STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

BOARD OF CHIROPRACTIC EXAMINERS

DECEMBER 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-21

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

December 28, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. Gary G. LeDoux, Chairman
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 January 30, 1980, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Chairman, Dr. Gary LeDoux, is found on the yellow pages preceding the appendices.

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

Respectfully submitted,

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Enclosure

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Board of Chiropractic Examiners in response to a resolution of the Joint Legislative Oversight Committee of January 30, 1980. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

Chiropractic as it is known today originated in the late 1800's when D.D. Palmer began treating patients suffering from all types of ailments and diseases by manipulation of the spine. Palmer first opened a chiropractic school in 1897.

Chiropractic quickly became a popular alternative to traditional medical care, as indicated by the existence of more than 100 chiropractic schools in the 1920's. Many of these chiropractic colleges disappeared as state licensing boards raised the educational requirements for licensure. Currently there are only 16 colleges teaching chiropractic in the U.S.

The Arizona Board of Chiropractic Examiners was created by statute in 1921. As of August 1981, approximately 800 chiropractors held Arizona licenses, although only 500 were practicing in the state. The Board is funded through fees charged for examination and licensure.

We found that the majority of Arizona chiropractors may be exceeding statutory limits on the practice of chiropractic. A.R.S. §32-925 - either before or after July 1, 1981 - may not authorize many of the treatment methods widely used by chiropractors. A Board rule defining the scope of practice appears to enlarge the statutory definition and therefore may constitute an invalid exercise of the Board's powers. The current statutory definition could be improved by eliminating language that is legally circuitous and misleading and by more clearly defining acceptable practices. (page 11)

We also found that the Board's statutory authority to investigate and resolve complaints is substandard when compared to other Arizona health regulatory boards. Specifically, grounds for disciplinary actions are not adequately defined and the Board's authority to examine and copy patient records prior to a hearing is unclear. In addition, the Board does not have sufficient authority to obtain information about malpractice actions against chiropractors. As a result, the Board's ability to regulate chiropractic practitioners is impaired. (page 25)

In addition, we found that the current "reciprocity" licensing law in reality provides for licensure by comity and impairs the Board's ability to protect the public. This statute needs to be amended because 1) other states' examination standards may not be equivalent to Arizona's, 2) other Arizona health regulatory boards that issue licenses without examination have more stringent requirements, and 3) examination and educational requirements are unclear. Further, statutory changes are needed to enhance the Board's ability to discipline a licensee whose license has been suspended or revoked in another state. (page 35)

Our review further showed that the manner in which the written licensing examination is graded does not comply with A.R.S. §32-922.D. In addition, the Board appears to discriminate against candidates who take the national written examination instead of the state-administered examination. (page 47)

Finally, we found that the Board of Chiropractic Examiners' statutory requirement to provide 20 days public notice of its meetings causes delays in the Board's resolutions of complaints. (page 53)

Consideration should be given to the following recommendations:

1. The Board amend Rule R4-7-01, paragraphs 7 and 8, to forbid chiropractic practices that are statutorily prohibited.

2. The Board notify all licensees of practices which may be in violation of the statutory limits on chiropractic practice, as explained in Finding I.

3. The Board petition the Legislature for statutory changes regarding scope of practice which it believes are needed to keep the laws current with the state of the chiropractic profession.

4. The Legislature review the limitations it intended in the current statutory definition of the chiropractic scope of practice. If it intended that chiropractors use procedures such as physiotherapy modalities or laboratory analysis, then the statutes should be amended to specifically provide for such practices. Statutes relating to medicine, physical therapy and pharmacy may also need amending to allow such practices.

5. At a minimum, the Legislature should amend A.R.S. §32-925, subsection A, paragraph 3, by:
   a) eliminating the phrase "generally used in the practice of chiropractic," and
   b) defining the term "analytical instrument."

6. The Legislature amend A.R.S. §32-924, subsection A, to provide more comprehensive grounds for disciplinary action.

7. The Legislature amend A.R.S. §32-924 to allow the examination and copying of patient records and other documents in connection with an investigation, and to include refusal to cooperate as grounds for disciplinary action.

8. The Legislature add provisions to the insurance statutes requiring insurers to report malpractice actions against chiropractors to the Chiropractic Board. Provisions should also be added to require the Department of Insurance to monitor compliance with these requirements and to impose penalties for noncompliance.

9. The Legislature amend A.R.S. §32-922.01 to require that an applicant have passed an examination equivalent to the Arizona examination, including a practical examination, in order to be licensed without examination in Arizona.

10. While the current law is in force, the Board allow the national examination to satisfy the written examination requirement for licensure by comity.

11. The Board require graduation from an approved school in order to qualify for licensure by comity.

12. The Board establish procedures to periodically discover what disciplinary actions have been taken by licensing boards in other states against Arizona licensees.

13. The Legislature amend chiropractic statutes as needed to give the Board authority similar to that given the Board of Medical Examiners for taking disciplinary action against out-of-state licensees.

14. The Legislature amend A.R.S. §32-922.D to provide for the current scoring procedures used by NBCE and the Board.

15. The Board grant waiver of the written examination to candidates who scored at least 60 on each of the 10 comparable subjects of the national examination with an overall average score of 75 for the 10 subjects.

16. The Legislature amend ARS 32-902, subsection B, by striking the 20-day meeting notice requirement, thereby allowing the 24-hour requirement of the open meeting laws to apply to the Board of Chiropractic Examiners.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Board of Chiropractic Examiners in response to a resolution of the Joint Legislative Oversight Committee of January 30, 1980. This performance audit was conducted as a part of the Sunset Review as set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

Historical Background of Chiropractic

Chiropractic as it is known today originated in the late 1800's when D.D. Palmer began treating patients suffering from all types of ailments and diseases by manipulation of the spine. Palmer first opened a chiropractic school in 1897.

Chiropractic quickly became a popular alternative to traditional medical care, as indicated by the existence of more than 100 chiropractic schools in the 1920's. Many of these chiropractic colleges disappeared as state licensing boards raised the educational requirements for licensure. Currently there are only 16 colleges teaching chiropractic in the U.S.

Soon after its inception the chiropractic profession divided into two persuasions of professional philosophy. One persuasion, the "straight practitioners," adhere largely to D.D. Palmer's teachings, which assert that a majority of diseases and ailments are caused by partial dislocations in the spine (subluxations) and can be cured by spinal adjustments. Diagnosis and treatment are therefore confined exclusively to the detection and adjustment of subluxations. The other persuasion, that of the "mixer practitioners," utilizes differential diagnosis* and various therapeutic methods to complement adjustment of the spine. Some of the most common therapies include heat, cold, diet or nutritional supplements. Most practitioners today are mixers of various degrees. Approximately 20,000 doctors of chiropractic currently practice in the U.S.

* Dorland's Medical Dictionary defines differential diagnosis as "the determination of which one of two or more diseases or conditions a patient is suffering from, by systematically comparing and contrasting their clinical findings."

The Arizona Board of Chiropractic Examiners

The Board of Chiropractic Examiners was created by statute in 1921. Since then the chiropractic statutes have undergone several significant changes, including:

1. Higher educational standards required of candidates for licensure. In 1959 the minimum amount of chiropractic education required was increased from three to four years.

2. Inclusion of two lay persons on the Board, beginning in 1976. The Board now consists of three chiropractors and two lay members, each serving five-year terms and appointed by the governor.

3. Adoption of a comity provision in 1980, allowing for licensure of out-of-state practitioners without examination.

4. Amendment of the scope of practice provision - also in 1980, but not taking effect until July 1, 1981.

Due to an increased workload handled by the Board, a full-time secretary was approved beginning with the 1978-79 fiscal year. As of August 1981 approximately 800 chiropractors held Arizona licenses, although only 500 were practicing in the state.

The Board is funded through fees charged for examination and licensure. Ninety percent of the fees collected are deposited in the Chiropractic Board fund. The remaining ten percent are deposited in the State General Fund. Table 1 presents a comparison of Board revenues and expenditures and workload indicators for fiscal years 1977-78 through 1980-81 and estimates for 1981-82.

TABLE 1

BOARD OF CHIROPRACTIC EXAMINERS
REVENUES AND EXPENDITURES AND WORKLOAD INDICATORS FOR FISCAL YEARS 1977-78
THROUGH 1980-81 AND ESTIMATES FOR 1981-82

	1977-78	1978-79	1979-80	1980-81	1981-82
Revenue from license issuance and examinations	42,660	41,952	47,355	88,100	83,800
90 percent available to board	38,400	37,800	42,600	79,300	75,420
Balance forward from the previous year	17,500	22,800	27,800 *	30,800 *	59,175 *
Total funds	55,900	60,600	70,400	110,100	134,595
Expenditures:					
Personal services	12,900	17,700	20,000	24,800	30,500
Employee related	1,200	2,600	3,200	3,900	5,100
Prof. & outside services	7,600	5,900	3,900	7,900	8,100
Travel in state	2,500	1,600	1,800	1,900	2,400
Travel out of state	3,900	1,600	3,700	1,600	4,800
Other operating expenses	4,000	3,100	5,800	9,400	11,300
Equipment	1,000	500	1,300	1,900	200
Total Expenditures	33,100	33,000	39,700	51,400	62,400
Balance forward	22,800	27,600 *	30,700 *	58,700 *	72,195
Full-Time Equivalent Positions	.5	1.0	1.0	1.0	1.5
Workload Indicators:					
Applications requested	368	377	321	1,347	1,000
Examinations Administered	134	98	109	93	150
New licenses	42	68	63	181	140
Renewed licenses	527	536	584	643	950
Complaints received	N/A	22	32	40	75

The Auditor General expresses gratitude to the Board of Chiropractic Examiners and its staff for their cooperation and assistance during the course of the audit.

* Differences between closing and opening balances for fiscal years 1978-79 through 1981-82 due to rounding and accounting adjustments after budget documents were submitted.

SUNSET FACTORS

Nine factors are considered to determine, in part, whether the Board of Chiropractic Examiners should be continued or terminated, in accordance with A.R.S. §§41-2351 through 41-2379.

SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE BOARD

The purpose of the Board is not stated explicitly in Arizona law. According to one Board member, the Board's purpose is:

> "To protect the public...from unqualified and dishonest and/or unethical chiropractic practitioners. To maintain a high standard of chiropractic care for the citizens of Arizona."

The Board attempts to accomplish this purpose by examining and licensing applicants and by regulating licensees through the complaint process.

SUNSET FACTOR: THE DEGREE TO WHICH THE BOARD HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The Board appears to be actively pursuing complaints and has taken disciplinary action against several chiropractors in recent years. The Board's ability to resolve complaints is impaired, however, by several deficiencies in the chiropractic statutes. (page 25)

The efficiency of the Board's operations is negatively impacted by the following factors:

- a dramatic increase in license applications since the reciprocity law went into effect, delaying the processing of many applications, (page 44)

- overly restrictive requirements for waiving the Board's written examination, which cause the Board to test applicants who have already demonstrated equivalent competency on the national examination, (page 48)
- a 20-day meeting notice requirement which, according to Board staff, unnecessarily delays the resolution of complaints. (page 53)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS OPERATED WITHIN THE PUBLIC INTEREST

We found that the Board generally has operated within the public interest, with the following exceptions:

1. The Board has adopted a rule which may exceed statutory limits on the chiropractic scope of practice. (page 19)

2. Written examinations do not appear to be scored in accordance with statutory requirements. (page 47)

3. The Board appears to discriminate against applicants who take the national examination instead of the state-administered written exam. (page 48)

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE BOARD ARE CONSISTENT WITH LEGISLATIVE MANDATE

Administrative rules and regulations promulgated by the Board must be reviewed for consistency and legality and approved by the Attorney General prior to their implementation. However, according to an opinion issued by Legislative Council, the Board has adopted a rule which appears to expand the chiropractic scope of practice beyond that which is permitted by statute. (page 19)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

The Board has not adopted any rules since 1977. A rule regarding continuing education was repealed in 1979 subsequent to the Legislature's repeal of a continuing education provision in the chiropractic statutes. According to Board staff, the Board will be proposing rules in the near future and intends to use the following means to notify the public and solicit input:

- post notices as required by law
- issue press release
- notify the Chiropractic Association of Arizona
- mail proposed rules to all licensees

In addition, the Board has two lay members who represent the general public.

The Board notifies individual complainants and licensees before holding hearings or taking disciplinary action.

Minutes of Board meetings and transcripts of formal hearings are available for public inspection at the Board office.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

The Board's ability to investigate and resolve complaints is impaired by the following conditions:

- inadequate statutory grounds for disciplinary action, (page 25)
- uncertainty regarding the Board's power to obtain and examine records prior to a hearing, (page 29)
- lack of statutory authority to obtain chiropractic malpractice information from insurers. (page 31)

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER ENABLING LEGISLATION

A.R.S. §32-927 states:

> "A person is guilty of a misdemeanor who:
> "1. Practices or attempts to practice chiropractic without a license.
>
> "2. Buys, sells or fraudulently obtains a diploma or license to practice chiropractic, whether recorded or not.
>
> "3. Uses the title chiropractor, D.C., or any other word or title to induce belief that he is engaged in the practice of chiropractic, without a license as a chiropractor.
>
> "4. Violates any provisions of this chapter."

The County Attorney and State Attorney General have authority to prosecute violations of chiropractic statutes. In addition, in accordance with A.R.S. §32-928, the County Attorney, Attorney General or the Board may seek a court injunction against a person who is practicing chiropractic without a license. However, according to the Board Chairman, the Board cannot effectively use A.R.S. §§32-927 and 32-928 unless the practitioner is actually holding himself out to be a chiropractor.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

In 1981 the Board proposed legislation which would have addressed several problems cited in this report, including the reciprocity licensing provisions. House Bill 2450, which embodied these changes, passed the House but not the Senate. The Board intends to submit a similar bill during the 1982 session.

The Board recently has taken the initiative to more clearly define the legal scope of practice for chiropractors; however, in doing so the board has adopted a rule which may expand the scope of practice beyond that which is permitted by statute. (page 19)

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE BOARD TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

Our review revealed the need for the following changes in the chiropractic statutes:

- clarify the legal scope of chiropractic practice, (page 22)
- enhance the Board's authority to investigate and resolve complaints, (page 25)
- amend the reciprocity licensing law, (page 35)
- amend a provision relating to the scoring of examinations, and (page 47)
- eliminate the 20-day requirement for notice of Board meetings. page 53)

FINDING I

THE MAJORITY OF THE CHIROPRACTORS IN ARIZONA MAY BE EXCEEDING STATUTORY LIMITATIONS REGARDING CHIROPRACTIC PRACTICE. IN ADDITION, BOARD ACTIONS TAKEN TO LIMIT THE PRACTICE OF CHIROPRACTIC MAY HAVE ACTUALLY ENLARGED THE PRACTICE BEYOND THE STATUTORY LIMITATIONS.

The Chiropractic profession in Arizona may be exceeding statutory limitations on the practice of chiropractic. Available data suggests that the majority of licensed chiropractors in Arizona use procedures and provide services that (a) may exceed the scope of practice currently defined in A.R.S. §32-925 and (b) may constitute violations of the State's medical, osteopathic, physical therapy and pharmacy practice laws.

Specifically, we found:

- The majority of chiropractors in Arizona incorporate procedures and services into their practices that may exceed statutory definitions;
- The change in the statutory definitions of the practice of chiropractic which became effective July 1, 1981, may not have, as some chiropractors believe, materially changed the allowable procedures and services;
- The Board of Chiropractic Examiners has attempted to define and regulate the scope of chiropractic practice through the promulgation of an administrative rule and a position paper; however, the rule appears to enlarge the statutory definition of the practice of chiropractic and thus may be an invalid exercise of the Board's powers;
- At a minimum, specific provisions of the current definition of the practice of chiropractic should be reworded to eliminate language that is unclear, legally circuitous and possibly misleading.

Practices Exceeding Statutory Limitations

A.R.S. §32-925 defines the practice of chiropractic and its limitations as follows:

> "A. The practice of chiropractic includes:
> "1. That practice of health care which deals with the detection of subluxations, functional vertebral dysarthrosis or any alteration of contiguous spinal structures.
> "2. The chiropractic adjustment and those procedures preparatory and complementary to the adjustment of the spine and its articulations for the restoration and maintenance of health.
> "3. The use of x-ray and other analytical instruments generally used in the practice of chiropractic.
> "B. A person licensed under this chapter shall not prescribe or administer medicine or drugs, use x-rays for therapeutic purposes or practice any branch, including obstetrics, of medicine and surgery or of osteopathic medicine and surgery or naturopathy unless such person is otherwise licensed therefor as provided by law."

We found through personal interviews and observations of the practice of licensed chiropractors, and through a survey of a sample of 61 chiropractors, that the majority of chiropractors in Arizona may be violating the limitations of A.R.S. §32-925. This conclusion is based on a Legislative Council opinion regarding the limitations of chiropractic practice as it relates to more than one dozen practices and modalities currently used by chiropractors.

A description of these practices and modalities, and the results of the Legislative Council opinion, follow. A table presenting the extent of the use of these practices is shown on page 17.

Unauthorized Therapies

Diathermy, infrared, ultraviolet and ultrasound therapies used in chiropractic practice may violate several statutes according to Legislative Council. Legislative Council's review* of the chiropractic scope of practice found that it is essentially limited to adjustments of the spinal column and that these therapies may exceed the statutory limitations set forth in A.R.S. §32-925. Moreover, because these therapies may not be authorized for chiropractors their use may also constitute violations of (1) A.R.S. §32-1455 pertaining to the unlicensed practice of medicine, (2) A.R.S. §32-2041 pertaining to the practice of physical therapy without a license, and (3) A.R.S §32-1901 pertaining to the possession of a prescription only drug. Further, future federal regulations may restrict the use of machines such as these to certain licensed practitioners only.

