Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump
Making government work better

Official Audit Report – Issued April 7, 2020

Board of Registration in Medicine

For the period July 1, 2016 through June 30, 2018

Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump
Making government work better

April 7, 2020

Mr. George Zachos, Executive Director
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Dear Mr. Zachos:

I am pleased to provide this performance audit of the Board of Registration in Medicine. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, July 1, 2016 through June 30, 2018. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Board of Registration in Medicine for the cooperation and assistance provided to my staff during the audit.

Sincerely,

Suzanne M. Bump
Auditor of the Commonwealth

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

BORIM	Board of Registration in Medicine
DLP	Division of Law and Policy
FSMB	Federation of State Medical Boards
OSA	Office of the State Auditor
PA	probation agreement
PHC	Physician Health and Compliance
PHP	physician health program
PHS	Physician Health Services
QPSD	Quality and Patient Safety Division

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Board of Registration in Medicine (BORIM) for the period July 1, 2016 through June 30, 2018. Under its enabling statute (Section 10 of Chapter 13 of the General Laws), BORIM is responsible for licensing physicians and acupuncturists and supporting a high quality of healthcare by ensuring that only qualified and competent physicians are licensed to practice in the Commonwealth. To meet its responsibilities, BORIM arranges for confidential treatment through Physician Health Services (PHS) for physicians who have conditions that may impair their ability to practice medicine.

BORIM uses PHS, a nonprofit corporation founded by the Massachusetts Medical Society, as the primary provider of the Commonwealth's physician health program (PHP).[1] The PHP is designed to provide consultation, assessment, support, and referrals for treatment to physicians, residents, and medical students who have potentially impairing health conditions (e.g., substance use disorders, mental health issues, and physical illness) that may compromise their ability to practice medicine. Physicians may seek treatment voluntarily or be required to seek treatment as part of BORIM's disciplinary action.

The objective of our audit was to assess how effectively BORIM administered the provision of PHP services to physicians through PHS. In particular, we determined whether BORIM had proper controls in place that would allow it to monitor and evaluate PHP services and, as necessary, effect the proper delivery of these services to ensure that physicians who participated in the program received quality care and completed all of their required treatment before being allowed to practice medicine.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 **Page 11**	BORIM had inadequate oversight controls, including monitoring, over PHS.

1. The Massachusetts Medical Society identifies PHS as the Commonwealth's PHP provider, and BORIM uses PHS for most impairment cases. However, BORIM does use other providers for competency issues and for instances where a physician requests a provider other than PHS.

Recommendations **Page 14**	1. BORIM should establish oversight and monitoring controls over PHS, including the following: a. BORIM should establish a formal contract with PHS documenting PHS's responsibilities as the PHP provider. b. BORIM's board of directors should formally approve PHS as the Commonwealth's PHP provider. c. BORIM should establish policies and procedures that PHS, its vendors, and other providers must follow to ensure that impairment cases are properly and consistently handled. d. BORIM should implement a requirement of PHS program reviews to determine whether PHS meets BORIM's expectations. e. BORIM should ensure that a fair disposition process for dispute resolution is provided to physicians under PHS care. f. BORIM should document monthly meetings between its Physician Health and Compliance Unit and PHS.
Finding 2 **Page 16**	BORIM did not effectively monitor and control PHS's compliance reporting related to physicians with BORIM probation agreements.
Recommendations **Page 17**	1. BORIM should implement controls over monitoring activities to ensure policy compliance, timely submission of complete required reports, and prompt notification to PHS of physicians who require monitoring reports. 2. BORIM should maintain records of all data for all years on the monthly and quarterly monitoring spreadsheet.

OVERVIEW OF AUDITED ENTITY

The Board of Registration in Medicine (BORIM), established by Section 10 of Chapter 13 of the Massachusetts General Laws, is in charge of the licensing, regulation, and discipline of Massachusetts physicians and acupuncturists. BORIM, which was created in 1894, is charged with standardizing medical license practices to protect public health and safety. In 2018, there were approximately 40,000 physicians and 1,800 acupuncturists licensed in the Commonwealth.

