



A REPORT  
TO THE  
ARIZONA LEGISLATURE

Performance Audit Division

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Performance Audit and Sunset Review

# Board of Chiropractic Examiners

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June • 2010  
REPORT NO. 10-06



**Debra K. Davenport**  
Auditor General

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AUDITOR GENERAL

**STATE OF ARIZONA**  
OFFICE OF THE  
**AUDITOR GENERAL**

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DEPUTY AUDITOR GENERAL

June 30, 2010

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Patrice Pritzl, Executive Director  
Board of Chiropractic Examiners

Transmitted herewith is a report of the Auditor General, a Performance Audit and Sunset Review of the Board of Chiropractic Examiners. This report is in response to a November 3, 2009, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board of Chiropractic Examiners (Board) agrees with most of the findings and plans to implement or implement in a different manner all of the recommendations. We have attached a brief reply to the Board's response to address some statements in the response.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on July 1, 2010.

Sincerely,

Debbie Davenport  
Auditor General

Attachment

cc: Members, Board of Chiropractic Examiners

**REPORT  
 HIGHLIGHTS**  
**PERFORMANCE AUDIT**

**Our Conclusion**

The Board of Chiropractic Examiners (Board) should improve four key aspects of its complaint-handling process. (1) It should ensure that board and staff decisions about whether to open a complaint are consistent with statutory authority by enhancing its complaint-opening policy to provide additional guidance. (2) It should, where possible, limit its subpoenas to records directly related to the nature of the complaints it is investigating. (3) It should not review a licensee's complaint or disciplinary history until after the complaint is adjudicated to avoid prejudicing its review. (4) It should consider establishing disciplinary guidelines to help ensure that its disciplinary actions are consistent. Finally, the Board should seek a statutory change clarifying how it can use advisory letters.



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**Key complaint-handling processes need improvement**

Established in 1921, the Board is responsible for regulating chiropractors in the State. The Board does this by issuing



licenses, including certifications in acupuncture and physiotherapy. The Board also receives and investigates complaints. When necessary, the Board disciplines licensees who violate statutes.

**Opening complaints**—Chiropractic statutes indicate there are two key provisions for opening complaints: whether the complaint involves a licensee, and whether there is a potential statute violation.

To help open new complaint investigations, the Board adopted a complaint-opening policy in February 2010. The policy provides that complaints will be opened only:

- When they fall within the Board's jurisdiction;
- When there is sufficient information; and
- After review by the Board when the Executive Director cannot determine whether it is appropriate to open a complaint.

The guidance is a step in the right direction, but it should be more specific. For example, the policy does not establish that, according to statute, a complaint can be opened only if it involves the actions of a licensed chiropractor. The policy should provide staff with greater direction on actions to take if a complaint does not

involve a licensed chiropractor, such as what information staff should gather so the Board can seek injunctive relief and how staff should distinguish that the complaint involves a nonjurisdictional issue.

**Investigating complaints**—When investigating complaints, the Board generally subpoenas all of a patient's records and medical information, without regard to the nature of the allegations in the complaint. However, statute provides that the Board should subpoena only information that is relevant to the investigation. In 3 of the 42 complaints we reviewed, the Board subpoenaed more records or information than necessary. One of these involved the chiropractor billing a patient \$11 more than the co-pay. In that matter, the Board subpoenaed all the patient's records, including health history, treatment plans, and x-rays.

Requesting irrelevant information causes the chiropractor extra time to assemble and copy the records, and the board staff to review the records. It also may cause a perception that the Board is searching for statute or rule violations in addition to those identified in a complaint.

Where possible, the Board should limit its subpoena to the minimum amount and type of information needed to address the complaint allegations. Some Arizona health regulatory boards limit the amount and type of records requested in subpoenas. For example, Podiatry Board staff indicated that complete medical records are not always necessary, and they are sometimes able to limit records requests to records associated with a particular event or situation.

**Adjudicating complaints**—The Board generally handles the adjudication process properly, but it should change two procedures.

First, the Board should stop considering the licensee's complaint and disciplinary history prior to deliberations about the allegations in the complaint. Because the complaint and disciplinary history are not relevant to whether the allegations of a new complaint are or may be true, this information may prejudice assessments of new complaints.

Second, the Board and its staff should not allow complainants to withdraw complaints alleging statute violations. Doing so prevents the Board from fulfilling its mission to protect the public. Auditors identified three cases where the Board and its staff have inconsistently permitted complainants to withdraw complaints. In two cases, complainants were allowed to withdraw complaints even though the complaints alleged potential violations and board staff had conducted investigative work. For example, in one complaint, board staff allowed the complainant to withdraw a complaint involving billing and record-keeping concerns even though its investigation identified statute violations. The staff presented information about the complaint at a board meeting, and the Board voted to table the complaint for 6 months. Despite the Board's vote, when the complainant decided to withdraw the complaint, a staff member sent a letter to the licensee stating that the complaint was being withdrawn. In contrast, another complainant was not permitted to withdraw a complaint because it alleged statutory violations.

**Applying discipline**—We identified one complaint where the Board appeared to issue inconsistent discipline to a licensed chiropractor. Specifically, a licensee received a \$250 civil penalty for failing to obey an order to attend a board meeting, while four other licensees who also ignored a board order to attend a board meeting during the same time period did not receive a civil penalty. The Board could help ensure greater consistency in discipline by developing disciplinary guidelines.

The Board should also seek a statutory change to clarify how it can use advisory letters. Some Arizona

health regulatory boards can issue an advisory letter when they have not found a statutory violation but have a concern based on the circumstances. Statute implies that the Board can issue an advisory letter only if it finds a statutory violation of insufficient seriousness to merit discipline.

**Other concerns unfounded**—During the audit, members of the public contacted us, raising concerns about conflicts of interest and the Board's documentation standards. However, we found board members appear to appropriately recuse themselves when they have a conflict of interest. In addition, the Board's form for assessing licensees' recordkeeping is based on rules, policy, and clinical competencies outlined by the nationally recognized Council on Chiropractic Education (Council). Statute allows the Board to hold licensees accountable to recognized standards, and the Council's competencies appear to be the type of recognized standard contemplated by statute.

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# INTRODUCTION & BACKGROUND

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The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Chiropractic Examiners (Board) pursuant to a November 3, 2009, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

## Board history and responsibilities

Laws 1921, Ch. 118, established the Board of Chiropractic Examiners, which is responsible for regulating chiropractors in the State. The primary focus of chiropractic therapy is the relationship between the functions of the spine and the nervous system, and the effects of these relationships on health. According to A.R.S. §32-925, the practice of chiropractic therapy includes physical examinations, the use of diagnostic x-rays, and adjustment of the spine and joints.

The Board's mission is: "*protecting the health, welfare and safety of the public through the enforcement of the laws governing the practice of chiropractic.*" The Board has various responsibilities that are designed to help accomplish its mission, including:

- Issuing and renewing licenses to ensure that persons practicing chiropractic therapy possess required qualifications;
- Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- Disciplining violators; and
- Providing consumer information to the public.

## Licensure and certification requirements

One of the ways the Board regulates the profession is through its licensing and renewal processes. A.R.S. §§32-921 and 32-922 contain the following requirements to obtain a license to practice chiropractic:

- Graduate from an approved chiropractic college. The Council on Chiropractic Education currently accredits 15 doctor of chiropractic programs in 18 locations in North America;
- Pass all parts of the national exam;
- Pass the Board's Arizona jurisprudence exam, which tests an applicant's knowledge of the Board's statutes and rules, with a score of 75 percent or higher; and
- Complete a criminal background check, be a person of good character and reputation, and be physically and mentally able to practice chiropractic skillfully and safely.

According to A.R.S. §32-922.01, the Board also allows for licensure by reciprocity to individuals licensed in other states that have similar licensing requirements and reciprocal privileges. Arizona has reciprocity with four states: Colorado, Louisiana, Missouri, and New York. Additionally, A.R.S. §32-922.02 provides the Board authority to issue licensees specialty certifications in acupuncture and physiotherapy. According to the Board's administrative rules, acupuncture is the stimulation of certain points on or near the surface of the body to control and regulate the flow and balance of energy in the body. According to the National Board of Chiropractic Examiners, physiotherapy is the treatment or prevention of injuries and illnesses utilizing physical agents such as heat, cold, ultrasound, or electrical stimulation. These certifications, which remain active as long as the chiropractor's license is active, require the following:

- **Acupuncture**—Completion of at least 100 hours of study in acupuncture at an accredited chiropractic college or post-graduate study with staff of an accredited chiropractic college, and passage of the National Board of Chiropractic Examiners exam in acupuncture with a score of 375 or higher.
- **Physiotherapy**—Completion of at least 120 hours of study in physiotherapy at an accredited chiropractic college and passage of the National Board of Chiropractic Examiners exam in physiotherapy with a score of 375 or higher.

After an individual is licensed, A.R.S. §32-923 requires that his/her license be renewed annually. See textbox for the fees associated with the licensing process. Licensees are also required by A.R.S. §32-931 to annually complete 12 hours of continuing education to maintain their licenses. According to board information, during fiscal year 2009, the Board issued 2,472 licenses (79 initial licenses and 2,393 renewed licenses).<sup>1</sup> The Board also issued 12 acupuncture certificates and 82 physiotherapy certificates.<sup>2</sup> Additionally, in fiscal year 2009, the Board registered 454 chiropractic assistants and approved 9 preceptorship training programs through which a chiropractic student may practice under the supervision of a licensed chiropractor.

## Complaint investigation and resolution process

The Board also regulates the profession by investigating and adjudicating complaints involving potential statutory violations and unprofessional conduct by licensed chiropractors as authorized by statute. A.R.S. §32-924 specifies 28 actions that are grounds for disciplinary action, including any conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or public; billing for procedures not provided; advertising in a false or misleading manner; and practicing chiropractic under a false or assumed name. Additionally, Arizona Administrative Code (A.A.C.) R4-7-902 defines 37 specific actions that constitute unprofessional conduct, such as knowingly making a false statement to the Board, failing to maintain adequate patient records (such as examination findings), and failing to properly supervise chiropractic assistants.

One of the initial steps in the complaint process is an investigation, which the Board's staff investigator generally conducts. A complaint investigation includes obtaining the licensee's response to the complaint. After some initial investigative steps, the Board subpoenas the licensee to appear before the Board for questioning. The complainant(s) also has the opportunity to address the Board. After the Board determines that adequate information has been obtained to determine if a violation has been committed, the Board adjudicates the complaint. According to statute, if

### Board Fees As of June 2010

#### Licensing fees:

Initial license <sup>1</sup>	\$374
License renewal <sup>2</sup>	\$170

#### Specialty certification fees:

Physiotherapy <sup>3</sup>	\$200
Acupuncture <sup>3</sup>	\$200

<sup>1</sup> The initial license cost includes a \$274 initial license application and fingerprint fee, and a \$100 issuance fee.

<sup>2</sup> If the licensee is late in renewing his/her license, his/her license is automatically suspended. The licensee can apply for reinstatement within 2 years of the suspension, but is subject to additional fees.

