

# Sunset Advisory Commission



**Texas Board  
of Chiropractic  
Examiners**

Staff Report  
February 2004

**TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

**SUNSET STAFF REPORT**

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# SUMMARY


## *Texas Board of Chiropractic Examiners*

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The regulation of chiropractic in Texas has in many respects not kept pace with the practice of chiropractic, which has enjoyed growing recognition from the public, becoming the third largest primary health-care profession behind medicine and dentistry. Its practitioners have enjoyed acceptance from third-party payers, such as workers' compensation, Medicare, and private health and auto insurance.

In contrast to these changes in the profession, the regulation of chiropractic has lacked a commitment from the State, both in terms of the resources and tools needed to properly enforce the Chiropractic Act, and the higher expectations from regulators in the way they resolve scope of practice questions. As a result, the Board of Chiropractic Examiners has had some difficulties regulating chiropractic in a way that adequately protects the public and defining the activities that chiropractors can safely perform.

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*The Board's unilateral approach to resolving scope of practice issues could be improved through rulemaking.*

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Sunset staff looked at the Board's process for clarifying which activities chiropractors may perform under the Act, focusing on its openness and objectivity in interpreting the statute as needed to regulate the profession. The review also evaluated the Board's ability to adequately enforce state chiropractic laws. Sunset staff found that the Board's unilateral approach to resolving scope of practice issues could be improved by taking a more open and inclusive rulemaking approach. In addition, the Board needs a more dedicated enforcement effort, and the additional tools and resources to perform the important job expected of it. Finally, while the State should continue to regulate chiropractors, the decision on the specific organizational structure for the agency should be made after the Sunset reviews of other health licensing agencies have been completed.

A summary of the recommendations in this report is provided in the following material.

## **Issues/Recommendations**

### **Issue 1**

***The Board's Use of Opinions to Define Scope of Practice Does Not Conform to the State's Standard Process and Fails to Achieve Its Stated Intent.***

#### **Key Recommendations**

- Require the Board to develop and adopt rules that clarify practices within and outside the scope of chiropractic practice, using stakeholder input early in the process.

- The Board should comply with the Attorney General opinion on needle electromyogram, and inform chiropractors that this procedure is not within their scope.

## **Issue 2**

### ***The Board's Enforcement Program Has Not Kept Up With the Growth of the Profession.***

#### **Key Recommendations**

- Augment the Board's enforcement tools by authorizing the Board to conduct inspections, require restitution, and issue cease and desist orders.
- Require the Board to investigate complaints according to risk.
- Require the Board to adopt a disciplinary policy with respect to fraud and to cooperate with the Texas Department of Insurance to improve the sharing of enforcement information.
- Authorize the local peer review committee members to assist the Board in investigating complaint cases that require a standard of care review.

## **Issue 3**

### ***Elements of the Board's Licensing Functions Do Not Conform to Commonly Applied Licensing Practices.***

#### **Key Recommendation**

- Revise elements of the agency's licensing authority to reflect standard practices in the way the Board handles the appeal process for license denials, charges for late renewals, and makes exams accessible to individuals with disabilities.

## **Issue 4**

### ***Decide on Continuation of the Chiropractic Board After Completion of Sunset Reviews of Other Health Licensing Agencies.***

#### **Key Recommendation**

- Decide on continuation of the Texas Board of Chiropractic Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.

## **Fiscal Implication Summary**

Issue 2 of this report contains several recommendations that would have a fiscal impact to the State resulting in an overall cost of \$87,600 in fiscal year 2006, and \$84,600 each year thereafter, for two additional enforcement staff and compensation for the Board's peer reviews committees. These costs would be largely offset by a fee increase among the Board's regulated population. Approximately \$5,600 would be needed annually to compensate the Board-appointed peer review committees.

