

TO: ARIZONA ASSOCIATION OF HEALTH CARE LAWYERS  
FROM: Jerry Gaffaney, President, Secretary/Treasurer  
DATE: March 3, 2016

---

**MARCH 17, 2016 PROGRAM ANNOUNCEMENT**

***“The Anatomy of a Board Case Before The Arizona Medical Board and the Arizona Board of Osteopathic Examiners, and other topics of Interest”***

Date: March 17, 2016  
Time: 12:00 noon to 1:00 pm  
Place: Lewis Roca Rothgerber Christie at Collier Center  
201 East Washington Street, 3<sup>rd</sup> Floor

---

Our speakers are Patricia McSorley, executive director of the Arizona Medical Board, and Jenna Jones, executive director of the Arizona Board of Osteopathic Examiners. Their Bios are attached.

Program Description: Our speakers will provide their insight into the anatomy of a board case before their respective boards as well as discuss many other topics of interest including such things as current initiatives of their Boards and regulatory and other issues being addressed by their Boards.

This program will be held on March 17, 2016 at 12:00 noon at Lewis Roca Rothgerber Christie's office in Phoenix. Lunch will be served - \$10 for AAHCL members/\$15 for non-members.

Please RSVP in advance by e-mail to [CLovejoy@dickinsonwright.com](mailto:CLovejoy@dickinsonwright.com). You may pay at the door or send your check in advance (payable to AAHCL) to Jerry Gaffaney, Dickinson Wright 1850 North Central Avenue, Suite 1400, Phoenix, Arizona 85004. Whether or not you pay in advance, you must RSVP prior to the program.

**This program will count for one (1) credit hour of continuing legal education.**

**CALL IN INFORMATION:** To access the teleconference, use any of these dial-in numbers: 1-866-496-2887, 602-262-5301 or 602-385-0230. Enter this Bridge number: 5218. Enter this Participant PIN number: 95218

For CLE credits and materials for this program, please contact Cyrie Lovejoy.

**OFFICE DIRECTIONS – [www.lrrc.com/phoenix#directions](http://www.lrrc.com/phoenix#directions)**

Take I-10W to Washington Street. Exit and turn left at Washington Street for 2 miles and follow it to Collier Center (Bank of America building, including Kincaid's and Hard Rock Café), located on the south side of Washington Street. Turn left into the parking garage just before 2nd Street. Collier Center is on the southeast corner of 2nd Street and Washington.

Take the garage elevators up to the 2nd floor (Collier Center Lobby), then take the second bank of elevators to Lewis Roca Rothgerber Christie's 3rd floor for the AAHCL Meeting.

### Bio for Patricia McSorley

Patricia McSorley has been employed by the Arizona Medical Board since 2005. For more than eight years, she managed the Medical Board's Investigations Department. On February 26, 2015, the Board appointed her as the Executive Director of both the Arizona Medical Board and the Arizona Regulatory Board of Physician Assistants. Prior to her appointment as Executive Director, she had been asked to by the Board on two occasions involving transitions to serve as the Acting Interim Executive Director. Ms. McSorley holds a Juris Doctorate from Brooklyn Law School. Previously, she served as the Assistant Commissioner for the Bureau of Investigations and Trials with the New York City Fire Department.

### Bio for Jenna Jones

Jenna Jones has served as the Executive Director of the Arizona Board of Osteopathic Examiners since April 2012. Prior to this, she served as the Executive Director of the Arizona Veterinary Medical Examining Board for over nine years. Her love of animals led to her career in public service. She was appointed as a public member to the Arizona Veterinary Board by Governors Symington and Hull. During her terms she was elected Chair of the Board and also served on the National Board of Medical Examiners (NBME) as a public member. NBME is responsible for administration of the national licensure examination for veterinarians. Prior to joining public service she worked in various claims positions in the commercial insurance industry in Dallas, New Orleans, and Scottsdale. Jenna grew up in the Phoenix area and is a graduate of Baylor University in Waco, Texas. She also completed her certification as Certified Public Manager through Arizona State University. She loves the great state of Arizona and can't imagine living anywhere else but she bleeds green and gold! SIC EM BEARS! In her spare time she enjoys traveling, playing tennis, volunteering, and spending time outdoors with her dogs.