<sup>3</sup> According to board staff, specialty certifications are not renewed, but are considered active as long as the associated license is active. Both certifications include a \$100 application fee and \$100 certification fee.

Source: Auditor General staff review of A.R.S. §§32-921, 32-922, 32-922.02, and 32-923, and interview with board staff.

<sup>1</sup> The number of licensees reported for fiscal year 2009 does not include licenses that the Board reinstated. An individual has to seek reinstatement when he/she does not renew his/her license within the specified time period or if his/her license was suspended as a result of a board sanction. According to board staff, the Board does not track the number of licenses it reinstates during each fiscal year.

<sup>2</sup> According to the Board, as of June 3, 2010, a total of 2,146 licensed chiropractors have a physiotherapy certificate and 391 have an acupuncture certificate.

the Board determines that the licensee has not violated statute or the violation is not of sufficient seriousness to merit disciplinary action, the Board may dismiss the complaint or issue a nondisciplinary advisory letter or order for continuing education. If the Board determines that a violation has occurred and discipline is warranted, according to statute, it may use one or more disciplinary options, including issuing a letter of concern, probation, or suspending or revoking the chiropractor's license. According to board data, it received 115 complaints during fiscal year 2009.

## Organization and staffing

The Board consists of five governor-appointed members who serve staggered terms of 5 years each. Three of the members must be licensed chiropractors in good standing who have resided in the State and practiced chiropractic therapy full-time for at least 3 years preceding appointment.

The Board is authorized five full-time equivalent positions—an executive director, a deputy director/investigator, a licensing manager, and two support staff. As of April 19, 2010, all five positions were filled. Staff responsibilities include:

- Collecting application, renewal, and other fees;
- Issuing licenses after board approval;
- Investigating complaints; and
- Providing information to the public.

## Budget

The Board's revenue comes primarily from licensing and examination fees, and its revenue is deposited in the Board of Chiropractic Examiners Fund (see Table 1, page 5). The Legislature grants the Board authority to spend prescribed amounts of monies from the Chiropractic Fund through appropriation bills. According to A.R.S. §32-906, the Board deposits 90 percent of its revenue, except civil penalties, into the Chiropractic Fund and remits all of its civil penalties and 10 percent of all other revenues to the State General Fund. As shown in Table 1, the Board's net revenues have ranged from approximately \$440,000 to \$480,000 for fiscal years 2004 through 2009. In fiscal year 2010, the Board received a \$148,000 State General Fund appropriation to help ensure it had sufficient operating revenues. This appropriation

represented a return of most of the monies transferred to the State General Fund in fiscal years 2008 and 2009, as required by Laws 2008, Ch. 53 and Ch. 285.<sup>1</sup> See the Other Pertinent Information section, pages 19 through 22, for additional information about the Board's revenues and expenditures.

**Table 1: Schedule of Revenues, Expenditures, and Changes in Fund Balance  
Fiscal Years 2004 through 2010  
(Unaudited)**

	2004 (Actual)	2005 (Actual)	2006 (Actual)	2007 (Actual)	2008 (Actual)	2009 (Actual)	2010 (Estimate)
<b>Revenues:</b>							
License fees	\$426,176	\$433,680	\$469,210	\$468,315	\$459,575	\$448,080	\$454,100
State General Fund appropriation <sup>1</sup>							148,000
Examination fees	55,249	50,015	52,637	39,150	44,540	33,270	47,100
Fines, forfeits, and penalties	8,006	5,825	15,723	10,008	14,320	5,475	9,100
Other	7,152	9,381	9,566	8,395	7,934	5,764	
Gross revenues	496,583	498,901	547,136	525,868	526,369	492,589	658,300
Remittances to the State General Fund <sup>2</sup>	(56,459)	(54,799)	(66,752)	(57,751)	(63,464)	(53,350)	(58,300)
Net revenues	440,124	444,102	480,384	468,117	462,905	439,239	600,000
<b>Expenditures and transfers out<sup>3</sup></b>							
Personal services and employee-related	250,871	274,947	301,831	326,155	338,926	321,662	344,500
Professional and outside services	62,489	83,696	84,290	81,407	84,226	42,419	26,000
Travel	6,691	9,912	7,929	12,063	9,811	7,572	5,900
Other operating	69,185	79,567	63,704	74,894	73,283	72,969	73,000
Equipment	69	31,202	3,572	230	1,489	11,589	500
Total expenditures	389,305	479,324	461,326	494,749	507,735	456,211	449,900
Transfers to the State General Fund <sup>4</sup>					104,800	71,600	
Operating transfers out	920	3,916	2,437	3,252	4,419	2,467	200
Total expenditures and transfers out	390,225	483,240	463,763	498,001	616,954	530,278	450,100
Net change in fund balance	49,899	(39,138)	16,621	(29,884)	(154,049)	(91,039)	149,900
Fund balance, beginning of year	308,614	358,513	319,375	335,996	306,112	152,063	61,024
Fund balance, end of year	\$358,513	\$319,375	\$335,996	\$306,112	\$152,063	\$ 61,024	\$210,924

<sup>1</sup> The Board received a State General Fund appropriation in fiscal year 2010 in accordance with Laws 2009, Ch. 11, §117, to restore most of the monies transferred from the Board of Chiropractic Examiners Fund to the State General Fund (see footnote 4).

<sup>2</sup> As required by A.R.S. §32-906, the Board remits all civil penalties and 10 percent of all other revenues to the State General Fund.

<sup>3</sup> Administrative adjustments are included in the fiscal year paid.

<sup>4</sup> Amounts were transferred to the State General Fund as required by Laws 2008, Ch. 53 and Ch. 285.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2004 through 2009; AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2004 through 2009; and board estimates for fiscal year 2010 as of March 10, 2010.

<sup>1</sup> As required by Laws 2008, Ch. 53 and Ch. 285, during fiscal years 2008 and 2009, a total of \$176,400 was transferred from the Board of Chiropractic Examiners Fund to the State General Fund as a part of the State's budget deficit reduction efforts.

## Audit scope and objectives

This performance audit and sunset review focused on assessing whether the Board's practices for opening, investigating, and adjudicating complaints are in compliance with its statutory authority; whether its disciplinary practices are in compliance with its statutory authority and are consistently applied; and whether the Board can take steps to improve its processes for opening, investigating, and adjudicating complaints and providing discipline. Additionally, auditors reviewed the Board's financial status. Finally, this report also includes responses to the 12 sunset factors specified in A.R.S. §41-2954.

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.

The Auditor General and staff express appreciation to the Board of Chiropractic Examiners and its Executive Director and staff for their cooperation and assistance throughout the audit.

# FINDING 1

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## Board should improve key complaint-handling processes

The Board of Chiropractic Examiners (Board) should improve four key areas of its complaint-handling processes:

- **Opening complaints**—The Board should ensure that board and staff decisions about whether to open a complaint are consistent with statutory authority by enhancing its complaint-opening policy to provide additional guidance.
- **Investigating complaints**—The Board should ensure that it limits the amount of information it subpoenas where possible during the complaint investigation process. The current process sometimes calls for obtaining a wide range of information and can create the appearance that the Board is searching for statute or rule violations that were not brought forward in the initial complaint.
- **Adjudicating complaints**—The Board should stop its current practice of considering a licensee's complaint and disciplinary history before adjudicating a complaint. Reviewing such information after substantiating the allegations in a complaint can help ensure the level of discipline is appropriate, but reviewing it beforehand can affect the objectivity with which a complaint is adjudicated.
- **Applying disciplinary measures**—The Board should consider establishing disciplinary guidelines to assist in issuing consistent discipline and should seek a statutory change to clarify how it can use nondisciplinary advisory letters.

## Complaint-opening policy should be enhanced

The Board's complaint-opening policy should be enhanced. Statutory provisions suggest two areas to consider when determining whether to open complaints. To help ensure compliance with statutory direction, the Board should enhance its guidance related to opening complaints.

Statute provides guidance on what to consider when deciding whether to open complaint—Based on A.R.S. §§32-924, 32-926, and 32-928, a decision about opening a complaint should focus on whether the allegation involves: (1) the actions of a licensed chiropractor, and (2) a potential violation of law (see Table 2). The Board has statutory authority to open complaints and has also granted this authority to its Executive Director. Auditors' review of complaint files showed that, in some instances, the Executive Director or staff make the determination of whether to open a complaint, while in other instances, the Board itself does so.

Table 2: Statutory Guidance for Opening Complaints

Questions the Board should consider in deciding whether to open a complaint	Actions the Board has statutory authority to take
<b>Question 1:</b> Is the complaint about a licensed chiropractor?	<p><b>No:</b> The Board does not have authority to discipline an individual practicing without a license. However, the Board does have authority to investigate the issue and can seek injunctive relief.</p> <p><b>Yes:</b> Move on to answering question 2.</p>
<b>Question 2:</b> Does the complaint suggest that a licensed chiropractor may be in violation of statutes or rules, or may be mentally or physically unable to safely practice?	<p><b>No:</b> The Board does not have authority to open a complaint if the complaint does not suggest a potential violation or safe practice issue.</p> <p><b>Yes:</b> The Board must open and investigate the complaint.</p>

Source: Auditor General staff analysis of A.R.S. §§32-924, 32-926, and 32-928.

Board should modify guidance for opening complaints—The Board adopted a complaint-opening policy in February 2010, and while this policy is a step in the right direction, a few changes would help ensure that the Board and its staff have adequate guidance in deciding whether to open a complaint. The Board's policy addresses a number of issues, such as stating that complaints will be opened only if they fall within the Board's jurisdiction, stating that complaints will not be opened if there is insufficient information to proceed, and outlining some

exception procedures, such as referring the complaint-opening decision to the Board when the Executive Director is unsure whether it should be opened. However, to ensure that guidance is adequate, enhancements should be made in two areas:

- **Greater guidance on alternative actions**—The policy should provide guidance on actions to be taken if a complaint does not involve a licensed chiropractor. For example, the policy should establish what steps to take, such as what information staff should gather so that the Board can seek injunctive relief if appropriate, and how staff should distinguish that the complaint and associated investigation pertains to a nonjurisdictional issue.
- **Greater conformity with statute in not considering complainant's intent**—The policy grants the Executive Director authority to not open complaints based on the complainant's intent, such as the intent to intimidate or harass a public official. This direction is inconsistent with statute, which does not allow the Board to consider the complainant's intent.

To ensure its guidance conforms with statutory provisions, the Board should work with the Attorney General's Office to revise its policy.

## Board should limit subpoenas to records directly related to complaint allegations

During its investigations, the Board has sometimes subpoenaed unnecessary information. Steps can be taken to more appropriately limit the amount of information requested in its subpoenas where possible. However, the Board has appropriately addressed additional concerns identified during its investigation.

