

PERFORMANCE AUDIT

**BOARD OF CHIROPRACTIC EXAMINERS**

Report to the Arizona Legislature  
By the Auditor General  
August 1991  
91-7

RECEIVED

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DOUGLAS R. NORTON, CPA  
AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

August 27, 1991

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Dr. James Badge, Chairman  
State Board of Chiropractic Examiners

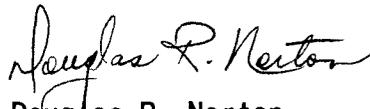
Transmitted herewith is a report of the Auditor General, A Performance Audit of the State Board of Chiropractic Examiners. This report is in response to a June 14, 1989, resolution of the Joint Legislative Oversight Committee.

The report addresses the twelve Sunset Factors mandated in the Sunset law. Our work included a review of the Board's two principle statutory functions: licensing and enforcement of standards of practice. We found no significant problems in the licensing area. Our ability to evaluate the enforcement function was limited by the documentation available.

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

This report will be released to the public on August 28, 1991.

Sincerely,



Douglas R. Norton  
Auditor General

DRN:lmn

Enclosure

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## INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Board of Chiropractic Examiners pursuant to a June 14, 1989, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Board of Chiropractic Examiners was established in 1921. Chiropractic is defined as "a therapeutic system based upon the premise that disease is caused by interference with nerve function, the method being to restore normal condition by adjusting the segments of the spinal column." The practice of chiropractic includes examination of the spine and pelvis to determine malfunctions or abnormal body movements, the use of diagnostic x-rays, and adjustment of the spine or joints. A.R.S. §32-925 prohibits a chiropractor from prescribing or administering medicine or drugs, performing surgery, or practicing obstetrics.

### Personnel And Budget

The Board consists of five members: three licensed chiropractors and two public members appointed by the Governor for a five-year term. The Board is primarily responsible for licensing chiropractors and enforcing standards of practice.

The Board has four full-time support staff, including an Executive Director, an investigator, and clerical staff.

Monies for Board operations are appropriated from the Chiropractic Examiners Fund. The fund receives revenues from fees collected for applications for examinations, licenses, and license renewals. The Board retains 90 percent of the fees it collects, while the remaining 10 percent is deposited in the State General Fund. Table 1 (see page 2) presents the Board's revenues, expenditures, and changes in fund balance for fiscal years 1988-89 through 1990-91.

TABLE 1

**BOARD OF CHIROPRACTIC EXAMINERS  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN FUND BALANCE  
FISCAL YEARS 1988-89 AND 1989-90 ACTUAL  
AND 1990-91 BUDGETED  
(unaudited)**

	<u>1988-89</u> <u>Actual</u>	<u>1989-90</u> <u>Actual</u>	<u>1990-91</u> <u>Budgeted</u>
FTE Positions	4	4	4
Revenues	<u>\$154,211</u>	<u>\$155,233</u>	<u>\$284,400</u>
Expenditures			
Personal services	65,480	77,568	107,800
Employee-related	15,494	15,184	26,700
Professional and outside services	24,283	27,325	18,000
Travel, in-state	3,979	6,321	4,500
out-of-state	5,397	3,194	5,300
Equipment	4,350	3,788	5,300
Other operating	<u>41,936</u>	<u>46,519</u>	<u>52,100</u>
Total Expenditures	160,919	179,899	219,700
Excess of revenues over (under) expenditures	(6,708)	(24,666)	64,700
Beginning fund balance	<u>188,000</u>	<u>181,292</u>	<u>89,100</u> <sup>(a)</sup>
Ending fund balance	<u>\$181,292</u>	<u>\$156,626</u>	<u>\$153,800</u>

(a) The beginning balance for the fiscal year 1990-91 budget was estimated prior to the end of fiscal year 1989-90. Therefore, the actual ending balance for fiscal year 1989-90 does not agree with the beginning balance budget for fiscal year for 1990-91.

Source: Arizona Financial Information Systems, Fiscal Years 1988-89 and 1989-90 Financial Reports; the State of Arizona, Appropriations Report for the Fiscal Year Ending June 30, 1991.

### Licensing Requirements

A.R.S. §§32-921 and 922 specifies the requirements an applicant must meet in order to be licensed as a chiropractor. Applicants must successfully pass a three-part examination conducted by the National Board of Chiropractic Examiners. In addition, applicants must also pass examinations on jurisprudence, x-ray interpretation, and clinical diagnosis administered by the Arizona Board. To specialize in physiotherapy and acupuncture, chiropractors must complete a minimum number of hours in those specialties from an accredited chiropractic college and pass a specialty exam with a score of at least 75 percent.

