



**Senator Janae Shamp
District 29**

STATE SENATOR
FIFTY-SIXTH LEGISLATURE

CAPITOL COMPLEX, SENATE BUILDING
PHOENIX, ARIZONA 85007-2890
PHONE: (602) 926-3499
EMAIL: JSHAMP@AZLEG.GOV

Arizona State Senate

COMMITTEES:

Health and Human Services
Vice Chairman
Finance
Government

February 12, 2024

Dear Representative Gress,

I write to you today in your capacity as Chairman of the Joint Legislative Audit Committee and to bring to your attention concerns that have been raised with the Arizona Chiropractic Board. I respectfully request that JLAC convene a special audit focused in the following 7 areas surrounding the boards practices:

1. The Board's subpoenas for information related to complaint investigations, in particular whether the Board requests only information relevant to its investigations.
2. The Board's application of its statutes and rules, in particular whether the Board has consistently applied its statutes and rules over time and to all licensees.
3. The Board's handling of allegations involving criminal wrongdoing.
4. The Board's handling of its complaint backlog.
5. Board members' and/or staffs' participation in lobbying and advocacy activities.
6. The Board's compliance with the State's open meeting law, in particular its compliance with requirements related to the call to the public.
7. The role of the Board's executive director, including but not limited to how the executive director ensures consistency in Board practices despite changes in board members and how the executive director communicates changes in Board practices to licensees and the public.

Additionally, here is some background information that should be addressed in an audit review:

**SECTION 1
QUESTIONS | SCOPE OF NEW AUDIT REQUEST**

Requesting Irrelevant information

- Why did the Board recently request 15,000 documents through a "provider driven" complaint alleging fee splitting despite the Arizona Administrative Code providing a carve out for a licensee who is a member of an LLC with independent contractors?
- Does the Board provide clear instructions on how to deliver subpoenaed documents and policies and procedures if the licensee is unable to provide any documents requested in their preferred format?

Applying the Law Inconsistently Amongst Licensees

- Does the Board have jurisdiction to hear cases involving alleged improper fee splitting?
- Why is the Board interpreting and applying A.C.C. R4-7-902(34) regarding fee splitting differently in 2024 from previous cases?

- What is the reason for collecting personal finance records and 1099s in matters that are clearly not in violation of A.A.C. and A.R.S. and are allegations of billing issues, of which the Board has no jurisdiction?
- Explain how the Board has jurisdiction to hear cases involving alleged improper fee splitting?
- Does the term “members” include “LLC members” as well as “business associates”?
- Chiropractic statutes were drafted long before LLCs even became as common place as they are today. “Members” does not mean only “LLC members”, it means “business associates”, does it not?

Ignoring Statute re Allegations of Criminal Wrongdoing

- Does the Board appropriately report any allegations of criminal wrongdoing to the appropriate criminal justice agency as prescribed in A.R.S. 32-924(J)?
- Statute requires the Board to report “allegations” of criminal wrongdoing. Does the Board wait until it determines that there is “evidence” of wrongdoing?
- Is the Board staff qualified and experienced to investigate criminal matters that involve various aspects of criminal statutes, evidentiary decisions, as well as likelihood of convictions beyond a reasonable doubt in the context of criminal charges? Why does the board not simply dismiss criminal with criminal allegations and refer the matters to appropriate criminal justice agencies to resolve the matters as those agencies deem appropriate in the future?
- The board can always monitor the case and charges, if filed, and if the physician is acquitted board action would be inappropriate, if convicted, the board would be required to take action, and if no charges were filed by qualified agencies the board could rely upon that determination and leave matters closed, right?

Backlog | High Priority Cases

- The Board is currently addressing a backlog of 84 complaints (21 classified as a high priority), dating back to Fiscal Year 2018.
 - How many of those are allegations of sexual misconduct, patient safety, or patient injury?
 - How many are patient driven vs. provider driver?
 - How many chiropractors with high priority complaints are still practicing and interacting with patients?