<b><i>Fiscal Year</i></b>	<b><i>Cost to the General Revenue Fund</i></b>	<b><i>Gain to the General Revenue Fund</i></b>	<b><i>Net Effect to the General Revenue Fund</i></b>	<b><i>Change in number of FTEs From FY 2005</i></b>
2006	\$87,600	\$82,000	\$5,600	+2
2007	\$84,600	\$79,000	\$5,600	+2
2008	\$84,600	\$79,000	\$5,600	+2
2009	\$84,600	\$79,000	\$5,600	+2
2010	\$84,600	\$79,000	\$5,600	+2





# ISSUES

## *The Board's Use of Opinions to Define Scope of Practice Does Not Conform to the State's Standard Process and Fails to Achieve Its Stated Intent.*

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### **Summary**

#### **Key Recommendations**

- Require the Board to develop and adopt rules that clarify practices within and outside the scope of chiropractic practice, using stakeholder input early in the process.
- The Board should comply with the Attorney General opinion on needle electromyogram, and inform chiropractors that this procedure is not within their scope.

#### **Key Findings**

- The nature of chiropractic raises questions about what is and should be the appropriate scope of practice for chiropractors, under the law.
- The Board's process for defining scope of practice does not conform to standard State processes for addressing these issues, and ultimately fails to clarify the scope of chiropractic practice.
- The Board has a history of acting unilaterally to expand scope of practice in a way that seems to indicate a greater interest in promoting the profession than following the law and protecting patients.
- The Board's efforts to define scope of practice could benefit from using the rulemaking process, which provides greater opportunities for participation by affected groups.

#### **Conclusion**

While regulatory boards need to be able to reasonably interpret the statute to regulate the profession as the Legislature has intended, their processes should be open and objective to ensure the quality and acceptance of decisions. The standard approach for resolving these types of policy issues is through rulemaking, with the Attorney General serving to clarify matters where legislative intent is not clear.

The Board's process of issuing opinions is not an appropriate way to define scope of practice. Using this non-inclusive process, the Board has essentially acted on its own to define the scope of chiropractic practice, ignoring Attorney General's opinions, and not fully complying with legislative mandates and recommendations by elected officials.

By ceasing the practice of issuing opinions and instead going through the rulemaking process to define scope of practice, the Board would do a better job of resolving lingering questions as to what procedures chiropractors can and cannot perform. Using early involvement of stakeholders in the development of rules would enable the Board to benefit from other interested parties with expertise to share. Finally, the Board complying with the Attorney General's Opinion on needle electromyogram would clarify that chiropractors may not perform the procedure. The Board should seek additional clarification from the Attorney General about whether chiropractors can interpret such a procedure.

## Support

**The nature of chiropractic raises questions about what is and should be the appropriate scope of practice for chiropractors, under the law.**

  
*Chiropractic has expanded beyond manipulations and adjustments to include many alternative treatments.*

- Chiropractors claim to treat the human body as an integrated whole, using practices and procedures based on their academic and clinical training. While chiropractors have traditionally focused on neuromusculoskeletal complaints, such as headaches, joint pain, neck pain, low back pain, and sciatica, they may also provide care for other conditions for which they receive training, including allergies, asthma, digestive disorders, and others as new research is developed. As a result, chiropractic practice has expanded beyond manipulations and adjustments to include such treatments as herbal and nutritional counseling, physical and massage therapy, and acupuncture. This expansion reflects the two schools of thought that divide the profession between chiropractors who focus on the traditional therapies and those who have also incorporated alternative practices.
- The Chiropractic Act's broad description of chiropractic has allowed the expansion of the profession beyond traditional manipulations by implicitly authorizing practitioners to use a wide range of procedures to diagnose and treat patients. The Act prevents chiropractors from performing surgical and incisive procedures, prescribing drugs other than drugs approved for over-the-counter sale, and using x-ray therapy or therapy that exposes the patient to radioactive materials. The textbox, *Practice of Chiropractic*, describes the scope of practice of chiropractors as defined in the Chiropractic Act.

***Practice of Chiropractic<sup>1</sup>***

A person practices chiropractic if the person:

  - (1) uses objective and subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body, or
  - (2) performs nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.
- Due to the general nature of chiropractic, the Board routinely receives questions on whether the use of specific treatments and new devices fall within the licensees' scope of practice. To answer these questions, the Board issues opinions through a Technical Standards Committee, composed of three Board members that make recommendations to the Board. Once the Board adopts an opinion, it sends a notice of its decision to the person who made the request. Staff keeps a record of the opinion for its files and posts only the most frequently asked questions on the Board's Web site. The Board provides opinions merely as guidelines to individual chiropractors, letting them decide if they have the knowledge and expertise to safely use the new treatment or device based on their professional judgment.