The Board currently licenses approximately 1,100 chiropractors in-state and 1,000 out-of-state. During the last two years the Board has issued approximately 130 new licenses each year.

### Scope And Methodology

This audit was conducted as a Sunset Review as defined by A.R.S. §41-2352. The purpose of the audit was to determine whether the Board of Chiropractic Examiners is needed and the extent to which it has accomplished its statutory goals.

The Board is a relatively small agency and has two principle statutory functions: to ensure applicants for licensure meet specified requirements and to enforce the standards of practice. Our work included a review of the Board's activities in these two areas. We found no significant problems in the area of licensing (see Sunset Factor 2, page 5). However, in the area of enforcing standards of practice, our ability to evaluate the Board's performance was limited (see Sunset Factor 6, page 8). Based on the advice of a former Attorney General representative, the Board maintains limited documentation in closed complaint files. Complaint files typically contain the complaint, the doctor's response, and the letter informing the complainant of the Board's action. Files in which the complaint went to hearing also contain transcripts or any documentation that was entered as evidence. Based on the documentation available, we were frequently unable to determine the extent of the Board's investigation or review, the reason for its decisions, and in

some cases when the Board began investigating the case. The limited documentation generally precluded us from thoroughly assessing the appropriateness of the Board's actions and its performance. Because of the scope limitation, we were unable to develop audit findings and, instead, we addressed areas of concern in the statutorily mandated Sunset Factors, pages 5 - 11.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members and the administrative staff of the Board of Chiropractic Examiners for their cooperation and assistance during the audit.

## SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following twelve factors in determining whether the Board of Chiropractic Examiners should be continued or terminated.

1. The objective and purpose in establishing the agency

Substandard chiropractic care can directly impact public health; hence, the profession is regulated to safeguard public health, safety, and welfare. The mission of the Board of Chiropractic Examiners is to assure the citizens of Arizona that only qualified persons are allowed to practice chiropractic and to protect the public from chiropractors whose conduct falls below the standard of the profession. The Board accomplishes its purpose by examining and licensing qualified candidates, and enforcing relevant statutes and rules governing practice.

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

The Board has been generally effective in regulating the practice of chiropractic by licensing only those applicants that meet State requirements and by taking action against practitioners who fail to comply with statutes or rules when complaints are filed against them.

Since our 1981 review of the Board, the following statutory changes have been made to strengthen licensing requirements.

The 1981 audit report noted that the statutes required the Board to license applicants in Arizona if they were licensed to practice in another state, regardless of the other state's licensing requirements. For licensure through reciprocity, the statutes now require that the licensing requirements in the other state must be substantially equivalent to Arizona chiropractic licensure requirements.

At the time of the 1981 audit, the Board accepted examination results from the National Board of Chiropractic Examiners or results from the examination administered by the Arizona Board. The Board now requires that applicants for licensure must have received a certificate of attainment for parts I and II of the examination given by the National Board. In addition, Arizona law also requires that applicants receive a score of 375 on part III of the National exam, a score recommended by the National Board.

Statutory revisions in 1990 expanded the requirements for certification of specialties in physiotherapy and acupuncture. In addition to passing a specialty examination, the applicant must also have successfully completed coursework with a minimum number of hours in these specialties.

Our review of the Board's licensing activities suggests that the Board is effectively and efficiently meeting the objective of licensing only qualified candidates. We reviewed records of all applicants who were granted licenses from November 1, 1990 through May 31, 1991, and found that the 34 recently licensed chiropractors met the statutory requirements of licensure. Although minor documentation was missing from a few files, we found no significant problems in this area.

We also found that the Board generally handles complaints in an efficient manner. Our review of all complaints received in the first half of fiscal year 1991 indicates that the majority (63 percent) of the complaints were resolved within four months. Ten cases in our sample were not resolved as of June 1991. These cases range in age from seven to eleven months. However, as noted under Sunset Factor 6, we were unable to evaluate the Board's effectiveness in handling some complaints due to the lack of adequate documentation in Board files.

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

The Board has operated in the public interest by ensuring that chiropractors meet established professional standards of practice. The Board's licensing requirements provide assurance that only qualified applicants are permitted to practice chiropractic medicine in Arizona.