Of the Chiropractors responding to our survey, 59 percent reported using diathermy, infrared, ultraviolet or ultrasound therapies. Similarly, four of the five chiropractors we personally interviewed and observed used one or more of these therapies.

Cryotherapy, hot and cold packs and motorized traction are also modalities which may not be authorized for chiropractic use. Legislative Council stated:

> "A chiropractor using cryotherapy, hot and cold packs or motorized traction may be in violation of A.R.S. sections §32-925, §32-1455 and §32-2041."

Of the chiropractors responding to our survey, 67 percent reported using one or more of these therapies.

* A full copy of the Legislative Council opinion is contained as Appendix I.

Vitamins and nutritional supplements. Under A.R.S. §32-925 a chiropractor "...shall not prescribe or administer medicine or drugs...." Legislative Council found that state statutes and common law meanings established by judicial decision define drugs to be any substances that are used in the treatment, prevention or diagnosis of disease. In A.R.S. §32-1901 the word "drug" is defined to include:

> "Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals."

With respect to vitamins, this statute is more specifically defined in the Arizona State Board of Pharmacy rule A.C.R.R. R4-23-501 which provides:

> "Classification of vitamin products:
>
> "1. The Board of Pharmacy hereby classifies as a non-drug product any vitamin product which is marketed only for the purpose of supplementing the diet, provided that the label supplies adequate information as to the normal intake of each vitamin contained in the preparation and the amount of each vitamin contained in the product and if the same be not held out for the treatment of any disease but merely as a food accessory, and provided, further, that the principal label of such product bears the additional conspicuous statement, to wit: "NOT FOR MEDICINAL USE."
>
> "2. Any vitamin preparation which is held out to be a treatment for any deficiency, disease or for the correction of any symptom of disease, or for the prevention, mitigation or cure of disease, either by direct statement or by inference, is hereby classified as a drug within the meaning of the pharmacy act of the State of Arizona." (Emphasis added.)

Therefore, Legislative Council has stated that a chiropractor "...who prescribes or administers vitamins for the treatment, prevention, mitigation or cure of disease, including a vitamin deficiency, may violate A.R.S. sections §§32-925 and 32-1455." In addition, if a chiropractor dispenses the vitamins he may be in violation of A.R.S. §32-1961 which relates to the sale or dispensing of drugs.

Further, because judicial decision has defined "drug" and "medicine" to include any substance used in the treatment, prevention, mitigation or diagnosis of disease, nutritional supplements may be considered drugs if used for these purposes. A chiropractor administering or recommending nutritional supplements for such purposes may be in violation of A.R.S. §32-925 and §32-1455. He may also violate these statutes if he prescribes a particular diet or particular foods and drinks for the treatment, prevention, mitigation or cure of a disease or ailment.

Of the chiropractors responding to our survey, 70 percent reported that they include dietetics and nutritional supplements as part of their practice.

Orthopedic, neurological and kinesiological examinations may be violations of statutory limitations on the scope of chiropractic practice. Legislative Council stated:

> "A chiropractor may make use of an orthopedic, neurological or kinesiological examination of the patient only to the extent that such an examination is for the purpose of uncovering the cause or existence of a misalignment of the spine. Beyond this, such examinations would constitute a violation of A.R.S. sections §32-925 and §32-1455." (Emphasis added.)

Of the chiropractors responding to our survey, 98 percent reported performing one or more of these examinations. We were unable to determine to what extent these examinations may go beyond "uncovering the cause or existence of a misalignment of the spine."

We also found that it is unclear whether chiropractors violate statutory limitations when they request and use laboratory analysis of urine samples and hair samples. Legislative Council noted that the Arizona Attorney General has issued an opinion stating that chiropractors are permitted to request and use laboratory examinations because the Legislature amended A.R.S. §32-922, subsection B, to require study and training in diagnosis including physical, clinical, x-ray and laboratory subjects. However, Legislative Council's research showed that:

> "In recent cases from other states, however, chiropractors have unsuccessfully attempted to argue that, notwithstanding the statutory limitation on the practice of chiropractic, statutes which require applicants for a chiropractic license to pass examinations on the subjects of laboratory procedures, diagnostic procedures, pathology, etc. evidence legislative intent to authorize chiropractors to make diagnostic tests to determine if a patient's disease is one which can be treated by chiropractic methods. This argument has been rejected by the courts. We have located no cases where the court agreed with this argument."

Of the chiropractors responding to our survey, 69 percent reported that they use laboratory analysis of hair or urine samples in their practices.

Table 2 summarizes, for each of the preceding practices, the number and percentage of chiropractors responding to our survey which use these practices.

TABLE 2

SUMMARY OF DIAGNOSTIC AND TREATMENT METHODS USED BY CHIROPRACTORS RESPONDING TO AUDITOR GENERAL SURVEY*

Diagnostic Method	Number of Respondents Who Use This Method	Percent of Total Respondents
Physical examination	59	97%
Orthopedic examination	57	93
Neurological examination	56	92
Kinesiological examination	35	57
X-ray	60	98
Laboratory analyses of:		
blood samples	30	49
urine samples	38	62
hair samples	28	46
Treatment Method		
Massage	29	48%
Traction:		
continuous	11	18
intermittent or alternating (motorized)	32	52
Mechanical supports (braces, casts, shoelifts, etc)	45	74
Enemas or colonic irrigation	4	7
Dietetics and nutritional supplementation	43	70
Cryotherapy (therapeutic use of cold)	32	52
Infrared and/or therapeutic heat	22	36
Shortwave diathermy (high-frequency electric current)	23	38
Microwave diathermy	10	16
Ultrasonic diathermy (ultrasound)	32	52
Sinusoidal current (low-voltage alternating current)	16	26
Galvanic current (low-voltage direct current)	20	33
Iontophoresis	3	5
Ultraviolet therapy	1	2
Therapeutic exercise	34	56
Electromyography	3	5
Acupuncture (with needles)	7	11
Acupressure (without needles)	29	48
Electro-acutherapy	14	23
None of the above	4	7

* One hundred and fifty chiropractors were sent questionnaires. 66 responded (44%), including five dual licensees (chiropractic and naturopathic licenses). This table does not include responses from dual licensees.

New Law May Not Materially Expand
Legal Scope of Practice

Most violations of the statutory practice limitations can be attributed to misinterpretation of A.R.S. §32-925. According to the Board President, various practices like those cited earlier have been widely used in Arizona since chiropractors were first licensed in 1921, and many among the profession believed such practices were permitted by the law. Prior to July 1, 1981, A.R.S. §32-925 read as follows:

> "A person licensed under this chapter to practice chiropractic may adjust by hand any articulations of the spinal column. He shall not prescribe for or administer medicine or drugs, practice major or minor surgery, obstetrics or any other branch of medicine or practice osteopathy or naturopathy unless he is otherwise licensed therefor as provided by law."

This statutory provision remained unchanged between 1921 and 1981, except for a 1959 amendment which added naturopathy as a prohibited practice. Despite the fact that many different treatment methods were used by chiropractors during this period, Legislative Council states:

> "A.R.S. §32-925 [prior to July 1, 1981] clearly and unambiguously limit[ed] chiropractic practice to adjustment by hand of the articulations of the spinal column, and no other method of treatment [was] authorized. This definition of chiropractic practice was the prevalent view of chiropractic practice at the time the statute was enacted."

In the 1980 legislative session A.R.S. §32-925 was repealed and replaced with the wording below, effective July 1, 1981:

> "A. The practice of chiropractic includes:
>
> "1. That practice of health care which deals with the detection of subluxations, functional vertebral dysarthrosis or any alteration of contiguous spinal structures.

"2. The chiropractic adjustment and those procedures preparatory and complementary to the adjustment of the spine and its articulations for the restoration and maintenance of health.

"3. The use of x-ray and other analytical instruments generally used in the practice of chiropractic.

"B. A person licensed under this chapter shall not prescribe or administer medicine or drugs, use x-rays for therapeutic purposes or practice any branch, including obstetrics, of medicine and surgery or of osteopathic medicine and surgery or naturopathy unless such person is otherwise licensed therefore as provided by law."

Some chiropractors believe this new law substantially expands upon the previous scope of practice and authorizes many of the practices widely used throughout the profession. Such may not be the case, however, according to Legislative Council. The arguments and conclusions cited earlier from a Legislative Council opinion - regarding various diagnostic and treatment methods - apply to A.R.S. §32-925 both before and after July 1, 1981. The new version expressly authorizes the use of x-rays, but authority to take x-rays may have already been granted to chiropractors in 1977 (A.R.S. §32-2811 and §32-2801). The new version also authorizes the use of "other analytical instruments generally used in the practice of chiropractic," but Legislative Council concludes that the Legislature's intent is not clear regarding this language.

Rule Regarding Scope Of Practice May Be An Invalid Exercise Of The Board's Powers

According to the Board President, prior to the 1970's the statutory definition of the legal scope of practice (A.R.S. §32-925) seemed adequate because there were few challenges of its definition. However, in the 1970's insurance companies began pressing the Board for a clearer definition of what fell within the authorized scope of practice so that the insurers could administer policies covering chiropractic care. In addition, the Attorney General advised the Board to promulgate administrative rules which would more clearly define various provisions of the chiropractic statutes. As a result, in 1975, the Board adopted R4-7-01, which states in part:

"7. 'Practice of Chiropractic' means the diagnosis, prognosis and treatment by chiropractic methods which includes those procedures preparatory to and complementary to an adjustment by hand of the articulations of the spinal column and the normal chiropractic regimen and rehabilitation of the patient as taught in accredited chiropractic schools and colleges.

"8. 'Diagnosis' means the physical, clinical and laboratory examination of the patient, and the use of x-ray for diagnostic purposes, as taught in accredited chiropractic schools and colleges." (Emphasis added.)

Legislative Council concludes that this rule enlarged the statutory definition of chiropractic practice and thus may constitute an invalid exercise of the Board's statutory powers:

"A statute cannot be changed by administrative regulations .... A regulation which operates to create a rule out of harmony with the statute is a mere nullity.

. . . . . .

"Since A.C.R.R. R4-7-01 enlarges the statutory definition of the practice of chiropractic to include diagnosis, prognosis and treatment as taught in accredited chiropractic schools and colleges, a court might hold this rule to be void as an invalid exercise of the board's statutory powers."

To illustrate how R4-7-01 appears to enlarge the statutory definition of chiropractic, consider the subject of obstetrics. Obstetrics is now taught in most of the accredited chiropractic schools, and thus it might be argued that R4-7-01 allows chiropractors to practice obstetrics in Arizona. However, this would be in direct conflict with A.R.S. §32-925, subsection B, which expressly forbids the practice of obstetrics by chiropractors.

The Board President claims that R4-7-01 was intended to clarify, not widen the legal scope of practice. Furthermore, he points out that the Attorney General reviewed the rule prior to its adoption and did not indicate that it exceeded statutory authority.

In August 1981 the Board attempted to further define the acceptable scope of practice for chiropractors by adopting a "Position Paper" which identifies several practices and indicates whether or not the Board believes these fall within the legal scope of practice. In its Position Paper the Board identified several practices that it interpreted to be outside statutory limits. These practices are colonic irrigation, prostrate treatment, accupuncture not preparatory or complementary to chiropractic adjustments, and facelifts.

However, in its Position Paper the Board interpreted A.R.S. §32-925 as authorizing many of the practices which Legislative Council concludes may be outside the statutory limits.

The Position Paper stated, in part:

> "After reviewing A.R.S. §32-925 effective 7/1/81, the Board has determined that the following procedures when used as preparatory to or complementary to an adjustment are considered within the scope of practice. These procedures include, but are not limited to:
>
> "1. Ultrasonic sonation
>
> "2. Diathermy (short wave and microthermy)
>
> "3. Transcutaneous nerve stimulation
>
> "4. Galvanism
>
> "5. Sine wave (electrical muscle stimulation)
>
> "6. Traction
>
> a. Static
>
> b. Intersegmental, motorized and ambulatory
>
> "7. Ice packs

"8. Heat packs or hydroculator

"9. Infra-red - ultra-violet

"10. Routine orthopedic appliances
a. Cervical collars
b. Rib belt
c. Lumbo sacral supports
d. Extremity supports (splint, etc.)
e. Heel lifts

"Any other adjunctive modality will be considered on an individual basis by the Board."

The Board Chairman acknowledges that the Position Paper does not have the effect of either law or administrative rules, but was written to provide a foundation for the Board's attempt to regulate the profession and to clarify issues raised by other state agencies regarding scope of practice. In addition, the Position Paper was reviewed by the Board's Attorney General representative for compliance with existing statutes.

A.R.S. §32-925 Should Be Amended
To Clarify Definition of Practice

The foregoing sections illustrate the need for action by the Legislature to clarify the legal scope of practice for chiropractors. At a minimum, specific provisions of A.R.S. §32-925 should be reworded to eliminate language that is unclear, legally circuitous and possibly misleading.

For example, A.R.S. §32-925 states, in part:

"A. The practice of chiropractic includes:

. . . . . .

"3. The use of x-ray and other analytical instruments generally used in the practice of chiropractic."

According to Legislative Council, the above provision "...cannot be understood to authorize the use of any instruments generally used by chiropractic practitioners, as this would allow chiropractors to define the practice of chiropractic, an unconstitutional delegation of legislative power." Legislative Council further elaborates in its opinion:

> "The term 'analytical instrument' should be defined by statute. It is not clear whether the legislature by this term meant to include all diagnostic instruments, or diagnostic instruments limited to the detection of abnormalities of the spine, and instruments used preparatory and complementary to spinal adjustment. The phrase 'generally used in the practice of chiropractic' is legally circuitous and misleading, as it appears on its face to authorize an unconstitutional delegation of power. It is noted that the provision authorizing 'use of x-ray and other analytical instruments generally used in the practice of chiropractic' is adopted from a Washington state statute. We have located no cases interpreting that provision." (Emphasis added.)

As stated earlier, it is also unclear whether chiropractors violate statutory limits when they request and use laboratory analysis of urine or hair samples.

Furthermore, A.R.S. §32-925, subsection A, paragraph 2 needs clarification as it authorizes procedures "preparatory and complementary to" a spinal adjustment. Without clear statutory language as a guide, the Board has proceeded to adopt its own interpretation of "preparatory and complementary to," as evidenced by its Position Paper.

CONCLUSION

The majority of Arizona chiropractors may be exceeding statutory limits on the practice of chiropractic. A.R.S. §32-925 - either before or after July 1, 1981 - may not authorize many of the treatment methods widely used by chiropractors. Furthermore, a Board rule defining the scope of practice appears to enlarge the statutory definition and therefore may constitute an invalid exercise of the Board's powers. The current statutory definition could be improved by eliminating language that is legally circuitous and misleading and by more clearly defining acceptable practices.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Board amend Rule R4-7-01, paragraphs 7 and 8, to forbid chiropractic practices that are statutorily prohibited.

2. The Board notify all licensees of practices which may be in violation of the statutory limits on chiropractic practice, as explained in the finding.

3. The Board petition the Legislature for statutory changes regarding scope of practice which it believes are needed to keep the laws current with the state of the chiropractic profession.

4. The Legislature review the limitations it intended in the current statutory definition of the chiropractic scope of practice. If it intended that chiropractors use procedures such as physiotherapy modalities or laboratory analysis, then the statutes should be amended to specifically provide for such practices. Statutes relating to medicine, physical therapy and pharmacy may also need amending to allow such practices.

5. At a minimum, the Legislature should amend A.R.S. §32-925, subsection A, paragraph 3, by:
   a) eliminating the phrase "generally used in the practice of chiropractic," and
   b) defining the term "analytical instrument."

FINDING II

STATUTORY CHANGES ARE NEEDED TO IMPROVE THE BOARD'S ABILITY TO RESOLVE COMPLAINTS.

In comparison to statutes governing other health care professions, the Chiropractic Board statutes are insufficient in that: 1) grounds for disciplinary action are not adequately defined, 2) the Board's power to subpoena or examine documents, records or other evidence for investigative purposes (prior to a hearing) is not clearly defined and 3) the statutes do not require that insurers report chiropractic malpractice information to the Board. These deficiencies impair the Board's ability to effectively regulate chiropractic practitioners.

Grounds For Disciplinary Action Are Inadequate

A.R.S. §32-924 sets forth the grounds by which the Board can take disciplinary action against licensed chiropractors:

> "A. The board may issue an order of censure, and fine a licensee a sum of money not to exceed five hundred dollars, or may refuse to issue, or may revoke or suspend a license, after a hearing, upon any of the following grounds:
>
> 1. Employment of fraud or deception in securing a license.
> 2. Practicing chiropractic under a false or assumed name.
> 3. Impersonating another practitioner.
> 4. Failing, after notice by the board, to record a license.
> 5. Habitual intemperance in the use of narcotics or stimulants to the extent of incapacitating him for the performance of his professional duties.
> 6. Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public.
> 7. For the violation of any of the provisions of this chapter."

The Board has expressed dissatisfaction with these provisions, claiming that the grounds for disciplinary action are inadequate for the type of complaints it handles. For example, the Board recently disciplined a chiropractor accused of child molesting. Because of the lack of more specific statutory grounds, the Board had to rely on A.R.S. §32-924.A.6-"unprofessional or dishonorable conduct of a character likely to deceive or defraud the public"-as the basis for action. The definition of "unprofessional or dishonorable conduct of a character likely to deceive or defraud the public" was debated and challenged by legal counsel of the accused. The Board maintained that it was acting on sufficient grounds and proceeded to take disciplinary action. However, this case demonstrates the need for more specific provisions for disciplinary action.

This need is also evidenced when the statutory provisions for disciplinary action for the Board of Chiropractic Examiners are compared to provisions governing other Arizona health regulatory boards. Table 3 summarizes this comparison.