Budget Request for FTE | Business Entity Coordinator

- Why would the board pursue new activity and work with a backlog going back 6 years that many involve sexual misconduct?
- Why would the Board ask for an additional FTE to employ a “business entity coordinator” when under the Revised Uniform Partnership Act Adopted in Arizona even oral business relationships/partnerships are recognized business relationships?
- How did the Board interpret A.R.S. 32-934(K) as it relates to the need to register business entities before receiving this recent advice from the AGs Office?
- Where did the board derive its prior understanding or interpretation of the statute and what changed to give rise to this new interpretation in FY 2023?
- Where is the interpretation or substantive policy statement published on this interpretation, or is it just how things were done without statements, disclosure, or clarification?
- The ED has indicated that all licensees should review the statutes and seek independent legal advice to ensure proper compliance and interpretation of statutes.
 - Please explain how any lawyer or chiropractic physician is supposed to know how the board interprets a statute, rule, regulation, or definition that is reasonably subject to other interpretations absent a written and published policy statement?
 - New advice received by the board is modifying its understanding of paragraph (K)(1) to ensure that while it doesn’t apply to a licensed doctor of chiropractic, if the business is co-owned by a non-licensed individual that person must also be registered.
 - The change does not involve (K)(2) because a business relationship involving (2) licensed Doctor of Chiropractic would already be subject to the board’s jurisdiction.

- The statement in the recent Budget Request indicating the new interpretation is necessary to ensure jurisdiction of the board over a non-physician owner, but please explain how this recent interpretation implicates patient safety?
- So, is it fair to say that the primary concern for the board under its new interpretation and understanding of the statute as stated in the funding request is premised upon the need for identification and accountability of everyone with access to HIPPA information or patient records even if direct “hands-on” patient treatment is not involved?
- In summary, the justification of the need for this new position is primarily identification of all those involved in the care of any patient under any business relationship, correct?
- What forms of business relationships are you aware the board accepts as being acceptable forms of businesses?

Lobbying and Advocacy Activity

- What are the laws or best practices regarding Lobbying and Advocating activity from a Board?
- Is it appropriate for a Board to mislead the public if, in their opinion, better results will be attained by doing so?

Open Meeting Law | Call to the Public

- Is a member of the public able to address a public body on any item of concern relating to subject matter within the public body's jurisdiction, even if the item is not specifically listed on the agenda?
- Is an individual public officer prohibited from dialoguing with or interrupt a member of the public during their Call to the Public?

Role of the Executive Director (ED)

- Is the role as the executive director to ensure that there is consistency as the composition of the board changes over time?
- What efforts does the ED take, or logs do they keep as the ED to ensure if a new board member questioned why something is viewed in a certain fashion you can provide historical context to that board member?
- Aren't the board's views or interpretations of statutes something that should be reduced to written and disseminated policy statements so that everyone is on notice of the board's interpretations?
- How does the ED plan on informing all chiropractors or chiropractic clinics, most importantly, informing those individuals who are not licensed chiropractors of the need to register in case the licensed physician doesn't handle that aspect of the business and focuses upon patient care only versus administrative tasks?
- Will the ED be issuing a policy statement or other public advisory to inform all such members or required registrants of the board's interpretation of the statute and its prior failure to inaccurately interpret the statute?
- Will the ED be reviewing whether any prior licensee was, based upon this new interpretation, improperly sanctioned in some fashion and ensure the board reviews, without any request, any past record of discipline imposed pursuant to this section is rectified and the physician's records cleared?
- If a new policy statement is issued and posted on the board's website who prepares and approves such a policy statement and statutory interpretation, i.e., describe the process involved?

SECTION 2 BACKGROUND | SCOPE OF NEW AUDIT REQUEST

Requesting Irrelevant information

The Board has failed to honor the recommendations within the 2010 AZ Auditor General Performance Audit and Sunset Review.

As recently as 2023, the Board requested 15,000 documents from a provider with unadjudicated complaints filed in 2020. These complaints continue to be stalled by the Board and refused adjudication. Instead, they are asking for documents not relevant to the investigation.

The 2010 Audit stated: *“Requesting irrelevant information causes the chiropractor extra time to assemble and copy the records, and the board staff to review the records”.*

The Audit goes on to recommend:

1) Limiting Subpoena Requests:

“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.”

2) Modify Subpoena Standard Language:

“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.”

Applying the Law Inconsistently Amongst Licensees

The Board has discriminatorily and inconsistently applied policy regarding fee splitting.

In May 2013, the Board adjudicated and dismissed three (3) fee splitting matters involving independent contractors (ICs) with a referring entity (see May 2013 Board Minutes), one of which is Case 2012-089 Dr. Danielle L. Lajeunesse:

“After review and discussion, a motion made by Dr. Katsaros and seconded by Dr. Guarino (a current Board Member) ...[the Board dismissed the case against Dr. Danielle]...with no basis on which to proceed” regarding “improperly divided professional fees...through an arrangement with Liberty Health Care” (LHC).