Although our review of complaints found no evidence that the Board has not acted in the public interest, the lack of adequate documentation prevented us from determining the appropriateness of the Board's handling of complaints or its actions. Once complaint files are closed, the Board does not retain adequate documentation of the information used in making their decisions. Most files contain the original complaint, the doctor's response to the complaint, and the letter stating the reason for dismissal. We reviewed several cases in which we were unable to evaluate the Board's activity in investigating the case and its decisions because evidence or information was no longer included in the file.

4. The extent to which rules and regulations promulgated by the Board are consistent with the legislative mandate

The Board is in the process of amending its current rules to conform with 1990 statutory revisions to the Chiropractic Act. The Board's hearing procedures are also being amended to conform with the Administrative Procedures Act.

In addition, the Board is drafting new rules pertaining to chiropractic assistants as required by 1989 legislation. The Board completed its first draft of these new rules in December 1989 and revised the draft in early 1990. Public opposition to the proposed training requirements and legal questions concerning certification delayed work on the rules. In June 1991, the Board submitted the draft of the proposed rules to the Governor's Regulatory Review Council. However, the Council declined to approve the draft stating that the proposed rules were too specific given the legislation they were based on. According to the Board's Executive Director, the Council advised the Board to seek revisions to the statute before attempting to rewrite the rules. Furthermore, the Board has postponed any rule changes in this area until it receives legal advice from the Attorney General regarding the Physical Therapy Board's argument that the provisions of the 1989 law will result in illegal practice of physical therapy by chiropractic assistants.

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

The Board is currently in the process of revising its rules and regulations and plans to encourage input from the professional association and the public on revisions. The Board has scheduled hearings on the new rules in August 1991. The professional association will be notified prior to the hearings and asked to comment on the draft of the new rules.

We also found that the Board has informed the public of its actions by complying with the Open Meeting Law requirements regarding proper notification of Board meetings during fiscal year 1990-91. The public may also learn about Board actions by reviewing its records.

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

The Board has broad authority to investigate and act upon complaints within its jurisdiction. The Board received an average of 103 complaints annually during fiscal years 1988-89 through 1990-91. On average, 16 of those complaints went to an administrative hearing. Table 2 presents the types of disciplinary actions taken by the Board during fiscal years 1988-89 through 1990-91.

**TABLE 2**  
**TYPES OF DISCIPLINARY ACTIONS**  
**TAKEN BY THE BOARD**  
**DURING FISCAL YEARS 1989, 1990, AND 1991**

	<u>1989</u>	<u>1990</u>	<u>1991</u>
Complaints Filed	79	119	110
<u>Type of Action</u>			
Decree of Censure Issued	0	1	0
Fine Levied	1	5	1
Placed on Probation	2	1	3
License Summarily Suspended	1	1	3
License Suspended	1	5	1
License Revoked	2	1	2

Source: Executive Director, Board of Chiropractic Examiners.

Although we found no evidence that Board action on consumer complaints is inappropriate, we were unable to evaluate actions in many cases. We reviewed all complaints (62) filed with the Board between July 1 and December 31, 1990, and found that the closed files generally contained insufficient documentation to assess the Board's decisions.

Based on the advice of a former Attorney General representative, the Board maintains limited information on the investigations conducted or the specific reasons for its decisions. In order to reduce the amount of materials it kept in its files, the Board asked its Attorney General representative what materials it needed to maintain on complaints. The Board was instructed to retain all formal orders, exhibits accepted into evidence and transcripts of all formal proceedings. For a complaint which goes to formal hearing, retaining only these materials is adequate because the transcripts describe the evidence introduced and the reasons for the decisions that are made. However, the Board has interpreted the Attorney General representative's advice broadly and applied it to all complaint cases. For cases that do not involve a hearing, there are no transcripts or other formal records. In approximately two-thirds of the complaints, we were either unable to evaluate the sufficiency of the evidence the Board based its decisions on, or we were unable to comment on the appropriateness of the Board's action because the Board had not kept the evidence that was before the Board at the time of its decision.