TABLE 3

COMPARISON OF STATUTORY PROVISIONS FOR DISCIPLINARY ACTION AVAILABLE TO BOARD OF CHIROPRACTIC EXAMINERS AND SEVEN OTHER ARIZONA HEALTH CARE BOARDS

Statutory Provision:	Board of Medical Examiners	Board of Osteopathic Examiners	Naturopathic Board of Examiners	Board of Podiatry Examiners	Nursing Board	Board of Dental Examiners	Physical Therapy Board	Board of Chiropractic Examiners
Conviction of a crime of moral turpitude	X	X	X	X	X	X	X	
Conviction of a felony, whether involving moral turpitude or not	X	X		X	X	X		
Immorality or misconduct tending to discredit profession	X	X					X	
Unprofessional conduct; or unprofessional conduct reflecting unfavorably on profession			X	X	X	X		X
Gross malpractice, repeated malpractice, or malpractice resulting in death of patient	X	X			X	X		
Professional connection to an illegal practitioner	X	X						
Conduct contrary to recognized standards, or conduct constituting danger to health, welfare or safety of patient or public	X	X		X				
Total	6	6	2	4	4	4	2	1

As demonstrated in Table 3, other Arizona health care boards have more specific grounds for disciplinary action.

Further, unlike other Arizona boards, the Board of Chiropractic Examiners has not used its rule-making authority to clarify the definition of unprofessional conduct. Article 9 of the Board's rules is entitled "Unprofessional Conduct," but contains only the following definition:

> "ARTICLE 9. UNPROFESSIONAL CONDUCT
>
> R4-7-70. Advertising of a deceptive and fraudulent nature.
>
> The Board shall cause a license to be investigated, suspended, or revoked for advertising that is likely to deceive or defraud the public, including but not limited to the following examples:
> 1. Advertising painless procedures.
>
> 2. Advertising complete health services."

During the 1981 legislative session the Board supported House Bill 2450, which proposed the following as grounds for disciplinary action:

> A.R.S 32-924, Subsection A.
>
> "...
>
> 5. HABITUAL INTEMPERANCE IN THE USE OF ALCOHOL.
>
> ...
>
> 7. Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public OR TENDING TO DISCREDIT THE PROFESSION.
> 8. COMMISSION OF A FELONY.
> 9. GROSS MALPRACTICE, REPEATED MALPRACTICE OR ANY MALPRACTICE RESULTING IN THE DEATH OF A PATIENT.
> 10. REPRESENTING THAT A MANIFESTLY INCURABLE CONDITION CAN BE PERMANENTLY CURED, OR THAT A CURABLE CONDITION CAN BE CURED WITHIN A STATED TIME, IF SUCH IS NOT THE FACT.
> 11. OFFERING, UNDERTAKING OR AGREEING TO CURE OR TREAT A CONDITION BY A SECRET MEANS, METHOD, DEVICE OR INSTRUMENTALITY.

12. REFUSING TO DIVULGE TO THE BOARD UPON DEMAND THE MEANS, METHOD, DEVICE OR INSTRUMENTALITY USED IN THE TREATMENT OF A CONDITION.

13. GIVING OR RECEIVING, OR AIDING OR ABETTING THE GIVING OR RECEIVING OF REBATES, EITHER DIRECTLY OR INDIRECTLY.

14. ACTING OR ASSUMING TO ACT AS A MEMBER OF THE BOARD WHEN SUCH IS NOT THE FACT.

15. ADVERTISING IN A FALSE, DECEPTIVE OR MISLEADING MANNER.

16. REFUSAL, REVOCATION OR SUSPENSION OF LICENSE BY ANY OTHER STATE, TERRITORY, DISTRICT OR COUNTRY, UNLESS IT CAN BE SHOWN THAT SUCH WAS NOT OCCASIONED BY REASONS WHICH RELATE TO THE ABILITY SAFELY AND SKILLFULLY TO PRACTICE CHIROPRACTIC OR TO ANY ACT OF UNPROFESSIONAL CONDUCT.

17. ANY CONDUCT OR PRACTICE CONTRARY TO RECOGNIZED STANDARDS OF ETHICS IN CHIROPRACTIC OR ANY CONDUCT OR PRACTICE WHICH DOES OR MIGHT CONSTITUTE A DANGER TO THE HEALTH, WELFARE OR SAFETY OF THE PATIENT OR THE PUBLIC OR ANY CONDUCT, PRACTICE OR CONDITION WHICH DOES OR MIGHT IMPAIR THE ABILITY OF THE LICENSEE TO SAFELY AND SKILLFULLY PRACTICE CHIROPRACTIC.

18. VIOLATING OR ATTEMPTING TO VIOLATE, DIRECTLY OR INDIRECTLY, OR ASSISTING IN OR ABETTING THE VIOLATION OF OR CONSPIRING TO VIOLATE ANY OF THE PROVISIONS OF THIS CHAPTER."

House Bill 2450 passed the House but did not pass the Senate. The Board is prepared to support similar legislation in 1982.

The Board Is Uncertain Of Its Power to Obtain Records For Investigative Purposes.

The Board is uncertain of its power to subpoena or examine and copy records for investigative purposes prior to a hearing.

Although the Board is enpowered in A.R.S. §32-924.B to investigate and hold hearings on alleged violations of the chiropractic law, the statutes do not mention specifically the authority to subpoena and examine records in connection with an investigation or hearing.

The ability of the Board to secure records, undamaged and unaltered, could have a significant impact on the Board's ability to resolve complaints. For example, in a recent case a chiropractic physician was suspected of fraudulently billing an insurance company for services which were not performed. The Chiropractic Board attempted to subpoena the patient's treatment records, and to use those records in conjunction with patient testimony to prove unprofessional conduct likely to deceive or defraud the public. The chiropractor refused to release the records, on the advice of his attorney. Although later developments in this case made it unnecessary for the Board to obtain the requested records, it is not certain that the Board could have obtained the records.

The Board's ability to obtain records is not as definite as other Arizona boards. For example, the Arizona State Board of Medical Examiners (BOMEX) is empowered in A.R.S. §32-1451.01, subsection A, to examine and copy patient records or other documents or evidence in connection with an investigation:

> "... the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documents, reports, records or any other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or any other public or private agency, and any health care institution as defined in §36-401, if such documents, reports, records or evidence relate to medical competence, unprofessional conduct, or the mental or physical ability of a doctor of medicine safely to practice medicine. (Emphasis added.)

BOMEX routinely utilizes this power when investigating complaints. Further, BOMEX, through its rulemaking authority, has included the following definition of unprofessional conduct:

> Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity.

As a result, BOMEX has an effective sanction to compel medical doctors to cooperate during an investigation.

The Board Does Not Receive Chiropractic Malpractice Information

Chiropractic statutes further differ from those of other health professions in that they do not require insurance companies to report chiropractic malpractice claims or settlements to the Board. For example, the Podiatry and Osteopathic boards each have provisions similar to a BOMEX statute (A.R.S. §32-1451.02) which states:

> A. "Any insurer providing professional liability insurance to a doctor of medicine licensed by the board of medical examiners pursuant to this chapter shall report to the board, within thirty days of its receipt, any written or oral claim or action for damages for personal injuries claimed to have been caused by an error, omission or negligence in the performance of such insured's professional services, or based on a claimed performance of professional services without consent or based upon breach of contract for professional services by a doctor of medicine.
>
> . . . . . .
>
> C. Every insurer required to report to the board pursuant to this section shall also be required to advise the board of any settlements or judgments against a doctor of medicine within thirty days after such settlement or judgment of any trial court.
>
> . . . . . .
>
> E. The board shall institute procedures for an annual review of all records kept in accordance with this chapter in order to determine whether it shall be necessary for the board to take rehabilitative or disciplinary measures prior to the renewal of a medical doctor's license to practice.
>
> . . . . . .
>
> G. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer reporting hereunder or its agents or employees, or the board or its representatives, for any action taken by them in good faith pursuant to this section. (Emphasis added.)

The Board has attempted to obtain malpractice information by requiring in its rules that licensees notify the Board of any malpractice actions initiated against them. However, this rule is virtually unenforceable. Recently the Board chairman contacted several insurance companies and requested information on malpractice claims or settlements against chiropractors. In response the insurers sent general information on the number, type and dollar settlement of claims; however, they refused to provide the names of chiropractors involved on the basis they would be violating privacy and privileged information agreements.

As a result, the Board is not receiving information which could be valuable in its effort to regulate the profession. To determine what kind of claims are going unnoticed, we contacted a major carrier of chiropractic malpractice insurance. We were provided general information about 23 malpractice actions against chiropractors occurring since 1977, including claims for the following complaints: failure to diagnose cancer; unauthorized use of chemicals; failure to diagnose fractured shoulder; failure to diagnose gonorrhea; injury to coccyx; fractured leg; fractured rib; injury requiring gall bladder surgery; freeze burn; and fatal coronary due to dietary change.

CONCLUSION

The Board's statutory authority to investigate and resolve complaints is substandard when compared to other Arizona health regulatory boards. Specifically, grounds for disciplinary actions are not adequately defined and the Board's authority to examine and copy patient records prior to a hearing is unclear. In addition, the Board does not have sufficient authority to obtain information about malpractice actions against chiropractors. As a result, the Board's ability to regulate chiropractic practitioners is impaired.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Legislature amend A.R.S. §32-924, subsection A, to provide more comprehensive grounds for disciplinary action.

2. The Legislature amend A.R.S. §32-924 to allow the examination and copying of patient records and other documents in connection with an investigation, and to include refusal to cooperate as grounds for disciplinary action.

3. The Legislature add provisions to the insurance statutes requiring insurers to report malpractice actions against chiropractors to the Chiropractic Board. Provisions should also be added to require the Department of Insurance to monitor compliance with these requirements and to impose penalties for noncompliance.

FINDING III

STATUTORY CHANGES ARE NEEDED TO HELP ENSURE THAT PERSONS LICENSED WITHOUT EXAMINATION ARE QUALIFIED.

In 1980, the Legislature enacted legislation to require the Board to issue a license to practice chiropractic, without examination, to persons licensed by other states. This statute needs to be amended because

- Other states' examination standards may not be equivalent to Arizona's.
- Other Arizona health regulatory boards that issue licenses without examination to persons holding licenses from other states have more applicant qualification requirements.
- Examination and educational requirements are unclear.

In addition, statutory changes are needed to make it easier for the Board to revoke or suspend the license of an Arizona licensee whose license has been suspended or revoked by another state.

In 1980 the Legislature enacted ARS 32-922.01, which states:

> "The Board shall issue a license to practice chiropractic without examination to an applicant who:
> 1. Possesses a current, unrevoked, unsuspended license to practice chiropractic issued after examination by a licensing board in another state; and
> 2. Has engaged in the practice of chiropractic for three years immediately preceding application for license; and
> 3. Intends to reside and practice chiropractic in this state."

While this section of the chiropractic statutes is titled "Reciprocity" and is commonly referred to as the reciprocity licensing law, it is in reality a licensure by comity law. According to Black's Law Dictionary, a reciprocal licensing law refers to a statute by which one state extends rights and privileges to the citizens of another state if that state grants similar privileges to the citizens of the first state. Comity on the other hand is the recognition that one entity allows within its territory to certain legislative, executive or judicial acts of another entity. The granting of licensure without examination to residents of other states, as provided in A.R.S. §32-922.01, therefore constitutes a comity statute.

Applicants for licensure by examination must pass both a written and a practical examination. A.R.S. §32-922 establishes the examination standards:

> "B. The examination shall be in English, practical in character and designed to include subjects which are necessary to ascertain the applicant's knowledge of and fitness to practice chiropractic safely and skillfully as authorized in this state. Examinations shall include subjects upon anatomy, physiology, pathology, bacteriology, symptomatology, diagnosis including physical, clinical, x-ray and laboratory subjects, chiropractic orthopedics, principles of chiropractic and adjusting, neurology, chemistry including biochemistry and nutrition, public health and hygiene, and chiropractic spinal analysis, as taught by accredited chiropractic schools and colleges.
>
> "C. The board may waive examination in those subjects that the applicant passed previously in an examination conducted by the national board of chiropractic examiners.
>
> "D. A license shall be granted to applicants who correctly answer seventy-five per cent of all questions asked, and sixty per cent of the questions on each subject, and pay the original license fee of fifty dollars." (Emphasis added.)

In contrast, the only examination requirement an applicant must meet in order to qualify for licensure by comity is expressed in A.R.S. §32-922.01:

> "1. Possesses a current, unrevoked, unsuspended license to practice chiropractic issued after examination by a licensing board in another state; ...." (Emphasis added.)

Other State's Examination Standards May Not Be Equivalent To Arizona

Neither the statutes nor Board rules provide any standards for the examinations given in other states. According to the Board, an applicant need only prove that he passed a board-prepared examination in another state, regardless of the examination type or length, subjects tested, or required passing rate. As a result, the Board is issuing licenses to applicants who may not have adequately demonstrated their competence through examination in other states.

According to Board members, the quality of chiropractic licensing examinations varies substantially from state to state. For example, some states do not require candidates to pass a practical examination. Although 48 states recognize the national examination administered by the National Board of Chiropractic Examiners (NBCE) as a substitute for part or all of their state board-prepared examinations, candidates in many states have the option of taking a state examination instead of the NBCE. The two states that do not recognize the NBCE examination - Connecticut and South Carolina - rely entirely on their own examinations.

Since the comity provisions went into effect on July 1, 1980, the Board has licensed at least 14 chiropractors through comity who could not pass the Board's examination. Table 4 summarizes the Arizona test results for these 14 licensees.

TABLE 4

SUMMARY OF ARIZONA TEST RESULTS FOR CHIROPRACTORS LICENSED THROUGH COMITY WHO COULD NOT PASS THE ARIZONA BOARD EXAMINATION

Licensee	Years In Practice	Chiropractic Licenses Held In Other States At Time Of Application	Date The Licensee Failed Arizona Examination	Overall Examination Score
A	4	Missouri	04/79 06/80	71 68
B	7	Michigan	06/75	**
C	4	New Jersey	04/80	71
D	9	Minnesota	04/79	60
E	7	Iowa	06/78	68
F	29	Missouri, Texas New Mexico	04/79 10/79	69 65
G	6	Missouri, Iowa	10/79	45
H	21	New York, Florida New Hampshire	04/79 04/80 10/80	58 73 71
I	6	Wisconsin	10/79	63
J	10	Mississippi, Kentucky Michigan	07/77 01/78	58 61
K	12	Florida, Kentucky, Michigan, Missouri	01/75	**
L	5	Minnesota, Florida	10/79	65
M	6	Pennsylvania	04/80	59
N	6	Wisconsin, Minnesota	10/79	71

* Passing score is 75.
** Scores not available.

As shown in Table 4, licensees A, F and J failed the Arizona examination twice and licensee H failed three times, including a failure only four months before receiving a license through comity. In addition, licensee G had a score of only 45 on the Board's October 1979 examination.

Based on the above information it appears that the Arizona comity law should be restricted to those states which have testing requirements equivalent to Arizona's.

In the 1981 session the Board supported H.B. 2450 which proposed changes to A.R.S. 32-922.01 as well as other provisions. The bill would have given the Board the right to deny a reciprocal license if it determined that licensing requirements in the applicant's state of residence were not equivalent to Arizona's requirements. In addition, the applicant would have to pass the Board's oral and practical examination. The bill passed the House but not the Senate.

Other Arizona Health Regulatory Boards Have More Applicant Qualification Requirements

Of 11 Arizona health regulatory boards, the Chiropractic Board appears to have the weakest statutory criteria for assuring the minimum qualifications of applicants licensed without examination. Table 5 displays key features of the reciprocity/comity provisions of these 11 boards.

TABLE 5

SUMMARY OF KEY RECIPROCITY/COMITY FEATURES
FOR ARIZONA HEALTH REGULATORY BOARDS

BOARD	Licensing Requirements in Other State Must Be Equivalent To Arizona, As Determined By Board	Cannot Have Failed Arizona Exam	Need National Examination Certificate	Limit On Time Since Other State Issued License	Must Be Graduate Of Approved School	Exemption For Only Part of Examination	Part Of Examinatio May Be Required
Chiropractic Examiners					*		
Podiatry Examiners	X					X	
Dental Examiners	X			X			
Medical Examiners			X	X	X		X
Naturopathic Examiners	X						
Nursing	X						
Dispensing Opticians	X						
Optometrists	X	X				X	
Osteopathic Examiners	X						
Physical Therapy	X						
Pharmacy					X		

* According to Legislative Council opinion, the statutes require graduation from an approved school, but the Chiropractic Board in actual practice has not required this - as explained on page 43.

As shown in Table 5, eight of the 11 boards have statutory provisions requiring that the state in which an applicant is currently licensed must have licensing standards equivalent to those in Arizona, as determined by the respective Arizona board. The Board of Medical Examiners seeks a minimum standard of competency by requiring an applicant to 1) pass a national examination, 2) be a graduate from an approved school, and 3) pass an oral examination if he took the national examination more than 15 years earlier. The Pharmacy Board requires graduation from an approved school.

In contrast, the Chiropractic Board reciprocity statutes contain none of these applicants' criteria for licensure without examination.

Unclear Examination and
Educational Requirements

The Board has interpreted A.R.S. §32-922.01 to mean that 1) in order to qualify for licensure by comity an applicant must have passed an examination administered by a chiropractic board in another state, and 2) applicants for comity need not have graduated from an approved school of chiropractic. These interpretations may not be correct.

According to the Board's interpretation of A.R.S. §32-922.01, an applicant for licensure by comity must have passed an examination which was actually administered by the chiropractic board in another state. The Board denies licensure to applicants who were licensed elsewhere solely on the basis of the national examination given by NBCE.* According to an opinion issued by the Legislative Council on September 11, 1981,** this interpretation is incorrect. Legislative Council explains:

* Chiropractic students may take the national examination directly from NBCE before graduation. Passage of this examination is recognized as meeting the examination requirement by some states. The Arizona Board's current interpretation would not allow for licensure by comity in these cases because the other state boards did not actually administer the examination.