**Board sometimes subpoenaed more information than needed**—The Board's subpoenas are sometimes overly broad in their scope. The Board explained that it subpoenas full patient records for all complaints in an effort to treat each case in the same manner. The standardized initial subpoena generally sent to licensees when complaints are received requests, for a specified patient, "any and all patient records to include, but not limited to, health histories, treatment plans, daily notes, examinations, billing documents and x-rays and sign-in sheets." However, according to A.R.S. §32-929(B)(1), the Board should subpoena only records that are relevant to the subject matter of the investigation. Among the 42 complaints reviewed for this audit, auditors identified 3 complaints in which the Board subpoenaed more records or information than needed to address a complaint. For example, one complainant reported to the Board that on July 25, 2007, a licensee's receptionist tried to charge \$11 more than the required co-pay

Limiting subpoena requests could save the Board, staff, and licensees time and resources.

and that this was a standard office practice for all patients. The Board subpoenaed the full patient record, including health histories, treatment plans, and x-rays, but could perhaps have limited its subpoena to only the patient's billing records since the complaint did not cover the treatment received.

Requests for irrelevant information cost the Board, staff, and licensees time and resources; could lengthen complaint-processing times; and may create the appearance the Board is searching for additional statute or rule violations. For example, four individuals who contacted the Office of the Auditor General were concerned that the Board requests more information than needed to investigate complaints and inappropriately expands the scope of its investigation by looking for additional issues other than those identified in complaints.<sup>1</sup>

According to A.R.S. §32-929(B)(1), licensees have the right to request within 5 days after the service of a subpoena that the Board revoke, limit, or modify a subpoena. However, the Board's subpoenas may be misleading in this regard because they include the following standardized language: "the information subject to the subpoena is the minimum information necessary for the Board to fulfill its statutory mandate in protecting the public and regulating its licensees." It is not clear that all chiropractors are aware of this right, although one licensee exercised this right in one of the complaints auditors reviewed. The licensee requested that the Board limit its request to a certain time period as he had been seeing the patient for 10 years and it would have caused a hardship to go through storage to find records that did not have any significance to the case.

**Board should take steps to limit requests for evidence where possible**—The Board should modify its complaint-handling policy and practices to appropriately limit its subpoena requests. Specifically, where possible, the Board should limit its subpoena to the minimum amount and type of records needed to address the complaint allegations. For example, the Board may not need to request billing information if a concern is specific to the standard of care provided. Conversely, the Board may sometimes need billing records only to assess whether or not a licensee charged a patient more than the required co-pay.

Some boards that regulate health professions in Arizona limit the amount and type of records requested in subpoenas. Based on interviews with four other health regulatory boards, three (the Arizona Medical Board, Naturopathic Physicians Board, and Board of Podiatry Examiners) indicated they attempt to limit their records request. For example, Podiatry Board staff reported that complete medical records are not always necessary to conduct a complete investigation and substantially prove or disprove the allegations. Podiatry Board staff request the minimum information necessary and are sometimes able to limit records requests to records associated with a particular event or situation. Similarly, the Board

Some Arizona health regulatory boards limit subpoena requests.

<sup>1</sup> During the audit, the Office of the Auditor General received several concerns from chiropractors and others related to the Board's complaint-handling processes. The Office of the Auditor General is not statutorily responsible for reviewing and resolving individual complaints about state agencies, but considers concerns raised by the Legislature and legislative staff, regulated professionals, and others, including the public, when conducting its work. To the extent that the concerns received fell within the objectives and scope of this audit, these concerns were included in the audit analysis.

should limit the amount and type of records requested in its subpoenas where possible. To help ensure that this change is made, the Board's Complaints, Investigations and Hearings policy should be modified to provide guidance to staff on how to subpoena appropriate information.

Board appropriately addresses additional statute violations identified during investigation process—According to A.R.S. §32-924(B), the Board has authority to address any additional concerns identified during its investigation. Auditors' review of 42 complaint files found that the Board regularly incorporates additional allegations found during its investigation.

## Board should change two important aspects of adjudication process

The Board should change two important aspects of its adjudication process. First, the Board considers a licensee's complaint and disciplinary history too soon. Second, the Board and its staff inconsistently allow complainants to withdraw complaints alleging statute violations. However, the Board appears to handle other aspects of the adjudication process appropriately, such as recusing themselves in situations involving conflicts of interest and holding licensees accountable to professional record-keeping standards.

### Board considers past complaint and disciplinary information too

**SOON**—The Board's review of a complaint may be prejudiced because it reviews the licensee's complaint and disciplinary history prior to deliberations about the allegations in the complaint. In 13 of 15 complaint files assessed, auditors found that staff provided the Board with a licensee's complaint and disciplinary history before the Board had decided whether the allegations of the new complaint were substantiated.<sup>1</sup> Based on observations of board meetings, the file review, and a review of board policy, auditors determined that receiving and/or discussing this information before deciding whether the allegations of the new complaint are substantiated is a standard board practice.

Because the complaint history and disciplinary history are irrelevant to whether the allegations in the new complaint may be true, such information may prejudice decisions by negatively affecting a board member's assessment of the new complaint. The Board should, however, be allowed to review a licensee's complaint and disciplinary history once the complaint has been adjudicated. Reviewing complaint and disciplinary history information after it has substantiated

A licensee's **complaint history** includes information on all complaints that the Board received against the licensee, including complaints that the Board dismissed without any disciplinary action.

A licensee's **disciplinary history** includes information about previous board disciplinary actions.

<sup>1</sup> Auditors stopped reviewing complaint files for this problem at 15 complaints since 13 complaints had the same concern. The 2 complaints that did not have this concern were opened and adjudicated during the same board meeting, and therefore staff did not provide board members with an investigative report containing complaint and disciplinary history information.

the allegations in a new complaint can help ensure that the Board provides appropriate discipline. For example, if the licensee was previously disciplined for a similar violation, the Board may decide that a different disciplinary action is needed to ensure another similar violation does not recur. Therefore, the Board should also modify its Complaints, Investigations and Hearings policy to direct staff to provide complaint and disciplinary information only during the disciplinary phase.

**Complainant requests to withdraw complaints inconsistently handled**—Auditors identified 3 cases where the Board and its staff have inconsistently permitted complainants to withdraw complaints. In two cases, complainants were allowed to withdraw complaints even though the complaints alleged potential violations and board staff had conducted investigative work. For example, in one complaint, board staff allowed the complainant to withdraw a complaint involving billing and record-keeping concerns even though its investigation identified statute violations. Board staff presented information about the complaint at a board meeting, and the Board voted to table the complaint for 6 months. Despite the Board's vote, when the complainant decided to withdraw the complaint, a staff member sent a letter to the licensee stating that the complaint was being withdrawn. The staff member's letter to the licensee cited concerns about the licensee's documentation and stated that the licensee needed to correct issues that were not in compliance with law. The Board was unaware the complaint had been handled in this way, and the staff member's action without involving the Board makes this withdrawal inappropriate; the presence of statutory violations heightens the inappropriateness. In contrast, in another complaint file auditors reviewed, a complainant was not permitted to withdraw a complaint because it suggested a violation related to accessing patient records.

Although there is no law preventing complainants from requesting to withdraw their complaints, permitting complainants to withdraw complaints that allege violations impacts the Board's ability to fulfill its mission to protect the health, welfare, and safety of the public through adjudicating complaints concerning unprofessional conduct or other statutory violations. Therefore, the Board should modify its Complaints, Investigations and Hearings policy to establish that complainants are not permitted to withdraw complaints alleging statute or rule violations, and direct staff to send any complaints that have been investigated to the Board for adjudication.

**Other concerns about adjudication process unfounded**—Auditors received two other concerns about the Board's adjudication processes regarding whether board members were appropriately recusing themselves when they had a conflict of interest and whether the Board was holding licensees accountable to documentation standards not specified in statute or rule. Audit work did not substantiate either of these concerns. In both cases, the processes appear to be appropriate. Specifically:

Permitting complainants to withdraw complaints alleging violations impacts the Board's ability to protect the public.

- **Board appears to appropriately recuse themselves when conflicts of interest arise**—Two individuals raised concerns to auditors that board members did not appropriately recuse themselves when they had a conflict of interest. However, auditors reviewed board meeting minutes from six meetings that occurred during fiscal years 2008 and 2009, and found that board members recused themselves in three meetings. It appeared that board members recused themselves appropriately. For example, in one board meeting, a board member recused herself from adjudicating two complaints because she was treating the patient identified in those complaints.

Auditors also reviewed the Board's handling of multiple anonymous complaints. During August and September 2006, board staff received about 1,100 anonymously filed complaints alleging that three licensed chiropractors who were current or former board members had improperly disposed of confidential patient records.<sup>1</sup> According to the complaint letters, the records—which included patients' names, social security numbers, and treatment information that was allegedly redacted by the complainant—had been found in or around trash cans outside the licensees' offices. Board members were not required to recuse themselves in handling these complaints because the Executive Director decided not to open them, mainly because their anonymity meant the complainant could not be contacted for additional information. The Executive Director sent a letter to the Arizona Ombudsman explaining her decision. The Ombudsman indicated that the decision appeared appropriate based on Board's protocol for handling anonymous complaints described in the Executive Director's letter.

In October 2009, the Board received similar concerns against the same three licensees. However, this time the complainant was not anonymous and provided unredacted copies of confidential patient records that reportedly had been found out in the area behind the licensees' offices. Board staff referred the complaints to the Board at its November 2009 meeting to consider whether or not to open them. During the meeting, each licensee was provided an opportunity to address the concerns, including how he or she protects confidential information. The Board voted not to open a complaint against any of the three licensees. The one licensee who is an active board member recused herself and did not participate in these votes.

- **Board documentation standards are appropriate**—Three individuals reported to auditors that the Board held them accountable to documentation standards that are unclear or are not specified in board statute or rule. Statute does not define record-keeping standards, but A.A.C. R4-7-101(1) defines and R4-7-902(5) requires that licensees

<sup>1</sup> According to A.R.S. §32-924(A)(5) and A.A.C. R4-7-902(29), it is a violation to intentionally dispose of confidential patient information or records without redacting, incinerating, or shredding the information or record.

The Board's forms used to assess whether licensees have met record-keeping standards are based on rule, policy, and professional standards.

maintain adequate patient records, including information such as patients' health history, clinical impression, and examination findings. The Board has also developed documentation review forms to help board staff assess whether licensees have met record-keeping standards established in rule, a board substantive policy statement, and clinical competencies outlined by the Council on Chiropractic Education.<sup>1</sup> A.R.S. §32-924(A)(15) allows the Board to hold licensees accountable to recognized standards in the profession and does not require that these standards be specifically addressed in statute or an associated rule. According to the Board's Executive Director, the Board began posting guidelines for recordkeeping in 2004, and the forms and information about the forms was made available to the public and licensees on its Web site in March 2008.

## Board could enhance disciplinary process

The Board could enhance its disciplinary process. Specifically, the Board should consider establishing disciplinary guidelines and should seek a statutory change clarifying its use of advisory letters.

### Four Key Steps to Help Identify Appropriate Sanctions

1. Briefly summarize the conduct that constituted unprofessional conduct meriting action.
2. Identify the severity of the conduct.
3. Describe other factors. This includes aggravating or mitigating circumstances and prior disciplinary history.
4. Identify the recommended sanction and additional conditions.