The dismissal of the 2013 cases was made pursuant to Ariz. Admin. Code R4-7-902(34) which states:

“Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between providers and institutions or entering into a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law from dividing fees received for professional services among themselves as they determine necessary.”

Fast-forward to 2024, the Board refuses to adjudicate a three-year-old case identical to the circumstances within the 2013 cases that were dismissed, as presented above. Instead, the Board has expanded the scope of its investigation into the 2021 case to include matters not identified in complaint including 1099s and personal finance records. This all despite the fact the Board admits they do “...not have jurisdiction over the following issues: Billing or fee disputes, personality conflicts, bedside manner, business or contract disputes, and employment matters or disputes.” (pg. 9 FY 25 Budget Request)

Ignoring Statute re Allegations of Criminal Wrongdoing

The Board has failed to report *allegations* of evidence of criminal wrongdoing pursuant to Ariz. Rev. Stat. Ann. § 32-924(J): "The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency."

In their June 9, 2023 response to Sen. Shamp, the Board fails to acknowledge the word "allegations" within the statute, stating:

"The statute does not require an immediate referral, nor does it prevent the Board from investigating. It requires the Board to forward a matter when the Board determines it has evidence of criminal wrongdoing." (see 6.9.23 Chiro Board Response)

The statute does not prohibit the Board from investigating and taking any action the Board has statutory authority to take. Reporting to "the appropriate justice agency" and adjudicating the complaint by the Board are not mutually exclusive. While the statute does not use the term "immediate", it is implied. The Board has never been granted the authority to investigate criminal "allegations" and determine whether it has evidence of criminal wrongdoing. This power has been granted to a criminal justice agency of which the Board is not.

Backlog | High Priority Cases

The Board has failed to complete its investigation, initial review and, make a final decision on, what should be, high priority cases filed with the Board in 2021. Despite the Board's statements in the FY 2025 Executive Budget of which the Board states it has:

"...taken a two-pronged approach to address...[their backlog]...first addressing high- priority complaints, then in the order the Board received the complaints starting with FY 2018."

Budget Request for FTE | Business Entity Coordinator

In the AZ Board of Chiropractic FY25 Budget Request, the Board's justification "to hire a full-time Business Entity Coordinator" (pg.55) is based on recently received new guidance and direction from the Arizona Attorney General's Office regarding the interpretation of A.R.S. §32-934 (K) which contains the exemptions for registering with the Board as a Business Entity. The justification goes on to state that the new position will be needed " *...to be able to not only process incoming applications but also research and locate businesses that are out of compliance and send notifications.*" (pgs. 23 and 55)

Regulatory agency/board investigations are "complaint-driven". This new budget request seeks to actively pursue non-compliance during a time where the Board also admits, in the Budget Request (pg. 11), they are "currently addressing a backlog of 84 complaints, 21 classified as a high priority, dating back to Fiscal Year 2018".

Lobbying and Advocacy Activity

SB 1233 was introduced on January 29 2024 by Senator Shamp. On January 22, 2024, one week prior to the bill's introduction, Executive Director Vander Veen and Chairman Wayne Bennett of the Arizona Board of Chiropractic Examiners participated in a stakeholder meeting coordinated by Senator Shamp. The document provided in the meeting for discussion was a draft version of SB 1233.

At the stakeholder meeting, Sen. Shamp's invited the Board to further engage in the stakeholder process by presenting any changed to the draft of which the Board never did and has yet to.

Instead, on February 1, 2024, the Board posted a Notice for an emergency Board Meeting to be held on February 2, 2024, to discuss Senate Bill 1233.

During the February 2, 2024 Meeting, Dr. Bennett began by admitting that the stakeholder meeting was "lengthy", despite his complaint that the bill was drafted with no input or comments from the Board. The purpose of the emergency meeting was for the Executive Director to present the bill's provisions to the Board. It is clear in that meeting, the Board and ED are not able to read a bill.

On February 5, 2024, the day before the HHS hearing of SB 1233, the Board continued to neglect the stakeholder process by emailing a misleading press release through the Board’s public email address (generalinfo@chiroboard.az.gov) announcing to licensee and subscribers that:

“SB 1233 renders the Chiropractic Board powerless to keep the public safe and to protect licensees from unethical practices by striking all its regulatory and self-governance powers.”