** See Appendix II for full text of opinion.

"...A.R.S. section 32-922.01 only requires, in pertinent part, that an applicant for licensure by comity hold a current, valid license to practice chiropractic issued "after examination by a licensing board in another state." The statute does not specify that any particular type of examination is required. As long as another state chiropractic board has approved the use of an examination prepared and graded by a national board as sufficient proof of an examination for state purposes, the requirement in A.R.S. section 32-922.01 for "examination by a licensing board in another state" would be satisfied.

. . . . . .

"The clear purpose of the examination requirement in A.R.S. section 32-922.01 is that an applicant for licensure by comity in this state has taken and passed an examination for licensure in another state. This requirement is satisfied when, in the absence of clear statutory language to the contrary, an applicant for licensure by comity in Arizona has taken and passed a national board examination for licensure (approved by the responsible state licensing board) in any state 'X' and subsequently secures a license to practice chiropractic in state 'Y' on the basis of the national board examination taken in state 'X'. The Arizona license to practice chiropractic pursuant to the comity provisions of A.R.S. section 32-922.01 would, in the fact situation given, be granted on the basis of the examination taken and passed in state 'X'." (Emphasis added.)

In other words, an applicant who was licensed in another state on the basis of the national examination without taking a state board-administered examination has satisfied the examination requirement of A.R.S. §32-922.01.

An applicant for licensure as a chiropractor who is not a licensee of another state is required to be a graduate of a Board-approved school. A.R.S. §32-921 states in part:

"B. To be eligible for an examination and licensure, the applicant shall be:

. . . . . .

"3. A graduate of a chiropractic school or college, accredited by or having status with the council on chiropractic education or having the equivalent of such standards as determined by the board...."

The Board's interpretation of the comity law (A.R.S. §32-922.01) is that the educational requirements shown above do not apply to applicants for licensure via comity. However, according to an opinion issued by Legislative Council, this interpretation is not correct; the requirements of A.R.S. §32-921 must also be adhered to when licensing without examination. The opinion, dated September 11, 1981, states:*

"While A.R.S. section 32-922.01 does not specifically require an application and payment of a fee in order to receive a license without examination, a reasonable construction of the statute leads to the conclusion that an application and fee would be required. Consequently, it can be justifiably argued that the provisions of A.R.S. section 32-921, save for the examination provisions, apply to the licensure of chiropractors pursuant to the comity provisions of A.R.S. section 32-922.01....

. . . . . .

"An applicant for licensure without examination pursuant to the comity provisions of A.R.S. section 32-922.01 must adhere to the application requirements of A.R.S. section 32-921. The applicant could be rejected by the board for failure to comply with any of the requirements of A.R.S. section 32-921...."

Thus, in addition to the requirements outlined in the comity statute, the Board should require applicants for licensure by comity to possess the qualifications specified in A.R.S. 32-921, including graduation from an approved chiropractic school. We found that the Board has licensed at least one candidate by comity who did not graduate from a school meeting the standards of A.R.S. §32-921.B.3.

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* See Appendix II for full text of opinion.

Licensees Practicing In Other States

In fiscal year 1980-81 the Board received more than 350 applications for licensure by comity. As of November 23, 1981, there were more than 300 out-of-state chiropractors holding Arizona licenses.

Currently, these out-of-state chiropractors can renew their Arizona licenses simply by paying the renewal fees. There is no statutory requirement that they remain in practice in other states, or remain in good standing with the other states' licensing boards. The Board has no procedures to determine if an out-of-state licensee has been disciplined in another state since he first obtained an Arizona license.

Further, the Board is uncertain of its authority to take disciplinary action against an out-of-state licensee whose license has been suspended or revoked by another state. According to Legislative Council, while the Board may have such authority, it may be severely restricted by the procedural requirements of A.R.S. §32-924, which appear to require a hearing, a review of charges and evidence, and attendance of the licensee before disciplinary action can be taken.

By way of contrast, the Arizona Board of Medical Examiners (BOMEX) has the explicit statutory authority to take action against out-of-state licensees. BOMEX statutes (A.R.S. §32-1401) define "unprofessional conduct" in part as follows:

> "10. "Unprofessional conduct" shall include the following acts, whether occurring in this state or elsewhere:
>
> . . . . . .
>
> (s) Refusal, revocation or suspension of license by any other state, territory, district or country, unless it can be shown that such was not occasioned by reasons which relate to the ability safely and skillfully to practice medicine or to any act of unprofessional conduct herein."

Thus, revocation or suspension of license by any other state is considered to be sufficient grounds for taking action against a doctor's Arizona license. Statutes (A.R.S. §32-1451) further allow BOMEX to hold a hearing and render a decision without attendance of witnesses or the licensee. A copy of the order issued by the board in another state is considered sufficient evidence for BOMEX to initiate disciplinary proceedings.

CONCLUSION

The current "reciprocity" licensing law in reality provides for licensure by comity and impairs the Board's ability to protect the public. This statute needs to be amended because 1) other states' examination standards may not be equivalent to Arizona's, 2) other Arizona health regulatory boards that issue licenses without examination have more stringent requirements, and 3) examination and educational requirements are unclear. In addition, statutory changes are needed to enhance the Board's ability to discipline a licensee whose license has been suspended or revoked in another state.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Legislature amend A.R.S. §32-922.01 to require that an applicant have passed an examination equivalent to the Arizona examination, including a practical examination, in order to be licensed without examination in Arizona.

2. While the current law is in force, the Board allow the national examination to satisfy the written examination requirement for licensure by comity.

3. The Board require graduation from an approved school in order to qualify for licensure by comity.

4. The Board establish procedures to periodically discover what disciplinary actions have been taken by licensing boards in other states against Arizona licensees.

5. The Legislature amend chiropractic statutes as needed to give the Board authority similar to that given the Board of Medical Examiners for taking disciplinary action against out-of-state licensees.

FINDING IV

APPLICANTS FOR LICENSURE AS CHIROPRACTORS ARE NOT BEING EXAMINED IN ACCORDANCE WITH STATUTORY REQUIREMENTS.

In order to be licensed by examination in Arizona an applicant for a chiropractic license must pass either a state or national examination and an oral/practical examination.*

Our review revealed the following problems regarding the manner in which licensing examinations are administered:

- Written examinations do not appear to be scored in accordance with statutory requirements; and
- The Board appears to discriminate against applicants who take the national examination instead of the state-administered examination.

Examinations Do Not Appear To Be Scored in Accordance With Statutory Requirements

An applicant for licensure by examination must pass a written examination and an oral/practical examination. The Board's written examination is prepared and graded by the National Board of Chiropractic Examiners (NBCE). The NBCE scores the written examination on a curve which does not appear to conform with statutory requirements.

A.R.S. §32-922.D states:

> "D. A license shall be granted to applicants who correctly answer seventy-five per cent of all questions asked, and sixty per cent of the questions on each subject...." (Emphasis added.)

* Requirements for licensure without examination are explained in Finding III. (See page 35)

When the NBCE scores the written examination for the Board it converts an applicant's raw score, or number of questions answered correctly, to a standard score which equates the applicant's performance on the examination to the other examinees. The NBCE's grading practice constitutes curving. According to the Board chairman, the Board is aware that the NBCE is curving the examination and that the practice is not in conformance with A.R.S. §32-922.D. However, the Board supports the practice because it allows for examination comparability.

Because the NBCE reports standard scores to the Board it cannot be determined if those candidates who have passed the examination did in fact "correctly answer 75 percent of all questions asked, and 60 percent of the questions on each subject" as required per A.R.S. §32-922.D.

It should be noted that the NBCE applies the same grading procedures described above to the other 36 states for which it prepares and scores examinations. Thus it appears that A.R.S. §32-922.D, which was enacted in 1921, should be amended to correspond with the grading practice that is actually being used on a nationwide basis. In addition, the present language in A.R.S. §32-922.D does not accomodate the scoring of the Board's practical examination which includes physical demonstrations and essay questions. These types of questions are not susceptable to being scored as either right or wrong, thus precluding a practical application of the grading requirements specified in A.R.S. §32-922.D.

Board Appears To Discriminate Against Applicants Who Take the National Examination

A.R.S. §32-922.C states:

> "C. The board may waive examination in those subjects that the applicant passed previously in an examination conducted by the national board of chiropractic examiners."

In exercising its discretionary authority cited above, the Board has adopted a policy that appears to discriminate against those persons who take the national examination instead of the Board examination in that the Board

- requires applicants who take the national examination to achieve higher scores than those applicants who take the state-administered examination, and
- prior to October 1, 1981, applied grading requirements to applicants who took the national examination that made it more difficult for them to pass the Board's oral/practical examination.

This policy appears to be unwarranted because for all intents and purposes the state examination and the national examination are the same, given that

- both are prepared and graded by the NBCE,
- the national examination includes all of the subjects tested in the state examination, and
- the questions on both examinations are drawn from the same pool of questions.

Twice a year the NBCE administers a national examination consisting of 13 subjects, including the same 10 subjects included in the written examination administered by the Board. Each subject is scored separately and consists of 100 questions drawn from the same pool of questions used in the Board-administered examination.

In accordance with A.R.S. §32-922.C, the Board will waive written examination requirements provided the applicant has passed the national examination with a score of 75 percent or better in each of 12 subjects tested (exclusive of the subject "physiotherapy") and files a certified list of those scores with the Board.

By way of contrast in order to pass a Board-administered written examination an applicant need score only 60 percent or better in each of the 10 subjects tested with an overall score of 75 percent.

As a result, the Board is applying two pass/fail criteria for obstensibly the same examination.

In addition, prior to October 1981, applicants who passed the national written examination were required to pass the five parts of the Board's oral/practical examination with an average score of 75 percent. However, applicants who took the Board-administered written examination were allowed to average their written examination scores with their oral/practical examination scores in determining if an average score of 75 percent had been achieved. This double-standard grading policy has resulted in applicants being failed by the Board who had higher overall scores than applicants who were passed by the Board.

During the course of the audit, we discussed with Board staff our concerns regarding grading procedures. In a subsequent Board meeting the Board agreed to change their grading procedures so that beginning with the October 1981 examination all applicants will be required to pass both the written and oral/practical examinations independently in order to qualify for licensure. However, the Board will continue to require applicants who take the national written examination to achieve higher scores than those applicants who take the state-administered examination.

CONCLUSION

The manner in which the written licensing examination is graded does not comply with A.R.S. §32-922.D. In addition, the Board appears to discriminate against candidates who take the national written examination instead of the state-administered examination.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Legislature amend A.R.S. §32-922.D to provide for the current scoring procedures used by NBCE and the Board.

2. The Board grant waiver of the written examination to candidates who scored at least 60 on each of the 10 comparable subjects of the national examination with an overall average score of 75 for the 10 subjects.

FINDING V

THE BOARD'S 20-DAY PUBLIC MEETING NOTICE REQUIREMENT CAUSES DELAYS IN COMPLAINT RESOLUTION.

Unlike most other Arizona boards the Board of Chiropractic Examiners is statutorily required to post public notice of Board meetings at least 20 days in advance. This requirement causes delays in the Board's resolution of complaints.

Arizona's open meeting laws require that meetings of public bodies "...shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public" - except in case of an "actual emergency." (A.R.S. §38-431.02, subsections C and D) Unless a board's statutes require more advance notice - as with the Board of Chiropractic Examiners - this 24-hour requirement applies.

Arizona Attorney General Opinion 78-1 states that the Open Meetings Act implicitly requires that an agenda be posted as part of the meeting notice, because "...a meeting can hardly be termed open unless the public knows of its time and place and subject matter to be considered."

A later opinion held:

> "Therefore, unless an actual emergency requires addition of an agenda item, any action on a subject not contained in the posted agenda must be delayed to allow a minimum of 24 hours' public notice."

The Board of Chiropractic Examiners, however, is required by statute to post a 20-day meeting notice. A.R.S. §32-902, subsection B, states:

"B. The board shall hold regular meetings at such places as it determines in January and July of each year, and may hold other meetings at times and places determined by a majority of the board. The board shall notify the public of such dates, time and place of meetings at least twenty days prior to any meeting as provided by law. Meetings of the board shall be open to the public as provided by law." (Emphasis added.)

As a result, the Board cannot take any action on a subject unless 20 days' public notice on that subject has been given. According to the Board, in some cases this restriction has prevented it from resolving complaints more expeditiously, because it is not clear to what extent, if any, the Board can even discuss a matter when the subject was not posted at least 20 days prior. Therefore, complaints received as much as 19 days before a scheduled meeting cannot be discussed until a later meeting.

When compared with other Arizona boards, the 20-day meeting notice requirement is unreasonable. Of the 10 boards* serviced by the Arizona State Boards Administrative Office, nine have 24-hour requirements and the other has a five-day requirement.

CONCLUSION

The Board of Chiropractic Examiners' statutory requirement to provide 20 days public notice of its meetings causes delays in the Board's resolution of complaints.

RECOMMENDATION

Consideration should be given to the following recommendation:

- The Legislature amend A.R.S. §32-902, subsection B, by striking the 20-day meeting notice requirement, thereby allowing the 24-hour requirement of the open meeting laws to apply to the Board of Chiropractic Examiners.

* These boards are: Board of Dispensing Opticians; Board of Funeral Directors and Embalmers; Naturopathic Board of Examiners; Board of Optometry; Board of Examiners of Nursing Care Institution Administrators; Board of Podiatry Examiners; Board of Physical Therapy Examiners; Board of Psychologist Examiners; Veterinary Medical Examining Board; and Athletic Commission.

STATE OF ARIZONA
BOARD OF CHIROPRACTIC EXAMINERS
1645 West Jefferson, Room 312 • Phoenix, Arizona 85007
Telephone (602) 255-1444

December 22, 1981

Douglas R. Norton
Auditor General
State of Arizona
Phoenix, Arizona 85007

Dear Mr. Norton:

The attached report represents the response of the State of Arizona Board of Chiropractic Examiners to the performance audit conducted by your Sunset Review Team.

If any questions should arise, please feel free to contact me.

Very truly yours,

Gary G. Le Doux, D.C.

Gary G. Le Doux, D.C.
Chairman

GGL:sa

cc: Gerald Silva, Performance Audit Manager

INTRODUCTION

The Board of Chiropractic Examiners expresses its appreciation to the assigned Sunset Review Team of the Auditor General's office for their cooperation in preparing the performance audit of the Board's activities. The audit report notes that the Board is attempting to respond to the needs of the public by actively reviewing complaints, but also recognizes that the Board has been handicapped by deficiencies of the chiropractic statutes. The report further acknowledges that the Board itself has attempted to address this problem by seeking statutory corrections in an earlier legislative session. That proposed legislation passed the House but not the Senate.

The Board, while disagreeing with certain of the legal conclusions relied upon by the review team, is in agreement with the majority of the recommended legislative and procedural changes, and in some cases, has adopted changes pursuant to those recommendations.

I. STATUTORY LIMITATIONS ON CHIROPRACTIC PRACTICE.

The Board's principle differences with the findings of the review team concern the proper construction of the scope of practice under statutory language effective July 1, 1981. Relying upon a legal opinion issued by Legislative Council, the audit report claims that the Board issued a position paper in August of 1981 that exceeded statutory limitations.

The basis of the opinion by Legislative Council appears to be that the changes in statutory language enacted by the Legislature in 1980 and effective in 1981, did not change the scope of practice for chiropractors either diagnostically or therapeutically. The opinion makes an extensive legal analysis of the original statutory language, enacted in 1921, particularly in light of chiropractic as it was practiced at that time. It does not contain, however, even a cursory analysis of the new statutory language or raise the possibility that the Legislature acknowledged new developments in chiropractic practice in amending A.R.S. §32-925 (Practice of Chiropractic) and A.R.S. §32-922(B) (Subject for Examination).

The Board, while conceding that the statutory language is somewhat ambiguous, contends that the position paper issued by the Board is consistent with the statute and was propounded in light of advice received from the office of the Attorney General both formally and in opinion form.

The Board does not, however, disagree with the recommendation that the statutory language be clarified.

The recommendation that the Board revise rule R4-7-01 to exclude those types of procedures specifically disallowed by the statute is well taken and will be addressed by the Board in the near future.

II. THE BOARD'S ABILITY TO RESOLVE COMPLAINTS

The Board is in full support of the recommended statutory changes regarding the Board's ability to resolve complaints. As the Auditor General's report has noted, the Board has attempted to protect the public with the investigatory and disciplinary tools available to it, but more adequate statutory authority is needed.

The Board would only hope that recently mandated budgetary cuts for health regulatory boards does not make such statutory authority meaningless. In addition to numerous informal dispositions, the Board has conducted three full hearings in the last calendar year. One of these, which resulted in revocation of a chiropractic license, cost the Board in excess of $2,900.00 (including witness fees, service of process, Board per diem and court reporter services and transcripts).

As the number of licensed chiropractors in the state grows, so do the responsibilities of the Board. But these responsibilities can be met only when the Board is allowed to utilize the licensing fees generated by these additional licensees.

III. EXAMINATIONS

This Board has previously sought statutory changes to the reciprocity statute (which the audit report properly identifies as being in fact a comity provision). It is strongly felt by the Board that the present reciprocity statute fails to provide the Board with sufficient means for determining the professional qualifications of out-of-state chiropractors seeking licensure pursuant to its provisions. The report's finding that the Board was forced to license at least 14 chiropractors who were unable to pass the Arizona examination highlights a need for statutory change. The Board, however, would enlarge the report's recommendation for statutory change to include a requirement that a practical examination be administered to out-of-state licensees seeking an Arizona license.

With regard to the report's recommendations concerning scoring of examinations, the Board wishes to report that it has, by Board resolution, concurred with the report's recommendation concerning the averaging of scores from the national and state administered examinations. It expects to take action in the near future on the issue of the required passing scores from persons taking the national examination.