According to BORIM's 2018 annual report,

> *The Board of Registration in Medicine's mission is to ensure that only qualified and competent physicians of good moral character are licensed to practice in the Commonwealth of Massachusetts and that those physicians and health care institutions in which they practice provide to their patients a high standard of care, and support an environment that maximizes the high quality of health care in Massachusetts.*

Section 9(a) of Chapter 13 of the General Laws places BORIM within the Department of Public Health under the Executive Office of Health and Human Services. The BORIM board of directors consists of seven members who are appointed by the Governor (five physicians and two other members of the public) and serve for terms of three years. BORIM also has jurisdiction over the licensure and discipline of acupuncturists through its committee on acupuncture.

BORIM has five major divisions: the Licensing Division, the Enforcement Division, the Division of Law and Policy (DLP), the Quality and Patient Safety Division (QPSD), and the Operations Division.

The Licensing Division is responsible for processing physician licensing applications for new applicants and renewals for licensed applicants. The division validates physician credentials, including education, training, experience, and competency.

Under Section 5(f) of Chapter 112 of the General Laws, healthcare providers (e.g., physicians, medical office personnel, and hospitals) are required to file a report to BORIM on any provider they believe to be in violation of BORIM's regulations, including those related to impairment. The Enforcement Division is responsible for investigating these statutory reports and other complaints, including those related to impairment involving physicians and acupuncturists, and for litigating adjudicatory matters. A complaint against a physician must allege that a licensee is practicing medicine in violation of law, regulation, or good and accepted medical practice as identified in Section 1.03(5)(a) of Title 243 of the Code of

Massachusetts Regulations. Complaints are received from various sources, including patients and relatives of patients. Section 5(f) of Chapter 112 of the General Laws requires statutory reports of physician noncompliance to be filed by medical stakeholders, such as physicians who are self-reporting, healthcare facilities and providers, law enforcement agencies, and malpractice insurers.

DLP is responsible for researching legal issues, providing legal analysis, and advising BORIM about legal determinations regarding physicians' licenses. DLP also works with other BORIM divisions on issues related to licensure, physician health, policy, statutory reports, and public information. Within DLP, the Data Repository Unit receives and evaluates statutory reports, oversees the accuracy of physician profiles, and reports BORIM's actions on licensees to the National Practitioner Data Bank and other healthcare databanks. The Physician Health and Compliance Unit within DLP is responsible for monitoring licensees who are on probation because of board disciplinary actions and for determining whether they comply with their probation agreements (PAs).[2] PA requirements may include monitoring and the submission of compliance reports[3] to BORIM. In 2018, there were 44 physicians monitored under PAs, 1 of whom successfully completed all the PA requirements. In 2017, there were 38 physicians monitored under PAs, 3 of whom successfully completed all the PA requirements. When a physician successfully meets all the requirements of a PA, s/he is eligible to have the probation period end.

QPSD oversees patient care in hospitals and offices to ensure that patients receive optimal care and to identify or prevent problems in practices. QPSD works with healthcare facilities to ensure the existence of a program of reviews and standards for quality care.

The Operations Division is responsible for BORIM's budget operations, human resources, procurement, expenditure tracking, and facilities. The division includes a call center, a Document Imaging Unit, a mailroom, and a reception area. The call center is responsible for answering questions, helping callers obtain forms and other documents, providing copies of requested documents in physicians' BORIM profiles, and handling licensing calls. In 2018, the call center received more than 19,000 calls. The Document Imaging Unit scans all agency documents into an electronic database for employee access.

2. PAs detail BORIM's requirements for physicians to return to good standing and are signed by the physicians and BORIM's chair. PAs involving substance abuse are typically five-year agreements requiring monitoring by Physician Health Services. If a physician does not comply with the agreement, a new PA is signed and the five-year probation period restarts.
3. Compliance monitoring reports include quarterly Physician Health Services reports and other compliance reports submitted by the personal physician of the physician on the PA, worksite monitors, or chaperones. They are submitted either quarterly or monthly, depending on the terms of the PA.

Section 35M of Chapter 10 of the General Laws established the Board of Registration in Medicine Trust Fund, which BORIM can use, without prior appropriation, exclusively for its operations and administration expenses. The trust fund revenue consists of physician licensing and renewal fees. For fiscal year 2017, the board spent $8,851,893, of which $8,387,350 was from the trust fund. For fiscal year 2018, it spent $9,687,695, of which $9,223,149 was from the trust fund. In addition to the money in the trust fund, during our audit period BORIM received two state appropriations of $466,206 each, one in fiscal year 2017 and one in fiscal year 2018.

