

State of Arizona
Office
of the
Auditor General

PERFORMANCE AUDIT

**BOARD
OF
CHIROPRACTIC
EXAMINERS**

Report to the Arizona Legislature
By Debra K. Davenport
Auditor General

**June 2001
Report No. 01-12**

The Auditor General is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. Her mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, she provides financial audits and accounting services to the state and political subdivisions and performance audits of state agencies and the programs they administer.

The Joint Legislative Audit Committee

Senator Ken Bennett, Chairman
Representative Roberta L. Voss, Vice-Chairman

Senator Herb Guenther	Representative Robert Blendu
Senator Dean Martin	Representative Gabrielle Giffords
Senator Peter Rios	Representative Barbara Leff
Senator Tom Smith	Representative James Sedillo
Senator Randall Gnant (ex-officio)	Representative James Weiers (ex-officio)

Audit Staff

Dale Chapman—*Manager*
and Contact Person (602) 553-0333
Julie Maurer—Team Member

Copies of the Auditor General's reports are free.
You may request them by contacting us at:

Office of the Auditor General
2910 N. 44th Street, Suite 410
Phoenix, AZ 85018
(602) 553-0333

Additionally, many of our reports can be found in electronic format at:

www.auditorgen.state.az.us



DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

June 25, 2001

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Patrice Pritzl, Executive Director
State Board of Chiropractic Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Chiropractic Examiners. This report is in response to a June 16, 1999, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §41-2951 et seq. I am also transmitting with 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 has agreed to implement 3 of the 4 Finding recommendations and the one Sunset Factor recommendation addressed to it, while it has agreed to implement the remaining Finding recommendation in a different manner.

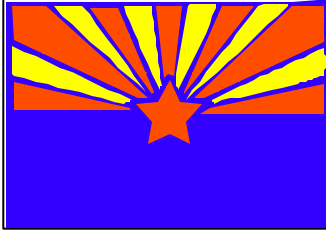
My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on June 26, 2001.

Sincerely,

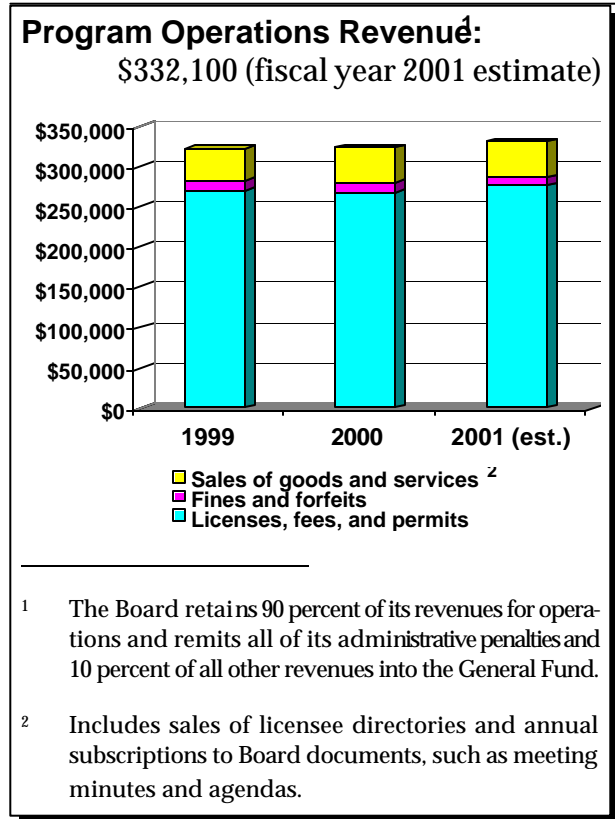
Debbie Davenport
Auditor General

Enclosure



Board of Chiropractic Examiners

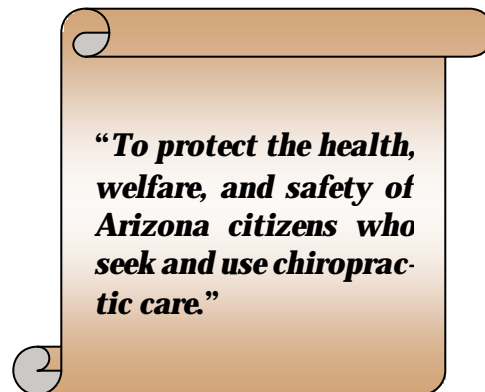
Services: The Board of Chiropractic Examiners (Board) is responsible for regulating chiropractors through licensure. The Board performs the following services: **1) Assuring applicant and license qualifications; 2) Investigating and adjudicating complaints** concerning allegations of unprofessional conduct or other statutory violations; and **3) Providing consumer information to the public.**



Facilities: The Board owns no facilities. The Board’s office is located at 5060 North 19th Avenue, in Phoenix. Board meetings are held at this location.

Equipment: The Board owns only standard office equipment.

Agency Mission:



Personnel: 4.5 full-time staff.

The Board consists of five members who serve five-year terms:

- Three doctors of chiropractic who have resided in the State and practiced chiropractic full-time for at least three years preceding appointment; and
- Two public members who do not have any connection to chiropractic schools, institutions, or practitioners.

Program Goals (Fiscal Years 2000-2002):

1. To issue and renew licenses promptly to those applicants determined to be eligible based on their accurate and complete application and demonstration of the required standards of education, knowledge, and competency while ensuring that the public’s health, safety, and welfare is protected.

Program Goals (Concl'd):

2. To investigate promptly complaints filed against licensees throughout the State and to proactively identify risks to the consumer public. To determine in a timely and knowledgeable manner if a matter should be dismissed or proceed to hearing, to conduct hearings in a timely manner, and to impose appropriate sanctions on those found to have violated the public trust.
3. To increase public awareness of agency functions, resources, and parameters; to increase public record accessibility; and to increase communication with the public and professional community.
4. To ensure Board and staff competence and knowledge.

Adequacy of Performance Measures:

Overall, the measures set forth for the Board are appropriate, and the Board has established most of the recommended input, output, outcome, efficiency, and quality measures. However, the Board could make some improvements to its performance measures:

- The Board's current performance measures report the "number of new licenses issued per 100 applicants" and the "number of complaints per 100 licensees." More straightforward measures, such as the number of licenses issued and denied and the number of complaints received and resolved, would be easier for most people to interpret. Additionally, the Board should develop basic measures to report the number of requests for public information and the number of those requests fulfilled.

SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Chiropractic Examiners (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

The Board is responsible for regulating licensed chiropractors. Chiropractors examine the spine and pelvis to determine malfunctions or abnormal body movements, using diagnostic x-rays and adjustments of the spine and joints during treatment. The Board's duties include issuing and renewing licenses, conducting investigations and formal disciplinary hearings, disciplining chiropractors who violate statute, and providing consumer information to the public. Currently, the Board licenses approximately 2,500 chiropractors and receives approximately 125 complaints each year.