# Anatomy of a Board Investigation

**Patricia McSorley,**  
Director

One of the most important, but often least understood, functions of the Board is the disciplinary process. We hope that this article helps the physician community better understand how the Board's disciplinary process works.

## Core Functions

The Arizona Medical Board's mission is to "protect the public through judicious licensing, regulation and education of all allopathic physicians. In order to carry out its mission; the Board has two core functions licensing and regulation.

## Regulation

The regulation of Arizona's physicians is guided by the Arizona Medical Practice Act (A.R.S. §§ 32-1401 *et. seq.*) and Board's rules (A.A.C. R4-16-101 *et. seq.*).

The regulation of physicians is dependent on a complaint driven process. Once a complaint is made that alleges a violation of the Medical Practice Act the Board notifies the physician that an investigation is being opened.

The physician is provided with a copy of the complaint and has the opportunity to make a written response to the allegations. Notice is also sent to the complainant letting them know that the Board opened an investigation. Each case is assigned to a staff investigator whose role is to obtain all of the relevant information necessary for the Board to make a decision regarding whether the allegations against the physician can be sustained. The investigators have a wide variety of tools at their disposal, including issuing a subpoena for medical records, interviewing witnesses (including the physician and complainant) and visiting the physician's office.

## Medical Consultants Play a Critical Role

Our volunteer medical consultants form the backbone of the investigation process. According to statute, any case that alleges patient harm must be reviewed by a medical consultant. All of the relevant information obtained by the staff investigator is provided to the medical consultant who then is tasked with reviewing the care rendered by the

In order to carry out its mission; the Board has two core functions: licensing and regulation.

physician and determining if there has been a deviation from the standard of care.

Currently, the Board has a pool of 1200 volunteer medical consultants. However, the Board is in great need of additional medical consultants willing to review cases. Our consultants are critical to protecting both the public and the physician community. The Board relies on medical consultants to render an unbiased opinion of the current community medical standard. By assigning medical consultants who practice in the same area of medicine as the physician under review, the Board can assure itself that the care at issue is given the most accurate review possible. The Board needs more physicians to volunteer for this important service, especially in areas of addiction medicine,

orthopedic surgery and internal medicine.

To serve as a medical consultant, a physician must hold an active Arizona medical license, have practiced for a minimum of five years, and have no disciplinary action on their license. A small stipend and continuing medical education credits are available to compensate our medical consultants for their time and expertise. However, the real impetus to volunteer is the satisfaction of contributing to the medical profession.

## Due Process

The Board's disciplinary process is designed to maximize due process for the physician while protecting the public. If a medical consultant generates a report finding a deviation from the standard of care, the physician is provided with the

governing the initial licensing process. The new rules are a product of extensive internal review of the Board's licensing processes as well as input from stakeholders. These new rules are one of several changes the Board has made to expedite physician licensing while maintaining standards designed to protect the public. The rules can also be found at [www.azmd.gov](http://www.azmd.gov).

The Board has initiated a streamlined initial application, is working closely with hospitals as they on-board new physician staff, in order to notify these physicians of the Arizona licensing

Before the Board reviews a case, the Staff Investigational Review Committee (SIRC) reviews completed cases in order to make a non-binding disciplinary recommendation.

requirements as early as possible. Additionally, the Board continues to develop our on-line initial application process. The on-line initial application is currently in the testing phase and will soon be piloted with a small group of applicants. The Licensing Department

is dedicated to continuous improvement and welcomes any suggestions from both licensees and applicants as to how we can better serve you.

Lastly, we ask all physicians to maintain and update your contact information with the

Board. There are times the Board may need to contact you and it is imperative that we have up-to-date information. For example, the Board sends email reminders regarding your renewal deadline. Please take a moment to click on the following to access your contact profile and update your contact information: <https://azdo.glsuite.us/glsuiteweb/clients/azbom/Private/change-address/login.aspx>.

As always, thank you for the opportunity to continue to serve the physician community. **AM**



## ARIZONA MEDICAL BOARD

### MEDICAL CONSULTANTS NEEDED!

IT IS OUR MISSION to protect the public safety through the judicious licensing, regulation and education of physicians and physician assistants.