The textbox, *Board Opinions on Practices Within Scope*, highlights a few practices that chiropractors may perform, according to the Board.


**The Board's process for defining scope of practice does not conform to standard State processes for addressing these issues, and ultimately fails to clarify the scope of chiropractic practice.**

- The Legislature takes the lead in defining the scope of practice of numerous professions and occupations. By creating new statutes or amending existing ones, it outlines the type of treatments or services that professionals may perform under their license. Legislation defining scope of practice is discussed in open meetings, providing ample opportunities for stakeholders to provide feedback. Because not all questions about proper scope may be answered by statute, the Legislature implicitly delegates authority to licensing boards, through their enabling statutes, to address these specific questions. Typically, this occurs through rulemaking, which emphasizes public inclusion and scrutiny, by required postings of proposed rules in the Texas Register and the recording of adopted rules in the Texas Administrative Code. Using this standard method, health licensing agencies, such as the Texas State Board of Medical Examiners and the Executive Council of Physical Therapy and Occupational Therapy Examiners, have adopted rules to clarify scope of practice.

<b>Board Opinions on Practices Within Scope</b>	
<b>Type of Treatment/Procedure</b>	<b>Description</b>
<b>Hypnosis</b>	The artificially induced sleeplike condition making an individual more receptive to suggestions by the hypnotist.
<b>Acupuncture</b>	The nonsurgical, nonincisive insertion of a needle to a specific area of the human body to treat or mitigate a human condition.
<b>Low Level Laser Therapy</b>	The use of a light source that is thought to generate photo-chemical reactions in the cells.
<b>Manipulation Under Anesthesia (MUA)</b>	Manipulation performed on a patient while under anesthesia to remove the patient's natural resistance to a certain range of motion.
<b>Needle Electromyogram (Needle EMG)</b>	The insertion of a needle into muscle tissues to determine whether a nerve is damaged or diseased, by measuring the electrical activity in the muscle.

- The Chiropractic Act does not specifically authorize the Board to define the practice of chiropractic. It provides for the Board to adopt rules and bylaws to regulate the practice of chiropractic and enforce the Act. It has a provision for the Board to issue opinions, based on a majority vote, which the Board uses to define the practice of chiropractic.<sup>2</sup> Since 1994, after an attempt at clarifying scope of practice through rules was overturned by a court, the Board has consistently opted to address these issues as Board opinions. However, the Board's process of issuing opinions does not have the clear delegation of legislative authority to clarify scope of practice.

The Board's opinions process also does not provide for adequate scrutiny or meaningful input from the public and affected parties before the Board renders an opinion. Typically, the only notification given is a listing of the questions under consideration that are posted on the Board's agenda one week before the meeting. Additionally, the Board's Technical Standards Committee, which makes scope of practice recommendations to the Board, does not have public representation and has not for the past several years. The result is that the Board misses more than the opportunity for public comment; it also misses the serious study and analysis of issues by multiple parties before it makes its decisions.

  
*The Board's opinion process does not provide for adequate scrutiny or meaningful input from the public and affected parties.*


Once adopted, the Board's opinions are not adequately made available to the public and to chiropractors. Unlike rules, which are recorded in the Texas Administrative Code for wide distribution and consistent application, Board opinions only reach the person who requested the opinion, with only a few making it to the Board's Web site. The vast majority of chiropractors are not made aware of these opinions or the guidelines to follow in performing the procedures discussed.

In its opinions affirming that procedures, such as needle EMG, are within the scope of chiropractic, the Board does not require specialized training, but indicates that chiropractors who perform these procedures without adequate training do so at their own risk. In other words, chiropractors may decide for themselves, based on their professional judgment and training what procedures are permissible. The risk to the chiropractor is the possibility of Board enforcement action that could only result from a complaint against the chiropractor. The Board cannot act to prevent chiropractors from performing these procedures simply because they lack required knowledge or expertise. This reactive approach to regulation abdicates considerable authority to chiropractors to decide what is within the scope of practice, and ultimately confuses, rather than clarifies, these issues.