Physician Health Program

Most states identify a physician health program (PHP) through which physicians who have been reported as practicing medicine while impaired[4] can obtain assistance to maintain or reestablish their licenses in good standing. This program is usually a nonprofit agency of the state's medical society and functions as a resource for needed assistance. According to the Federation of State Physician Health Programs'[5] website, 36 state PHPs have formal contractual relationships with their state medical boards. For the Commonwealth, physicians needing assistance are referred to Physician Health Services (PHS) as the provider of the Commonwealth's PHP. The Massachusetts Medical Society identifies PHS to physicians as the Commonwealth's PHP provider, and BORIM uses PHS for most impairment cases. PHS is a nonprofit corporation founded by the Massachusetts Medical Society to provide confidential consultation and support to physicians, residents, and medical students. Physicians who have been reported as practicing medicine while impaired can do the following:

- voluntarily self-report or receive assistance from PHS without BORIM involvement if no patient harm has been reported and the physician meets PHS requirements, such as receiving treatment, attending counseling meetings, and passing drug or alcohol tests
- obtain PHS services voluntarily because of a complaint before BORIM investigates
- be referred to PHS by BORIM for assessment and/or treatment as a condition of the BORIM board of directors' disciplinary proceedings or PAs.

Physicians with BORIM PAs who receive PHS services related to substance use must also enter into a monitoring contract with PHS. PHS provides case management, including monitoring, and refers

4. "Impaired physician" is defined in Section 1.03(5)(a)(4) of Title 243 of the Code of Massachusetts Regulations as a physician "practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability." This audit only includes alcohol and drug impairments.
5. The Federation of State Physician Health Programs is an independent organization that focuses on the rehabilitation and monitoring of physicians experiencing substance use disorders.

physicians to third-party vendors for assessment and treatment of substance use disorders, behavioral health concerns, occupational problems, or mental or physical illness, as needed. BORIM does not vet the third-party vendors that PHS selects to provide these treatment services. Help can also be obtained to address stress, burnout, issues with work-life balance, and a variety of physical and behavioral health concerns. Individuals with competency issues are referred by the BORIM board of directors either to PHS for assessment of other potential impairments or to a third-party vendor approved by the BORIM board of directors for assessment and services that the board of directors requires in order for the person to maintain licensure.

A physician's PA with BORIM requires the physician to comply with all terms of the PHS monitoring contract, PHS to submit quarterly compliance reports to BORIM, and PHS to notify BORIM immediately of any noncompliance with the agreement. All fees and costs for compliance with the agreements, including costs for assessment and treatment, are the physician's responsibility.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Board of Registration in Medicine (BORIM) for the period July 1, 2016 through June 30, 2018.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding the objective, and where the objective is discussed in the audit findings.

Objective	Conclusion
1. Do BORIM's oversight and monitoring of controls over Physician Health Services' (PHS's) operation ensure due process and quality treatment of substance use disorders for physicians who have been reported as practicing medicine while impaired?	**No; see Findings 1 and 2**

To achieve our objective, we gained an understanding of BORIM's internal control environment related to our audit objective by reviewing applicable laws, regulations, and agency policies and procedures, as well as conducting inquiries with BORIM's staff and management. Our audit involved examining some of the physician health program (PHP) services PHS provided to physicians who had been reported as practicing medicine while impaired that were relevant to BORIM's fulfillment of its mission. However, we also determined that there was no contract between BORIM and PHS for PHP services and that PHS did not receive any direct payments from BORIM; physicians are responsible for paying for any services. Therefore, our ability to perform any audit testing at PHS was limited at best, so we focused our audit work on assessing how effectively BORIM oversaw and administered PHS's provision of PHP services.

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objective.