Of the 62 complaints, we identified at least 4 that left unanswered questions about the Board's actions in complaints of alleged inappropriate or substandard care. Because the Board did not document the reasons for its decisions in these cases, we cannot conclude that its actions were appropriate. For example,

- A patient alleged that a chiropractor injured his neck. A second chiropractor diagnosed the injury as being caused by a particular procedure used by the first doctor. The Board dismissed this complaint due to an "insufficient basis on which to proceed further." While the Board may have conducted an investigation to evaluate the quality of this doctor's care, there is no record of an investigation in the file. As a

result, it cannot be determined from the file whether or not the Board made reasonable attempts to substantiate or disprove the allegation in this case before dismissing it.

- Another patient alleged that treatment by one chiropractor caused a pinched nerve and sought treatment by another chiropractor to correct the condition. The patient reported that the second practitioner believed that the previous treatment caused the patient's problem. This complaint was dismissed by the Board as a fee dispute over which it has no jurisdiction. Although the patient had requested reimbursement for the costs of her subsequent treatment, the complaint also raised additional questions about the appropriateness of care received. The Board's complaint file does not indicate whether the Board addressed these questions.

The Board needs to improve the documentation of its decisions on complaints filed against chiropractors. We spoke with the former Attorney General representative regarding the Board's policy of retaining few case records. He indicated that the Board should maintain documentation in the case file that explains the specific basis for its decision. He also suggested that investigative reports be retained. More complete documentation will provide greater assurance that the Board is operating in the public interest when it resolves complaints against chiropractors.

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

The Office of the Attorney General has the authority to prosecute actions under the Board's statutes. The Assistant Attorney General representative currently assigned to the Board considers the authority adequate. According to the Executive Director, past representatives have expressed similar opinions, with the exception of concerns about the Board lacking specific authority to discipline sexually inappropriate conduct. However, as part of the 1990 amendment to the Chiropractic Act, a specific citation was added (A.R.S. §32-924.A.21) to grant that authority.

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

The Board successfully sought legislation in 1990 to raise licensing fees, require applicants for licensure to pass all three exams given by the National Board of Chiropractic Examiners, and establish

coursework requirements for doctors seeking certification in specialty areas. The new law also strengthened the Board's authority to regulate chiropractors' conduct, particularly in advertising.

As part of the 1990 statutory revision, the Board also sought authority to address other areas of concern; however, these were deleted from the bill before passage. The Board did not succeed in obtaining the authority to (1) require doctors to issue billing statements to patients (2) determine that a fee was clearly excessive, and (3) require continuing education for annual license renewal.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the subsection

Our limited audit work did not identify any changes needed in the Board's enabling legislation.

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

Termination of the Board could pose a threat to public health, safety, or welfare because the unregulated practice of chiropractic could result in substandard care. Patients could be at risk because improper diagnosis and chiropractic treatment can cause bodily harm. According to the Executive Director, terminating the Board of Chiropractic Examiners would also deny the public and the profession a forum in which to review the standards of practice of chiropractic in Arizona.

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

We found the current level of regulation to be appropriate. Although Board members and individual practitioners identified certain areas, such as billing practices, in which they felt additional regulation may be desirable, we did not perform audit work to determine the need for such regulation.

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

Current use of private contractors appears appropriate. The Board contracts for court reporters and process servers outside of metropolitan Phoenix. According to the Board, it uses process servers outside the Phoenix area because the cost of service and the shipment of records from outlying areas is less expensive than the travel costs that would be incurred if the Board's investigator served the papers. Contracted court reporters are used to transcribe formal hearings because neither the Board nor the Assistant Attorney General is satisfied with the quality of mechanically taped records later transcribed by the Board's clerical staff. According to the Board, the service is contracted because the Board lacks sufficient work to warrant hiring its own reporter.



**STATE OF ARIZONA  
BOARD OF CHIROPRACTIC EXAMINERS**

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August 16, 1991

Mr. Douglas R. Norton  
Auditor General  
2700 N. Central Avenue, Ste 700  
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HAND DELIVERED

Dear Mr. Norton:

The Board of Chiropractic Examiners has reviewed the draft report of the performance audit your office conducted as part of the Sunset review of this agency as set out in A.R.S. §§41-2351 through 2379.

The Board takes exception to the presentation and conclusions drawn from two of the issues contained in that draft. The first of these two issues concerns the impact of the Board's recordkeeping practices on the appropriateness of its decision making when reviewing complaints. The second concerns the apparent contradiction between the Board's and your perspective on the need for changes in enabling legislation.

I. Recordkeeping of dismissed complaints

A. In the report's section on "Scope and Methodology," the Auditor General states that the team was kept from "thoroughly assessing the appropriateness of the Board's action and its performance" (page 4) because of the Board's recordkeeping practices.