Board Should Improve Its Adjudication of Complaints (See pages 9 through 14)

The Board has not always taken disciplinary action when chiropractors violate statute. One of the Board's main responsibilities in protecting the public is investigating and adjudicating complaints. However, a review of 30 dismissed complaints showed that 7 complaints were dismissed despite investigations that revealed evidence of statutory violations. In one instance, the Board noted that the chiropractor's actions were "absolutely inappropriate" when the chiropractor double-billed an insurance company and patient for the same services and failed to reimburse the patient. Yet, the Board dismissed the complaint after the chiropractor reimbursed the patient and agreed to take a course in ethics. The Board dismissed another complaint which alleged that the chiropractor provided patient treatment prior to

having adequate knowledge of the patient's symptoms and reviewing patient records or x-rays, after the chiropractor fulfilled a Board request to pass two examinations and take a record-keeping course.

The Board should take disciplinary action when it determines that statutory violations have occurred. The Board has a range of sanctions available, including less severe sanctions such as Orders to Cease and Desist, Orders of Censure, and civil penalties. Imposing a milder form of sanction when a violation occurs, rather than dismissing a valid complaint, provides the public more accurate information about the licensee, and allows the Board to impose progressive discipline should the licensee repeat the violation.

The Board should also take action to separate its complaint investigation and adjudication. Currently, the Board participates in some complaint investigations, especially for complaints regarding patient treatment, because of the medical expertise needed to properly review these cases. However, the Attorney General's *Arizona Agency Handbook* recommends that Board members "...not actively participate in the investigative process unless they will be recusing themselves from the decision-making process." By participating in the investigative process, the Board may create an appearance of bias when adjudicating these same complaints. There are several options available to the Board, including hiring a medical consultant to assist with investigations.

Legislative Change Could Help Board Ensure More Timely Complaint Resolutions (See pages 15 through 18)

The Legislature can help the Board improve the timeliness of its complaint resolutions by amending current statute. Currently, the Board must refer all potential disciplinary sanctions to formal hearing. However, the Board reports that its Assistant Attorney General does not have the time to review, prepare, and prosecute all cases referred to formal hearing in a timely manner. In fact, of the 9 open complaints currently awaiting hearing, all 9 have been

open over 340 days, with 5 of these complaints open over 550 days. The majority of this delay can be attributed to the time it takes to properly prepare complaints for formal hearing once referred to the Assistant Attorney General, as 7 of the 9 complaints have been with her for over 320 days.

To improve the Board's timeliness in resolving complaints, the Legislature should consider granting the Board the authority to resolve complaints with alleged violations that do not merit license suspension or revocation through investigative hearings. Other Arizona health profession regulatory boards, including the Board of Dental Examiners and the Board of Medical Examiners, have the authority to conduct investigative hearings. Investigative or informal hearings would allow the Board to decide on the merits of a complaint and impose appropriate discipline, without referring the matter to formal hearing. Eighteen of 28 closed complaints referred to formal hearing during fiscal years 1999 and 2000 involved violations that could have been resolved by an investigative hearing.

If the Legislature grants the Board authority to conduct investigative hearings, the Board should assess the impact of this authority on its Assistant Attorney General's workload and determine if additional Attorney General resources are needed. If so, it should request and procure these resources from the Attorney General's Office.

Sunset Factors (See pages 19 through 25)

As part of the Sunset review process, this audit recommends that the Board ensure that its staff follow Board policy of fully informing consumers who contact the Board of a licensee's disciplinary history, including the general nature of each complaint.

This audit also recognizes that the Board may need to seek an increase in its licensing fees to allow it to retain the services of an outside medical consultant for complaint investigations and additional Attorney General representation.

(This Page Intentionally Left Blank)

TABLE OF CONTENTS

	<u>Page</u>
Introduction and Background.....	1
Finding I: Board Should Improve Its Adjudication of Complaints	9
Board Inappropriately Adjudicates Some Complaints.....	9
Board Lacks Authority to Issue Letters of Concern.....	11
Board Inappropriately Participates in Complaint Investigations	12
Recommendations	14
Finding II: Legislative Change Could Help Board Ensure More Timely Complaint Resolutions.....	15
Requirement for Formal Hearings Leads to Untimely Complaint Resolutions	15
Legislature Should Grant Investigative Hearing Authority to Board.....	17
Recommendations	18

TABLE OF CONTENTS (Concl'd)

	<u>Page</u>
Sunset Factors	19
Agency Response	

Table

Table 1	State Board of Chiropractic Examiners Statement of Revenues, Expenditures, and Changes in Fund Balance Years Ended or Ending June 30, 1999, 2000, and 2001 (Unaudited).....	6
---------	--	---

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Chiropractic Examiners (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

Board Responsibilities

Laws 1921, Chapter 118, established the Arizona Board of Chiropractic Examiners, which is responsible for regulating chiropractors in the State. The main focus of chiropractic therapy is the relationship between the functions of joints, muscles, and the nervous system and the effects of these relationships on health. The practice of chiropractic therapy includes examining the spine and pelvis to determine malfunctions or abnormal body movements, the use of diagnostic x-rays, and adjustment of the spine and joints.

The Board's mission is:

To protect the health, welfare, and safety of Arizona citizens who seek and use chiropractic care.

The Board accomplishes this mission by performing a variety of functions, including:

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

The Board currently licenses 2,500 chiropractors.

Currently, the Board licenses approximately 2,500 chiropractors and receives approximately 125 complaints each year. Additionally, the Board approves approximately 2,500 chiropractic assistants and 50 preceptorship training programs, by which a chiropractic student may practice under the supervision of a licensed chiropractor.

Statutory Licensure and Certification Requirements

The Board's statutes contain the following general education, experience, and examination requirements for initial licensure as a chiropractor:

- Graduation from an approved College of Chiropractic. There are currently 18 colleges of chiropractic in North America that are accredited by the Council on Chiropractic Education;
- Passage of parts I and II, as demonstrated by a certificate of attainment, and a score of at least 75 percent on parts III and IV of the examination conducted by the National Board of Chiropractic Examiners (NBCE) or possession of an unrestricted license from another state with similar standards;¹ and
- Passage of the Board's Arizona jurisprudence exam, which tests an applicant's knowledge of the Board's statutes, with a score of 75 percent or higher.