We reviewed BORIM's oversight and monitoring of PHS's operation of the Commonwealth's PHP, including oversight and monitoring of 27 physicians with BORIM probation agreements (PAs) for substance use requiring PHS monitoring,[6] and whether BORIM used oversight controls over PHS, by performing the following tests:

- We conducted interviews with BORIM management and board members to understand BORIM's oversight of PHS's operations.
- We performed an inquiry with BORIM's management and board of directors regarding whether BORIM had a formal contractual relationship with PHS according to the best practices of the Federation of State Medical Boards (FSMB).
- We performed an inquiry with BORIM management regarding whether the BORIM board of directors had established adequate program standards for PHS, including a confidential impaired physician program approved by BORIM, establishment of rules and regulations for the review and approval of a medically directed PHP, a review of its approved program/s on a regular basis, and selection of treatment providers and facilities in accordance with FSMB best practices.
- We performed an inquiry with BORIM's management and board of directors regarding whether BORIM monitored or required a program performance review to ensure that PHS met FSMB best practices.
- We performed an inquiry with BORIM's management and board of directors regarding whether the 27 physicians who had PAs that involved PHS during the audit period were provided with a fair disposition process (i.e., due process).

We tested all 27 physicians identified as having BORIM PAs with a requirement of substance use monitoring provided by PHS during the audit period. We performed the following procedures:

- We reviewed the physicians' Claris[7] case records to verify the accuracy of the impairment complaint type, BORIM board of directors' actions, and probation status.
- We determined whether PAs were signed by the physicians and the BORIM board of directors' chair or vice chair and were on file. We reviewed the PAs to verify requirements for substance use monitoring, a PHS substance use monitoring contract, and any additional monitoring requirements.
- BORIM receives from PHS an initial physician evaluation report, quarterly compliance monitoring reports on physician compliance that include a summary of substance testing dates and results, and a final report stating that the physician has completed treatment. We examined

6. Although there were other physicians with PAs during the audit period, our findings focus on the 27 who had PAs with PHS for substance use.
7. Claris is the database BORIM uses to maintain physician records, including information regarding licensing type and status, complaints received, enforcement investigations, legal proceedings, and the BORIM board of directors' actions.

the Physician Health and Compliance (PHC) Unit PA monitoring case files to verify the timely receipt of signed PHS quarterly compliance monitoring reports. We also reviewed additional monitoring reports required by PAs, including reports submitted by the physicians' personal physicians, worksite monitors, and chaperones, for receipt and timeliness (see Other Matters). We also reviewed the reports for completeness, duplications, and any missing reports. We reviewed and discussed these cases with the PHC Unit compliance manager.

- We reviewed each BORIM physician online profile to verify the accuracy of the physician status listed and discussed any discrepancies with BORIM management.

- For each physician who completed a PA during the audit period, we reviewed the petition for the termination date of the PA, if applicable; the petition submittal date to the BORIM board of directors; and meeting minutes. We compared the submittal dates to the BORIM board of directors' review dates to assess timeliness.

Data Reliability

To gain an understanding of BORIM data systems and controls, we interviewed the information technology staff member responsible for their oversight.

To assess the reliability of the data on the list of physicians with active PAs involving PHS, we interviewed BORIM management employees who were responsible for oversight of this data entry. We also searched the list for hidden rows and columns and duplicate records. We then traced a sample of 11 physicians from the list to Claris and OnBase[8] records to verify case information, such as physician name, sanction date, impairment type, PA start and end dates, BORIM board of directors' meeting minutes, and Claris records.

With regard to the accuracy of the list of physicians with active PAs provided by the PHC Unit manager, we compared these data to BORIM monthly and quarterly monitoring report spreadsheets, meeting minutes for the BORIM board of directors and complaint committee, the BORIM board of directors' actions per the BORIM website, the PHC Unit internal audit report, and Claris case files.

BORIM's Enforcement Unit provided us with a data extract from Claris that listed 41 cases regarding complaints of physicians practicing while impaired that were received during the audit period. To assess the reliability of this data extract, we traced a sample of five records from the extract to OnBase records to verify case information, including physician name, complaint type, complaint date issued, complaint

8. OnBase is the electronic record of scanned hardcopy documents related to physicians, including licensing information, complaints, investigations, and legal proceedings.

date closed, and license number. We also reviewed security, access, segregation of duties, and contingency planning controls over the systems and tested user access controls.

We deemed the list of physicians with active PAs and the data extract list of impairment cases to be sufficiently reliable for our audit purposes.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Board of Registration in Medicine had inadequate oversight controls, including monitoring, over Physician Health Services.