The Board contends that the Auditor General had made a prior and independent decision to limit the thoroughness of the audit. The audit process was initially presented to the Board as being of more limited scope and duration than was the norm. As an example, the report states that the Auditor General was unable to determine the dates or the extent of investigations. The Board notes that a review of Minutes of Board would yield additional documentation about the conduct and duration of investigations.

Douglas R. Norton  
August 16, 1991  
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Therefore, the Board requests that the language of the statement be amended to acknowledge that the Board's practice of not retaining certain records was not the sole determinant of the thoroughness of the assessment made.

B. In the section on "Scope and Methodology," and again in the responses to three of the sunset factors (see pages 3, 4, 6, 7, 9 and 10), the Auditor General cites a particular one of the Board's recordkeeping practices as precluding the Auditor General's ability to evaluate and comment on the appropriateness of the Board's handling of complaints. In so doing, the Auditor General has substituted the issue of whether the appropriate records were available at the time the Board made its decisions with the issue of whether those records were still available at the time the Auditor General conducted its review.

The Board contends that, through language and repetition of this substitution of issues, the Auditor General sets forth the unfounded conclusion that the Board has engaged in either negligent or deliberate misconduct in investigating, and making decisions on complaints.

1. The Board is not required by either law or rule to retain confidential records gathered pursuant to A.R.S. §32-929.C. The Board's staff looked to the statutory confidentiality of those records and extrapolated the advice given by the Board's Assistant Attorney General on recordkeeping of hearing files in establishing the Board's practice of not retaining confidential records after the Board has made its decision and it seems apparent that there will be no appeal of that decision. That practice in no way warrants the conclusion the Auditor General inferences that the Board did not gather appropriate information, or did not use it in making decisions.

The Board argues that the Minutes of their meetings show evidence that the Board appropriately conducted investigations of complaints. They gathered and reviewed the appropriate records. That the records so gathered are not kept does not diminish the appropriateness of the Board's investigation of complaints.

The Board argues that keeping all investigatory records is an unnecessary administrative burden on the agency. Since these records are not available to the public, the sole purpose for retaining them would be for review by the Auditor General. To that end, the Board points out the such reviews are conducted once every ten years.

2. The Board finds fallacious the Auditor General's argument that the Board's decisions were inappropriate because those decisions were communicated categorically, and because the audit team was unable to reach the same decisions as did the Board.

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The Board argues that the manner in which a decision is communicated does not call in to question the appropriateness of the decision. While the Board acknowledges that more detailed explanations of decisions may be more satisfactory to complainants, those explanations do not affect the decisions themselves.

The Board further argues that the inability of the audit team to reach the same decision as does a professional regulatory board is not solely a function of records. A fundamental tenet of professional regulation is that such may only be conducted meaningfully by members of the profession, or by those who, like consumer members of professional boards, acquire certain knowledge and insight by association. Appropriate decisions depend as much on the expertise of the Board in analyzing the complaint and applying the law as on the records making up the complaint.

The Board requests that the multiple references to the unretained records be summarized into a single statement that acknowledges that the Board has no statutory obligation to retain them, and that the accompanying inferences that the Board erred in investigation or decision making be deleted in their entirety.

## II. Necessary Legislation

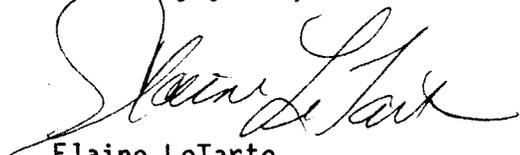
In the Board's response to the eighth of the Sunset Factors (page 11) the Board noted that some of the changes in the law they had sought in the past few years had not been successful in the legislature. The Auditor General noted those unsuccessful efforts in the report, but made no direct comment.

However, the Auditor General's response to the ninth factor was that the audit "did not identify any changes needed." That statement appears to directly contradict the position the Board has obviously taken by its inclusion of the unsuccessful issues in previous legislative bills.

The Board requests that, if this contradiction exists only in the language and juxtaposition of the two factors, the Auditor General clarify the response in ninth factor by deleting the contradictory language. If the contradiction is intentional, the Board requests that the Auditor General detail the reasons for that contradiction so that the Board may respond specifically.

The Board appreciates your attention to their requests. Should you wish to discuss this further, please contact me.

Sincerely yours,



Elaine LeTarte  
Executive Director