CONCLUSION

The Board of Chiropractic Examiners appreciates the report's acknowledgement of its efforts to obtain the statutory authority necessary to properly carry out the responsibilities of a health regulatory board. It applauds the Auditor General's independent identification and establishment of the need for the types of legislative changes which the Board has sought in the past and will continue to pursue.

APPENDIX I

LEGISLATIVE COUNCIL OPINION (O-80-20)

OCTOBER 20, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

October 20, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-80-20)

This is in response to a request submitted on your behalf by Bill Thomson to review Legislative Council memorandum (0-80-20) taking into consideration subsequent legal developments. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-925 defines the limitations on the practice of chiropractic as follows:

> A person licensed under this chapter to practice chiropractic may adjust by hand any articulations of the spinal column. He shall not prescribe for or administer medicine or drugs, practice major or minor surgery, obstetrics or any other branch of medicine or practice osteopathy or naturopathy unless he is otherwise licensed therefor as provided by law.

However, in addition to spinal adjustments a number of chiropractors incorporate into their practices such procedures and services as:

Nutritional supplements, supplemental vitamins and therapeutic nutrition

Shortwave diathermy

Lab Analysis, including urinanalysis and hair analysis

Acupressure

Cryotherapy

Infrared, Ultraviolet and Ultrasound therapies

Hot and cold packs including oil packs

Traction, including motorized traction

Orthopedic examinations

Orthopedic supports

Neurological examinations

Kinesiological examinations

X-rays

QUESTIONS PRESENTED:

1. Do any of the above practices constitute a violation of the provisions of A.R.S. section 32-925?

2. What guidelines may be used to evaluate whether other chiropractic practices may violate the provisions of A.R.S. section 32-925?

ANSWERS:

1. Yes.

2. See Discussion.

DISCUSSION:

In answering your questions regarding the legality of certain services and procedures performed by chiropractors, we draw your attention to Laws 1980, chapter 191, sections 5 and 6, which repeals A.R.S. section 32-925 and adds a new section 32-925 and which became effective July 1, 1981.

The first part of this memorandum is applicable to services and procedures performed by chiropractors prior to July 1, 1981. The second part of this memorandum addresses the legality of these services and practices if performed after July 1, 1981, and which are governed by Laws 1980, chapter 191.

PART I - CHIROPRACTIC PRACTICE PRIOR TO JULY 1, 1981.

Under A.R.S. section 32-925, the only method which a chiropractor may use to treat his patient is to "adjust by hand any articulations of the spinal column." This statute also expressly prohibits a chiropractor from prescribing or administering medicine or drugs, practicing minor or major surgery, obstetrics or any other branch of medicine or practicing osteopathy or naturopathy.

This statutory provision has remained unchanged since its enactment in 1921, except for a 1959 amendment which added naturopathy as a prohibited practice. (For repeal of this provision and enactment of new A.R.S. section 32-925, see Part II of this memorandum.)

Under the plain meaning rule, words of a statute are to be given their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended. Huerta v. Flood, 103 Ariz. 608, 447 P. 2d 866 (1968).

The meaning of the word "adjust" is not defined by Arizona statute or case law. The ordinary dictionary meaning of adjust is "to bring to a true and effective relative position." Webster's Third New International Dictionary 27 (1976).

The meaning of "articulation" is not defined by Arizona statute or case law. The ordinary dictionary meaning of articulation is "a joint or juncture between bones or cartilages in the skeleton of a vertebrate, being immovable when the bones are directly united, slightly movable when they are united by an intervening substance, or more or less movable when the articular surfaces are covered with smooth cartilage and surrounded by a fibrous capsule with synovial membrane. Id. at 124. (Synovia is a transparent lubricating fluid secreted by synovial membranes of articulations.)

The "spinal column" is the "articulated series of vertebrae connected by ligaments and separated by more or less elastic intervertibrate fibrocartilages that in nearly all vertebrates forms the supporting axis of the body and a protection for the spinal cord extending from the hind end of the skull through the median dorsal part of the body and to the end of the tail." Id. at 2196.

Thus, the ordinary dictionary meaning of "to adjust by hand the articulations of the spinal column" is to bring into true position the joints or junctures between bones or cartilages in the human vertebrae by use of the hands.

The Arizona statutory definition of chiropractic practice is limited to manipulation or adjustment of the spine by hand only. This very narrow definition of chiropractic practice is identical or very similar to other statutory definitions of chiropractic enacted by other states in the early 1920's.

Also, this narrow definition of chiropractic conforms to the philosophy and ideas of chiropractic practice as understood at the time of enactment. That this definition is not expressive of present day ideas and practices of chiropractic as taught in chiropractic schools today or practiced in other states is not relevant to determining the scope of chiropractic practice authorized by A.R.S. section 32-925. Only the legislature may define the practice of chiropractic, and the meaning of chiropractic is that meaning intended at the time the statutory definition in A.R.S. section 32-925 was enacted. Courts may not look outside the words of the statutory definition and read into the statute words not contained in the statute, as that would defeat the legislative intent.

It is a rule of statutory construction that the intent of the legislature must be determined by the words used. Barlow v. Jones, 37 Ariz. 396, 294 P. 1106 (1930).

Where a statute expressly defines certain words and terms used in the statute, the court is bound by the legislative definition. Pima County v. School District No. One of Pima County, 78 Ariz. 250, 278 P. 2d 430 (1954).

If the language of a statute is plain and unambiguous, and can be given but one meaning which does not lead to an impossibility or absurdity, such as could not have been contemplated by the legislature, the court will follow the meaning, even though the result may be, in the court's opinion, harsh, unjust or a mistaken policy. Garrison v. Luke, 52 Ariz. 50, 78 P. 2d 1120 (1938).

An unambiguous statute should not be interpreted but should be enforced according to its clear language. Industrial Commission v. Price, 37 Ariz. 245, 292 P. 1099 (1930).

If a statute is complete, unambiguous and workable on its face, the court cannot read into it any provisions which change the apparent meaning because of matters outside the face of the statute. Peterson v. Central Arizona Light and Power Co., 56 Ariz. 231, 107 P. 2d 205 (1940).

It is a rule of statutory construction that a statutory definition should be given a definition consonant with ideas prevailing at its enactment. Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co., 39 Ariz. 65, 4 P. 2d 369 (1931).

A.R.S. section 32-925 clearly and unambiguously limits chiropractic practice to adjustment by hand of the articulations of the spinal column, and no other method of treatment is authorized. This definition of chiropractic practice was the prevalent view of chiropractic practice at the time the statute was enacted.

Thus, in an Iowa statutory definition of chiropractic practice nearly identical to Arizona's which defined chiropractor as "a person who treats human ailments by the adjustment by hand of the articulations of the spine or by other incidental adjustments", the Iowa Supreme Court, in applying that statute, stated that:

> chiropractic is a system of healing that treats diseases by manipulation of the spinal column; the specific science that reduces pressure on the nerves by adjustment of the spinal vertebrae. There are no instruments used, the treatment being by hand only. (Emphasis added.) State v. Boston, 226 Iowa 429, 278 N.W. 291, aff'd., 284 N.W. 143 (1939).

Other courts have similarly defined chiropractic practice as: "the practice of adjusting joints of the spine by hand for the curing of diseases", Nicodeme v. Bailey, 243 S. W. 2d 397 (Tex. App. 1951); "chiropractic means

hand manipulation and the word is applied to a system of healing that treats disease by manipulation of the spinal column", State v. Gallagher, 101 Ark. 593, 143 S.W. 98 (1912).

Arizona's statutory definition of chiropractic practice seems to conform to the original concept of chiropractic as discovered by its founder.

> The chiropractic theory, at the beginning at least, held that all diseases and illnesses were due to one cause--a dislocation or subluxation of one or more of the spinal vertebrae resulting in pressure upon the nerve or nerves issuing from the spinal cord at that point. The pressure or impingement, according to chiropractic theory, prevents the nerve from doing its work and disease then results in the organ or part which the nerve activates. To cure the disease the chiropractor "adjusts" the subluxated vertebrae to release the pressure; the 'chiropractic thrust' is used to push the out-of-line vertebrae back into place.
>
> This theory is alleged to have been discovered by D.D. Palmer. It was developed by his son, B.J. Palmer who is sometimes referred to as 'the daddy of all chiropractors.' As it was with osteopathy, chiropractic has gradually departed from its initial theory of the causation of disease, causing a split in the ranks. B.J. Palmer remained steadfast in the original concept; others accepted the germ theory and began to employ various and sundry modalities, particularly those in the field of physiotherapy. Those who embraced the newer concept of chiropractic were referred to as 'mixers. Lawyer's Medical Encyclopedia, edited by Charles Frankel, Vol. 1, sec. 1.2 (1958).

Under A.R.S. section 32-925 effective prior to July 1, 1981, the only mode of treatment a chiropractor could engage in was:

1. Adjustment by hand,

2. Of articulations of the spinal column.

This statutory limitation is based on the original concept of chiropractic - that all diseases are due to one cause, the dislocation or subluxation of spinal vertebrae.

Because of this narrow statutory definition of chiropractic practice, many of the procedures and services listed in your question are not authorized.

In addition, such practices or services performed by chiropractors may violate other statutes in addition to A.R.S. section 32-925. Therefore we will consider the listed practices or services separately.

Vitamins

A chiropractor is not authorized to prescribe or administer vitamins for the treatment, prevention, mitigation or cure of disease.

Under A.R.S. section 32-925, a chiropractor "shall not administer medicine or drugs".

The words "medicine" and "drug" are not defined in the chapter regulating chiropractors.

Under the plain meaning rule, words of a statute are to be given their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended. Huerta v. Flood, 103 Ariz. 608, 447 P. 2d 866 (1968).

The ordinary dictionary meaning of "medicine" is "a substance or preparation used in treating disease", and the ordinary meaning of "drug" is "a substance used as a medicine." Webster's Third New International Dictionary 1402 (1976).

It is also a rule of statutory construction that if a statute contains words, the meanings of which have become well-settled under judicial decision, it is presumed that the legislature used such words in the sense justified by the long judicial sanction. State v. Jones, 94 Ariz. 334, 385 P. 2d 213 (1963).

Under both the plain ordinary meaning of drug and medicine and the common law meaning as defined by judicial decision, vitamins prescribed or administered for the treatment, prevention or mitigation or cure of a disease or ailment are a "drug" or "medicine".

The common law meaning of drug is any substance that is used in the treatment, prevention or diagnosis of disease. A substance may be a drug under one set of circumstances and not another, the test being whether it is sold for, or used as, a medicine. 28 C.J.S. Drug. 496 (1941).

This definition has been adopted by the Arizona Supreme Court which stated in Stewart v. Robertson, 45 Ariz. 143, 151, 40 P. 2d. 979 (1935), that "generally the term 'drug' includes all medicines for internal and external use in connection with the treatment of disease or to effect any structure or function of the human body." (Emphasis added.)

Thus, the Kansas Supreme Court has held that vitamin pills administered by a chiropractor in his professional capacity, to his ailing patient, and for which he expected to make a charge, constituted medicine or drug within a statute defining practice of chiropractic as not including administration or prescription of any drug or medicine. State v. Missouri Board of Chiropractic Examiners, 365 S.W. 2d 773 (Kan. Ct. App. 1963).

In addition to violating A.R.S. section 32-925, prohibiting chiropractors from prescribing or administering a medicine or drug, a chiropractor who prescribes without a medical license vitamins for the treatment or cure of a disease violates A.R.S. section 32-1455, which prohibits the practice of medicine by one without a medical license. A.R.S. section 32-1455, subsection A, paragraph 1 provides that:

> A. The following acts are class 5 felonies:
>
> 1. The practice of medicine by one not licensed or exempt from the requirement therefor pursuant to this chapter.

"Practice of medicine" in the above statute is defined in A.R.S. section 32-1401, paragraph 9 as follows:

> "Practice of medicine", which shall include the practice of medicine alone, the practice of surgery alone, or both, means the diagnosis, treatment or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat or correct any and all human diseases, injuries, ailments or infirmities, whether physical or mental, organic or emotional, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. (Emphasis added.)

In Harris v. State, 92 So. 2d 217 (Miss. 1957), the Mississippi Supreme Court held that a chiropractor who injected vitamins into the body of a patient to cure a vitamin deficiency was guilty of illegally practicing medicine without a license, even though the use of a hypodermic needle itself did not constitute the illegal practice of medicine.

The court in Harris stated that, since a vitamin deficiency in the human body is a disorder or ailment interfering with normal processes of growth and is likely to result in disease, the administration of vitamins to cure the deficiency constitutes the practice of medicine.

In Norville v. Mississippi State Medical Ass'n., 364 So. 2d 1084 (Miss. 1978), the same court held that a chiropractor who prescribed or suggested the use of vitamins for his patients was guilty of the unlicensed practice of medicine, notwithstanding that those vitamins did not require a medical prescription and could be purchased by any layman over the counter in most stores. The court distinguished the selling or purchasing of vitamins at the retail level and their prescription or use in the context of a practitioner-patient relationship:

> We are fully cognizant that any layman can obtain such vitamins and that any retailer can sell such vitamins. Purchase of or sale of vitamins is not however the vice which is condemned here. Rather the vice condemned and that which constitutes the unlicensed practice of medicine is (1)

prescription of vitamins, (2) to cure, (3) an ailment or disease, (4) for compensation.

> The chiropractor on the present facts does not simply sell vitamins to a customer who asks for them as does a retailer. Rather, he represents to a patient who has come to him that such vitamins will cure a disease or ailment. Further, unlike the relative or friend who recommends that someone take vitamins for nutrition or to prevent colds, and neither expects nor receives any compensation for such "advice," the chiropractor in a professional capacity advises the patient to take the vitamins for the ailment or disease, charges compensation for such advice, and may cause the patient to think his ailment or disease will thereby be cured. This is the vice condemned . . . . (Emphasis added.)

In State v. Horn, 4 Ariz. App. 541, 422 P. 2d 172 (1967), the Arizona Court of Appeals held that, although the defendant had a license to sell vitamins, when he sold vitamins as a treatment for cancer he was guilty of practicing medicine without a license. The court relied on the ordinary definition of medicine for its holding that vitamins used in the treatment of disease are a medicine:

> Medicine as defined by Webster is "any substance administered in treatment of disease; a remedial agent; a remedy." The fact that the substance so employed may have value as food, and have a tendency to build up and restore wasted or diseased tissue will not deprive it of its character as a medicine if it be administered and employed for that purpose. (Emphasis added.) 4 Ariz. App. at p. 547.

In addition to violating A.R.S. section 32-925, prohibiting chiropractors from prescribing or administering any drug or medicine, and A.R.S. section 32-1455, prohibiting the unlicensed practice of medicine, a chiropractor who prescribes or administers vitamins for the treatment or cure of a disease is also guilty of violating A.R.S. section 32-1961, subsection A, prohibiting the sale or dispensing of any drug from one who is not a pharmacist. A.R.S. section 32-1961 provides that:

> A. It is unlawful for any person to manufacture, compound, sell or dispense any drugs or to dispense or compound the prescription orders of a medical practitioner, unless he is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist, except as provided in section 32-1921. (Emphasis added.)

Exceptions from the above provision are provided for in A.R.S. section 32-1921 for medical practitioners and certain retailers and wholesalers who hold a permit from the Arizona state board of pharmacy. A.R.S. section 32-1921 provides that:

Nothing contained in this chapter shall be construed to prevent:

1. The personal administration of drugs and devices kept for emergencies by a medical practitioner.

2. The sale of patent or proprietary medicines, when sold at retail in original packages by a person holding a permit under the provisions of this chapter.

3. The sale of drugs, at wholesale, by a wholesaler or manufacturer thereof, holding the required permit issued by the board, to a person holding the required permit issued under the provisions of this chapter. (Emphasis added.)

"Medical practitioner" as used in the above statute is defined in A.R.S. section 32-1901, paragraph 26, as follows:

26. "Medical practitioner" means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, or other person licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state. (Emphasis added.)

Therefore, under the above definition, a chiropractor is exempt from A.R.S. section 32-1921 only if he is an "other person authorized by law to use and prescribe drugs" for the treatment, diagnosis or prevention of sickness in human beings or animals.

The term "authorized by law" means as provided by legislative enactment. Kreiss v. Clerk of Superior Court, 111 Ariz. 373, 530 P. 2d 365 (1975). Since A.R.S. section 32-925 expressly prohibits chiropractors from prescribing or administering drugs, chiropractors do not fall within the class of persons exempted from A.R.S. section 32-1961.

Vitamins used in the treatment of disease are drugs for purposes of applying A.R.S. section 32-1921. The word drug as used in A.R.S. section 32-1921 is defined in A.R.S. section 32-1901, paragraph 13, subdivision (b) to include the following:

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals. (Emphasis added.)

The Arizona State Board of Pharmacy in its rules distinguishes when a vitamin product is deemed to be a drug and when it is not. A.C.R.R. R4-23-501 provides:

Classification of vitamin products:

1. The Board of Pharmacy hereby classifies as a non-drug product any vitamin product which is marketed only for the purpose of supplementing the diet, provided that the label supplies adequate information as to the normal intake of each vitamin contained in the preparation and the amount of each vitamin contained in the product and if the same be not held out for the treatment of any disease but merely as a food accessory, and provided, further, that the principal label of such product bears the additional conspicuous statement, to wit: "NOT FOR MEDICINAL USE".

2. Any vitamin preparation which is held out to be a treatment for any deficiency disease or for the correction of any symptom of disease, or for the prevention, mitigation or cure of disease, either by direct statement or by inference, is hereby classified as a drug within the meaning of the pharmacy act of the State of Arizona. (Emphasis added.)