Additionally, statute provides the Board authority to issue licenses specialty certifications in acupuncture, which includes, but is not limited to, the stimulation of certain points on the body that complement a chiropractic adjustment, and physiotherapy, which is a type of rehabilitation that includes, but is not limited

¹ Chiropractic students take parts I and II of the examination while still in school and NBCE issues the certificates of attainment.

to, using hydrotherapy, ultrasound, and electrical stimulation. Certifications require:

- **Acupuncture**—Completion of at least 50 hours of study in acupuncture at an accredited chiropractic college and passage of the Board’s acupuncture examination with a score of 75 percent or higher; and
- **Physiotherapy**—Completion of at least 120 hours of study in physiotherapy at an accredited chiropractic college and passage of the national physiotherapy examination with a score of 75 percent or higher.

Licensure renewals, which include the specialty certifications if the chiropractor has been previously certified, are issued annually. Renewals require completion of a renewal application and a payment of a \$100 renewal fee.

Complaint Resolution

The Board investigates and adjudicates complaints involving potential statutory violations and unprofessional conduct by licensed chiropractors as authorized by statute. A.R.S. §32-924 provides 28 actions that constitute statutory violations for chiropractors, including billing for procedures not provided, advertising in a false or misleading manner, and representing that an incurable condition can be cured through chiropractic treatment. Additionally, the Board’s administrative rule, R4-7-902, defines 13 specific actions that constitute unprofessional conduct, such as knowingly making a false statement to the Board, failing to maintain patient records, and failing to properly supervise chiropractic assistants.

According to Board policy, upon receiving a complaint alleging that a chiropractor violated statute, Board staff open an investigation. A complaint investigation includes obtaining the licensee’s response to the complaint and pertinent treatment records; a complainant’s response to the licensee’s explanation; and, if possible, interviewing the complainant and licensee. After the Board staff’s investigation is completed, the Board subpoenas the licensee to appear before the Board for questioning. The complainant(s) also has the opportunity to address the Board. After

Statute provides 28 specific actions that constitute chiropractic violations.

the Board determines that adequate information has been obtained to determine if a violation has been committed, the complaint is adjudicated. According to statute, the Board must refer all complaints requiring potential disciplinary action to formal hearing. While the Board conducts some hearings, most complaints are referred to Arizona's Office of Administrative Hearings to be heard by an administrative law judge. Upon its own determination or the recommendation of the administrative law judge, the Board resolves each complaint using one of its nondisciplinary or statutory disciplinary options. The Board's one nondisciplinary option is to dismiss the complaint. The Board generally dismisses about 100 complaints annually.

If the Board imposes discipline, it can use one or more of the following options:

- Issuing an Order to Cease and Desist, which is a formal order to discontinue current practices that violate Board statutes;
- Issuing an Order of Censure, which is a formal written reprimand;
- Imposing a civil penalty of not more than \$500;
- Imposing probationary terms, which may include additional education and/or periodic reviews of treatment records; and
- Suspending or revoking the chiropractor's license.

Organization and Staffing

The Board consists of five governor-appointed members, who serve staggered terms of five 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 three years preceding appointment. The remaining two members are public members who do not have any connection to chiropractic schools, institutions, or practitioners.

Currently, the Board is authorized 4.5 full-time equivalent (FTE) positions, but requested and received funding for an additional .5 FTE to assist in administrative duties beginning in fiscal year

2002. At present, its staff includes an executive director, a deputy director, an investigator, and 1.5 support staff. Staff responsibilities include:

- Collecting application, renewal, and other fees;
- Issuing licenses after Board approval;
- Initiating investigations of unprofessional conduct and chiropractic incompetence; and
- Providing information to the public.

Budget

The Legislature appropriates monies to the Board from the Board of Chiropractic Examiners Fund. This Fund contains revenues derived principally from the collection of licensure application and renewal fees. The Board deposits 90 percent of its revenues into the Board of Chiropractic Examiners Fund and remits all of its administrative penalties and 10 percent of all other revenues into the General Fund. Table 1 (see page 6) illustrates the Board's actual and estimated revenues and expenditures for fiscal years 1999 through 2001. As shown, expenditures have exceeded revenues by over \$11,700 in fiscal year 2000 and an estimated \$3,000 in fiscal year 2001, which has caused the Board's fund balance to decrease. The Board expects this trend to continue. As a result, the Board plans to propose legislation during the 2002 regular legislative session to increase its licensing fees and revenues.

Audit Scope and Methodology

Audit work focused on the Board's complaint investigation and adjudication processes and its provision of information to the

Table 1**State Board of Chiropractic Examiners
Statement of Revenues, Expenditures, and Changes in Fund Balance
Years Ended or Ending June 30, 1999, 2000, and 2001
(Unaudited)**

	1999 (Actual)	2000 (Actual)	2001 (Estimated)
Revenues:			
Licenses, fees, and permits	\$270,705	\$269,123	\$276,600
Sales and charges for goods and services ¹	41,372	44,168	44,400
Fines and forfeits	<u>11,861</u>	<u>11,075</u>	<u>11,100</u>
Total revenues	<u>323,938</u>	<u>324,366</u>	<u>332,100</u>
Expenditures: ²			
Personal services	146,756	170,713	165,400
Employee-related	28,960	30,740	30,300
Professional and outside services	15,123	15,707	21,000
Travel, in-state	464	2,585	4,300
Travel, out-of-state	1,809	4,676	5,500
Other operating	73,433	62,768	74,100
Equipment	<u>12,609</u>	<u>11,744</u>	
Total expenditures	<u>279,154</u>	<u>298,933</u>	<u>300,600</u>
Excess of revenues over expenditures	<u>44,784</u>	<u>25,433</u>	<u>31,500</u>
Other financial uses:			
Net operating transfers out	48	3,434	
Remittances to the State General Fund ³	<u>32,780</u>	<u>33,754</u>	<u>34,500</u>
Total other financing uses	32,828	37,188	34,500
Excess of revenues over (under) expenditures and other financing uses	11,956	(11,755)	(3,000)
Fund balance, beginning of year	<u>362,656</u>	<u>374,612</u>	<u>362,857</u>
Fund balance, end of year	<u>\$374,612</u>	<u>\$362,857</u>	<u>\$359,857</u>

¹ Includes revenues from the sale of licensee directories; annual subscriptions to Board meeting minutes, agendas, and other documents published on an ongoing basis; and hard copy license verification requests.

² Includes administrative adjustments from the prior year.

³ As a 90/10 agency, the Board remits all of its administrative penalties and 10 percent of all other revenues to the State General Fund.

Source: The Arizona Financial Information System *Revenues and Expenditures by Fund, Program, Organization, and Object and Trial Balance by Fund* reports for the years ended June 30, 1999 and 2000; the *State of Arizona Appropriations Report* for the year ending June 30, 2001; and the Board's *Revenue Schedule—Fund Deposits* for the years ended or ending June 30, 2000, 2001, 2002, and 2003.

public. This performance audit and Sunset review includes two findings:

- The need for the Legislature and Board to consider a number of steps to ensure that the Board takes appropriate disciplinary action when chiropractors violate statute (see Finding I, pages 9 through 14); and
- The need for the Legislature to consider granting the Board authority to conduct investigative hearings to ensure that complaints are resolved in a timely manner (see Finding II, pages 15 through 18).

