

**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.



2010

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.