The Board of Registration in Medicine (BORIM) had inadequate oversight and monitoring controls over Physician Health Services (PHS), the operator of the Commonwealth's physician health program (PHP). Although the BORIM board of directors provided a detailed analysis for each doctor's petition to return to work, often including the requirement that PHS provide additional documentation, BORIM had not exercised adequate oversight over PHS, which is entrusted with monitoring and reporting to BORIM whether physicians who have been found to have practiced while impaired fulfill their probation agreement (PA) requirements and with ensuring that physicians are provided with a fair disposition process (i.e., due process). For example, BORIM does not formally advise physicians that they can appeal its decision to use PHS as the treatment provider. Also, no documentation is provided to physicians notifying them of their right to dispute the choice of a testing facility. Without effective oversight of PHS, BORIM cannot ensure that physicians receive proper treatment for each alleged impairment.

BORIM did not have a contract with PHS that would outline any expected standards, nor could BORIM provide any documentation that it had approved PHS as the Commonwealth's PHP provider. Additionally, the BORIM board of directors had not developed any specific policies, procedures, or guidelines to ensure that PHS, its vendors, or other providers properly and consistently handled impairment cases. Also, BORIM had not performed any reviews (i.e., audits) of PHS to assess whether PHS properly and consistently handled impairment cases.

Additionally, although some physicians in a program monitored by PHS have appealed to BORIM when they felt that due process was compromised, BORIM did not ensure that PHS had a fair disposition process in place. As the licensing authority for physicians, BORIM is responsible for ensuring that physicians have a fair process for the handling of matters involving PHS. Further, BORIM could not provide documentation of the required monthly meeting between its Physician Health and Compliance (PHC) Unit and PHS to demonstrate that BORIM reviewed the progress of all 27 physicians who had PAs during the audit period.

A lack of adequate oversight and monitoring controls, including a contract, approval, policies, procedures, guidelines, reviews, and documented meetings, could result in doctors practicing while

impaired, thus putting patients at risk. In addition, a lack of a fair disposition process for physicians involved with PHS could result in physicians not having access to fair and impartial resolution of allegations of impairment.

Authoritative Guidance

The Committee of Sponsoring Organizations of the Treadway Commission's document *Internal Control—Integrated Framework*, which is referred to in the Comptroller of the Commonwealth's *Internal Control Guide*, provides guidelines for effective internal controls. BORIM is required to follow guidelines set forth by the Comptroller. *Internal Control—Integrated Framework* states,

> *While management can use others to execute business processes, activities, and controls for or on behalf of the entity, it retains responsibility for the system of internal control.*

Because BORIM is the state agency with the overall responsibility of making sure only competent doctors are licensed to practice in Massachusetts, it is also responsible for oversight of organizations that contribute to its mission, including PHS.

We used the Federation of State Medical Boards' (FSMB's) *Guidelines for the Structure and Function of a State Medical and Osteopathic Board* as criteria to assess BORIM's monitoring and oversight program. Although BORIM is not required to follow these guidelines, they are a best practice for state medical boards. Regarding a contract with a PHP provider, the guidelines state,

> *[A state medical board] should have available to it a confidential impaired physician program approved by the Board and charged with the evaluation and treatment of licensees who are in need of rehabilitation. The Board may directly provide such programs or through a formalized contractual relationship with an independent entity whose program meets standards set by the Board.*

Additionally, regarding policies and procedures for the PHP provider, these guidelines state,

> *The board should be authorized at its discretion to establish rules and regulations for the review and approval of a medically directed Physician Health Program (PHP).*

We believe that the rules should include guidelines for PHS, because the guidelines also indicate that state medical boards should "develop, recommend, and adopt rules, standards, policies, and guidelines related to qualifications of physicians and medical practice," and PHS's services relate to ensuring that physicians are qualified.

Regarding reviews of the PHP provider, the FSMB document states,

> *[A state medical board] should be the final authority for approval of a PHP, should conduct a review of its approved program(s) on a regular basis and should be permitted to withdraw or deny its approval at its discretion.*

Regarding approval of a PHP provider, the FSMB document states,

> *[A state medical board] . . . should . . .*
>
> 21. *establish a mechanism, which at the Board's discretion, may involve cooperation with and/or participation by one or more Board-approved professional organizations, for the identification and monitored treatment of licensees who are dependent on or abuse alcohol or other addictive substances which have the potential to impair.*

Because an organization needs to be board-approved to provide the above services, it would be reasonable for BORIM to document its approval of PHS as its PHP provider.