This audit used a variety of methods to study the issues addressed in this report. These methods included interviewing Board members, the Board's executive director, Board staff, the Arizona Chiropractic Association, and the Board's current Assistant Attorney General representative; attending Board meetings; and reviewing statutes, rules, Board meeting minutes, and Board policies and procedures. In addition, the following specific methods were used:

- To assess whether the Board's adjudication decisions were adequately supported and to assess the quality and timeliness of investigations, auditors reviewed and conducted an analysis of a random sample of 30 dismissed complaints filed during fiscal years 1999 and 2000, and all 38 closed complaints filed during fiscal years 1999 and 2000. In addition, auditors reviewed and conducted an analysis of all 9 complaints currently pending hearing that were filed during fiscal years 1999 and 2000.
- To determine whether the Board provides consumers with accurate and complete information, including complaint histories about licensed chiropractors, auditors posing as members of the public made six calls to the Board requesting information on eight chiropractors. Information supplied was compared to the information obtained from the Board's complaint records.
- To determine the completeness and accuracy of the Board's complaint database, which is used to supply information to the public, auditors compared 20 complaint files from the 77

Introduction and Background

dismissed, closed, and pending complaints reviewed to the Board's complaint database.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members of the Board of Chiropractic Examiners, the executive director, and staff for their cooperation and assistance throughout the audit.

FINDING I

BOARD SHOULD IMPROVE ITS ADJUDICATION OF COMPLAINTS

Several steps can be taken to improve the Board's adjudication of complaints. Rather than dismissing some complaints that it considers less serious in nature, even though there is evidence that a violation has occurred, the Board should impose some form of discipline. The Board should also request authority to issue Letters of Concern for those complaints where there is not sufficient evidence of a violation to allow formal action. Finally, the Board should separate its investigative and adjudication processes.

Board Inappropriately Adjudicates Some Complaints

The Board dismisses some complaints with evidence that a violation was committed. This can affect the Board's future disciplinary options and inadequately protects the public.

Board inappropriately dismisses complaints—The Board dismisses some complaints when evidence of statutory violations exists. Based on a review of 30 complaints dismissed during fiscal years 1999 and 2000, the Board appears to have inappropriately dismissed 7 complaints despite evidence of statutory violations that would warrant disciplinary action. The Board dismissed 1 of these complaints without requiring or asking the licensee to take any corrective action to ensure the violation or concern was addressed. However, the Board dismissed the other 6 complaints when licensees agreed to correct the problem, discontinued the practice that resulted in the complaint, or fulfilled informal requirements requested by the Board. While most of these inappropriately dismissed complaints were relatively minor, involving misleading advertising or inappropriate billing

Board inappropriately dismissed seven complaints.

practices, one did involve inappropriate patient treatment. For instance:

- The Board dismissed a complaint alleging that a chiropractor double-billed an insurance company and patient for the same services and failed to reimburse the patient, both of which are violations of Board statutes. However, although the Board noted that the chiropractor's actions were "absolutely inappropriate," the complaint was dismissed after the chiropractor reimbursed the patient and agreed to take a course in ethics.
- The Board dismissed another complaint that alleged inappropriate treatment because the chiropractor provided patient treatment prior to having adequate knowledge of the patient's symptoms and reviewing the patient's records or x-rays. While Board members expressed concerns with the chiropractor's treatment practices and requested that the chiropractor take and pass two chiropractic examinations and take a record-keeping course, the Board dismissed the complaint after verifying that the chiropractor fulfilled the request.

In response to auditors' questions, Board members acknowledged dismissing complaints when evidence of statutory violations is substantiated. One Board member explained that he is hesitant to formally discipline a chiropractor for minor infractions because of the impact the discipline may have on the chiropractor's ability to practice. Furthermore, another Board member expressed concern that some types of minor allegations do not merit formal Board action, even if a violation was committed.

Inappropriate dismissals limit disciplinary options and do not protect public—The Board has a range of disciplinary options available, including less severe measures such as issuing an Order to Cease and Desist, issuing an Order of Censure, or imposing a civil penalty. Failing to impose any disciplinary sanctions, despite evidence of statutory violations, limits the Board's disciplinary capabilities. For example, when complaints are dismissed, the Board relinquishes its authority to impose appropriate disciplinary action and ensure that the chiropractor implements corrective action. Further, the Board cannot use that complaint as a factor for imposing progressive disciplinary action if

the Board substantiates another complaint against the chiropractor.

Additionally, dismissing substantiated complaints does not ensure that the public is adequately protected or informed of chiropractors who violate statutes. First, dismissed complaints communicate that the allegations were not substantiated. Also, the public is not informed of any actions the Board required chiropractors to take or actions that chiropractors volunteered to take in response to the complaint allegations. Finally, dismissed complaints are not reported to the Federation of Chiropractic Licensing Boards and the National Practitioners Databank, which maintains disciplinary histories that are accessible to health care organizations and state licensing boards.

The Legislature should consider clarifying the Board's authority to dismiss complaints.

The Legislature should consider clarifying the Board's authority to dismiss complaints. Current statutes do not clearly define the appropriate circumstances in which the Board can use its authority to dismiss complaints. Other health profession regulatory boards' statutes better clarify the appropriate actions regulatory boards should take. For example, the Board of Osteopathic Examiners' statutes require the Board to dismiss a complaint only if its investigation determined the complaint was without merit.

Board Lacks Authority to Issue Letters of Concern

Because the Board does not have the authority to issue Letters of Concern, it dismisses some complaints when Letters of Concern (LOCs) would be more appropriate. Other Arizona health profession regulatory boards' statutes, including the Board of Osteopathic Examiners and Board of Medical Examiners (BOMEX), define LOCs as advisory letters that can be issued when there is insufficient evidence to support direct action against the licensee, but sufficient evidence for the Board to notify the licensee of its concern. These statutes also stipulate that LOCs can be used in future disciplinary actions. Auditor review of 30 dismissed complaint files identified 4 complaints with insufficient evidence to substantiate a violation, but with enough evidence to concern the Board. These complaints alleged unprofessional conduct, including inadequate record keeping and selling unrelated services while the patient was receiving treatment, and inappropriate

Other boards have the authority to issue Letters of Concern.

treatment, but the Board did not have sufficient evidence to proceed with disciplinary action.

Despite lacking the authority to issue Letters of Concern, the Board sent advisory letters to two of the four chiropractors named in the complaints, expressing concern with the chiropractors' actions. However, since the Board did not have authority to use these types of letters, these letters cannot be released as public information or be used to impose progressive disciplinary action. In fact, the Board received a substantiated complaint against one of the chiropractors approximately eight months after it had issued the advisory letter. However, the Board could not use the previous advisory letter as a factor when considering progressive disciplinary action. The Board agrees that not having the authority to issue LOCs has affected its ability to appropriately adjudicate some complaints.