MEDICAL CONSULTANTS ARE THE **BACKBONE** OF OUR MISSION

**BECOME PART OF THE TEAM!**

Visit our website: [www.azmd.gov](http://www.azmd.gov) under Medical Consultants Orientation or Email: [omc@azmd.gov](mailto:omc@azmd.gov)



# PROFESSIONAL CONDUCT: The Board's Perspective

Jenna Jones

Executive Director

Arizona Board of

Osteopathic Examiners





## Board's Mission

### **ARS § 32-1803 (A)**

**The Board shall protect the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners.**





## The Board

---

- **Consists of seven members:**
  - **Five Osteopathic Physicians**
  - **Two Public Members**
- **Are all appointed by the Governor of Arizona**
- **Term of service is five years and reappointment for a second five year term is possible**



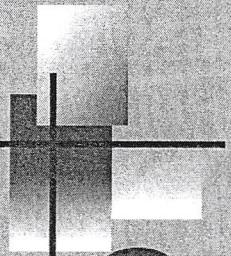


## Board staff

---

- Full time: Executive Director, Investigation Manager, Licensing Administrator, and Receptionist
- Part time: Investigator, Medical Consultant, and Admin. Asst.
- Over 300 complaints per year





# Osteopathic numbers

- 3000 licensees
- 350 Post Graduate permit holders
- 250 new licenses issued per year





# Roles of the Board

- **Licensure**
  - **Issues or denies licenses**
  - **Issues contingent licenses**
- **Regulation**
  - **Rehabilitates doctors to correct conduct**
  - **Disciplines by imposing sanctions\***





## Board Meetings

- **Board meeting agendas must be posted 24 hours prior to the scheduled meeting**
- **Open meeting law requires that discussions be made in public**
- **The Board may only decide items on the agenda\***





# Complaint Sequence

---

- **The case is reviewed by the Board's investigator or medical consultant.**
- **Some cases are sent to an outside reviewer.**
- **The case is sent to three Board members for initial review.\***





# Complaint Sequence

- **Executive Director Dismissal**
- **Case Review**
- **Investigative Hearing**
- **Formal Hearing**
- **Administrative Law Judge Review\***





## Case Review

---

- **The case and the three Board recommendations are reviewed.**
- **The Board may briefly discuss the case with the physician or the complainant.**
- **The physician may be represented by legal counsel.\***





## Possible Actions:

- **Dismissal of the case.**
- **Issue a Letter of Concern.**
- **Require further CME.**
- **Request an Investigative Hearing.**
- **Move to Formal Complaint Hearing.\***





# Investigative Hearing

---

- **The case file is sent to the physician of complaint or the representing attorney**
- **Any new information from the physician or attorney is reviewed and sent to the Board (this should be received at least two weeks prior to the Board meeting)\***



## **Investigative Hearing**

- **The case is reviewed.**
- **The Doctor, complainant, and witnesses will be sworn in and then testify under oath.**
- **The Board will hold discussion and vote on possible sanctions.**
- **The physician may be represented by legal counsel. \***





## Possible Actions:

- **Case Dismissal**
- **Require further CME**
- **Issue a Letter of Concern**
- **Fix a period of Probation**
- **Issue a Decree of Censure\***





## Possible Actions:

- **Restrict the physician's practice.**
- **Suspend the physician's license up to twelve months.**
- **Impose a civil penalty.**
- **Order a mental, physical or medical competency exam.\***





## Formal Administrative Hearing

- **The physician will be notified by certified mail.**
- **The Board will and the physician may be represented by counsel.**
- **Sworn statements of witnesses are received.\***





## Possible Actions:

- **Recommendations are made by the Administrative Law Judge within twenty days.**
- **Any of the above sanctions.**
- **Suspension of the physician's license.**
- **Revocation of license.\***





## Revocation

- **After revocation the licensee may not re-apply for five years**
- **Proof of rehabilitation from the underlying unprofessional conduct and competency may be necessary**
- **A re-entry plan may include CME, competency exams, evaluations or restriction of practice\***





## Consent Agreements

---

- **Both the physician and the Board agree to the:**
  - **Findings of Fact (description of conduct)**
  - **Conclusions of Law (the violation)**
  - **And the Order (the sanction)\***