This definition is in conformity with the common law definition of drug adopted in State v. Horn, 4 Ariz. App. 541, 422 P. 2d 172 (1967), which held that it is the use of the substance which determines whether it is a drug. This definition of drug in A.R.S. section 32-1901 is derived from the Federal Food, Drug and Cosmetic Act (52 Stat. 1041, 21 U.S.C. 301). In applying that definition, federal courts have always held that it is the use of the article which determines if a substance is a drug, Gadler v. U.S., 425 F. Supp. 244 (D. Minnesota 1977).

Therefore a chiropractor prescribing vitamins as a method of treatment is in violation of A.R.S. section 32-1961, in addition to being in violation of A.R.S. sections 32-925 and 32-1455.

Nutritional supplements

A chiropractor is not authorized to prescribe or administer nutritional supplements for the treatment, prevention or mitigation of disease.

Because, under the plain meaning of "drug" and "medicine" and the meanings of these terms as defined by judicial decision, any substance used in the treatment, prevention, mitigation or diagnosis of disease is a medicine or drug, there is no reason for treating such items labeled as nutritional substances any differently from vitamins. The above discussion relating to the administration and prescription of vitamins as constituting a violation of A.R.S. sections 32-925, 32-1455 and 32-1961 is also applicable to nutritional supplements.

Therapeutic nutrition

Your request does not give illustrations of "therapeutic nutrition". Therefore, in this memorandum, we will understand that term in its ordinary

dictionary meaning. "Therapeutic" means "relating to the treatment of disease". Therapeutic is derived from the Greek word "therapeia" or "medical treatment". "Therapy" means the "treatment of diseases by various methods". "Nutrition" is "the study of the food and drink requirements of human beings or animals". Stedman's Medical Dictionary (4th Unabridged Lawyer's ED.).

Therefore, it would seem that "therapeutic nutrition" would be the treatment of disease by the recommendation, prescription or administration of particular foods or drink or a particular diet.

A chiropractor is not authorized to prescribe particular foods or drinks or a diet for the treatment, prevention, mitigation or cure of a disease or ailment.

As we have stated in the beginning of this memorandum, A.R.S. section 32-925 limits the practice of chiropractic to adjustment by hand of the articulations of the spine. A chiropractor is not authorized to treat his patient by any other method.

A chiropractor who prescribes certain foods, food substances or diet for the purpose of treating or curing an ailment or disease is guilty of violating A.R.S. sections 32-925 and 32-1455.

Thus, in State v. Horn, 4 Ariz. App. 541, 422 P. 2d 172 (1967), a defendant who utilized diet to effect cure of skin cancer was guilty of practicing medicine without a medical license.

And in Pinkus v. MacMahon, 129 N.J.L. 367, 29 A. 2d 885 (1943), the New Jersey Supreme Court held that the owner of a health food store who recommended and prescribed diets as cures for ailments was guilty of practicing medicine without a license. In Pinkus a customer who visited the store complained of stomach pain and pressure around the heart. The store owner recommended that the customer abstain from starches and meats and eat more fruits and vegetables. The store owner also recommended to a customer that he abstain from table salt and eat more fruit and vegetables as a cure for an itch and gave that customer a package of vegetable broth. The store owner in Pinkus argued that one who merely sold food and food products could not be held guilty of practicing medicine without a license. The court, however, rejected that argument and held that the defendant had gone beyond mere selling when he diagnosed ailments and expressed an opinion as to their cause.

The Iowa Supreme Court in State v. Boston, 278 N.W. 291 aff'd. 284 N.W. 143 (Iowa 1939), relying on a statutory definition of chiropractic nearly identical to Arizona's, held that a chiropractor who recommended to a patient a specific course of diet as an independent remedy or means of treatment was practicing outside the scope of chiropractic and guilty of practicing medicine without a medical license. The pertinent statute and holding of the court is as follows:

The question presented is whether the district court correctly held that the use of these things in the treatment of human ailments was not chiropractice, but constitutes practice of medicine. Section 2555, Code 1935, so far as pertinent to this case, is in these words:

"2555. Chiropractic defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of chiropractic:

"1. * * *

"2. Persons who treat human ailments by the adjustment by hand of the articulations of the spine or by other incidental adjustments."

In this statute is found the only source of defendant's authority to treat human ailments. Likewise therein is a legislative definition of what such treating of human ailments consists, i.e., adjustment by hand of the articulations of the spine or other incidental adjustments. When defendant professed to use and used modalities other than those defined in section 2555, as curative means or methods, the conclusion seems unavoidable that he was attempting to function outside the restricted field of endeavor to which the Legislature has limited the practice of chiropractic. (Emphasis added.) 278 N.W. at p. 292.

The court in Boston enjoined the chiropractor from all modes of treatment other than adjustment by hand of the articulations of the spine.

In Boston the court also distinguished between the recommendation of diet for one's general health or well-being and the recommendation of a diet as a specific remedy or treatment for disease:

Wherefore it is ordered, adjudged and decreed that the defendant, Charles J. Boston, be and he hereby is forever enjoined from ... prescribing certain or specific course of diet for any patient as an independent remedy or means of treatment. Defendant is not enjoined from using his reasonable judgment in recommending to a patient certain changes in diet, exercise or such of his general habits as affect his health but is enjoined from prescribing any specific or certain course of diet as above set out. (Emphasis added.) 278 N.W. at p. 293.

Although the administration or prescription of vitamins, nutritional supplements, food substances and recommendations of diet for the treatment or cure of a disease or ailment, or as a specific remedy for such, is outside the scope of chiropractic practice, the prescription or

recommendation of vitamins, nutritional supplement or diet solely for nourishment is not prohibited.

Thus, advice to a nursing mother with respect to using canned milk in her diet was not practicing medicine. State v. Baker, 229 N.C. 73, 48 S.E. 2d 61 (1948). Also a "drugless practitioner" who prescribed food supplements containing wheat germ oil and capsules containing sea water was not practicing medicine absent evidence the preparations were used for the treatment of disease or other conditions. King v. Board of Medical Examiners, 151 P. 2d 282 (Cal. Ct. App. 1944).

Whether vitamins, nutritional supplements, food substances or diets are considered a mode of treatment, and so fall within the proscription in A.R.S. section 32-925 against the use of "drugs" or constitute the unlicensed practice of medicine as prohibited in A.R.S. section 32-1455, depends on the facts of each individual case, the test being the use of the article. Stewart v. Robertson, 45 Ariz. 143, 40 P. 2d 979 (1935).

We should point out that any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals is also a "drug" for purposes of the Federal Food, Drug and Cosmetic Act (52 Stat. 1040, 21 U.S.C. 301) and is subject to the provisions of that act and the rules issued pursuant to that act, including requirements of packaging, labeling, written warnings, etc. The provisions of the federal act are incorporated into state law. (See A.R.S. section 32-1901 et seq.)

Shortwave diathermy, infrared, ultraviolet and ultrasound therapies

Shortwave diathermy is the:

> therapeutic heating of the body tissues by means of an oscillating electromagnetic field of high frequency; the frequency varies from ten million to one hundred million cycles per minute and the wavelength from thirty to three meters. Dorland's Illustrated Medical Dictionary 439 (25th Ed. 1974).

Infrared therapy is the:

> thermal radiation of wavelength greater than that of the red end of the spectrum, between the red waves and the radio waves, having wavelengths between 7700 and 120,000 angstroms. Id. at 781.

Ultraviolet therapy uses:

> thermal radiation of wavelength beyond the violet end of the spectrum; rays of radiation between the violet rays and the roentgen rays, that is with wavelengths between 1800 and 3900 angstroms. They have powerful actinic and chemical properties. Id. at 1671.

Ultrasound is:

> mechanical radiant energy with a frequency greater than 20,000 cycles per second. Ultrasonic radiation is injurious to tissues because of the thermal effects when absorbed by living matter, but in controlled doses it is used therapeutically to selectively breakdown pathological tissues, as in treating arthritis. Id.

A chiropractor is not authorized to use shortwave diathermy, infrared, ultraviolet, ultrasound, or any other machine or instrument as a method of treatment.

As we have stated in the beginning of this memorandum, under A.R.S. section 32-925, the practice of chiropractic is limited to adjustment by hand of the spinal column.

A chiropractor who uses the above listed machines or instruments is in violation of A.R.S. section 32-925, limiting the practice of chiropractic, and also A.R.S. section 32-1455, prohibiting the practice of medicine without a medical license.

Although we have not located any Arizona cases on the use by chiropractors of such machines, other state courts, in interpreting chiropractic statutes nearly identical to Arizona's, have held that the use of such machines by chiropractors is not authorized.

The Iowa Supreme Court, relying on a statute defining chiropractor as "one who treats ailments by the adjustment by hand of the articulations of the spine or by other incidental adjustments", held that chiropractors were not authorized to use any mechanical or electrical means as an aid to, or preliminary to, the use of chiropractic, or for any other purpose. State v. Boston, 278 N.W. 291, aff'd. 284 N.W. 143 (Iowa 1939).

The court in Boston specifically enjoined the chiropractor from using electrotherapy, ultraviolet rays, infrared rays, radionics, traction tables, white lights, cold quartz, ultraviolet light, neuroelectric vitalizer, electric vibrator, galvanic current and sinusoidal current.

The Iowa Supreme Court, in another case, and relying on the same statutory definition of chiropractor, held that the use of ultrasonic machines did not come within the limited definition of chiropractic but constituted the unlicensed practice of medicine. Correll v. Goodfellow, 125 N.W. 2d 745 (Iowa 1964).

The South Carolina Supreme Court, relying on a statute that defined chiropractic as "the science of palpating and adjusting the articulations of the human spinal column", affirmed an opinion of the state Attorney General that "chiropractors are restricted to the use of the hands only, and that therapeutic methods such as diathermy, ultrasonic devices, and colonic

irrigations are outside the scope of chiropractic." Bauer v. State, 227 S.E. 2d 195 (S.C. 1976).

A federal court held that the use of chlorine gas inhalation therapy did not fall within the meaning of chiropractic since it in no way involved manipulation of joints by hand (notwithstanding that the statute also authorized "use of all necessary mechanical, hygienic, and sanitary measures incidental to care of the body"). United States v. 22 Devices, 98 F. Supp. 914 (S.D. Cal. 1951).

A statute defining chiropractic as the "art of permitting the restoration (of vertebrae) by placing in juxtaposition on the abnormal concrete positions of definite mechanical positions with each other by hand" did not authorize treatment by electricity and such treatment was the practice of medicine without a medical license. State Board of Medical Examiners v. De Baun, 147 A. 744 (N.J. 1929). The court in De Baun in so holding stated that:

> The specific use above referred to in no wise involved the function of hand manipulation. We are unable to conceive of any hypothesis. . . upon which the use of electricity in the matter stated is part of the practice of chiropractic. (Emphasis added.) 147 A. at p. 745.

Where a statute limited chiropractic practice to manipulation of the body and spinal column by hand, the use by a chiropractor of a machine called a concusser to cause light to shine in the eye was in violation of statute. State Board of Medical Examiners v. Blechschmidt, 142 A. 549 (N.J. 1928). The same court also held that a chiropractor giving electrical treatments using an electric vibrator and electric lamp exceeded authority as a licensed chiropractor and was practicing medicine without a medical license. Heintze v. New Jersey State Board of Medical Examiners, 153 A. 253 (N.J. 1931).

In addition to violating A.R.S. section 32-925, limiting the practice of chiropractic, and A.R.S. section 32-1455, prohibiting the practice of medicine without a license, a chiropractor who uses diathermy, infrared, ultraviolet or ultrasound therapy is also in violation of A.R.S. section 32-2041, subsection B which prohibits the practice of physical therapy by one who is not a licensed physical therapist. A.R.S. section 32-2041, subsection B provides:

> B. It is unlawful for any person who does not have a certificate, or whose certificate has lapsed or has been suspended or revoked, to practice, advertise or assume the title of physical therapist, physiotherapist or registered physical therapist, or to use the abbreviation P.T. or R.T. or any other words, letters or figures to indicate that the person using the same is a registered physical therapist. (Emphasis added.)

Physical therapy is defined in A.R.S. section 32-2001, paragraph 1, as follows:

> 1. "Physical therapy" means the treatment of a bodily or mental condition by the use of physical, chemical or other properties of heat, light, sound, water or electricity, or by massage and active and passive exercise, prescribed or authorized by a licensed physician, dentist or podiatrist, but does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes or the use of electricity for surgical purposes, including cauterization.

(This definition has been amended by Laws 1980, chapter 291, section 1, effective July 1, 1981.)

As diathermy, ultrasound, infrared and ultraviolet therapies utilize the use of heat, light and sound, a chiropractor who uses these treatments is also in violation of A.R.S. section 32-2041 if he does not have a physical therapist certificate.

We should point out that licensed naturopaths are permitted to practice physical therapy. Sanfilippo v. State Farm Mutual Automobile Insurance Co., 24 Ariz. App. 10, 535 P. 2d 38 (1975). Therefore, a chiropractor who is also a licensed naturopath may, by virtue of his naturopathic license, engage in the practice of physical therapy.

The above machines or instruments may also be considered "restricted devices" for purposes of the Federal Food, Drug and Cosmetic Act. Under Title 21, United States Code, section 360j, such medical devices may by federal regulation be restricted to use only upon authorization of a practitioner who is "licensed by law to administer such devices."

We have not been able to determine whether a chiropractor who possesses any of the above listed machines or instruments is in possession of a "prescription-only" drug and thus violating A.R.S. section 32-1969, subsection A, which provides that:

> A. It is unlawful for any person to sell, offer for sale, barter or otherwise dispose of, or be in possession of any prescription-only drugs, except under the following conditions:

1. Manufacturers, wholesalers, and pharmacies may sell, offer for sale, barter, or otherwise dispose of, or be in possession of for sale, under the provisions of sections 32-1921 and 32-1961 of this chapter, any prescription-only drugs.

2. Medical practitioners and pharmacists while acting in the course of their professional practice in good faith and in accordance with generally accepted medical standards. (Emphasis added.)

Under the above statute, if diathermy, ultrasonic, ultraviolet machines, etc. are deemed "prescription-only" drugs, a chiropractor in possession of such would be in violation of the statute. "Medical practitioner" as used in subsection A, paragraph 2 is defined in A.R.S. section 32-1901, paragraph 26 and does not include chiropractors:

> 26. "Medical practitioner" means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian or other person licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state.

"Drug" is defined in A.R.S. section 32-1901, paragraph 13, as follows:

> 13. "Drug" means":
>
> * * *
>
> (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.
>
> (c) Articles other than food intended to affect the structure or any function of the body of man or other animals. (Emphasis added.)

A "prescription-only drug" is defined in A.R.S. section 32-1901, paragraph 40, as follows:

> 40. "Prescription-only drug" does not include a controlled substance but does include:
>
> (a) Any drug which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.
>
> (b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.
>
> (c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.
>
> (d) Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "caution: federal law prohibits dispensing without prescription". (Emphasis added.)

Because the above listed machines are "articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man" and are "articles intended to affect the structure or function of the body of man" such machines or instruments fall within the definition of "drug". If such instruments or machines also are deemed "prescription-only drugs" because of any of the provisions in A.R.S. section 32-1901, paragraph 40, subdivision (a), (b), (c), or (d), a chiropractor in possession of such machines would be in violation of A.R.S. section 32-1969.

A.R.S. section 32-1901, paragraph 39 contains a definition of "prescription-only device": (effective 7/1/81)

> 39. "Prescription-only device" includes, but is not limited to:
>
> (a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.
>
> (b) Any device required by the federal act to bear on its label essentially the legend, "caution: federal law prohibits dispensing without prescription".

As the term "prescription-only device" does not appear in the text of the act, even though it is defined, we do not know if the intent of the statute is to make "prescription-only drug" and "prescription-only device" synonymous terms.

Cryotherapy, hot and cold packs, traction (including motorized traction)

> Cryotherapy is "the therapeutic use of cold". Dorland's Illustrated Medical Dictionary 380 (25th Ed. 1974).
>
> Traction is the "act of drawing or exerting a pulling force." Id. at 1628.
>
> Orthopedic means "pertaining to the correction of deformities." Id. at 1099.

As we have stated in the beginning of the memorandum, the definition of chiropractic in A.R.S. section 32-925 authorizes only one method of treatment--adjustment by hand of the articulations of the human spine. As the above modalities are not an authorized method of treatment, a chiropractor who uses such methods of treatment is in violation of A.R.S. section 32-925.

In addition, because practice of medicine is defined in A.R.S. section 32-1401, paragraph 9 as "the diagnosis, treatment or correction, or attempt to, or the holding of oneself out as being able to diagnose, treat, correct any and all human diseases, injuries, ailments, or infirmities, whether physical or mental, organic or emotional, by any means, methods, devices, or

instrumentalities", a chiropractor who does not hold a medical license using means or methods outside the scope of chiropractic appears to also be in violation of A.R.S. section 32-1455, prohibiting the practice of medicine without a medical license. In State v. Boston, 278 N.W. 291, aff'd., 284 N.W. 143 (Iowa 1939), the court enjoined a chiropractor from using traction tables, relying on a statutory definition of chiropractic, nearly identical to Arizona's statute.

Also because cryotherapy and hot and cold packs are treatments that use the properties of heat and cold, such treatments fall within the definition of physical therapy in A.R.S. section 32-2001, paragraph 1, and a chiropractor using these treatments appears to be in violation of A.R.S. section 32-2041, subsection B, which prohibits the practice of physical therapy without a physical therapy certificate. Also the use of traction may constitute practice of physical therapy. (See discussion on shortwave diathermy, infrared, ultraviolet and ultrasound therapies.)

Laboratory analysis of urine samples and hair samples

A.R.S. section 36-471, subsection A prohibits a person who is not a licensed physician or not authorized by law from manipulating a person for the collection of specimens. A.R.S. section 36-471, subsection A provides:

> No person other than a licensed physician or one authorized by law shall manipulate a person for the collection of specimens or human blood except that technical personnel of a laboratory may collect blood, or remove stomach contents, or collect material for smears and cultures or inject substances under the direction or upon the written request of a licensed physician. (Emphasis added.)