Board Inappropriately Participates in Complaint Investigations

Currently, the Board participates in some complaint investigations, especially for complaints regarding patient treatment or care because of the medical expertise required to properly review these cases. Based on a review of 77 complaints received by the Board in fiscal years 1999 and 2000 and auditor observations of Board meetings, Board members participated in both the investigation and adjudication of some complaints at Board meetings without recusing themselves. However, this practice is inconsistent with the Attorney General's advice in the *Arizona Agency Handbook*, which states that, "Decision-makers should not actively participate in the investigative process unless they will be recusing themselves from the decision-making process." By participating in the investigation of complaints, the Board creates a possible appearance of bias when adjudicating these same complaints, especially if Board members have not recused themselves.

Therefore, the Board should separate its investigation and adjudication practices so that Board members have clear and objective mindsets when considering the facts of the case. This would not preclude Board members from asking questions or clarifying issues on complaints at its Board meetings. While the Board has

Finding I

not explored options for investigating complaints without its involvement, there are a variety of approaches used to separate investigative and adjudicatory functions. For example:

- The Board could use a contracted medical consultant or professional Board member to investigate medically related complaints, identify potential statutory violations, and make recommendations to the Board. If a professional Board member investigates a complaint, the member should be recused from the Board's decision making.
- Alternatively, the Board could use a panel comprised of professional members who are not part of the Board to conduct medical investigations. This panel could conduct investigative interviews and make recommendations for action to the Board.

The executive director has estimated that approximately 75 to 90 complaints the Board receives annually might require review and additional investigation by a medical expert. According to the Board chair and executive director, the preferred option for the Board is to retain the services of an outside medical consultant. While this would likely require the Board to generate additional revenues to pay for these services, the Board has already developed legislation for increased Board fees, which it plans to propose in the 2002 legislative session.

Approximately 75 to 90 Board complaints might require medical expert review each year.

Once the Board has separated its investigation and adjudication of complaints, the Board should assign one of its members on a rotating basis to review complaint investigations prior to the Board's initial review of complaints. This practice will help to ensure that investigations are complete, but still allow the reviewing Board member to participate in the Board's decision-making process without having to recuse himself/herself from this process. Specifically, a one-member review of complaint investigations should make certain that all complaint allegations have been addressed and that sufficient evidence has been obtained to determine whether a violation was committed. If it is determined that a complaint investigation is incomplete, the reviewer can direct Board staff as to the additional steps needed to complete the investigation. Since the Board member will only provide this direction and not participate in the actual investigation, he/she can still act with the rest of the Board in making decisions.

Recommendations

1. The Legislature should consider revising A.R.S. §32-924 by:
 - a. Granting the Board authority to issue “Letters of Concern”; and
 - b. Defining when it is appropriate to dismiss complaints.
2. The Board should take disciplinary action when it determines that a statutory violation has occurred.
3. The Board should separate investigative and adjudicative processes by:
 - a. Hiring a medical consultant to investigate all medically related complaints; or
 - b. Designating a professional Board member to investigate medically related complaints. The investigating Board member could not participate in adjudicating the final decision; or
 - c. Designating a panel of professional non-Board members to investigate all medically related complaints.
4. The Board should designate one of its members on a rotating basis to review each complaint investigation to ensure the investigation is complete prior to its review before the full Board.

FINDING II

LEGISLATIVE CHANGE COULD HELP BOARD ENSURE MORE TIMELY COMPLAINT RESOLUTIONS

The Legislature should consider granting the Board authority to conduct investigative hearings. Currently, statute requires the Board to refer all complaints where potential disciplinary action is contemplated to formal hearing. However, many complaints referred to formal hearing are resolved in an untimely manner, while problem chiropractors may continue to practice unchecked. If the Legislature gave the Board authority to conduct investigative hearings, complaints resulting in discipline could be resolved in a more timely manner.

Requirement for Formal Hearings Leads to Untimely Complaint Resolutions

Because the Board cannot impose disciplinary action without referring complaints to formal hearing, many complaints are unnecessarily prolonged. These delays negatively affect the Board's ability to adequately protect the public.

The Board must refer all complaints requiring potential disciplinary action to formal hearing.

Complaint timeliness affected by limited adjudication authority—Currently, statute requires the Board to conduct or refer all complaints that merit potential disciplinary action to formal hearing. However, the Board reports that its Assistant Attorney General does not have the time or resources to review, prepare, and prosecute all cases referred to formal hearing in a timely manner. According to an Attorney General's Office official, the Board's Assistant Attorney General currently provides part-time representation to nine state boards, including the Board of Chiropractic Examiners. While the Board receives approximately 40 percent of her time, this limited amount of time is split between

providing legal advice to the Board and preparing cases for formal hearing.

Because of the limited time the Assistant Attorney General has available to prepare cases referred to formal hearing, many are resolved in an untimely manner. Specifically, a review of all 9 open complaints referred to formal hearing during fiscal years 1999 and 2000 found most cases delayed while awaiting preparation for formal hearing, which, in some instances, requires further investigation by the Board. In fact, these complaints will be resolved well beyond the recommended 180-day time frame for the timely processing of complaints. For example, the 9 complaints awaiting formal hearing have been open over 340 days, with 5 of these complaints open for more than 550 days. The majority of this delay can be attributed to the time it takes to properly prepare complaints for formal hearing once referred to the Assistant Attorney General, as 7 of the 9 complaints have been with her for over 320 days.

Untimely complaint resolutions lead to inadequate public protection—Because complaints referred to formal hearing take a long time to resolve, certain chiropractors with problems continue to practice unchecked. Specifically, these chiropractors continue practicing for long periods of time without receiving appropriate disciplinary action and the public is not informed of the Board’s concerns with these chiropractors for this same length of time. For example:

- One chiropractor was the subject of a complaint filed in January 1999. This complaint alleged that the chiropractor targets elderly patients, charges excessive fees, and claims to cure ailments not treatable through chiropractic manipulations. Although the Board referred this complaint to formal hearing, due to the Assistant Attorney General’s workload, the hearing has not yet been held. In the meantime, in September 1999 and October 2000, the Board received three additional complaints about this chiropractor, alleging the same types of problems.