Regarding providing a fair disposition process, Section 1 of Title 243 of the Code of Massachusetts Regulations governs the handling of matters related to the practice of medicine and adjudicatory hearings by BORIM. It is "based on the principle of fundamental fairness to physicians and patients and shall be construed to secure a speedy and just disposition [of any cases]." Because BORIM is responsible for following this regulation, it should ensure that its PHP provider has a fair disposition process.

Finally, regarding PHC Unit meetings with PHS, Section II(g) of the PHC Unit's procedures states, "PHC Unit staff meets monthly with the staff of PHS to review mutual monitoring cases."

Reasons for Lack of Oversight

When discussing why BORIM did not have oversight controls, written policies and procedures with PHS, or documentation approving PHS as the Commonwealth's PHP provider, BORIM management told us that PHS was the Commonwealth's long-term PHP provider and that BORIM management felt PHS's staff included very knowledgeable medical experts and therefore PHS did not require oversight. In a meeting with the audit team, the BORIM executive director stated, "The board does not interfere with the treatment decisions made by PHS pertaining to the impaired physician, since PHS is deemed the experts with a very knowledgeable physician in its management." He added that PHS had been very responsive to BORIM personnel and board members.

Regarding the lack of a contract, the BORIM board of directors told us that a formal arrangement might present the appearance of a conflict of interest between BORIM and PHS and prevent physicians from voluntarily seeking necessary confidential rehabilitation assistance. We believe, however, that neither of these reasons is valid, or FSMB would not promote the use of formal contracts as a best practice. In addition, other states have formal contracts with their PHP providers, as mentioned in the "Overview of Audited Entity" section of this report. It is possible to build confidentiality requirements into a contractual relationship.

Regarding documentation of BORIM approving PHS as the Commonwealth's PHP provider, BORIM management stated that they could not find a vote by the board of directors approving PHS in the available meeting minutes. Also, BORIM management told us a program review of PHS was not conducted because BORIM's board of directors was satisfied with PHS's performance.

BORIM management told us that although the BORIM board of directors addresses physicians requesting a provider other than PHS for their PAs, the board of directors does not provide a dispute resolution process for individuals receiving PHS services, because the BORIM board of directors does not get involved in disputes between physicians and PHS regarding treatment plans.

Regarding the lack of PHS meeting documentation, BORIM personnel stated that these meetings were considered informal discussions about physician cases and therefore were not documented.

Recommendations

1. BORIM should establish oversight and monitoring controls over PHS, including the following:

    a. BORIM should establish a formal contract with PHS documenting PHS's responsibilities as the PHP provider.

    b. BORIM's board of directors should formally approve PHS as the Commonwealth's PHP provider.

    c. BORIM should establish policies and procedures that PHS, its vendors, and other providers must follow to ensure that impairment cases are properly and consistently handled.

    d. BORIM should implement a requirement of PHS program reviews to determine whether PHS meets BORIM's expectations.

    e. BORIM should ensure that a fair disposition process for dispute resolution is provided to physicians under PHS care.

    f. BORIM should document monthly meetings between the PHC Unit and PHS.

Auditee's Response

The Board disagrees "best practices" under the Federation of State Medical Boards' (FSMB) Guidelines for the Structure and Function of a State Medical and Osteopathic Board, requires the Board to have oversight of Physician Health Services. Rather, the Board has discretion whether to exercise oversight of Physician Health Services (PHS), and the Board strongly maintains that PHS's independence from the Board is essential to encourage physicians to seek help and for PHS to be effective. If PHS, or another provider of similar health services, is viewed as an adjunct of the Board, physicians will be deterred from seeking necessary treatment as they will view PHS, as an arm of the Board. PHS' findings would be viewed as the Board's findings and/or issued by PHS to satisfy its "contractual obligations" to the Board. Such a result, where physicians no longer seek treatment, could have an extremely harmful effect on patient safety. [The American College of Physicians has stated: "Various constituencies, such as hospitals, insurers, boards, and medical societies, can support PHPs but should not influence day-to-day operations and case management." Physician Impairment and Rehabilitation: Reintegration Into Medical Practice While Ensuring Patient Safety: A Position Paper From the American College of Physicians, Ann Intern Med. 2019; 170(12):871-879.]