Source: Auditor General staff review of Washington State Department of Health.(2007). *Disciplinary guidelines manual*. Olympia, WA: Author. Retrieved April 22, 2010, [http://www.doh.wa.gov/hsqa/professions/documents/Sanction\\_Guidelines.pdf](http://www.doh.wa.gov/hsqa/professions/documents/Sanction_Guidelines.pdf)

Disciplinary guidelines may help further ensure Board issues consistent sanctions—Auditors received concerns from eight individuals that the Board was issuing inappropriate discipline. However, auditors' review of 42 complaints identified no inappropriate discipline and only 1 complaint where the Board appeared to issue inconsistent discipline to a licensed chiropractor. Specifically, in June 2008, the Board issued a \$250 civil penalty to a licensee who ignored a board order to attend a board meeting. Auditors reviewed four other complaints from the same time period where licensees also ignored a board order to attend a board meeting and found that none received a civil penalty. Although auditors identified only 1 case, the Board's risk for issuing inconsistent discipline may be heightened because the Board is operating without disciplinary guidelines. To reduce the risk, the Board should consider establishing such guidelines.

Guidelines have been developed elsewhere that may serve as a starting point for the Board. Specifically, the Federation of Chiropractic Licensing Board's Web site has reference to guidelines that Washington's State Department of Health developed. These guidelines define four key steps to help identify appropriate sanctions (see textbox). Further, the guidelines outline how to handle seven significant and/or common types of violations, and provide advice on the type of discipline to issue based on severity level as well as mitigating and aggravating factors (see Figure 1, page 15). Similar guidelines and sanction schedules subsequently adopted into administrative code also cover how to handle complaints that do not fall within sanction guidelines.

<sup>1</sup> The Council is the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the doctor of chiropractic degree.



The Board's use of advisory letters is consistent with the authority granted to some Arizona health regulatory boards.

in advisory letters, and in 3 of the 11 advisory letters, the Board did not indicate that the licensee violated statute. For example, 1 advisory letter reported that a licensee "may" have violated sexual boundaries.

The Board's practice of issuing advisory letters when it has not found a statutory violation, but only has a concern, appears consistent with the authority granted to some Arizona health regulatory boards. Specifically, the Arizona Medical Board, Board of Osteopathic Examiners in Medicine and Surgery, Naturopathic Physicians Medical Board, and Board of Podiatry Examiners statutes permit them to use advisory letters or letters of concern, and also further clarify how these letters can be used.<sup>1</sup>

For example, the Osteopathic Board's statutes, A.R.S. §32-1800(15), permit it to use a letter of concern to "notify a physician that while there is insufficient evidence to support disciplinary action against the physician's license there is sufficient evidence for the board to notify the physician of its concern." If the Chiropractic Board intends to use advisory letters when it has not found a statutory violation, but only has a concern, the Board should seek a statutory change to add a definition clarifying, like other boards, how the Board can use these letters. Such a change would also help ensure that the Board's use of advisory letters is understood among the profession and the public. The Board can also enhance its advisory letters by ensuring the letters clearly indicate the statutes violated, and/or the licensee practices that caused the Board concern.

## Recommendations:

- 1.1. To improve its process for opening complaints, the Board should work with the Attorney General's Office to revise its complaint-opening policy to: guide staff on what actions should be taken if a complaint involves an unlicensed chiropractor, including what information staff should gather so that the Board can seek injunctive relief if appropriate and how staff should distinguish that the complaint and associated investigation pertains to a nonjurisdictional issue; and eliminate the authority to not open complaints based on the complainant's intent, such as the intent to intimidate or harass a public official.
- 1.2. To improve its investigation process, the Board should limit the amount and type of records requested in its subpoenas where possible. To help ensure that this change is made, the Board's Complaints, Investigations and Hearings policy should be modified to provide guidance to staff on how to subpoena appropriate information.

<sup>1</sup> The Naturopathic Physicians Medical Board, Board of Osteopathic Examiners in Medicine and Surgery, and Board of Podiatry Examiners statutes assign the term "letter of concern" to the document that the Arizona Medical Board's and the Board of Chiropractic Examiners' statutes call an advisory letter.

1.3. To improve its adjudication process, the Board should:

- a. Review a licensee's complaint and disciplinary history information only after it has substantiated the allegations in a new complaint.
- b. Modify its Complaints, Investigations and Hearings policy to direct staff to provide complaint and disciplinary information only during the disciplinary phase, establish that complainants are not permitted to withdraw complaints alleging statute or rule violations, and instruct staff to send any complaints that have been investigated to the Board for adjudication.

1.4. To improve its disciplinary process, the Board should:

- a. Consider developing guidelines to help it ensure that it provides consistent discipline.
- b. Request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters.
- c. Ensure that its advisory letters clearly communicate the statutes violated and/or licensee practices that caused the Board concern.

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# OTHER PERTINENT INFORMATION

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During this audit, auditors collected other pertinent information related to the Board of Chiropractic Examiners' (Board) financial status, including an explanation of how the Board's financial status has changed since fiscal year 2004 and what actions the Board has taken to address increasing expenditures.

## Board's financial status

As shown in Table 1 (see Introduction and Background, page 5), the Board's fund balance in fiscal year 2010 is projected to be approximately \$148,000 less than it was in fiscal year 2004. The Board's decreasing fund balance mainly occurred because of increases in expenditures without any sustained increases in net revenues.

- **Board expenditures have increased in three areas**—Board expenditures have increased in three main areas since fiscal year 2004: salaries and employee-related expenditures, professional and outside services, and other operating expenditures. Some expenditure increases were required, while others were optional. Salary and employee-related expenditures have increased gradually, and are about \$94,000, or approximately 37 percent, higher than in fiscal year 2004.<sup>1</sup> Mandated increases included statutorily required salary adjustments and performance pay increases. Other salary increases were not statutorily required and occurred for other reasons. For example, the Board increased the Executive Director's salary at the beginning of fiscal year 2005 by \$16,331. At the end of fiscal year 2004, the Board's expenditures were almost \$50,000 less than net revenues. Additionally, the Executive Director restructured staff positions at the end of fiscal year 2005, causing some positions to be reclassified and resulting in a salary increase of \$2,500 each for two of five staff members. In fiscal year 2005, the Board's expenditures exceeded net revenues, but it had sufficient monies in its fund balance to cover the salary increase.

In the second area of increase—professional and outside services—expenditures increased about \$20,000 in fiscal year 2005 compared to fiscal year 2004 and remained elevated through fiscal year 2008. This increase was

The Board's fund balance has decreased.

<sup>1</sup> The Board's overall employee-related and salary expenditures increased by \$94,000. However, the Board's 2009 employee-related expenditures were not as high as 2008 because of a vacancy that lasted approximately 4 months.

Increased professional and outside services expenditures are due to various factors, including changes to the complaint-handling process and efforts to reduce a complaint backlog.

due to various factors such as changes in the complaint-handling process, efforts to reduce a complaint backlog, and efforts to seek fee increases. Specifically, in response to recommendations in the Office of the Auditor General's 2001 performance audit (see Report No. 01-12), the Board began using outside investigators and court reporters. The Board chose to separate its investigative and adjudicative functions by using contracted investigators on cases that required more professional expertise or knowledge than the Board's investigator has.<sup>1</sup> According to the Executive Director, the Board does not track how often it uses contracted investigators, but reported that costs vary depending on the size and complexity of files contractors review. Additionally, the Board increased its use of contracted investigators in fiscal year 2005 to reduce a backlog of complaints. The Board also received authority to resolve more cases on its own instead of having to go to the Office of Administrative Hearings. According to the Executive Director, the Board uses court reporters to record its hearings should a licensee appeal a board decision. The Board needs transcripts to handle appealed decisions and uses those created by court reporters because its recording equipment is unreliable. Finally, the Board spent about \$40,000 during fiscal years 2006 and 2007 on a lobbyist contract in unsuccessful efforts to obtain statutory fee increases. The Board had sufficient monies in its fund balance to cover these expenditures for the lobbyist.

In the third area of increase—other operating expenditures—higher expenditures were related primarily to telecommunication and postage cost increases. For example, the Board's external telecommunication costs increased by about \$5,000 when it was required to switch to the State's telecommunication network known as AZNet.

Finally, in addition to expenditure increases in three main areas, the Board's equipment expenditures notably increased in fiscal years 2005 and 2009. According to the Executive Director, increases occurred when the Board: (1) purchased laptops for board members so that they could receive board materials electronically, (2) replaced a photocopy machine, and (3) replaced a broken computer and two laptops. Some other Arizona health regulatory boards also use laptops for board members to save on costs such as photocopying and shipping board materials and labor involved in making the copies.

- **Net revenues have decreased since 2006**—As shown in Table 1 (see Introduction and Background, page 5), after peaking in fiscal year 2006 at \$480,000, net revenues through fiscal year 2009 steadily declined to fiscal year 2004 levels. Net revenues are projected to be significantly higher in fiscal year 2010, mainly because the Board received a one-time State General Fund appropriation of \$148,000 to restore most of the monies transferred from the Board of Chiropractic Examiners Fund to the State General Fund. The decline in

<sup>1</sup> The Board also could have chosen to use board members to investigate complaints, which would have required the board member to recuse him/herself from the adjudication process. According to the Executive Director, due to the large number of complaints and limited number of board members, the Board would have trouble maintaining a quorum if board members were used to investigate complaints.

net revenue since fiscal year 2006 is primarily due to decreases in the Board's licensing revenue, which represents the Board's largest revenue source. As shown in Table 3, the decrease may be due to fluctuations in the number of initial licenses along with a steady decrease in the number of individuals renewing their licenses since fiscal year 2006. The Executive Director reported that various factors could have influenced licensure revenue, including the economy and decreasing nation-wide chiropractic school enrollment numbers. However, the National Board of Chiropractic Examiners reported that the number of individuals taking their national prelicensure exams has remained stable since 2004.

**Table 3:** Number of Initial and Renewal Chiropractic Licenses Fiscal Years 2004 through 2009 (Unaudited)

	2004	2005	2006	2007	2008	2009
Initial licenses	111	137	114	96	110	79
Renewal licenses	<u>2,349</u>	<u>2,460</u>	<u>2,521</u>	<u>2,502</u>	<u>2,463</u>	<u>2,393</u>
Total	<u>2,460</u>	<u>2,597</u>	<u>2,635</u>	<u>2,598</u>	<u>2,573</u>	<u>2,472</u>

Source: Auditor General staff analysis of initial licensing data from board spreadsheets and renewal data reported by board staff based on receipt logs and deposit information for fiscal years 2004 through 2009.

As shown in Table 1 (see Introduction and Background, page 5), during fiscal years 2008 and 2009, \$176,400 was transferred to the State General Fund as required by Laws 2008, Ch. 53, and Laws 2008, Ch. 285, to help reduce the State's budget deficit. The one-time State General Fund appropriation of \$148,000 made in fiscal year 2010 restored most of the monies transferred from the Board of Chiropractic Examiners Fund to the State General Fund. Although this will improve the Board's ending fund balance, it will remain below fiscal year 2004 levels. As a result of increased expenditures, decreased revenues, and net legislative transfers of money, the Board's fund balance has decreased in 4 of the past 7 years.