**The Board has a history of acting unilaterally to expand scope of practice in a way that seems to indicate a greater interest in promoting the profession than following the law and protecting patients.**

- On several occasions within the last decade, the Board has either had difficulties or has been unwilling to respond to legislative mandates and elected officials' recommendations related to scope of practice. The textbox, *History of Scope of Practice Issues*, summarizes some of the mandates and recommendations made to the Board that relate to scope of practice.
- One Board opinion has skirted the intent of the Legislature, as interpreted by the Attorney General. For the past five years, the Board has ignored an Attorney General opinion restricting chiropractors from using needles. The March 30, 1998, opinion stated that the use of needles for any other purposes than the drawing of blood or the practice of acupuncture is not within the scope of chiropractic. The effect of the opinion was to specifically exclude needle EMG from the range of procedures that chiropractors may perform under the law. However, barely a month later, on May 7, 1998, the Board issued an opinion affirming that nerve conduction studies, including needle EMG, were within the chiropractic scope of practice.<sup>14</sup>

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*The Board opinion regarding needle EMG skirts the intent of the Legislature, as interpreted by the Attorney General.*

In July 2001, an administrative law judge from the State Office of Administrative Hearings found that needle EMG was not within the scope of practice, thereby denying reimbursement for the procedure through workers' compensation. Despite this additional ruling, the Board issued a new opinion in January 2002 reaffirming its belief that needle EMG is within the scope of chiropractic.<sup>15</sup>

### **History of Scope of Practice Issues**

1994	A Travis County District Court enjoined several scope of practice rules because the Board did not indicate proper statutory authority. The court also overturned a Board rule defining “surgery” because it was inconsistent with the Texas Medical Act, to the extent that it would have authorized chiropractors to perform manipulation under anesthesia (MUA). <sup>3</sup> This procedure requires an anesthesiologist and must be performed in a hospital. The federal Health Care Financing Administration has classified MUA as surgery, which would place it outside the scope of chiropractic. In 1995, a bill that would have allowed the Board to certify chiropractors to perform MUA was amended to prohibit the Board from certifying the procedure. <sup>4</sup> Despite persistent confusion about the legality of the procedure, the Board, without seeking an Attorney General’s opinion, issued an opinion in 1997 to allow chiropractors to perform MUA without being certified. <sup>5</sup>
1995	The Legislature created an advisory commission, composed of five chiropractors, two physicians, one nurse, and one pharmacist to advise the Board on new and experimental diagnostic and treatment practices, procedures, or instruments within the meaning of chiropractic as defined in the Act. <sup>6</sup> Although the Board could have benefited from this additional expertise, it gave little direction to the commission, which met only once and has since been allowed to expire. <sup>7</sup>
1996	The Attorney General issued an opinion stating that acupuncture is not within the chiropractic scope of practice. <sup>8</sup> Despite the opinion, the Board did not take a stand to prohibit acupuncture and numerous chiropractors continued to openly advertise for it. <sup>9</sup> The issue was resolved in 1997 when the Legislature amended the Acupuncture Act to authorize chiropractors to practice acupuncture. <sup>10</sup>
1997	A special study of the Chiropractic Board by the Comptroller found that the Board had not fully complied with recent legislative enactments by failing to develop rules clarifying restrictions on performing incisive and surgical procedures. <sup>11</sup> The Comptroller recommended that the Board adopt such rules and rules establishing clear and detailed guidelines on the permissible scope of practice, using the expertise of the advisory commission mentioned above. <sup>12</sup> The Board never complied with the recommendations despite a written assurance to the Comptroller that it had already begun the process of introducing into rules many of its previous scope of practice opinions. <sup>13</sup>

- Board opinions may influence reimbursement decisions by third-party payers, such as the workers’ compensation and health insurance systems. This influence may be direct, as a result of the deference generally given to professional licensing boards to administer their acts. For example, the Texas Workers’ Compensation Commission (TWCC) has traditionally recognized the role of licensing boards in defining scope of practice, and does not, as a rule, supercede the decisions of these boards. Additionally, TWCC guidelines for reimbursement of chiropractic services expand on Medicare guidelines, which reimburse only manual manipulations of the spine, to authorize reimbursement for any medically necessary procedure within the scope of practice.<sup>16</sup> This policy places considerable authority into the hands of the Chiropractic Board to determine procedures that will be reimbursed under the workers’ compensation system.<sup>17</sup>