Legislature Should Grant Investigative Hearing Authority to Board

The Legislature should consider granting the Board authority to resolve complaints where alleged violations do not merit license suspension or revocation through investigative hearings. An investigative or informal hearing is a meeting between the Board and a licensee during which the Board may hear statements from Board staff, the complainant, and licensee; consider the investigative materials and evidence presented; decide on the merits of a complaint; and impose appropriate discipline. Other Arizona health profession regulatory boards have the authority to conduct investigative hearings. Specifically, the Board of Dental Examiners, Board of Psychologist Examiners, Board of Osteopathic Examiners, and BOMEX have the authority to conduct investigative hearings and issue disciplinary orders for all violations, except those that merit license suspension or revocation, rather than refer all complaints to formal hearing.

Investigative hearings would help resolve many complaints in a more timely manner.

With the authority to conduct investigative hearings, complaints that otherwise would have to go to formal hearing could be resolved in a more timely manner. Complaints could be resolved in a more timely manner because the Board's Assistant Attorney General would not have to prepare cases for investigative hearings. Rather, she would provide legal advice to the Board, while its staff would prepare the complaints for investigative hearings. Eighteen of the 28 closed complaints referred to formal hearing during fiscal years 1999 and 2000 did not merit or receive license suspension or revocation. Therefore, these cases could have been resolved more quickly through an investigative hearing. For example:

- One complaint, with a substantiated allegation of charging for services not rendered and inadequate patient record keeping, required 224 days to resolve.¹ The Board could have resolved this complaint in 133 days if it had investigative hearing authority.

¹ The disciplinary action consisted of six months' probation, a fine, and reimbursing the patient.

Additionally, one complaint currently pending formal hearing could have been resolved through an investigative hearing by the Board. This complaint has been open at least an additional 350 days after being referred to formal hearing.

While the authority to conduct investigative hearings will help the Board to resolve complaints in a more timely manner and lessen the demand on the Board's Assistant Attorney General, auditors could not estimate what the Assistant Attorney General's workload will be if the Legislature grants the Board authority to hold investigative hearings. However, the official from the Attorney General's Office indicated that the Board's Assistant Attorney General should be able to handle two to three complaints referred to formal hearing monthly. Therefore, if the Legislature grants the Board this authority, the Board should assess its impact upon the Assistant Attorney General's workload, determine if additional resources are needed, and request and procure these resources from the Attorney General's Office. As previously mentioned, the Board has already developed legislation for increased fees, which could be used to pay for additional Attorney General representation, if needed.

Recommendations

1. The Legislature should consider granting the Board the authority to hold investigative hearings and take disciplinary action as part of these hearings when discipline is warranted, yet it appears that the charge is not of such magnitude as to warrant the suspension or revocation of the chiropractor's license.
2. If the Board receives authority to conduct investigative hearings, it should assess the impact of this authority on the Assistant Attorney General's workload, determine if additional Attorney General resources are needed, and, if so, request and procure them from the Attorney General's Office.

SUNSET FACTORS

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

1. The objective and purpose of establishing the Board.

The Board was established in 1921 to protect the public's health, safety, and welfare by licensing and regulating chiropractors. Since then, the Board's statutes have been amended to provide for certification of chiropractors in physiotherapy and acupuncture. The Board has also become responsible for approving chiropractic assistants and students and supervising chiropractors to participate in preceptorship training programs, by which a chiropractic student may practice under a licensed chiropractor's supervision.

The Board's mission is to "protect the health, welfare, and safety of Arizona citizens who seek and use chiropractic care." To meet this mission, the Board has established four goals: 1) to promptly issue and renew licenses; 2) to promptly investigate complaints; 3) to increase public awareness; and 4) to ensure Board and staff competence.

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

The Board has generally met its objective and purpose through licensure and regulation of chiropractors. Specifically, the Board processes licensure applications and renewals in a timely manner and the Board actively monitors chiropractors placed on probation or whose license has been suspended.

However, the audit found other areas in which the Board can improve its effectiveness and efficiency in fulfilling its statutory responsibility to protect the public:

- The Board needs to consistently discipline chiropractors who violate statute. Auditor review of Board complaint files found instances in which the Board did not discipline chiropractors when warranted. Specifically, the Board dismissed complaints with evidence of statutory violations. Additionally, because the Board does not have the authority to issue Letters of Concern, it dismisses some complaints when Letters of Concern would be more appropriate. Therefore, the Legislature should consider granting the Board authority to issue Letters of Concern, while the Board needs to ensure that statutory violations are properly addressed (see Finding I, pages 9 through 14).
- Further, the Board needs to work with the Legislature to obtain authority to hold investigative hearings. Because the Board does not have the authority to conduct investigative hearings and, therefore, must refer all potential disciplinary actions to formal hearing, some disciplinary actions are unnecessarily prolonged (see Finding II, pages 15 through 18).

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

The Board generally operates in the public interest in some areas, but can improve in others. The Board appropriately allows complainants to participate in all aspects of the complaint adjudication process. The Board also publishes biannual newsletters to inform licensed chiropractors of its actions and to educate them about compliance issues. Further, the Board maintains an accurate and complete licensee and complaint database that it uses to provide the public with information about a chiropractor's license and complaint history, including pending complaints.

However, auditors identified one area in which the public interest could be better served. Specifically:

- While Board policy states that the public should be provided a chiropractor's complete complaint history, including the status and general nature of each complaint, test calls made by auditors revealed that staff does not always inform the public about the nature of complaints. For example, while the Board provided information on the number of complaints received and disciplinary sanctions imposed, information requested for five of eight chiropractors did not include an explanation of the complaint's general allegations. Therefore, the Board should ensure that staff adhere to current Board policy by training them on the appropriate information to provide consumers.

The Board should ensure that staff provide appropriate information to the public.

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

The Governor's Regulatory Review Council (GRRC) recently reviewed the Board's statutes and determined that the Board has adopted most of the rules required by statute. However, GRRC identified additional areas where the Board should promulgate rules, including requirements for issuing licenses to chiropractors licensed in other states, the circumstances under which the Board will waive the annual renewal license fee, Board requirements for reinstating a retired license, and the Board's rule-making procedures.

The Board is currently revising nine of its rules regarding licensure and certification requirements, acupuncture techniques, Board subpoena and disciplinary authority, and Board processing and appeal time frames to make these rules consistent and more understandable.

- 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.**

According to Board staff, the Board seeks input on proposed rules from stakeholder groups such as the Arizona Chiropractic Association. However, while other regulatory boards have created committees to encourage public input, the Board has not pursued these methods to encourage public input when developing its proposed rules and regulations.

Additionally, the Board has complied with the State's open meeting laws by posting public meeting notices at least 24 hours in advance at the required location, making agendas available to the public, and having the required statement of where meeting notices will be posted on file with the Secretary of State.

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

While the Board has generally been able to investigate and resolve complaints, several statutory and Board process limitations have prevented the Board from resolving complaints in the most appropriate and expeditious manner. For example, while the Board has adjudicatory options ranging from dismissal to probation, license suspension, or revocation, the Board does not have the authority to issue nondisciplinary Letters of Concern (see Finding I, pages 9 through 14). Additionally, the audit found that the Board has not imposed disciplinary actions when warranted and needs to separate its investigation and adjudication functions (see Finding I, pages 9 through 14). Further, the Board does not have the authority to conduct and resolve complaints at investigative hearings (see Finding II, pages 15 through 18).