## Board efforts to address financial problems

The Board has attempted to address its financial problems by seeking fee increases and by reducing operating expenditures. Specifically:

- Board reduced some expenditures and unsuccessfully sought statutory fee increases**—The Board reported that it took steps to reduce expenditures between fiscal years 2004 through 2008, such as reducing newsletter publications, having the Executive Director review completed investigative reports rather than a consultant, and borrowing the Board of Dental Examiners' meeting facility and recording equipment rather than paying for expanded meeting space and purchasing recording equipment. However, according to the Executive Director, the Board felt that further reducing its expenditures would impact the Board's ability to fulfill its responsibilities, so it decided to seek a

The Board took various steps to reduce expenditures, including reducing publications and borrowing equipment.

statutory fee increase. The Board subsequently sought statutory fee increases in 2007 and again in 2008 to address its financial problems, but both efforts failed.

- **Board further reduced expenditures after efforts to seek fee increases failed—**  
As it became apparent that the Board's efforts to obtain a statutory fee increase were not likely to succeed, according to the Executive Director, the Board began looking for additional ways to further reduce expenditures, such as using volunteer investigators instead of contracted investigators. In addition, Board expenditures were significantly reduced in fiscal year 2009, in part because the Board did not pay for Attorney General services and had a staff position that was temporarily vacant. The Board has made additional cuts in expenditures for fiscal year 2010. Specifically, for fiscal year 2010, the Board did not enter into an interagency service agreement with the Attorney General's Office for a designated representative. Staff from the Attorney General's Office still provide services to the Board as required by law. However, the Board may receive services from various representatives instead of a designated representative. The Executive Director reported that the Board also plans to maintain reductions from prior years. For example, the Board plans to continue to have reduced supply and postage costs and plans to conservatively use contractors. Although these reductions have improved the Board's situation, board staff indicated the reductions may also negatively impact board operations. Specifically, the Executive Director reported that, prior to using a designated Assistant Attorney General representative, complaints that required hearings were delayed for up to 4 years.

The Board plans to maintain prior expenditure reductions during fiscal year 2010.

# SUNSET FACTORS

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In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Chiropractic Examiners (Board) should be continued or terminated.

**1. The objective and purpose in establishing the Board.**

The Board was established in 1921 to protect the public's health, safety, and welfare by licensing and regulating chiropractors. The Board's statutes also provide for certification of chiropractors in physiotherapy and acupuncture. In addition, the Board registers chiropractic assistants and approves preceptorship training programs through which a chiropractic student may practice under the supervision of a licensed chiropractor.

The Board's mission is *"protecting the health, welfare and safety of the public through the enforcement of the laws governing the practice of chiropractic."* To accomplish this mission, the Board licenses individuals according to licensing statutes and rules; investigates and adjudicates complaints concerning unprofessional conduct or other violations of statutes or rules; disciplines licensees who have violated statutes; monitors licensees for compliance with board orders; and provides information to licensees and the public through various avenues, including its Web site and over the phone.

**2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which it has operated.**

The Board has met some of its prescribed purposes and objectives, but should improve in some other areas. For example, the Board approves continuing education programs and ensures that licensees meet the required amount of continuing education prior to renewing licenses. In addition:

- **Overall licensing time frame met**—Auditors reviewed 10 of the 285 initial license applications received between fiscal years 2007 and 2009 that resulted in licensure, and found the Board processed these 10 applications within the required 145 business days. According to A.A.C. R4-7-502, the Board must conduct an administrative completeness review of a license application within 25 business days of receipt to verify the application is

complete, and a substantive review and disposition of the application within 120 business days, resulting in an overall time frame of 145 days for both reviews.

- **Adequate licensing examination procedures**—According to A.R.S. §32-922, the Board must conduct a licensing examination at least semiannually, and the Board offers licensing examinations once a month. Auditors found that the Board’s licensing-examination content and administrative procedures were in accordance with statutory mandates. For example, a review of ten initial licensing files received between fiscal years 2007 and 2009 found that the Board’s licensing process ensures applicants meet statutory requirements such as obtaining a minimum score of 75 percent on the jurisprudence exam. In addition, auditors’ review of six license renewal files received between fiscal years 2007 and 2009 found that the Board’s renewal procedures were in accordance with statutory mandates such as sending renewal application notices to licensees at least 30 days before the applications are due.

However, the Board can more effectively meet its objectives and purpose by improving the following four key areas of its complaint-handling processes:

- **Opening complaints**—The Board should enhance its guidance to ensure complaint-opening decisions are consistent with statute. A decision about opening a complaint should focus on whether the allegation involves (1) the actions of a licensed chiropractor, and (2) a potential violation of law. The Board should work with the Attorney General’s Office to revise its complaint-opening policy to provide greater guidance on what should be considered when deciding whether to open complaints (see Finding 1, pages 7 through 17).
- **Investigating complaints**—The Board has sometimes subpoenaed unnecessary information. Steps can be taken to more appropriately limit the amount of information requested in its subpoenas where possible (see Finding 1, pages 7 through 17).
- **Adjudicating complaints**—The Board’s review of a complaint may be prejudiced because it reviews the licensee’s complaint and disciplinary history prior to deliberations about the allegations in the complaint. The Board should review a licensee’s complaint and disciplinary history information only after it has substantiated the allegations in a new complaint. In addition, the Board has inconsistently allowed complainants to withdraw complaints, even though the complaints alleged potential statute violations. The Board should modify its Complaints, Investigations and Hearings policy to establish that complainants are not permitted to withdraw complaints alleging violations, and direct staff to send any

complaints that have been investigated to the Board for adjudication (see Finding 1, pages 7 through 17).

- **Disciplining licensees**—The Board should consider establishing disciplinary guidelines to assist in issuing consistent discipline and should seek a statutory change to clarify how the Board can use nondisciplinary advisory letters (see Finding 1, pages 7 through 17).

Auditors also found that the Board is not processing complaints in a timely manner. The Office of the Auditor General has found that Arizona health regulatory boards should generally process complaints within 180 days. However, auditors found that for the 235 complaints received during fiscal years 2007 and 2008, only about 21 percent were processed within 183 days (see textbox). According to the Board, it has identified some issues impacting timely resolution, including the time it takes to investigate complaints as well as establish consent agreements. In addition, the Board has taken steps to resolve these issues, such as establishing time frames for investigations and the various aspects of consent agreements.

**3. The extent to which the Board has operated within the public interest.**

The Board generally operates in the public interest. For example, the Board has a Web site that provides information to the public on licensees and board activities. This includes information regarding licensing procedures and licensed chiropractors. In addition, the Board's Web site provides information regarding the complaint-handling process and how to file a complaint. Further, auditors placed four phone calls to the Board between June 17, 2009 and July 1, 2009, requesting public information about licensees' complaint and disciplinary history, and found that board staff provided complete and accurate information.

**4. The extent to which rules adopted by the Board are consistent with the legislative mandate.**

General counsel for the Auditor General has reviewed an analysis of the Board's rulemaking statutes by the Governor's Regulatory Review Council staff, performed at auditors' request, and believes that the Board has fully established rules required by statute.

**Complaint-Handling Timeliness  
Fiscal Years 2007 and 2008<sup>1</sup>**

- 21% processed within 183 days
- 29% processed from 184 to 252 days
- 25% processed from 253 to 349 days
- 25% processed from 350 to 658 days

<sup>1</sup> The timeliness information is for all complaints received during fiscal years 2007 and 2008. The Office of Administrative Hearings conducted formal hearings for some of the complaints, which the Executive Director indicated can add up to 4 months or longer to the processing time.

Source: Auditor General staff analysis of the Board's complaint-tracking system data for 235 complaints received during fiscal years 2007 and 2008.

5. **The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Board last amended its rules in fiscal year 2007. In the process of revising its rules, the Board took steps to inform and involve the public and stakeholders. For example, the Board filed a notice of proposed rulemaking with the Arizona Secretary of State and provided for a period of public review and comment. Further, the Board's Executive Director reported that the Board made proposed rule-making information available on its Web site. In addition, the audit found that the Board generally complied with open meeting law. Specifically, during the May and June 2009 board meetings, the Board followed published meeting agendas in accordance with A.R.S. §38-431.02(H). Further, the Board appropriately entered into executive sessions in accordance with A.R.S. §38-431.03, which permits the Board to hold executive sessions for reasons such as discussion or consultation for legal advice, or receipt and discussion for information or testimony specifically required to be maintained as confidential by state or federal law. In addition, the Board has recordings of board meetings available to the public within 3 business days of the board meeting. Finally, in accordance with A.R.S. §38-431.02(A)(1), the Board filed a statement with the Office of the Secretary of State identifying where it posts meeting notices. Although the Board did not post the notice and agenda in all places as required in May 2009, the Board revised the statement in June 2009 to match its posting locations.

6. **The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has sufficient statutory authority to investigate and adjudicate complaints within its jurisdiction and has various disciplinary options. As recommended in the Office of the Auditor General's 2001 performance audit and sunset review of the Board (see Report No. 01-12), the Board sought and received authority to conduct investigative hearings, which are called formal interviews, which has allowed it to take action against licensees without sending all complaints to formal hearing. However, this audit recommends improvements that will help ensure that the Board appropriately investigates and resolves complaints. For example, this audit recommends that the Board limit the amount and type of records requested in its subpoenas where possible, and that the Board consider developing guidelines to help ensure it provides consistent discipline (see Finding 1, pages 7 through 17).

**7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

A.R.S. §41-192 authorizes the Attorney General's Office to prosecute actions and represent state agencies, including the Board. The Board determined not to enter into an intergovernmental agreement for an assigned Attorney General representative in fiscal year 2010 (see Other Pertinent Information, pages 19 through 22). Staff from the Attorney General's Office still provide services to the Board as required by law. However, the Board may receive services from various representatives instead of a designated representative.

**8. The extent to which the Board has addressed deficiencies in its enabling statutes, which prevent it from fulfilling its statutory mandate.**

The Board has sought a number of statutory changes to address deficiencies in its statutes. Specifically:

- In 2002, changes to A.R.S. §32-924 increased the complaint-handling options available to the Board. Specifically, these changes allowed the Board to issue nondisciplinary advisory letters, forward complaints to formal interview, and issue disciplinary letters of concern. Previous to these statutory changes, the Board was required to forward any complaint that merited discipline to formal hearing, and any violation resulted in at least an order of censure.
- In addition, further changes to A.R.S. §32-924 in 2007 granted the Board authority to issue both nondisciplinary and disciplinary orders for continuing education.

These changes have allowed the Board to issue less severe sanctions for less severe infractions of the Board's regulatory statutes that are not of sufficient seriousness to merit discipline. For example, the Board issued a nondisciplinary advisory letter to a licensee who failed to place the words "chiropractic," "chiropractor," "chiropractic doctor," or "chiropractic physician" on his letterhead.