As we shared with the auditors, while the Board does not have a contractual relationship with PHS, the Board continuously assesses PHS's performance. PHS is a "finder of fact" or an "evaluator of a problem" for the Board, it is the Board not PHS who has the authority and duty to determine what disciplinary action, if any, should be taken based on PHS' findings. "The effectiveness of PHS is assessed on a case by case basis. When PHS evaluates a physician based on their self-report, or at the direction of the Board, it either makes its independent verification of the facts or uses other "specialist" or entities for verification and analyses. After its evaluation, PHS makes recommendations to the Board for possible remediation options, including periodic assessments, ongoing monitoring for a defined period of time, testing (in case of substance abuse). The information thus gathered and the recommendations received from PHS, is then carefully and deliberately considered by the Board, as a basis (but not the sole basis) supporting the Board's decision whether to impose discipline, monitoring, remediation or further evaluation. It is not uncommon for the Board to ask for additional information, an alternate opinion or other data that might be helpful to the Board in making its decision, which PHS is not privy to.

Further, although BORIM has not requested an audit of PHS' programs, PHS hired an independent evaluator with special expertise in the operations of health programs to conduct an independent review of their programs as referenced in the Physician Health Services 2017 Annual Report.

Auditor's Reply

The Office of the State Auditor (OSA) can appreciate BORIM's position regarding the establishment of a contract with PHS. However, as noted above, FSMB guidelines indicate that it is a best practice for a state medical board to enter into a contract with its PHP provider. Although we are not in a position to comment on whether entering into a contract with PHS might negatively affect the number of physicians seeking treatment, it is important to note that this concern has not deterred many other

state medical boards from entering into formal contracts with their PHP providers.[9] According to the Federation of State Physician Health Programs' website, 36 (75%) of the 48 states with PHPs had entered into contracts with their PHP providers as of March 10, 2020. Although we acknowledge that PHS provides BORIM with services and information that are critical to BORIM's decision-making, OSA believes that by entering into a formal contract with PHS, BORIM will have better control over program services and quality. A formal contract would allow BORIM to establish essential program requirements, such as formal program performance standards and measures, confidentiality requirements, program quality assessment requirements (e.g., peer reviews or audits), and an established grievance process for physicians who may not be satisfied with their treatment programs.

In its response, BORIM asserts that it continuously assesses PHS's performance on a case-by-case basis. However, BORIM did not provide OSA with any formal standards it may use to perform these assessments. Further, although we believe it is a sound management practice for BORIM to conduct a case-by-case review of PHS's evaluations of each physician and use this information as one way to assess the quality of PHS's services, we also believe BORIM could more effectively assess PHS's overall performance and the quality of PHP services by establishing formal performance standards and monitoring PHS's overall compliance with them.

BORIM points out that "PHS hired an independent evaluator with special expertise in the operations of health programs to conduct an independent review of their programs as referenced in the Physician Health Services 2017 Annual Report." Although we acknowledge that PHS's hiring of a consultant to perform a review of its program services is commendable, we believe that a contractually required periodic assessment of program services will better allow BORIM to monitor and ensure program quality and integrity. Further, when we asked BORIM officials to provide us with a copy of PHS's 2017 annual report, they told us they did not have a copy; therefore, we could not determine to what extent, if any, BORIM reviewed this report and assessed the quality of the PHP services provided.

2. BORIM did not effectively monitor and control PHS's compliance reporting related to physicians with BORIM PAs.

BORIM did not effectively monitor and control compliance reporting by PHS related to 27 physicians with BORIM PAs. BORIM was able to account for 432 out of 437 quarterly reports that PHS was required

9. Other states that have entered into contracts with their state medical boards include Colorado, Florida, Maine, and New York.

to send to it for 27 physicians with PAs; the other 5 reports were not submitted. Of the 432 that were submitted, 1 was incomplete and 13 were not submitted on time. Twelve of the 13 untimely reports involved two people for whom BORIM did not notify PHS that PAs had been approved and that quarterly compliance reporting should begin. For one of these two people, it was two years before PHS compliance reporting occurred.

In addition, BORIM did not keep past data in the tracking spreadsheet that logs the dates the monthly and quarterly compliance reports are received. Instead, BORIM only kept information for the current year on the spreadsheet.