Board opinions may also have an indirect influence on reimbursement determinations, as in the case of recent complaints against chiropractors who perform utilization reviews to determine reimbursement of other providers for their work. In its fourth quarter 2000 newsletter, the Board actively solicited complaints against peer reviewers from its licensees on the basis of fraud or abuse, or a lack of due diligence, and not mere disagreement with the peer reviewer's opinion.<sup>18</sup> Despite acknowledged “jurisdictional questions,” the Board has pursued at least two complaints



on this basis against chiropractors who made recommendations counter to the Board's opinion on needle EMG. The most recent of these cases was before the Board's Enforcement Committee on December 11, 2003. While no enforcement action was ordered in either case, the cautionary effect on chiropractors is unmistakable.

- The cumulative effect of Board actions regarding scope of practice seems to indicate a greater interest in promoting the profession than protecting the public. By essentially allowing chiropractors to decide what they can and cannot do based on their knowledge and training, the Board has opted not to impose requirements on chiropractors to ensure that they know and can demonstrate how to perform these specialized practices. Further, because training guidelines for properly performing these procedures are not readily available, neither chiropractors nor the public can get a clear picture of how these practices should be performed. Ultimately, for the Board to get involved to protect the public, it must receive a complaint against the chiropractor alleging harm or wrongdoing.

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*The Board does not impose additional requirements on chiropractors to ensure they can safely perform specialized procedures.*

**The Board's efforts to define scope of practice could benefit from using the rulemaking process, which provides greater opportunities for participation by affected groups.**

- Clarifying scope of practice through the State's standard rulemaking process would ensure that the Board receives needed public input and additional expertise on technical issues by providing for adequate public notification in the Texas Register. It would also make the process more transparent and ensure that a public record of the Board's decision is maintained for the practitioners and the public in the Texas Administrative Code. Such a process would more clearly clarify the types of procedures that are within and those that are outside the scope of practice, and whether additional training or certification is needed to perform specialized procedures.
- Some agencies have also found that involving stakeholders earlier in the rule development process is a more effective way of soliciting input on proposed rules. The Legislature encourages agencies to involve stakeholders, particularly in the development of controversial rules, through a negotiated rulemaking process. Other state agencies, such as the Department of Health and the Commission on Environmental Quality, take advantage of stakeholder input early in rule development to avoid controversies and allow for more efficient rulemaking.

## Recommendations

### Change in Statute

#### **1.1 Require the Board to develop and adopt rules that clarify practices within and outside the scope of chiropractic practice, using stakeholder input early in the process.**

This recommendation would require the Board to cease its practice of issuing Board opinions and to follow the State's rulemaking process for clarifying scope of practice issues. Specifically, the Board would clearly define the practices and technology that chiropractors can and cannot use to diagnose

and treat patients by rule, using the input of stakeholders early in the rulemaking process. The recommendation would require the Board to submit all of its previous Board opinions to this rulemaking process. As part of this process, the Board would determine whether additional training or certification is required to practice certain procedures and use certain equipments.

This recommendation would also require the Board to develop guidelines for the use of early stakeholder input. The Board could solicit stakeholder input through low-cost methods by sending e-mail or using its newsletter and that of other related health licensing agencies, such as the boards of Medical Examiners, Physical Therapy and Occupational Therapy Examiners, and Nurse Examiners. The Board would still be required to publish the proposed rules according to the Administrative Procedure Act and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period.

### **1.2 Repeal the Advisory Commission in statute.**

This recommendation would repeal the multi-disciplinary advisory commission that had been established to advise the Board on new and experimental practices within the meaning of chiropractic. Because the advisory commission has not met in the past six years and has not been reauthorized by the Board, it has expired under the terms of the Government Code.

## **Management Action**

### **1.3 The Board should comply with the Attorney General opinion on needle electromyogram, and inform chiropractors that this procedure is not within their scope.**

This recommendation would direct the Board to retract its opinions on needle EMG and inform chiropractors that this procedure is not within their scope of practice, as the statute is currently worded. The recommendation would also direct the Board to enforce the Act against chiropractors who violate the Board's statute by using needle EMG on patients. The Board should seek clarification from the Attorney General as to whether chiropractors may interpret the results of needle EMGs.