## Top Ten Board Issues

- **1. Communication**
- **2. Documentation**
- **3. Inappropriate Prescribing**
- **4. Impairment**
- **5. Failure to diagnose\***





## Top Ten Board Issues

- **6. Boundary Issues**
- **7. Failure to Follow Up**
- **8. Fee Disputes**
- **9. Supervision of Staff**
- **10. Surgical Issues\***





## Documentation

---

- **Maintain adequate medical records.**
- **Document a thorough history and physical.**
- **Do not alter medical records.**
- **Provide medical records in a timely manner.\***





## Inappropriate Prescribing

- **Be responsible when prescribing controlled substances.**
- **Do not prescribe controlled substances to family members.**
- **Do not prescribe any medication to friends or family without keeping medical records.\***





# Impairment

- **Drugs and Alcohol**
- **Physical**
- **Emotional or Psychological**
- **Disruptive Behavior or Anger Issues\***



## **Failure to Diagnose**

- **Failure to perform a thorough history and physical**
- **Failure to order appropriate lab or X-rays**
- **Failure to recognize the seriousness or acuity of an illness\***





## Boundary Issues

- **Inappropriate comments**
- **Inappropriate touching**
- **Misdirected jokes**
- **Sexual intimacies with a patient\***



## **Failure to Follow Up**

- **Failure to follow up on lab and X-rays.**
- **Failure to inform patients of necessary repeat lab or X-rays.**
- **Failure to have office systems in place to prevent missed studies or follow up studies.\***





## Fee Disputes

- **Fraudulent billing**
- **Fraudulent practices**
- **Billing for Services Not Rendered\***





## Failure to Supervise Staff

- **Front office staff**
- **Billing personnel**
- **Medical assistants or nurses**
- **Physician Assistants**



# Surgical Issues

- **Failure to adequately inform patients of risks and possible complications**
- **Wrong site surgery**
- **Failure to recognize complications**
- **Failure to assess pre-operative lab and x-rays\***





## New Rule

---

- R4-22-103

An individual who wants the Board to consider a document at a meeting or hearing shall submit the document to the Board at least 15 days before the meeting or hearing or at another time as directed by the Board.





## Board concerns

---

- More than one continuance request.
- Late or voluminous submission of documents.
- Responses to medical consultants reports should be done at least two weeks prior to the meeting.
- Not submitting all medical records at first request.





# When appearing before the Board

- Candidness
- Honesty
- Recognizing possible issues and correcting them prior to appearing before the Board, when possible.



## Jerry K. Gaffaney

---

**From:** Spellman, Sabrina <SSpellman@lrrc.com>  
**Sent:** Thursday, March 17, 2016 11:51 AM  
**To:** Jerry K. Gaffaney  
**Subject:** FW: Anatomy of a Board Investigation with color background.pptx  
**Attachments:** Anatomy of a Board Investigation with color background.pptx

---

**From:** Patricia McSorley [<mailto:Patricia.McSorley@azmd.gov>]  
**Sent:** Thursday, March 17, 2016 10:56 AM  
**To:** Spellman, Sabrina  
**Subject:** Anatomy of a Board Investigation with color background.pptx

Sabrina,  
Please see slides for power point. See you very shortly.  
Pat

---

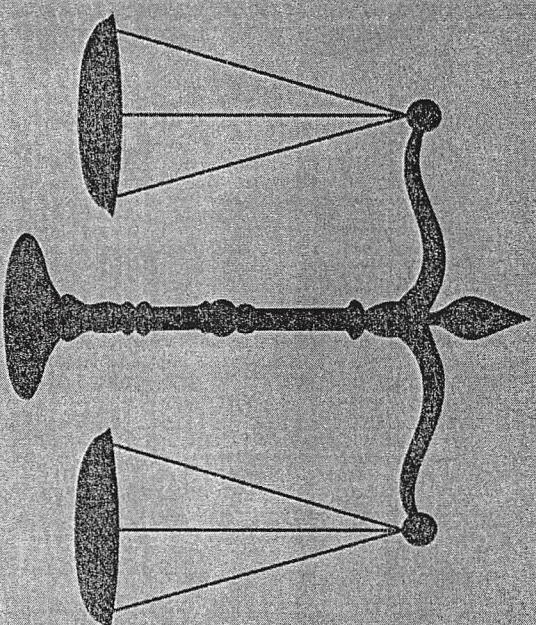
Confidentiality and Nondisclosure Notice: This email transmission and any attachments are intended for use by the person(s)/entity(ies) named above and may contain confidential/privileged information. Any unauthorized use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by email, and delete or destroy all copies plus attachments.