**9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors in the sunset law.**

This audit identified one change that is needed to the Board's statutes. Specifically, the Board should request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters (see Finding 1, pages 7 through 17).

**10. The extent to which the termination of the Board would significantly harm the public's health, safety, or welfare.**

Terminating the Board without assigning its responsibilities to another state agency would harm the public's health, safety, and welfare because the Board is responsible for licensing chiropractors, and investigating and adjudicating complaints against licensed chiropractors. Without state laws establishing educational and competency standards, the public could be subject to unskilled chiropractic practices. Further, the Board has addressed chiropractor actions that harm the public's health, safety, and welfare by taking action against licensees who practice below the standard of care or commit other inappropriate actions such as suggesting or having sexual contact with a patient in the course of treatment. Currently, all 50 states regulate chiropractors.

**11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.**

The audit found that the current level of regulation the Board exercises is generally appropriate.

**12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Board has relied on private contractors to perform activities beyond its staff resources or abilities. For example, the Board contracts for information technology support. Additionally, the Office of the Auditor General's 2001 performance audit and sunset review of the Board (see Report No. 01-12) suggested that the Board could better separate its investigative and adjudicative functions by contracting with chiropractic medical consultants to assist in complaint investigations that require technical expertise. The Board has contracted with medical consultants for these types of investigations since the 2001 audit. According to the Board, it stopped using these contracts in fiscal year 2009 and decided to limit its use of these contracts during fiscal year 2010 because of budget constraints. The current audit did not identify any changes that were needed related to the Board's use of private contractors.

# APPENDIX A

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## Methodology

Auditors used various methods to study the issues addressed in this report. These methods included interviewing Board of Chiropractic Examiners (Board) members, management, and staff; reviewing board statutes and rules; reviewing board policies and procedures; observing three board meetings during fiscal years 2009 and 2010; and reviewing board meeting minutes for various board meetings that occurred during fiscal years 2006 through 2009.

In addition, auditors assessed the Board's internal control structure that supports the collection and management review of complaint-handling data to determine completeness and reliability. Auditors' work on the controls over the Board's data included interviewing various staff and management knowledgeable about and responsible for data input accuracy to assess supervisory controls over data input.

Auditors also assessed data reliability as follows:

- **Complaint-handling data**—Auditors assessed the reliability of complaint-handling data in the Board's complaint-tracking system by (1) assessing completeness and accuracy of complaint-handling data (dates, allegations, outcomes, and other identifying information) using ACCESS queries, and (2) reviewing related documentation for a random sample of ten complaints opened between fiscal years 2007 and 2009 that were chosen using a random number generator, and ten files randomly selected from file drawers. Auditors found the Board's complaint-tracking system data to be generally complete and accurate for the purposes of determining overall timeliness.
- **Licensing data**—Auditors did not evaluate the accuracy of the data sources used to track the number of licenses issued and renewed, and so limited the use of this information to background purposes. Auditors noted that the Board does not track the number of licenses reinstated each year. A license must be reinstated if it is suspended or if the licensee does not renew his/her license on

time. However, the Board indicated that a minimal number of licenses are reinstated each year.

Auditors also used the following methods:

- To determine whether the Board's opening, investigation, adjudication, and disciplinary practices are in compliance with its statutory authority, and whether discipline appeared to be consistently applied, auditors reviewed a total of 42 complaints that were opened and/or resolved during fiscal years 2006 through 2009. The 42 complaints reviewed involved 39 licensees, and included 27 complaints selected randomly and 15 selected judgmentally, including some that were added to ensure that the file review included board-opened complaints or the most serious sanctions the Board employed. Table 4 illustrates the results of the file review by each sampling technique.

**Table 4:** File Review Results by Selection Method  
Fiscal Years 2006 through 2009

	Selection Method	
	Random (27 total)	Judgmental (15 total)
Subpoena too broad	3	0
Board considered prior complaint and disciplinary information too soon	6	7
Advisory letters used inconsistent with statute	3	0
Inconsistent discipline issued	1	0

Source: Auditor General staff analysis of 42 complaint files selected from fiscal years 2006 through 2009.

In addition, auditors selected four other Arizona health regulatory boards—the Arizona Medical Board, Naturopathic Physicians Medical Board, Board of Osteopathic Examiners in Medicine and Surgery, and Board of Podiatry Examiners—based on their experience handling complaints, size, auditors' familiarity with board processes, and/or because their professionals provided some of the same services as chiropractors, and interviewed these boards' executive directors regarding their complaint-handling practices. Auditors also reviewed the four boards' complaint-handling statutes. Additionally, auditors reviewed the Washington State Department of Health's *Disciplinary guidelines manual*.

- To assess the Board's financial status, auditors obtained and reviewed information on the Board's budget process and various expenditures; compiled and analyzed unaudited information about the Board from the Arizona Financial Information System (AFIS) for fiscal years 2004 through 2009 and the AFIS Management Information System *Status of General Ledger—Trial Balance* screen for fiscal years 2004 through 2009, and board estimates for fiscal year 2010 as of March 2010; and reviewed agency documentation including a board document explaining the Board's financial situation. Auditors also reviewed the Office of the Auditor General's 2001 performance audit and sunset review of the Arizona State Board of Chiropractic Examiners (see Report No. 01-12), and changes that occurred to the Board's statutes after 2001 to determine whether such changes may have impacted the Board's financial situation. Finally, auditors requested national information about the profession from the National Board of Chiropractic Examiners.

- To develop information for the Introduction and Background section, auditors compiled and analyzed unaudited information about the Board from the Arizona Financial Information System (AFIS) for fiscal years 2004 through 2009 and the AFIS Management Information System *Status of General Ledger—Trial Balance* screen for fiscal years 2004 through 2009, and board estimates for fiscal year 2010 as of March 2010; reviewed information about the Board in the Joint Legislative Budget Committee appropriations report for fiscal year 2009; and reviewed the Board's organizational chart and other agency-provided documents. Auditors also reviewed the National Board of Chiropractic Examiners Web site for national exam information and other chiropractic information; the Council on Chiropractic Education's Web site for information on national chiropractic colleges accredited by the Council; and the Master List of State Government Programs.
- To gather information for the Sunset Factors, auditors relied on work conducted to complete the audit report's Introduction and Background section, Finding, and Other Pertinent Information section. Additionally, auditors placed four anonymous public information request phone calls to board staff and reviewed the Board's records-retention schedule filed with the Arizona State Library, Archives and Public Records. Auditors also reviewed a sample of ten licensing files for initial licenses issued between fiscal years 2007 and 2009, including renewal information for six licenses. Additionally, auditors reviewed an analysis of the Board's administrative rules performed by the Governor's Regulatory Review Council staff and a board notice of proposed rulemaking filed with the Secretary of State's Office. Auditors also assessed the Board's compliance with open meeting laws, including reviewing its statement of disclosure filed with the Secretary of State's Office as of June 19, 2009, and two board meeting notices and agendas from May and June 2009. Auditors also reviewed board interagency service agreements with other state agencies such as the Attorney General's Office and board contracts such as those for contracted investigators.

# AGENCY RESPONSE



## State of Arizona Board of Chiropractic Examiners

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James Badge, D.C.  
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Norris Nordvold  
Member

•••  
Patrice A. Pritzl  
Executive Director

June 23, 2010

Debra Davenport  
Auditor General  
2910 N. 44<sup>th</sup> St., #410  
Phoenix, AZ 85018

Dear Ms. Davenport,

Please find attached the Board's response to the agency sunset audit. The Board appreciates the dialogue with your staff during this process. The Board hopes that any additional comments or opportunity taken to clarify the Board's position or provide explanation is accepted in the same spirit as the explanation and clarification noted in the Audit Report.

### Response to recommendations:

- 1.1 (A) The Board should revise its complaint opening policy to guide staff on what actions should be taken if a complaint involves an unlicensed chiropractor.

The finding of the Auditor General is not agreed to, but a different method of dealing with the recommendation will be implemented.

This recommendation appears to be a simple matter of semantics. The audit staff has agreed that the Board must investigate the unlicensed practice of chiropractic in order to establish a cause to seek an injunction. The Board believes that it is consistent in law and action with other Board's in this matter. The investigation of the unlicensed practice of chiropractic is the same as that of an investigation of a licensed chiropractor. The party is informed of the allegation of unlicensed practice and given the opportunity to respond. Board staff identifies the information required in order to determine if the allegation is true. Upon completion of the investigation, the matter is forwarded to the Board for its review. The Board will accommodate the recommendation of the Auditor General by designating the investigation of an unlicensed person who is not an applicant as a "non-jurisdictional" complaint. The investigation process will remain the same as that of a jurisdictional complaint.

In addition, the Board will include actions related to unlicensed practice in its adverse actions report and direct staff to provide that information to the Board after the Board determines whether the allegation either has or has not been substantiated by the investigation.

(B) The Board should eliminate the authority to not open a complaint based on the complainant's intent, such as the intent to intimidate or harass a public official.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

- 1.2 To improve its investigation process, the Board should limit the amount and type of records requested in its subpoenas where possible. The Board policy should be modified to provide guidance to staff on how to subpoena appropriate information.

The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.

The Board's policy for subpoenas has been structured to prevent perceptions or allegations of inconsistency in the investigation process. However, the Board will, when possible, limit the request for documents to the current period of treatment, unless the complaint indicates a broader spectrum of concern. The Board will also limit requests for x-rays and sign-in sheets when applicable. The Board will authorize the executive director to use her judgment when issuing subpoenas. If the executive director encounters situations in which she requires additional guidance, she will submit that request to the Board. In addition, the Board views all subpoenas with the complaint during its initial review. If the Board becomes concerned that additional instruction is required, it will respond at that time. To date, Board staff has developed templates of subpoenas for the levels of investigation indicated above.

**Clarification:**

Board staff has also researched this matter by speaking with staff of eight other boards and obtaining copies of their subpoenas. We found that the structure and scope of Chiropractic Board subpoenas are consistent with those Boards, except in one case in which it is typical for a patient to see the doctor for one day only. Such short periods of treatment are not common to most health professions, and certainly not common to the chiropractic profession. We have found that the audit staff's lack of familiarity with chiropractic and chiropractic record keeping, as well as their lack of understanding of the relationship between the treatment record and the billing record makes it difficult to successfully arrive at a consensus on this matter.

The audit report expresses the opinion that limitations on subpoenas save time and money. Actually, the delay caused by insufficient collection of documents requires both the doctor and the Board to expend additional resources for staff time, equipment, supplies and postage to issue and comply with multiple subpoenas. In addition to cost, insufficient collection of documentation requiring that additional subpoenas be issued is contrary to the Auditor's expectation that the Board conclude cases within 180 days. The investigation is delayed

each time that the Board is required to issue an additional subpoena in order to give the doctor sufficient time to respond.