Under A.R.S. section 36-470, a clinical laboratory is authorized to examine specimens only at the request of a physician authorized to practice medicine and surgery or other person permitted by law to use the findings of laboratory examinations. A.R.S. section 36-470, subsection A provides:

> A. Except as otherwise provided, a clinical laboratory shall examine specimens only at the request of a person licensed pursuant to title 32, chapter 13, 17 or 29 or other person permitted by law to use the findings of laboratory examinations. (Emphasis added).

The Arizona Attorney General has issued an opinion which simply states that, chiropractors are permitted by law to request laboratory examinations, receive reports of laboratory findings and manipulate persons by non-surgical procedures for the collection of specimens for laboratory examination because the legislature intended that the practice of chiropractic include the use of findings of laboratory examinations when it amended A.R.S. section 32-922, subsection B to require study and training in diagnosis, including physical, clinical, x-ray and laboratory subjects. Op. Atty. Gen. R79-213, I81-002 (January 5, 1981).

In recent cases from other states, however, chiropractors have unsuccessfully attempted to argue that, notwithstanding the statutory limitation on the practice of chiropractic, statutes which require applicants for a chiropractic license to pass examinations on the subjects of laboratory procedures, diagnostic procedures, pathology, etc. evidence legislative intent to authorize chiropractors to make diagnostic tests to determine if a patient's disease is one which can be treated by chiropractic methods. This argument has been rejected by the courts. We have located no cases where the court agreed with this argument.

In Spunt v. Fowinkle, 572 S.W. 2d 259 (Ct. App. Tenn. 1978), the definition of chiropractic was limited to manipulation of the spine, and a chiropractor argued that, because chiropractors were trained and qualified to perform pap smears and take blood samples, and that they were necessary only for the purpose of making a differential diagnosis to determine whether or not an individual patient had a condition appropriate and safe to treat, the taking of such samples was authorized. The court rejected his arguments and ruled that such procedures did not fall within the practice of chiropractic and constituted unauthorized practice of medicine.

In Bauer v. State, 227 S.E. 2d 195 (S.C. 1976), where the statute defined chiropractic as the "science of palpatating and adjusting the articulations of the human spinal column by hands", the court held that chiropractors were restricted to treatment of ailments of the human body to use of hands only, notwithstanding the teachings of chiropractic schools and the requirements of chiropractic licensing examinations. In the words of the court:

> The teachings of approved chiropractic schools and practices of various chiropractors are of no concern because the practice of chiropractic is subject to the control of the legislature. 227 S.E. 2d at p. 197.

Op. Atty. Gen. R79-213, I81-002 provides authority for chiropractors to request laboratory examinations, receive reports of laboratory findings and manipulate persons by non-surgical procedures for the collection of specimens for laboratory examination. It is important to note, however, that courts in other jurisdictions have held that the statutory definition of the practice of chiropractic was not enlarged by the legislature to include taking specimens by requiring study in laboratory subjects. Whether or not A.R.S. section 32-922, subsection B which sets forth the subjects contained in the examination for a chiropractic license authorized the taking of laboratory specimens should be determined by a court. *

*We also note that the Board of Chiropractors has enlarged the statutory definition of the practice of chiropractic in its rules. A.C.C.R. R4-7-01 provides as follows:

> 7. "Practice of Chiropractic" means the diagnosis, prognosis and treatment by chiropractic methods which includes those procedures preparatory to and complementary

con't
to an adjustment by hand of the articulations of the spinal column and the normal chiropractic regimen and rehabilitation of the patient as taught in accredited chiropractic schools and colleges.

8. "Diagnosis" means the physical, clinical and laboratory examination of the patient, and the use of x-ray for diagnostic purposes, as taught in accredited chiropractic schools and colleges. (Emphasis added.)

A statute cannot be changed by administrative regulations. Arizona Power Co. v. Stuart, 212 F. 2d 535 (1954). A regulation which operates to create a rule out of harmony with the statute is a mere nullity. Lynch v. Tilden Produce Co., 265 U.S. 315, 44 S. Ct. 488, 68 L. Ed. 1034 (1924).

Where a statute expressly defines certain words and terms used in the statute, the court is bound by the legislative definition. Pima County v. School District No. One of Pima County, 78 Ariz. 250, 278 P. 2d 430 (1954).

Since A.C.R.R. R4-7-01 enlarges the statutory definition of the practice of chiropractic to include diagnosis, prognosis and treatment as taught in accredited chiropractic schools and colleges, a court might hold this rule to be void as an invalid exercise of the board's statutory powers.

In Kentucky Ass'n., etc. v. Jefferson City Medical Society, 549 S.W. 2d 817 (1977), the Kentucky Supreme Court held a regulation invalid under circumstances nearly identical to those surrounding Arizona's regulation.

In Kentucky Ass'n., etc., the Kentucky statute defined chiropractic as "the science of locating and adjusting the subluxations of the articulations of the human spine and the adjacent tissues." A Kentucky statute also required applicants for a chiropractic license to take examinations in "anatomy, physiology, pathology, histology, hygiene, bacteriology, chemistry, chiropractic orthopedics, diagnosis, the use and effects of x-rays, and chiropractic principles and practices as taught in chiropractic schools and colleges." The Kentucky Chiropractic Board issued a regulation which provided that "/c/hiropractors may examine, analyze, and diagnose the patient and his diseases by the use of any physical, chemical, or thermal methods reasonably appropriate to the case."

The Kentucky Supreme Court held that the regulation was void as an attempt to go beyond the statutory definition of chiropratic as originally enacted and amended and did not authorize the collection of specimens and submission of them to a laboratory. The court stated:

> The original statutory definition of chiropractic gives absolutely no authorization for the collection and submission of human specimens to a medical laboratory. We can find no evidence from the definition as originally worded of any intent of the General Assembly to authorize any activity by chiropractors involving medical laboratories. 549 S.W. 2d at p. 821.

X-rays

The use of x-rays for therapeutic treatment is clearly unauthorized for the reasons stated in our discussions of diathermy machines, etc., supra.

Whether the use of x-rays for diagnostic purposes is authorized is more difficult to answer. As we have stated in the beginning of this memorandum, A.R.S. section 32-925, defining the practice of chiropractic, only authorizes a chiropractor to use manual adjustments of the spinal column.

Also A.R.S. section 32-1401, paragraph 9 defines the practice of medicine to include "the diagnosis . . . or the attempt to, or the holding of oneself out as being able to diagnose . . . all human diseases, injuries, ailments or infirmities. . . ."

It thus becomes necessary to answer the question of whether or not a chiropractor under the above statutes is prohibited from using machines or instruments for diagnostic purposes, as opposed to therapeutic purposes. We have not located any case law on this question, but it is a rule of statutory construction that a statutory definition should be given a definition consonant with the ideas prevailing at its enactment. Maricopa County and Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co., 39 Ariz. 65, 4 P. 2d 369 (1931).

At the time of the enactment of A.R.S. section 32-925 it was understood that chiropractic practice did not include the use of machines. "There are no instruments used, the treatment being by hand only." State v. Boston, 226 Iowa 429, 284 N.W. 143 (1938).

Also, it appears that, at the time of enactment of the statutory definition of chiropractic, it was the theory of chiropractors that all diseases and illnesses were due to one cause--a dislocation of one or more of the spinal vertebrae. Lawyers Medical Encyclopedia, supra at sect. 1.20. This theory excludes diagnostic methods altogether.

In addition, we believe there is no reason for distinguishing diagnostic machines from therapeutic machines or machines or instruments used in treatment. By limiting chiropractic practice to manual adjustment of the hands we believe that the legislature intended to exclude the use of instruments and machines from chiropractic practice.

It is our opinion that chiropractors were not authorized to take x-rays prior to August 27, 1977.

Laws 1977, chapter 145, section 10, which became effective August 27, 1977, provided for the regulation and licensing of radiologic technologists. This act added A.R.S. section 32-2811, which prohibits the use of x-rays on a human by anyone who is not a licensed practitioner or

licensed radiologic technologist operating under the direction of a licensed practitioner. A.R.S. section 32-2811, subsection A, provides:

> A. No person may use x-radiation on a human being unless such person is a licensed practitioner or the holder of a certificate as provided in this chapter.

"Licensed practitioner" is defined in A.R.S. section 32-2801, paragraph 6 as follows:

> 6. "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic, podiatry or naturopathy in this state. (Emphasis added.)

Reading these two provisions alone, a chiropractor is a licensed practitioner authorized to use x-rays on human beings.

However, A.R.S. section 32-2811, subsection C sets forth a mandatory direction that in construing the meaning of this chapter no provision should be construed to enlarge in any respect the practice of licensed practitioners. This provision states:

> C. Nothing in the provisions of this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.

It is clear that A.R.S. section 32-2801, paragraph 6 does enlarge the practice of chiropractic defined in A.R.S. section 32-925.

We cannot say whether or not a court would conclude that the legislature intended to enlarge the practice of chiropractic to include the taking of x-rays.

Orthopedic, neurological and kinesiological examinations

Orthopedic means "pertaining to the correction of deformities." Neurology means "that branch of medical science which deals with the nervous system." Kinesiology is the "study of motion of the human body." Dorland, supra.

A.R.S. section 32-925 defines the practice of chiropractic as adjustment by hand of the articulations of the spine. We have not located any case law that has decided to what extent this definition would, if at all, limit the scope of the chiropractor when making a diagnosis, as opposed to applying a particular mode of treatment.

Practice of medicine is defined in A.R.S. section 32-1401, paragraph 9 to include "the diagnosis . . . or the holding of oneself out as being able to

diagnose . . . any and all human diseases, injuries, ailments or infirmities, whether physical or mental, organic or emotional, by any means, methods, devices, or instrumentalities." (Emphasis added.)

Under A.R.S. section 32-1401, medical and osteopathic physicians and surgeons are unlimited in the scope of their practice. Gates v. Kilcrease, 66 Ariz. 328, 188 P. 2d 247 (1947). In Gates, the court pointed out that chiropractors are limited in their practice.

Reading A.R.S. sections 32-1401 and 32-925 together, we believe that a chiropractor may use only those diagnostic procedures which he reasonably believes would be necessary to detect abnormalities or misalignments of the spine. A chiropractor who uses diagnostic procedures to detect ailments or diseases other than those related to the spine, or who holds himself out as being able to diagnose ailments or diseases other than those related to the spine, is engaged in the unauthorized practice of medicine.

Under Arizona law only licensed medical and osteopathic doctors and physicians are authorized to diagnose any and all diseases and ailments. To hold that a chiropractor may make diagnostic examinations for the purpose of detecting diseases or ailments that are not causally related to abnormalities of the spine would expand chiropractic practice to include a diagnostic field as broad in scope as that of these licensed physicians. We do not believe that this was the legislative intent at the time of the enactment of A.R.S. section 32-925, it being the original chiropractic doctrine that most if not all human ailments result from a misalignment or subluxations of contiguous vertebrae. England v. Louisiana State Bd. of Med. Examiners, 246 F. Supp. 993 (E. D. La. 1965).

Whether a particular examination is one reasonably related to uncovering the cause or existence of spinal abnormality is dependent on the particular facts of each individual examination.

A chiropractor goes beyond the practice of chiropractic and enters the field of practice of medicine or osteopathy when he assumes to diagnose any and all diseases. Thus a chiropractor making orthopedic, neurological or kinesiological examinations to diagnose diseases or ailments not reasonably related to abnormalities of the spine is in violation of A.R.S. section 32-925, limiting chiropractic practice, and A.R.S. section 32-1455, prohibiting the practice of medicine without a medical license.

Orthopedic supplies

Since A.R.S. section 32-925 limits chiropractic treatment to adjustment by hand of articulations of the spinal column a chiropractor is not authorized to use or prescribe orthopedic supports.

Acupressure

Acupressure is the "compression of a bleeding vessel by inserting needles into the adjacent tissue." Dorland, supra.

Severing or penetrating the skin with a needle is a form of minor surgery. For this reason, the Attorney General has stated that chiropractors may not use needles to draw blood specimens. 63 Op. Atty. Gen. 85-L (1963). As A.R.S. section 32-925 limits chiropractic practice to the use of the hands only, a chiropractor inserting needles into a patient is in violation of A.R.S. sections 32-925 and 32-1455.

If acupressure is understood to mean the application of pressure by use of the hands for the purpose of adjusting the spine, such procedure would be within the authorized scope of chiropractic.

PART II - CHIROPRACTIC PRACTICE AFTER JULY 1, 1981.

Laws 1980, chapter 191, sections 5 and 6 repeals existing A.R.S. section 32-925 and replaces it with a new section 32-925, which provides as follows:

> 32-925. Practice of chiropractic; limitations
> A. THE PRACTICE OF CHIROPRACTIC INCLUDES:
> 1. THAT PRACTICE OF HEALTH CARE WHICH DEALS WITH THE DETECTION OF SUBLUXATIONS, FUNCTIONAL VERTEBRAL DYSARTHROSIS OR ANY ALTERATION OF CONTIGUOUS SPINAL STRUCTURES.
> 2. THE CHIROPRACTIC ADJUSTMENT AND THOSE PROCEDURES PREPARATORY AND COMPLEMENTARY TO THE ADJUSTMENT OF THE SPINE AND ITS ARTICULATIONS FOR THE RESTORATION AND MAINTENANCE OF HEALTH.
> 3. THE USE OF X-RAY AND OTHER ANALYTICAL INSTRUMENTS GENERALLY USED IN THE PRACTICE OF CHIROPRACTIC.
> B. A PERSON LICENSED UNDER THIS CHAPTER SHALL NOT PRESCRIBE OR ADMINISTER MEDICINE OR DRUGS, USE X-RAYS FOR THERAPEUTIC PURPOSES OR PRACTICE ANY BRANCH, INCLUDING OBSTETRICS, OF MEDICINE AND SURGERY OR OF OSTEOPATHIC MEDICINE AND SURGERY OR NATUROPATHY UNLESS SUCH PERSON IS OTHERWISE LICENSED THEREFOR AS PROVIDED BY LAW. (Emphasis added.)

This provision became effective July 1, 1981.

We believe that the practices and services identified as unauthorized in part I of this memorandum are also unauthorized under the above provision except for:

1. The use of x-rays.

Subsection A, paragraph 3 of the above provision expressly authorizes the use of x-rays.

2. The use of instrument or machines.

Subsection A, paragraph 3 of the above provision also expressly authorizes the use of "analytical instruments". The term "analytical" is not defined in this chapter in which this section appears.

The ordinary dictionary meaning of "analytical" is "the separation or breaking up of a whole into its fundamental elements or component parts" or "a detailed examination of anything complex, made in order to understand its nature or determine the essential feature"; "the separation of compound substances into their constituent by chemical processes"; "the separation of compound substances into their constituents by chemical process"; "the determination, which may or may not involve actual separation, of one or more ingredients of a substance either as to kind or amount"; "the statement of the amount or percent of each fundamental ingredient present in a mixture." Webster's, supra, at 77.

As used in paragraph 3 of the above provision, the term "other analytical instruments" appears to refer to other instruments of which x-ray instruments are an example.

The above dictionary meanings of "analytical", however, do not seem descriptive of x-ray instruments. It is unclear whether "other analytical instruments" means any diagnostic instruments, such as x-ray machines, or includes laboratory instruments that are used for chemical analysis, as the dictionary meaning of the term "analytical" indicates.

The above provision also limits analytical instruments to those "generally used in the practice of chiropractic." As "practice of chiropractic" is defined in paragraphs 1 and 2 of subsection A, "analytical instruments generally used in the practice of chiropractic" may be taken to be understood as instruments used for the "detection of subluxations, functional vertebral dystharsis or any alteration of contiguous spinal structures" or instruments used "preparatory and complementary to the adjustment of the spine and its articulations for the restoration and maintenance of health."

Paragraph 3 of subsection A cannot be understood to authorize the use of any instruments generally used by chiropractic practitioners, as this would allow chiropractors to define the practice of chiropractic, an unconstitutional delegation of legislative power.

The term "analytical instrument" should be defined by statute. It is not clear whether the legislature by this term meant to include all diagnostic instruments, or diagnostic instruments limited to the detection of abnormalities of the spine, and instruments used preparatory and complementary to spinal adjustment. The phrase "generally used in the practice of chiropractic" is legally circuitous and misleading, as it appears on its face to authorize an unconstitutional delegation of power. It is noted that the provision authorizing "use of x-ray and other analytical instruments generally used in the practice of chiropractic" is adopted from a Washington state statute. We have located no cases interpreting that provision.

CONCLUSION:

Vitamins

A chiropractor who prescribes or administers vitamins for the treatment, prevention, mitigation or cure of disease, including a vitamin deficiency, may violate A.R.S. sections 32-925 and 32-1455.

Violation of A.R.S. section 32-925 is a class 2 misdemeanor, punishable by a maximum sentence of four months and a maximum fine of $750. Violation of A.R.S. section 32-1455 is a class 5 felony, punishable by a maximum sentence of two years and a maximum fine of $150,000.

A chiropractor who dispenses vitamins may be in violation of A.R.S. section 32-1961. A violation of A.R.S. section 32-1961, if committed without intent to defraud or mislead, is a class 2 misdemeanor; if committed with intent to defraud or mislead, it is a class 5 felony.

The sale or dispensing of vitamins should also be in conformity with the Federal Food, Drug and Cosmetic Act.

Nutritional supplements and diet

A chiropractor administering or recommending food supplements or a particular diet may be in violation of A.R.S. sections 32-925 and 32-1455.

Diathermy, infrared, ultraviolet or ultrasound therapies

A chiropractor using diathermy, infrared, ultraviolet or ultrasonic machines may be in violation of A.R.S. sections 32-1455 and 32-925.

He may also be in violation of A.R.S. section 32-2041, subsection B as practicing physical therapy without a license, a class 3 misdemeanor which is punishable by a maximum fine of $500 and a maximum sentence of 30 days.