As a result of these issues, BORIM could not ensure the public's safety related to physicians returning to active practice. Without adequate controls and oversight, BORIM cannot achieve its mission, stated in its 2018 annual report, of ensuring "that only qualified and competent physicians of good moral character are licensed to practice in the Commonwealth of Massachusetts."

Authoritative Guidance

According to Section II(f) of the PHC Unit's procedures,

> *An essential task of the PHC Unit is to ensure that any monitoring reports . . . are filed on time. In order to effectuate this, the PHC Manager will coordinate with the PHC Program Coordinator in reviewing the submission of reports. The Program Coordinator will keep a spreadsheet tracking the submission of reports. The Program Coordinator will log the date that the report was received and the PHC Manager will review for any issues and sign off on it, logging it in the tracking system.*

Reasons for Lack of Monitoring

BORIM management stated that the lack of notification regarding two physicians who were required to be monitored was a communication oversight. Also, BORIM personnel stated that the monthly and quarterly monitoring spreadsheet used to track receipt of compliance reports was a live document and that therefore information from prior years was not kept on the spreadsheet.

Recommendations

1. BORIM should implement controls over monitoring activities to ensure policy compliance, timely submission of complete required reports, and prompt notification to PHS of physicians who require monitoring reports.

2. BORIM should maintain records of all data for all years on the monthly and quarterly monitoring spreadsheet.

Auditee's Response

As we discussed with your audit team, prior to this audit, in 2018, the Board conducted a self-audit of its Physician Health and Compliance Unit to ensure monitoring reports were provided in a timely manner. The recommendations referenced in this finding were adopted prior to the commencement of OSA Audit.

The Board measures PHS' effectiveness and adherence to the Board's performance standards by reviewing, among other measures, the quality of its recommendations, monitoring reports, results of body fluid sampling, inpatient and outpatient reports and in-depth psychiatric evaluations. When warranted, the Board will request that PHS provide additional reports and supporting documentation before the Board adjudicates a matter, and may also make recommendations to PHS regarding its business practices.

The Board also measures PHS' effectiveness using the clinical expertise of its Board members. A past Board member, who was a psychiatrist, and a current Board member, who is a Licensed Alcohol and Drug Counselor and Certified Interventionist, reviewed and confirmed PHS's effectiveness as matters were brought to the Board on a case by case basis. The Board also recognizes PHS' Board of Directors includes diverse representation and leaders from the medical community, including its Medical Director who is highly respected in the field of addiction medicine. PHS' effectiveness is also measured by the successful transition of many physicians back into the workplace.

Additionally, to ensure patient safety, the Board implemented procedures to confirm the reported information regarding impaired physicians is complete and brought forward in a timely manner.

BORIM's protocols require its Executive Director promptly (the same-day) to review statutory reports received by the Board, and refer those reports to the Complaint Committee for prompt review at the next Complaint Committee meeting, or for urgent matters to contact the Chair of the Board and perhaps hold an emergency board meeting.

Auditor's Reply

In its response, BORIM states that it "conducted a self-audit of its Physician Health and Compliance Unit to ensure monitoring reports were provided in a timely manner" and, as a result of this audit, implemented changes to better ensure the timeliness of reporting. Despite this, we still found problems with PHS's submission of quarterly monitoring reports to BORIM during the audit period. Timely reporting on physicians who have PAs is essential to keeping BORIM informed about physician progress and ensuring patient safety. Therefore, OSA made recommendations for improvements to both recordkeeping and internal controls, which we believe would be effective in resolving the problems we

identified with the quarterly reporting process. Based on its response, BORIM is taking measures to address our concerns on this matter; however, we urge BORIM to implement all our recommendations.

OTHER MATTERS

During our review of the 27 physicians in Board of Registration in Medicine (BORIM) probation agreements (PAs) with Physician Health Services (PHS) during the audit period, we noted that 50 additional required monitoring reports that were sent directly to BORIM (including worksite monitor and chaperone reports required either monthly or quarterly by BORIM PAs) had issues similar to the issues with PHS's quarterly reports. These issues included missing and untimely reports. Specifically, from a population of 285 quarterly or monthly worksite monitoring reports, 1 was missing and 48 were submitted late. From a population of 51 quarterly chaperone reports, 1 was missing. The missing and untimely reports involved 13 (48%) of the 27 physicians reviewed. To ensure physician compliance with its PAs, BORIM should improve its controls over the monitoring of PA compliance.