Finally, the Board would like to refer to Pima County Superior Court Case No. 2 CA-CV 2009-0083. The licensee petitioned the Court to revoke or modify a Board subpoena based on his assertion that the complaint did not allege a violation of the Chiropractic Practice Act. The Court noted that the Board is permitted on its own motion or on receipt of a complaint...[to] “investigate any information that appears to show that a doctor of chiropractic is or may be in violation of this chapter or board rules.” § 32-924(B). Courts must therefore give “wide berth” when reviewing the validity of an investigation conducted by the Board. *Carrington v. Ariz. Corp. Comm’n*, 199 Ariz. 303, paragraph 8, 18 P. 3d 97, 99 (App.2000), quoting *Polaris Int’l Metals Corp. v. Ariz. Corp. Comm’n*, 133 Ariz. 500, 506, 652, P.2d 1023, 1029 (1982). Based on the allegations in C.F.’s complaint ----the Board became concerned that the licensee had engaged in a number of actions that could be grounds for disciplinary action and initiated this investigation. The Boards concern was neither arbitrary nor capricious, and we cannot say its initiation of an investigation based on the information presented to it was an abuse of discretion. See *Lathrop*, 182 Ariz. At 177, 894 P. 2d at 720. The court therefore did not err in refusing to revoke or modify the subpoena”. This is offered as a demonstration that the intent of the law regarding the scope of a subpoena is not intended to narrow the reasonable scope of an investigation.

(See attached Auditor General Reply, Item #1)

- 1.3 (A) The Board should review a licensee’s complaint and disciplinary history information only after it has substantiated the allegations in a new complaint.

The finding of the Auditor General is agreed to and will be implemented.

The Board will establish a policy as recommended. The policy will direct staff to provide information to the Board on a licensee’s history of complaints, advisory letters, non-disciplinary orders and disciplinary orders only at the time that the Board finds that allegations are true but before the Board determines what action it will take.

**Clarification:**

There are some cases in which the Board believes a review of history would be appropriate. The Board believes these cases would be appropriate because the Board is not reviewing the history to determine whether or not a new complaint is true. First, an assistant attorney general for the Office of the Auditor General has confirmed that if the licensee or the licensee’s legal representative introduces the subject of any complaint or disciplinary history, the Board may then review the complaint or order at that time to confirm that the statements are based in fact. Additionally, the Board feels that it should be able to take into account a licensee’s history of remediation when considering a new complaint, because the history of remediation may adequately address any concerns. Finally, the Board may need to consider whether the allegations in a new complaint have already been adjudicated in a prior matter. (See attached Auditor General Reply, Item #2)

Because the report appears to indicate that the Board discusses a licensee's complaint and disciplinary history as a normal course of action, it appears appropriate for the Board to clarify the actual practice. The Board members are provided a brief when they review a complaint investigation. The brief provides a summary of the complaint, the doctor's response, the investigative findings and the doctor's public record profile. The public record includes the doctor's history of dismissed complaints, advisory letters and/or orders. The Board does not discuss the public record for each case, it is simply provided as part of the summary. The purpose of including the doctor's public record is not intended to influence the determination as to whether the current allegations are true. The recent passage of HB2545 A.R.S. § 32-3213, which states that a licensee's record of complaints, advisory letters and disciplinary or non-disciplinary orders is available to the regulatory board at all times supports that the inclusion of the public record in the summary has been appropriate. That being said, the Board understands that while its practice has been appropriate, the audit recommendation is a best practice option that the Board will adopt.

(B) The Board should establish a policy that complainants are not permitted to withdraw complaints alleging statute or rule violations, and instruct staff to send any complaints that have been investigated to the Board for adjudication.

The finding of the Auditor General is agreed to and will be implemented. The policy will prohibit withdrawal of a complaint once it has been submitted to the office, regardless of whether a file had been opened.

***Clarification:***

Although the Board will adopt the auditor's recommendation, it is not in agreement that the Board's practice for allowing withdrawals has been inappropriate or inconsistent. The practice has been that staff would honor a complainant's request to withdraw a complaint if the investigation had not established a probable violation of law at the time the request was made. If staff had become aware of evidence of a violation, the investigation would proceed. Staff is not aware of any law that prevents a person from withdrawing a complaint. In one case, the investigation had progressed enough to establish evidence of a possible violation of law. The request for withdrawal was declined. The investigation in the matter was concluded, and had found only minor record keeping errors. The matter went before the Board, but was pended at the request of the licensee's attorney. The reason given was that the complainant was filing a malpractice suit and it was requested that the Board delay its review until the civil matter was concluded. Shortly after, the complainant withdrew her complaint. Because there were no substantive findings from the investigation, the request was honored. The third case is consistent with the second. The investigation found no violation of law. The complainant withdrew the complaint, and with no evidence of violations, the request was honored. Although the Board believes that the requests for withdrawals were consistently addressed, it also recognizes that a best practice may be to remove the option to allow a complainant to withdraw a complaint.

(See attached Auditor General Reply, Item #3)

- 1.4 (A) The Board should consider developing guidelines to help it ensure that it provides consistent and appropriate discipline.

The finding of the Auditor General is not agreed to, but a different method of dealing with the recommendation will be implemented.

The audit admittedly did not establish that the Board has been inconsistent in imposing disciplinary action. It noted one matter in which the Board issued a fine that was not consistent with other cases. In all other cases, action was consistent and appropriate. In addition, in 2008, the Office of the Ombudsman also conducted an investigation in which a sample of 20 files were reviewed for disciplinary actions taken between June 1, 2006 and June 1, 2007. The investigation found that the Board's actions were consistent. The Board also communicated with the Medical Board on this matter because it has disciplinary guidelines in law. The information received was that the guidelines are not useful.

Past Board members have informally looked to guidelines published by the Federation of Chiropractic Licensing Boards and those guidelines may be used as advisory by integrating them into orientation materials for new Board members. The guidelines indicated in the audit report will also be used to assist with orientation. The fact remains, however, that all cases before the Board must be considered on the specific facts at hand.

In most cases, the Board imposes discipline when multiple violations have occurred; making the application of preconceived actions cumbersome and impractical. The Board, however, has been successful in meeting consistency expectations by referring to its past actions and by establishing standard language that applies to all disciplinary orders when applicable. The Board has accomplished this by referring to staff for guidance with consistency concerning past actions. The Board will accommodate the Auditor's recommendation by formalizing that process as an "adverse action report" that will be available to Board members at the time they consider what action to take following a finding that violation(s) of law have occurred. Staff will also have language from past orders for similar violations available for the Board's consideration at that time.

- (B) The Board should request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

- (C) The Board should ensure its advisory letters clearly communicate the statutes violated, and/or licensee practices that caused the Board concern.

The finding of the Auditor is agreed to and the audit recommendations will be implemented.

When making a motion for an advisory letter, the Board will be clear as to whether the advisory letter is issued due to a violation of the Chiropractic Practice Act, and what statute or rule has been violated, or whether the advisory letter is merely issued to express a concern.

## **Sunset Factors**

### **Time to complete investigations.**

**The Board is very concerned about the delay in completing investigations. Although the Board has implemented a number of practices to improve timeliness, the fact remains that the Board has insufficient staff (one investigator) to handle all investigations and to monitor licensees on suspension or probation for compliance. This will continue to be a challenge due to insufficient revenues. In addition, the Board no longer has sufficient funds to maintain a contract with the Office of the Attorney General. It can be anticipated that hearings will be delayed as a result. Given the above, the Board will continue to work toward improving timeliness, but the auditor's goal of 180 days for concluding cases is not feasible without legislative authority to increase fees to meet that expectation.**

Please find listed below some of the steps taken to address timeframe concerns.

**Formal Hearings:** The timeframe to complete Formal Hearings from FY03 to FY08 range from 4.8 months to 24 months. The 24 months applied to FY05. The timeframe in FY04 had been 4.8 months. The Board has no control over how quickly the Office of the Attorney General prepares a case for hearing, but some resolutions can be instituted. A concern with timeliness in concluding Formal Hearings was raised during the last Sunset Audit. As a result, the Board was able to obtain statutory authority to increase fees to contract for dedicated time from the Office of the Attorney General. The average time to conclude a hearing improved somewhat before the poor performance in concluding hearings again came to the executive director's attention in FY05. The executive director found that the assistant attorney general assigned to the Board was not preparing for hearings because he reported he was putting all of his time toward negotiating consent agreements. As a result, negotiating and writing of consent agreements was assigned to the executive director, and the assistant attorney general's time was to be dedicated to timely conclusion of hearings. When hearings still fell outside of an acceptable timeframe, the Board requested a new assistant attorney general. The Board was then able to improve timeframes for hearings. It is the Board's goal to hold Formal Hearings within 3 months. The Board's current assistant attorney general's effort to accommodate this policy has been appreciated; however, the lack of financial resources combined with the Board's work load is anticipated to impact timeliness in the future.

**Consent Agreements:** The executive director's review of delays in concluding matters with consent agreements identified two primary causes. The first was that the licensee's defense

would wait until receipt of notice of the date of a Formal Hearing or Formal Interview before consideration of a consent agreement was requested. The result was that the Formal Hearing or Formal Interview would be delayed, and negotiations for a consent agreement would not even begin until the third month or longer. The second was that no timeframe was placed on the negotiation process, with some cases taking up to a year before an agreement was reached. To solve this problem, the Board instituted three policies. A licensee has twenty days following a matter being voted to Formal Hearing or Formal Interview in which to request consideration of a consent agreement. As per Board policy, a request for a consent agreement submitted after the Complaint and Notice of Hearing or the Invitation to Formal Interview has been served is not accommodated. The licensee is notified of these policies in writing at the time the matter is voted to Formal Interview or Formal Hearing. Finally, the Board will not delay a Formal Hearing or Formal Interview for a consent agreement. The current challenge to concluding a matter with a consent agreement within the three month target date is a lack of human resources to write the consent agreement. The executive director writes the consent agreements in addition to her other duties.

**Investigations:** In FY03, FY04 and FY06, staff was able to conclude the average investigation within four months. In FY05, staffing was insufficient to maintain that performance. Contract investigators were engaged to assist, and both the deputy director and the executive director worked nights and weekends to improve timelines, which was achieved in FY06. However, the board also received a record high of 178 new complaints filed in FY06. The high number of complaints exceeded the Board's resource of one person to timely conclude investigations, and therefore, the timeframe went up. The executive director reviewed possible causes for the substantial increase in complaints. One of the explanations had to do with complaints coming from the insurance industry. Insurance complaints were submitted to the Department of Insurance, which then forwarded the complaint to the Board. In order to file a complaint with the Department of Insurance, the insurance company was required to file each patient file separately for the same doctor. As a result, the Board was getting multiple complaints filed against the same doctor with the same allegations in each complaint. The Board's resolution was to arrange a different structure for submission of complaints from participating insurance companies that compressed multiple patient files into one complaint, and limited the files reviewed to the minimum number needed to complete the investigation. Although this effort resulted in fewer complaints filed in following years, the backlog from the 178 FY06 complaints continued to impact timeliness for completion of investigations into FY08 and FY09. While the Board had used the resources of contracted chiropractors to conduct investigations requiring technical expertise to alleviate a work load exceeding the capacity of one person in the past, the Board no longer has sufficient funds to use that resource.