The events outlined above follow a series of unanswered communications from multiple legislators and legislative staff that began in March 2023.

Sender/Receiver	Communication Method	Date	NOTES (Board Response?)
Grant Hanna to Alissa Vander Veen (“ED”)	Call (left VM)	3/21/23	ED responded via email on 3/22/23
Shamp to ED	Email	4/20/23	*ED responded 2 months on 6/9/23
Chaplik to ED	Ltr.	5/15/23	No response; Chaplik requested a response “as soon as possible”
ED to Shamp	Call	5/16/23	N/A
Montenegro to Chairman Guarino & Vice-Chairman Bennett	Ltr.	5/26/23	No response: Montenegro requested a response no later than 6/5/23
*ED to Shamp	Ltr.	6/9/23	N/A
Shamp, Chaplik & Montenegro to ED	Ltr.	6/27/23	No response; Members requested a response by 7/24/23

Open Meeting Law | Call to the Public

The Board has violated Open Meeting Law on multiple occasions. An "open call to the public" is a time period for members of the public to address a public body on any item of concern relating to subject matter within the public body's jurisdiction, even if the item is not specifically listed on the agenda.

An individual public officer may respond to criticism, ask staff to review an item or ask that an item be placed on a future agenda, but he or she may not dialogue with the presenter or collectively discuss, consider, or decide an item that is not listed on the agenda. A.R.S. § 38-431.01(H); Ariz. Att’y Gen. Op. 199-006.

The Arizona Supreme Court stated as follows in *Button v. Nevin*, 44 Ariz. 247, 257, 36 P.2d 568, 571 (1934):

“Public officials may not violate the plain terms of a statute because in their opinion better results will be attained by doing so. They have but one duty, and that is to enforce the law as it is written, and, if the effect of their action is disastrous, the responsibility is upon the Legislature and not upon them.” (Agency Handbook)

On July 7, 2023, the Board voted in favor to table and potentially “formally stay” three sexual misconduct complaints [2022-044 (Kim LaFrance); 2023-002 (Valerie Jo Clayton); and 2023-006 (Jennifer Dixon)] against Dr. Danielle Lajeunesse (License #7276). This would have been the first time the Board would have reviewed these cases but, instead, the Executive Director advised that the cases should be stayed:

“....as this board is aware there are some companion board matters related to other licensed providers and there is also ongoing civil litigation relating to those providers and complaints as well and we believe that these matters should be tabled and or potentially stayed for a period of time to allow for further investigation and discovery...”

As recently as January 17, 2024, Kim LaFrance, who's sexual misconduct complaint filed in 2021 and tabled in 2023, was denied speaking when the Board Executive Director and Chairman dialogued with her during her statement.

TRANSCRIPT:

LaFrance:

"...good afternoon board members and staff, this is Kim LaFrance, I have spoken on calls as the public for the same issue many times regarding complaints against doctor Danielle Lajeunesse for patient sexual..."

Vander Veen:

"...confidential and cant be discussed...until they're on the agenda and"

LaFrance:

"why didn't you tell me this the last three times I've spoke?"

Bennett:

"by way of patience and at this point we did hear your comments each of the three times that you spoke previously and we have we are unable to move forward with regard to our actions due to civil information and civil cases that you are aware of and are all with and so at this point we are not able to even put on record information that pertains to civil matters and so if you if you have anything else to do to speak about them please feel free to do so otherwise please please refrain from inappropriately talking about confidential civil matters they"

LaFrance:

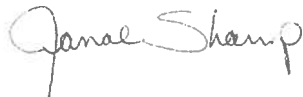
"I didn't believe that I was being inappropriate, but these complaints have been put on stay as you said because of other civil actions which yes I am involved in a lawsuit these complaints have nothing to do with the lawsuits they"

Bennett:

"they do and so thank you for your comments and with that we will we will move on"

Chairman Gress, I appreciate your time in reviewing these concerns and I do hope that you agree that a special audit is warranted in this situation. If I can provide any further information, please feel free to contact my office.

Sincerely,



Janae Shamp BSN, RN

Senator Janae Shamp

Legislative District 29

602.926.3499

JShamp@azleg.gov

Vice Chair Health & Human Services

Government Committee

Finance Committee

Ethics Committee