---

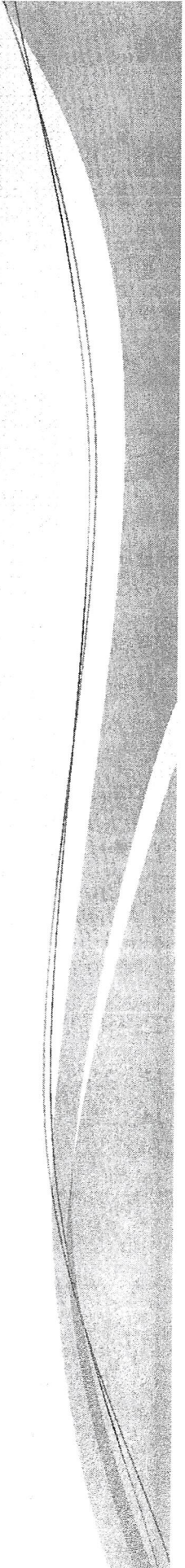
This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.



# Anatomy of a Board Investigation







## Arizona Medical Board's Mission

- “To protect the public through judicious licensing, regulation, and education all allopathic physicians.”
- Two core functions: licensing and regulation.



# Regulation

- Guided by the Arizona Medical Practice Act  
(A.R.S. §§32-1401 *et seq.* and the Board's rules  
A.A.C. R4-16-101 *et seq.*)
- Complaint driven process.
- Threshold for opening a complaint- if allegations made in the complaint were found to be true, a violation of the Medical Practice Act would result.

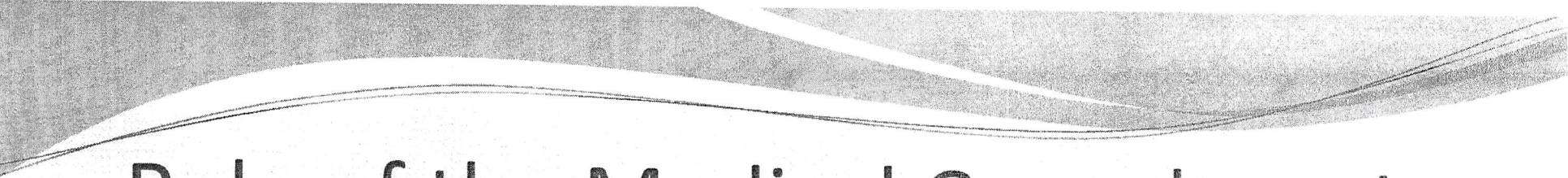




# Investigation Process

- Physician noticed of the investigation and provided with a copy of the complaint and asked for a written response.
- Assigned to a Board investigator who is responsible for obtaining all of the information for the Board to make an informed decision as to whether the charge can be sustained.
- Investigative tools: subpoena for medical records, interview physician/ witnesses, or visit physician's office.





# Role of the Medical Consultant In Investigations

- Critical to the process.
- Receive the materials gathered by the Staff Investigators to determine whether a deviation from the standard of care has occurred.





# Who are the Medical Consultants?

- Volunteer Physicians relied upon to render an unbiased opinion of the current community standard.
- Assigned to review cases in accordance with their specialty.
- Required to have an active Arizona license, a minimum of 5 years of practice and no disciplinary action.





# Opportunity to Respond

Disciplinary process is designed to allow for physician to have a fair and meaningful opportunity to respond to the allegations and balance the process with patient safety.



# Opportunity to Respond

- The goal of the investigation is to gather sufficient information for the Board to whether the standard of care has been met.
- Give several opportunities for the licensee to provide information/ documentation. Licensee is given the complaint and the consultants report to make a response.
- Often times additional material provided by licensee.