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 the Board. The Board currently is represented by one part-time Assistant Attorney General and is exploring contracting for additional Attorney General services to resolve complaints in a more timely manner when they are referred to formal hearing. While the number of complaints referred to hearing will be reduced should the Legislature grant the Board authority to hold investigative hearings and take disciplinary action at them, the Board should assess the impact of this authority on its Assistant Attorney General's workload and, if necessary, request and procure additional resources from the Attorney General's Office (see Finding II, pages 15 through 18).

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. For example:

- In 1998, the Board sought and legislation was passed to establish practicing without a license as a class 6 felony and to issue restricted permits to unlicensed chiropractors who wish to contribute to charitable organizations without compensation.
- In 1997, the Board proposed and the Legislature passed statutory changes that added finger pricks and venipuncture as approved laboratory procedures for chiropractic therapy.
- In 1996, legislation passed to amend the Board's statutes to mandate that chiropractors complete 12 hours of continuing education annually and to restrict inappropriate solicitations, including solicitation at the scene of an accident.

The Board plans to propose legislation to increase fees.

While the Board did not propose any legislation in 2001, it has developed legislation proposing an increase in Board fees, which it plans to introduce in the 2002 legislative session.

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

Based on audit work, the Legislature should consider amending Board statutes. Specifically:

- Modifying A.R.S. §32-924 to grant the Board authority to issue “Letters of Concern” and to clarify the adjudication process by defining when it is appropriate to dismiss complaints, issue Letters of Concern, and impose disciplinary action (see Finding I, pages 9 through 14);
- Granting the Board the authority to hold and take disciplinary action at investigative hearings when discipline is warranted, yet it appears the charge does not merit suspension or revocation of license (see Finding II, pages 15 through 18); and
- Granting the Board authority to increase its licensing fees to provide additional revenues that would allow the Board to retain the services of an outside medical consultant for complaint investigations and additional Attorney General representation, if needed (see Finding I, pages 9 through 14, and Finding II, pages 15 through 18).

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

Terminating the Board would harm the public’s health, safety, and welfare because the Board is responsible for licensing chiropractors and investigating and adjudicating complaints against chiropractors. Without state laws es-

establishing educational and competency standards, the public could be subject to untrained and unskilled chiropractic practices. 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.

This audit found that the current level of regulation exercised by the Board of Chiropractic Examiners is appropriate. Licensure requirements for chiropractors ensure that applicants meet education and training requirements and prevent unqualified or unprofessional chiropractors from practicing.

12. The extent to which the agency 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. For example, the Board currently contracts for the development and support of its databases and also contracts with the Department of Administration to provide accounting services.

Additionally, the Board should consider retaining the services of an outside medical consultant to assist with the investigation of complaints requiring medical expertise. Currently, the Board inappropriately participates in complaint investigations that require this expertise, which can create the appearance of bias when the Board adjudicates these complaints. Therefore, one option the Board can consider for these types of complaints is to retain the services of a third-party medical consultant to assist in the investigations (Finding I, pages 9 through 14).

(This Page Intentionally Left Blank)

AGENCY RESPONSE

(This Page Intentionally Left Blank)



State of Arizona Board of Chiropractic Examiners

5060 North 19th Avenue Suite 416 • Phoenix, Arizona 85015
Voice: (602) 255-1444 FAX (602) 255-4289
TTY (800) 367-8939 (AZ Relay Service)

June 21, 2001

Debbie Davenport, Auditor General
State of Arizona
Office of the Auditor General
2910 N. 44th St., #410
Phoenix, AZ 85018

Please find attached the Board's response to the agency sunset audit. We appreciate the dialogue with your staff, and find many of the recommendations to be in tandem with the goals and objectives established by this agency.

Responses to recommendations:

1. Performance Measures:

a. The finding of the Auditor General is agreed to and the audit recommendation will be implemented. The identified measures regarding number of licenses and complaints were established by a previous administration. Although current administration found this to be an odd way to measure those items, I was hesitant to change them since current years measures are presented with previous years measures. If I change the nature of the measures, that comparison becomes confusing. This agency, however, agrees with the audit and will make the changes.

2. The Boards authority to dismiss complaints should be in statute:

The finding of the Auditor is agreed to, and a different method of dealing with the recommendation will be implemented if supported by the legislature through amendment to statute. Since the Board already has the inherent authority to dismiss complaints if in their opinion the matter does not rise to the level of a violation of law or imposition of sanction, the implementation of this matter will not change the practices of the Board. The Board, however, acknowledges that addition of language stating that the Board has the authority to dismiss complaints can provide some clarity to the public. The Board will look to amend statute to state that the Board has the authority to dismiss complaints. Additional language stating that a complaint may be dismissed only if it is without merit is not agreed to. The Board has dismissed complaints that involved minor violations of law such as failing to designate that an advertised service is chiropractic or a clerical error that resulted in a double billing. If during the Board's investigation it is found that the matter is a first offense, the matter is minor and there appears to be no

intent to violate laws, the Board will give the licensee the opportunity to remedy the situation without sanction. If the licensee fails to do so or repeats inappropriate actions, the Board will pursue the matter further. In addition, the Board does take informal actions in these matters such as requiring that an advertisement be changed or the licensee complete applicable training. These matters are public since they appear in the minutes. In addition, the Board has taken actions against licensees who had an earlier complaint dismissed with opportunity to rectify and failed to do so. In this regard the nature of the complaint is public, a corrective action is taken and reflected in the minutes and the Board is still able to pursue disciplinary action if the corrective action is not effective. Since the Board only exercises this discretion with minor matters that do not pose an impending danger to the public, their responsibility to protect the public is still honored. As a final note, the Board feels that it must have the leeway to determine when a violation is due to errors rather than intent, particularly since many of these complaints have to do with errors committed by third parties.

3. The Board should separate investigative and adjudicatory roles.

The finding of the Auditor General is not agreed to but the audit recommendation will be implemented.

It is the opinion of the Board that the audit report does not accurately reflect the practices of the Board. The Board's staff investigates all complaints. The Board members do not engage in ex-parte communication with licensees or complainants outside of Board meetings, interview parties, conduct inspections or otherwise take part in the investigation. Once the Board staff obtains all pertinent information, the staff investigator compiles the information, specifies allegations and makes recommendations for action. The matter is then scheduled for a Board meeting. During a scheduled and noticed Board meeting, Board members allow each party in the matter to address the Board. If, after reviewing the investigative materials and hearing testimony, a Board member has questions for clarification, they will ask those questions in the open meeting. The Board will then determine if the matter falls under their jurisdiction. If so, they will consider whether the matter rises to a level of violation of law. If they are unable to make a determination, they will instruct the **staff** to further investigate. Due to the technical nature of most complaints appearing before the Board, it is inevitable that the expertise of the professional members will come into play in reviewing and clarifying information in the course of the Board meeting.