A chiropractor in possession of such machines may also be in violation of A.R.S. section 32-1901, as in possession of a prescription-only drug. Future federal regulations may restrict the use of such machines to certain licensed practitioners only.

Cryotherapy, hot and cold packs and motorized traction

A chiropractor using cryotherapy, hot and cold packs or motorized traction may be in violation of A.R.S. sections 32-925, 32-1455 and 32-2041.

Laboratory analysis of urine samples and hair samples

The Attorney General has issued an opinion which states that chiropractors are permitted by law to request laboratory examinations, receive reports of laboratory findings and manipulate persons by non-surgical procedures for the collection of specimens for laboratory examinations. It is unclear whether or not a court would hold that the legislature enlarged the statutory definition of the practice of chiropractic to include taking specimens when it amended A.R.S. section 32-922, subsection B to require study and training in diagnosis, including physical, clinical, x-ray and laboratory subjects.

When the legislature enacted Laws 1980, chapter 191, sections 5 and 6 it expressly enlarged the statutory definition of the practice of chiropractic to include the use of x-rays and other analytical instruments generally used in the practice of chiropractic. It is not clear whether the legislature by the use of the term "analytical instrument" meant to include all diagnostic instruments, or diagnostic instruments limited to the detection of abnormalities of the spine, and instruments used preparatory and complementary to spinal adjustment.

X-rays

It is clear that, prior to August 27, 1977, chiropractors were not authorized to take x-rays, and this practice would have been a violation of A.R.S. sections 32-925 and 32-1455.

After August 27, 1977, it is not clear whether the legislature intended in A.R.S. sections 32-2811 and 32-2801, paragraph 6, as added by Laws 1977, chapter 145, to authorize the taking of x-rays by chiropractors.

Since July 1, 1981, the practice of chiropractic has included the use of x-rays for diagnostic purposes.

Orthopedic, neurological and kinesiological examinations

A chiropractor may make use of an orthopedic, neurological or kinesiological examination of the patient only to the extent that such examination is for the purpose of uncovering the cause or existence of a misalignment of the spine. Beyond this, such examinations would constitute a violation of A.R.S. sections 32-925 and 32-1455.

Orthopedic supplies

A chiropractor who administers or recommends orthopedic supplies may be in violation of A.R.S. sections 32-925 and 32-1455.

Acupressure

Whether or not acupressure is within the scope of authorized chiropractic practice depends on the definition of acupressure.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX II

LEGISLATIVE COUNCIL OPINION (O-81-90)

SEPTEMBER 11, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

September 11, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-90)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated August 27, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-922.01 provides for the licensure of chiropractors without examination by comity.* A.R.S. section 32-924, subsection A, paragraphs 1 through 7 prescribes certain grounds for censure, supervision, revocation or refusal to issue a license to practice chiropractic.

QUESTIONS PRESENTED:

1. Does the state board of chiropractic examiners (board) have the authority to refuse to license an applicant by comity who has been placed under probation or is otherwise restricted in his practice in another state?

2. Does the board have the authority to refuse to license an applicant by comity who (a) has had his license suspended in one state and, at the same time, (b) has a license in good standing issued by a second state which was obtained by examination.

3. Is the requirement for an "examination by a licensing board in another state" satisfied if a national board prepares and grades the examination and the responsible state licensing board organizes and supervises the sitting? If yes, is the requirement still satisfied if the applicant was licensed in that state on the basis of a national board examination taken in another state?

*Please note that despite the reference in the section heading for A.R.S. section 32-922.01 and the language in the stated fact situation received by this office relating to "reciprocity", the correct reference here should be to licensure by comity, rather than to licensure by reciprocity. A reciprocal licensing law, following Black's Law Dictionary 1142 (5th ed. 1979), refers to a statute by which one state extends rights and privileges to the citizens of another state if such state grants similar privileges to citizens of the first state. As noted in Black's Law Dictionary, id. at 242, comity is the recognition that one entity allows within its territory to certain legislative, executive or judicial acts of another entity, having due regard for the rights of its own citizens. The granting of licensure by comity in Arizona to the residents of any state "X" does not require that state "X" grant similar privileges to Arizona residents.

4. Can the board refuse to issue a license by comity or take any other disciplinary action cited under A.R.S. section 32-924, subsection A if the applicant committed the violation in question in another state?

5. Is there a statute of limitations which precludes the board from imposing disciplinary sanctions on an applicant? Can the board refuse an applicant a license if the offense occurred beyond a certain point in time?

ANSWERS:

1. Yes.

2. Yes.

3a. Yes.

b. Yes.

4a. With respect to whether the board could refuse to issue a license by comity if the applicant committed the violation in question in another state, the answer is yes.

b. With respect to whether the board could take any other disciplinary sanctions (other than declining to issue a license under A.R.S. section 32-924) against an applicant for licensure by comity, the answer is no.

5a. With specific reference to whether there is a statute of limitations which precludes the board from imposing disciplinary sanctions on an applicant, the answer is no. More importantly, however, the board does not have any authority to impose such sanctions, other than refusing to issue the license, in the first place.

b. With respect to whether the board has the formal statutory authority to refuse to issue a license to an applicant for licensure by comity because of certain acts occurring in the past which would be offenses under A.R.S. section 32-924, the answer is yes. Given the due process requirements of A.R.S. section 32-924 which the board must follow in determining not to issue a license in such circumstances, it is likely that this authority would be cautiously exercised.

DISCUSSION:

1. If the applicant otherwise complies with the three qualifications of A.R.S. section 32-922.01 and the board chooses to find compliance with the good character and reputation requirement of A.R.S. section 32-921, subsection B, then the answer is no. The board could, however, determine that placement on probation or being otherwise restricted in the scope of licensure in another state would constitute noncompliance with the good character and reputation requirement of A.R.S. section 32-921, subsection B. In this context, the board would have the authority to refuse to license an applicant by comity who has been placed on probation or is otherwise restricted in his practice in another state. Whether the board would choose to decline to license an applicant by comity depends, in the final analysis, on the fact situation involved. The law can be properly applied only after a close examination of the facts and is properly left to the administrative authority in the first instance and to the courts in the second.

Administrative agencies are creatures of legislation without inherent or common law powers. The general rule applied to statutes granting powers to administrative agencies is that they have only those powers that are conferred either expressly or which can be derived by necessary implication. Sutherland, Statutes and Statutory Construction, section 65.02 (4th ed., Sands, 1972); Corporation Commission v. Consolidated Stage Company, 63 Ariz. 257, 161 P.2d 110 (1945); Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946). The board must follow the provisions of the Arizona Revised Statutes in exercising its administrative powers and duties relating to licensure by comity, as well as with respect to every other matter. Generally the contemporaneous and practical construction of the statutes by an administrative agency will be followed unless the construction is unreasonable and clearly erroneous. See DeWitt v. Magma Copper Co., 16 Ariz. App. 305, 492 P.2d 1243 (1972).

A.R.S. section 32-922.01 provides:

> 32-922.01. Reciprocity
>
> The board shall issue a license to practice chiropractic without examination to an applicant who:
>
> 1. Possesses a current, unrevoked, unsuspended license to practice chiropractic issued after examination by a licensing board in another state; and
>
> 2. Has engaged in the practice of chiropractic for three years immediately preceding application for license; and
>
> 3. Intends to reside and practice chiropractic in this state.

Use of the word "shall" in the above section imposes a mandatory duty on the board to take the actions specified. It is an elementary principle of statutory construction that each word in a statute will be given effect. Sutherland, id., section 46.06; State v. Superior Court In and For Maricopa County, 113 Ariz. 253, 540 P.2d 1234 (1975).

A.R.S. section 32-921 provides in full that:

> 32-921. Application for license; qualifications of applicant; fee
>
> A. A person desiring to practice chiropractic in this state shall, at least thirty days prior to any meeting of the board, make written application to the board upon a form and in the manner prescribed by the board.
>
> B. To be eligible for an examination and licensure, the applicant shall be:
>
> 1. A person of good character and reputation.
>
> 2. A graduate of a regularly accredited four-year high school, or shall have equivalent education sufficient to satisfy the requirements for matriculation in the University of Arizona.
>
> 3. A graduate of a chiropractic school or college, accredited by or having status with the council on chiropractic education or having the equivalent of such standards as determined by the board, teaching a resident course of four years of not less than nine months each year, or the equivalent of thirty-six months of continuous study, comprising not less than four thousand sixty-minute class hours of resident study for the granting of

a degree of doctor of chiropractic (D.C.), or file with the board a photostatic copy of a diploma issued by a legally chartered chiropractic school or college, the requirements of which at the time of granting such diploma were not less than those prescribed by the Arizona chiropractic act in force since March 18, 1921, together with certified proof of having been engaged in the active practice of chiropractic for a term of at least ten years immediately prior to the filing of application for examination.

4. Physically and mentally able to practice chiropractic skillfully and safely.

C. The board may refuse to give an examination to an applicant who:

1. Fails to qualify for an examination under subsection B; or

2. Has engaged during the period of two years next preceding his application in conduct constituting grounds for suspension pursuant to section 32-924.

D. On making application, the applicant shall pay to the secretary-treasurer of the board a nonrefundable fee of one hundred dollars. The board shall keep a register of all applicants and the result of each examination. (Emphasis added.)

While A.R.S. section 32-922.01 does not specifically require an application and payment of a fee in order to receive a license without examination, a reasonable construction of the statute leads to the conclusion that an application and fee would be required. Consequently, it can be justifiably argued that the provisions of A.R.S. section 32-921, save for the examination provisions, apply to the licensure of chiropractors pursuant to the comity provisions of A.R.S. section 32-922.01. As Sutherland, id., section 45.12, notes:

> It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. It is . . . a "well established principle of statutory interpretation that the law favors rational and sensible construction . . . ."

An applicant for licensure without examination pursuant to the comity provisions of A.R.S. section 32-922.01 must adhere to the application requirements of A.R.S. section 32-921. The applicant could be rejected by the board for failure to comply with any of the requirements of A.R.S section 32-921. Probation or being otherwise restricted in the scope of practice in another state could be viewed by the board as a failure to comply with the good character and reputation requirements of A.R.S. section 32-921, subsection B, paragraph 1.

2. Yes, but the board would not be statutorily required to do so. A.R.S. section 32-922.01 requires only that, among other things, an applicant possess "/a/ current, unrevoked, unsuspended license to practice chiropractic issued after examination by a licensing board in another state . . ." (emphasis added). The mere fact that an applicant for chiropractic licensure by comity is the holder of a suspended license from one state does not make the application defective under A.R.S. section 32-922.01 as long as the applicant is also the holder of a license in good standing issued by a second state which was obtained by examination. However, in order to be eligible for licensure by comity, an

applicant must also comply with the provisions of A.R.S. section 32-921 as noted above. The board could find that an applicant who might be classified under the fact situation in question 2 does not meet the good character and reputation test of A.R.S. section 32-921, subsection B, paragraph 1. In such circumstances the board could decline to issue a license pursuant to the comity provisions of A.R.S. section 32-922.01.

3a. Yes. A.R.S. section 32-922.01 only requires, in pertinent part, that an applicant for licensure by comity hold a current, valid license to practice chiropractic issued "after examination by a licensing board in another state." The statute does not specify that any particular type of examination is required. As long as another state chiropractic board has approved the use of an examination prepared and graded by a national board as sufficient proof of examination for state purposes, the requirement in A.R.S. section 32-922.01 for "examination by a licensing board in another state" would be satisfied.

b. Yes. Again, A.R.S. section 32-922.01 only requires, in pertinent part, that an applicant for licensure by comity hold a valid, current license to practice chiropractic issued "/a/fter examination by a licensing board in another state". It is, as noted earlier, an elementary principle of statutory construction that each word in a statute will be given effect. Sutherland, id., section 46.06; State v. Superior Court In and For Maricopa County, 113 Ariz. 253, 540 P.2d 1234 (1975). The clear purpose of the examination requirement in A.R.S. section 32-922.01 is that an applicant for licensure by comity in this state has taken and passed an examination for licensure in another state. This requirement is satisfied when, in the absence of clear statutory language to the contrary, an applicant for licensure by comity in Arizona has taken and passed a national board examination for licensure (approved by the responsible state licensing board) in any state "X" and subsequently secures a license to practice chiropractic in state "Y" on the basis of the national board examination taken in state "X". The Arizona license to practice chiropractic pursuant to the comity provisions of A.R.S. section 32-922.01 would, in the fact situation given, be granted on the basis of the examination taken and passed in state "X".

4. In order to answer both parts of this question, it should be briefly noted that the several states license and regulate certain professions and occupations as a function of their inherent police powers under the 10th Amendment to the United States Constitution. As defined by Black's Law Dictionary 1041 (5th ed. 1979), "police power" is:

> /T/he power of the State to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. The police power is subject to limitations of the federal and State constitutions, and especially to the requirement of due process. Police power is the exercise of the sovereign right of a government to promote order, safety, health, morals and general welfare within constitutional limits and is an essential attribute of government. (Citation omitted.)

A state may statutorily exercise its inherent police powers to license and otherwise regulate certain professions and occupations in the interests of the public health and safety primarily within its own territorial boundaries.

The board has jurisdiction, under A.R.S. Title 32, chapter 8, over the licensure and regulation of the chiropractic profession in Arizona. The proper forum to determine the accuracy of any allegation concerning the professional competence of a chiropractor is the state in which the incident is alleged to have occurred.

a. With respect to whether the board can refuse to issue a license by comity under A.R.S. section 32-922.01 for violations of A.R.S. section 32-924, subsection A, committed in another state, the answer is yes. A.R.S. section 32-924 provides:

> 32-924. Grounds for censure, suspension, revocation or refusal to issue license; hearing; reinstatement; fines; appeal
>
> A. The board may issue an order of censure, and fine a licensee a sum of money not to exceed five hundred dollars, or may refuse to issue, or may revoke or suspend a license, after a hearing, upon any of the following grounds:
>
> 1. Employment of fraud or deception in securing a license.
> 2. Practicing chiropractic under a false or assumed name.
> 3. Impersonating another practitioner.
> 4. Failing, after notice by the board, to record a license.
> 5. Habitual intemperance in the use of narcotics or stimulants to the extent of incapacitating him for the performance of his professional duties.
> 6. Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public.
> 7. For the violation of any of the provisions of this chapter.
>
> B. The board on its own initiative shall investigate and may hold hearings on alleged violations of this section. Prior to a hearing, the board shall give written notice of the alleged violations and of the date, time and place of the hearing to the person charged. The person charged shall appear at the hearing and may be represented by an attorney.
>
> C. Within two years after refusal to issue or the revocation of a license, the board may issue a license or grant a new license. If a license is issued or a new license is granted the applicant shall pay a fee of fifty dollars to the secretary-treasurer.
>
> D. Decisions of the board shall be subject to judicial review pursuant to title 12, chapter 7, article 6.(Emphasis added.)

While A.R.S. section 32-922.01 provides no specific grant of authority to the board to consider acts committed in another state in determining qualifications for licensure in Arizona, such authority may be inferred in the general proscriptive language of subsection A, paragraph 7 of this section. The board must have such authority in order to effectively fulfill legislative intent to license and regulate the practice of chiropractic and thus adequately protect the public health, safety and welfare. Support for this implied conclusion may be derived from a passage quoted earlier from Sutherland, id. section 45.12, to the effect that it is a "/w/ell established principle of statutory interpretation that the law favors rational and sensible construction."

b. With respect to whether the board can take any other disciplinary action specified by A.R.S. section 32-924, subsection A, against an applicant for licensure by comity if the applicant committed the violation of A.R.S. section 32-924 in question in another state, the answer is no. A.R.S. section 32-924, subsection A provides, in pertinent part:

A. The board may issue an order of censure, and fine a licensee a sum of money not to exceed five hundred dollars, or may refuse to issue, or may revoke or suspend a license, after a hearing, upon any of the following grounds:

Each of the disciplinary sanctions specified in subsection A, with the exception of the phrase "refuse to issue", refers to and is presumed to apply against persons who are already licensed. Since your question references the possible application of these disciplinary sanctions against applicants for licensure by comity, the answer must be in the negative. The board has no jurisdiction over any applicant for licensure other than making a determination after certain due process hearing requirements are satisfied that a license should or should not be issued in the given fact situation.

5a. The wording of your last question as received by this office was somewhat unclear. It would appear that it can be most effectively divided into two parts. No answer is needed to the first part, which references whether there is any statute of limitations which precludes the board from imposing disciplinary sanctions, other than declining to issue a license, on an applicant, by virtue of the negative answer on question 4b, above.

b. The wording of the second half of your question 5 appears to reference a situation analoguous to the first part of question 4 in that the board does have the referenced authority. A.R.S. section 32-924, relating to grounds for refusal to issue a license and to apply certain disciplinary sanctions against existing licensees, contains no set time deadline after which offenses may no longer be considered. Strict due process requirements are, however, mandated by A.R.S. section 32-924. As a practical matter, the board would consider the activities in which the applicant has engaged since the alleged offense occurred, the determination of the appropriate licensing authority at the time and other related factors before making a determination to refuse to issue a license by comity based on the occurrence of an event in another state in the distant past which could have been classified as an offense under A.R.S. section 32 -924.

It may be that the legislature envisioned an implied two-year statute of limitations in the board's consideration of the punitive effects of past offenses. As support for this proposition, please note that A.R.S. section 32-924, subsection C provides:

C. Within two years after refusal to issue or the revocation of a license, the board may issue a license or grant a new license. If a license is issued or a new license is granted the applicant shall pay a fee of fifty dollars to the secretary-treasurer. (Emphasis added.)

RECOMMENDATION:

In that A.R.S. sections 32-921, 32-922.01 and 32-924 are somewhat unclear with respect to legislative intent in the issuance of a license without examination to practice chiropractic, you may wish to recommend corrective legislation to the legislature.