## Role of the Staff Investigator

- Conduit of information.
- Gather information.
- Respond to questions from licensee and the complainant.
- Draft reports for cases with allegations that do not involve standard of care.
- Testify at hearings.





# Dismissal of Complaints

- Where no violations have been established, statute allows the Executive Director to dismiss a complaint.
- Both physician and the complainant notified.
- Complainant has the right to appeal the dismissal to the full Board.



# Staff Investigational Review Committee (“SIRC”)

- Upon completion of a case with a sustained violation; the matter will proceed to SIRC.
- SIRC consists of the Chief Medical Consultant, the Assistant Attorney General, Board of Operations Manager and the Investigations Manager.



# Purpose of SIRC

- Review the case to ensure there is sufficient evidence to sustain the findings.
- Make a non-binding disciplinary recommendation to the Board.
- SIRC report serves as legal notice of the potential violations the Board will consider.



# Adjudication of Cases by the Full Board

When disciplinary action is recommended, the physician has three options: sign a consent agreement, appear before the Board for an informal interview, or proceed for a full evidentiary hearing at the Office of Administrative Hearings (“OAH”).




## Resolution of a Case

- Sign a consent agreement.
- Informal Interview before the full board: physician presents case, questioned by the Board members, full Board deliberates and makes a finding.
- Full evidentiary hearing before an administrative law judge.
- Law Judge makes a recommendation to the Board and the Board makes final decision.



# LICENSING





# Licensing Statistics

MD's Active Arizona License Population – 22,688

PA's Active Arizona Licensed Population – 2,735

MD Applications Received FY 2015- 1,478

PA Applications Received FY 2015- 352

MD Renewals Processed FY 2015- 10,275

PA Renewals Processed FY 2015- 2,382



# Initial Application

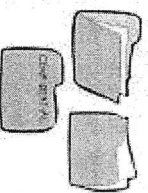
## MD Initial Applications

Online Application – Online as of December, 2015

Paper Application- Updated December 7, 2015



Applications are received Accurate and Complete- This means required documentation is NOT received with the application.



Each of the 4 MD Licensing Coordinators manage approximately 125-150 files at any given time.





# Online Application

- ✓ Live on December 7, 2016
- ✓ Board Staff has received 180 application as of December 7, 2016
- ✓ There are currently approximately 100+ Applicants in the process of Applying Online
- ✓ Online Application Status Update has started this Month



# Update on New Statutes & Rules

- ✓ Notarized Birth Certificates & Notarized Passports are now acceptable
- ✓ Board Consideration-Application for Licensure by Examination or Endorsement
  - Are Not ABMS Certified
  - Have Not passed SPEX
  - Board to Consider Applicants professional history
- ✓ ECFMG may be accepted in lieu of medical transcripts for foreign graduates.
- ✓ Board Staff Can verify ABMS Certification via AMA
- ✓ Malpractice
  - We no longer require Names and Address of the defendant, plaintiff or the date and location of the occurrence.



# Days to License a Physician

- ✓ In December 2014, the Peak for the Total Number of Days to License a Physician was 176 Days
- ✓ At the start of our Lean Transformation Project, the number was 141 Days.
- ✓ Currently, the Total Number of Days to License a Physician is 123 days.

**PLEASE!**  
**NOTE**

*These number include all days, even those in which we are waiting for the applicant or third party entity to submit a document.*



# Days to License a Physician *to exclude Wait Days*

- ✓ July 2015- 27 Days
- ✓ August 2015- 27 Days
- ✓ September 2015- 27 Days
- ✓ October 2015- 19 Days
- ✓ November 2015- 15 Days
- ✓ December 2015- 13 Days
- ✓ January 2015- 16 Day
- ✓ Overall Average is 22 Days



# Typical Cause for Delays

- ✓ **Primary Source Hospital Affiliation & Medical Employment Verification**
  - Many facilities utilize online verification processes. Arizona revised Statute Requires Primary Source Verification to be sent directly to the AMB from the verifying entity.
  
- ✓ **Fingerprint/Background Check**
  - 4 to 6 weeks Processing Time
  
- ✓ **Malpractice Documents**
  - Specifically for cases older than 10 years, as documents may have been purged by legal representatives or by the courts.
  
- ✓ **No Response from Applicant**



# Questions