The Board has responded in the negative to this recommendation because they do not agree that they take part in the investigation. In addition, the Board does not believe that their current procedures predispose them toward a particular decision in their adjudicatory role any more so than those procedures proposed by the Auditor. In either case, the Board reviews the investigation materials, decides if the matter falls under their jurisdiction and whether the matter rises to the level of a violation of law. In addition, under the Auditor's recommendation, Board members would still be allowed to hear statements and ask questions of parties in the course of an informal or formal hearing, as does a hearing officer. In reality, there is no greater probability of

predisposition of judgment and action under the Board's current procedures than under the procedures recommended by the Auditor.

That being said, the Board does recognize the value of retaining a chiropractic professional on a contract basis to assist in investigations. Approximately 70 to 90 investigations do involve a technical aspect requiring some knowledge of chiropractic. The investigation of complaints, as well as prosecution of violations of law, would be greatly facilitated through the availability of consultation with a chiropractic professional. Currently, matters that require technical knowledge may be missed in the course of the staff investigation and raised during the Board meeting by the professional Board members. Staff access to a professional consultant would allow complaints to appear before the Board with technical matters already identified and addressed. In addition, the professional consultant would then be prepared to act as an expert witness for matters proceeding to hearing. Currently, staff must identify and prepare expert witnesses after a matter is voted to hearing, slowing the process. The Board will require the support of the legislature in raising fees in order to fund a professional resource for purposes of investigations.

4. The Board should obtain authority to issue Letters of Concern.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented if supported by the legislature through amendment to statute.

5. The Board should take disciplinary action when it determines that a statutory violation has occurred.

The finding of the Auditor is agreed to and a different method of dealing with the finding will be implemented. The Board has dismissed certain minor complaints for the numerous reasons identified in the audit. In particular, the Board must take any matter to hearing prior to imposing a sanction, regardless of the degree of violation. The Board does not have sufficient Attorney General support as is, and would further bog down an inadequate system with minor matters that can be resolved with a minimal burden. The Board will require legislative support in obtaining the authority to hold informal hearings and impose sanctions that do not rise to the level of a suspension or revocation. The Board will still maintain some desecration in determining when they may or may not be able to substantiate that a preponderance of evidence demonstrates a violation of law or when a matter does or does not rise to the level of a violation of law.

In addition, The Board believes that they should retain the discretion to dismiss complaints that involved minor violations of law, if during the Board's investigation it is found that the matter is a first offense, the matter is minor and there appears to be no intent to violate laws. In such cases, the Board will give the licensee the opportunity to remedy the situation without sanction. If the licensee fails to do so or repeats inappropriate actions, the Board will pursue the matter further. In addition, the Board does take informal actions in these matters such as requiring that an advertisement be changed or the licensee complete applicable training. These matters are public since they appear in the minutes. In addition, the Board has taken actions against licensees

who had an earlier complaint dismissed with opportunity to rectify and failed to do so. The Board feels that it must have the leeway to determine when a violation is due to errors rather than intent, particularly since many of these dismissed complaints have to do with errors committed by third parties.

6. The Board should designate one member of the Board to review complaints and investigations prior to the matter being placed on the Board agenda.

The finding of the Auditor is agreed to and the audit recommendation will be implemented. This recommendation will require legislative support for a fee increase since Board members will need to be compensated for the extra days spent in the service of the Board.

7. The Board should obtain statutory authority to hold informal hearings.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented if supported by the legislature through amendment to statute.

8. The Board should research the need for additional resources through the Office of the Attorney General.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented if supported by the legislature through amendment to statute to increase fees.

9. Agency staff should adhere to agency policy regarding dissemination of complaint history information to include a description of the allegation(s) in the complaint.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. As noted in the audit, this is already a policy of the agency. The Executive Director has already taken steps to determine why policy was not being followed by all staff in order to correct the matter.

10. The Agency should encourage public input before adopting rules.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented. Although the agency already solicits input from the Arizona Association of Chiropractic, additional sources of input will be explored and utilized.

Audit Report Issues

a. The Joint Legislative Audit Committee requires that agencies provide a written report on the status of all recommendations within 6 months following publication of the report. Seven of the 10 recommendations will require changes in legislation that will not take effect until the summer of 2002. In this regard, the Board will be unable to implement most of the recommendations within a 6 month timeframe. Depending on

the date of publication, it is likely that implementation of recommendations requiring legislative support will be delayed by at least 12 months.

b. Page 2 of the Introduction and Background identifies the Board's authority to issue certificates to licensed chiropractors to perform acupuncture and physiotherapy. It is the opinion of the Board that the audit should not attempt to define acupuncture and physiotherapy due to the broad range of procedures and therapies that are applicable. However, since the audit will make some attempt at description, the Board would like to emphasize that by no means are the descriptions stated inclusive of all procedures and therapies which fall under the certifications in acupuncture or physiotherapy issued to doctors of chiropractic. The descriptions are examples only, and do not encompass the full range of procedures or therapies for which certified doctors of chiropractic are qualified and authorized by law to perform.

On behalf of the Board of Chiropractic Examiners,

Patrice Pritzl
Executive Director

Other Performance Audit Reports Issued Within the Last 12 Months

00-16	Arizona Department of Agriculture— Pesticide Compliance and Worker Safety Program	01-04	Arizona Department of Corrections—Human Resources Management
00-17	Arizona Department of Agriculture— Sunset Factors	01-05	Arizona Department of Public Safety—Telecommunications Bureau
00-18	Arizona State Boxing Commission	01-06	Board of Osteopathic Examiners in Medicine and Surgery
00-19	Department of Economic Security— Division of Developmental Disabilities	01-07	Arizona Department of Corrections—Support Services
00-20	Arizona Department of Corrections— Security Operations	01-08	Arizona Game and Fish Commission and Department—Wildlife Management Program
00-20	Universities—Funding Study	01-09	Arizona Game and Fish Commission—Heritage Fund
00-21	Annual Evaluation—Arizona’s Family Literacy Program	01-10	Department of Public Safety— Licensing Bureau
01-01	Department of Economic Security— Child Support Enforcement	01-11	Arizona Commission on the Arts
01-02	Department of Economic Security— Healthy Families Program		
01-03	Arizona Department of Public Safety—Drug Abuse Resistance Education (D.A.R.E.) Program		

Future Performance Audit Reports

Department of Real Estate

Department of Corrections—Private Prisons