The executive director placed the requirement that timeframes to complete investigations be improved in performance expectations. A new structure was introduced as a result. The Board agenda had had a mix combining Board review of investigation files and Board review of Formal Interviews at each meeting. It takes one to two weeks to prepare files for a Board meeting. As a result, there were only two weeks a month to work on investigations. The new structure dictated that investigative files be reviewed by the Board every other month, rather than monthly, to

provided more time to work on investigations. The plan was successful and staff was able to improve timeframes for investigations. That plan was interrupted when the deputy director/investigator left his position, and the current hiring freeze caused a delay in hiring a replacement. The current deputy director reports that she believes she is now on target to achieve the goal to reduce timeframes.

**Formal Interviews:** The timeliness of Formal Interviews was impacted by some of the same circumstances that influenced timeliness for Formal Hearings and Investigations. Resolutions are also the same. Formal Interviews are generally held every other month, when the Board is not reviewing investigations. This allows for more Formal Interviews to be placed on the agenda, with great success. The backlog of Formal Interviews resulting from the FY06 filing of 178 complaints has been completely eliminated. The majority of Formal Interviews are now considered by the Board within three months, as per policy.

**The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.**

The Board agrees that the current level of regulation exercised by the Board is appropriate for regulation of the chiropractic profession. However, the Board has observed a need to establish authority to regulate business entities offering chiropractic services that are not owned by and/or operated by a licensed health care professional. Traditionally, chiropractic practices were owned and operated by chiropractors. However, that trend is reversing. It is becoming common for unlicensed individuals to own and/or operate businesses offering chiropractic services. It is also becoming common for the those businesses to establish practices that violate the Chiropractic Practice Act, and place the health, welfare and safety of the consumer at risk. Without the authority to regulate such businesses, the Board's only option is to address the violations through the chiropractic employees. It is not a sufficient measure. The employee leaves the business, sometimes with discipline on their record, only to be replaced by another chiropractor who is put into the same position by the business owner to violate laws, or lose employment. In one case, the Board found that the unlicensed operator of a clinic has been receiving notices of complaints and subpoenas sent to licensees in her employ, keeping the information from the licensees, and submitting a reply to the subpoena with a forged signature of the licensees. In other cases, patient records are left in the possession of the unlicensed business owner when the licensee leaves employment. The patients are then unable to obtain their records to seek care from another provider.

**Additional Comment**

The recommendations of the Office of the Auditor General are established based on the explanation and clarification provided in the body of the report. The Board feels it is appropriate for it to comment on those observations that may have influenced the recommendations, and that

may not be consistent with the data or records of the Board. The comments are not intended as criticism of the report or audit staff. They are offered for purposes of clarification only.

As an initial observation, the Board finds that identification of an error during the audit has been extrapolated into an overall structural weakness of agency functions. An error may occasionally occur, which is true of any entity. However, occasional errors do not reflect an overall dysfunction. While this Board may strive for perfection, it is logical that some errors will occur.

On page 10, the report states that in three complaint investigations, the subpoenas were overly broad. Two of these cases have been responded to in the past, although on further review, it appears additional analysis of one of the cases is appropriate. In terms of the third complaint investigation, the Board has expressed its intention to limit subpoenas to the current period of treatment unless otherwise indicated. The Board is not in agreement on the audit analysis of the other two matters for the following reasons:

There appears to be some level of misperception that the purpose of an investigation is to prove that a doctor has violated a law. That is perhaps understandable if one is not experienced in and familiar with conducting health regulatory board investigations. In reality, it is never assumed that the allegations in a complaint are or are not true. Obtaining the investigative record is as important to disproving allegations as it is to proving allegations. A patient record is a large picture. Each part of the record, whether it is a day or section, is a piece of the puzzle that makes up the whole picture. Looking only at a limited piece of a record may inaccurately reflect that a doctor has violated a law, when another part of the record may demonstrate the opposite. Doctors generally follow a similar outline in creating records, but the law does not require any particular outline be used. It is not unusual to find the answer to a question scattered about in the record. When we conduct an investigation, we want it to be fair and impartial. The Board issues its subpoenas to that end. The subpoenas in the two cases in question were issued with the following analysis.

Case 1. The complainant alleged that he was told his co-pay was \$36.00, but he learned from his insurance provider that the co-pay was actually \$25.00. The allegation would fall under the Board's jurisdiction under A.R.S. 32-924(A)(5) and (23) and A.A.C. R4-7-902 (2). If the doctor billed the patient \$11.00 more than the actual co-pay, it would substantiate a violation of law. However, a review of the patient treatment record may actually reflect that the additional \$11.00 was for a separate service that was appropriately billed. Therefore, billing and treatment records were obtained.

Case 2. The complainant alleged that she was told her co-pay was \$25 but it was actually only \$10. She also alleged that the Doctor billed her for \$1,300 before billing the insurance company and that the doctor stated it was because the insurance company does not always pay when billed. This raised the allegation of double billing. The complaint does allege violations of the Chiropractic Practice Act. The allegation that the patient was told her co-pay was \$25 when it was actually \$10 would fall under the Board's jurisdiction under A.R.S. 32-924(A)(5) and (23)

and A.A.C. R4-7-902 (2). The additional allegation that the patient and the insurance company were billed for the same services would fall under the above as well as ARS 32-924(5) and AAC R4-7- 902 (13). The billing and treatment records were obtained to determine what amount was actually billed and collected. The investigator would not assume the allegation to be true. The billing record was needed to determine the amount actually billed and collected. The rest of the record was needed to determine whether or not the patient was improperly billed for services also billed to the insurance company. Both billing and treatment records are needed to determine if both the patient and the insurance company were billed for the same services, or if the charges were for different services.

Page 10 also comments on the subpoena's being misleading. The Board contends that the subpoenas are not misleading. The Board's subpoenas are consistent with other health regulatory boards in providing legal reference for the board's authority to issue a subpoena and the licensee's rights. In general, Boards give the appropriate statutory reference, as does the Chiropractic Board. Licensees, as a regulated party, have the responsibility to be familiar with the Chiropractic Practice Act. They are provided with the laws with their application, and required to pass the jurisprudence examination. They are provided with any updates in laws by mail. Finally, the laws are available on the Board's web site. Subpoenas are consistent in providing statutory reference because a professional person who is provided with a statutory reference would reasonably be expected to look at the law. It has been the Board's experience that this is true. The audit report itself notes a doctor requested an amendment of a subpoena. The executive director regularly receives requests to amend or waive a subpoena, and an example given on page 3 of this response reflects a licensee challenging a subpoena in court.

Page 13, the audit report refers to complaints that were filed against one current Board member and two former Board members. The Board recognizes that the audit found that the matter was handled appropriate by the Board, and appreciates the considerable amount of time audit staff spent in their research. The Board did note that because the audit report dedicates a fairly substantial portion of that section describing the allegations, it may also be advisable to explain the conclusion as well. The complaints were not opened because the license who submitted them declined to provide the name or contact information for a witness to the complaint, and his complaint clarified he was not a witness himself. In addition, the licensee, although present, declined to speak to the Board to support his allegations.

Page 19 of the report indicates that expenses for professional and outside services increased about \$20,000 in FY 2005 and remained elevated. While the report identifies some of the basis for increased expenses, it fails to identify two interagency contracts which comprised a significant portion of the costs. The Board had a contract with the Office of the Attorney General and with the Department of Administration for accounting services. Those represent significant costs, as well as costs that tend to increase each year as those agencies experience increases to their own expenses.

Page 20 of the report states that the Board authorized an increase in personnel expenses in 2005 and that the agencies expenses exceeded revenues those years, although the funds were available to cover the cost. The Board would like to clarify that in FY2005, the Board's expenses did not exceed revenues. Expenses were \$444.8 and revenues were \$441.9. The Auditors table reflects a different expense because it does not factor in administrative adjustments from bi-annual appropriations. In addition, the Board cut other expenses so that the increase did not increase the overall budget request, and the fees for license renewals were still \$35.00 below the cap.

**In closing, the Board appreciates this opportunity to respond to the audit report. The Board also expresses its appreciation for the observations and recommendations of the audit staff, and will most certainly apply them as we do any constructive criticism, as a goal toward continued improvement.**

Sincerely,

Patrice Pritzl  
Executive Director

# AUDITOR GENERAL REPLY TO AGENCY RESPONSE

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The following auditor comments are provided to address certain statements the Board of Chiropractic Examiners made related to Finding 1:

1. The Board refers to a Court of Appeals (Division 2) case, but according to the Court, this case does not create legal precedent. The Board's response indicates that the case demonstrates that the intent of the law regarding the scope of a subpoena is not to narrow the reasonable scope of an investigation. However, our report does not recommend narrowing the reasonable scope of an investigation, but rather that the Board limit where possible the amount and type of records requested in its subpoenas. (See page 3 of the Board's response.)
2. The Board's response refers to a statement made by an Assistant Attorney General for the Office of the Auditor General. However, as allowed by A.R.S. §41-192(E)(5), our Office has its own General Counsel, and does not make use of an Assistant Attorney General. (See page 3 of the Board's response.)
3. The Board's response suggests that staff are allowed to dispose of complaints based on the results of investigations. However, only the Board has authority to conclude on the results of investigations and resolve complaints. Therefore, regardless of whether staff investigations identify no or minor violations, according to A.R.S. §32-924(E) and (F), the Board is responsible for determining what actions to take such as dismissing a complaint, or issuing nondisciplinary or disciplinary action. (See page 4 of the Board's response.)

## Performance Audit Division reports issued within the last 24 months

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<b>08-03</b>	Arizona's Universities—Capital Project Financing	<b>09-08</b>	Arizona Department of Liquor Licenses and Control
<b>08-04</b>	Arizona's Universities—Information Technology Security	<b>09-09</b>	Arizona Department of Juvenile Corrections—Suicide Prevention and Violence and Abuse Reduction Efforts
<b>08-05</b>	Arizona Biomedical Research Commission	<b>09-10</b>	Arizona Department of Juvenile Corrections—Sunset Factors
<b>08-06</b>	Board of Podiatry Examiners	<b>09-11</b>	Department of Health Services—Sunset Factors
<b>09-01</b>	Department of Health Services, Division of Licensing Services—Healthcare and Child Care Facility Licensing Fees	<b>10-01</b>	Office of Pest Management—Restructuring
<b>09-02</b>	Arizona Department of Juvenile Corrections—Rehabilitation and Community Re-entry Programs	<b>10-02</b>	Department of Public Safety—Photo Enforcement Program
<b>09-03</b>	Maricopa County Special Health Care District	<b>10-03</b>	Arizona State Lottery Commission and Arizona State Lottery
<b>09-04</b>	Arizona Sports and Tourism Authority	<b>10-04</b>	Department of Agriculture—Food Safety and Quality Assurance Inspection Programs
<b>09-05</b>	State Compensation Fund	<b>10-05</b>	Arizona Department of Housing
<b>09-06</b>	Gila County Transportation Excise Tax		
<b>09-07</b>	Department of Health Services, Division of Behavioral Health Services—Substance Abuse Treatment Programs		

## Future Performance Audit Division reports

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Department of Agriculture—Sunset Factors