### **1.4 The Board should discontinue its Technical Standards Committee, and ensure adequate public membership on its Rules Committee.**

This recommendation would eliminate the need for the Technical Standards Committee since under Recommendation 1.1, the Rules Committee would address all scope of practice questions by developing and interpreting rules related to scope of practice using stakeholder involvement early in the rulemaking process. This recommendation would also require the Board to appoint at least one-third public membership on its rules committee.

## **Impact**

These recommendations would require the Board to use the accepted State rulemaking process for dealing with scope of practice issues. Using a more open and inclusive process to clarify the scope of chiropractic practice would help resolve lingering questions as to what procedures a chiropractor can and cannot perform. Allowing stakeholders to provide advice and opinions earlier in the rulemaking process would allow the Board to benefit from the expertise of other interested parties, including other related health-care professions. These changes would also ensure that the Board complies with its statute and an opinion of the Attorney General by informing chiropractors that needle EMG is not within the chiropractic scope of practice.



## Fiscal Implication

These recommendations would not have a fiscal impact to the State.

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<sup>1</sup> Texas Occupations Code, sec. 201.002 (b).

<sup>2</sup> Texas Occupations Code, sec. 201.152.

<sup>3</sup> *Chiropractic Society of Texas, et al., v. Texas Board of Chiropractic Examiners*, No 94-08315, (200th Dist. Ct., Travis County, Tex. Jan. 8, 1994).

<sup>4</sup> Texas House of Representatives, floor debate for S.B. 673, (Austin, Texas, May 22, 1995). In the debate, Dr. Janek made the assertion that his amendment “does away with the practice of manipulation under anesthesia by chiropractors.”

<sup>5</sup> Op. Texas Board of Chiropractic Examiners (Sept. 11, 1997).

<sup>6</sup> Texas Occupations Code, sec. 201.059.

<sup>7</sup> Texas Comptroller of Public Accounts, *Realigning Chiropractic Oversight – A Performance Review of The Texas Board of Chiropractic Examiners* (Austin, Tx., 1997), p. 7-8.

<sup>8</sup> Op. Tex. Att’y Gen. DM-415 (1996).

<sup>9</sup> Texas Comptroller, *Realigning Chiropractic Oversight*, p. 7.

<sup>10</sup> Texas Occupations Code, sec. 205.001.

<sup>11</sup> Comptroller, *Realigning Chiropractic Oversight*, p. 7.

<sup>12</sup> *Ibid.*, p.8.

<sup>13</sup> Letter from the Texas Board of Chiropractic Examiners to the Honorable John Sharp, Comptroller of Public Accounts, February 21, 1997.

<sup>14</sup> Op. Texas Board of Chiropractic Examiners (May 7, 1998).

<sup>15</sup> Op. Texas Board of Chiropractic Examiners (Jan. 25, 2002).

<sup>16</sup> Texas Workers’ Compensation Commission, *Medicare, TWCC, & You*, Austin, TX (brochure).

<sup>17</sup> In one case later reversed by the State Office of Administrative Hearings, TWCC ordered reimbursement for needle EMG, siding with the Board’s opinion that the procedure is within scope instead of the Attorney General’s contrary interpretation.

<sup>18</sup> Texas Board of Chiropractic Examiners, *Texas Chiropractic Board News and Views*, (4th quarter 2000), p. 2 (newsletter).

### *The Board's Enforcement Program Has Not Kept Up With the Growth of the Profession.*

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#### **Summary**

##### **Key Recommendations**

- Augment the Board's enforcement tools by authorizing the Board to conduct inspections, require restitution, and issue cease and desist orders.
- Require the Board to investigate complaints according to risk.
- Require the Board to adopt a disciplinary policy with respect to fraud and to cooperate with the Texas Department of Insurance to improve the sharing of enforcement information.
- Authorize the local peer review committee members to assist the Board in investigating complaint cases that require a standard of care review.

##### **Key Findings**

- The Chiropractic Board lacks the necessary resources and tools to adequately enforce the Chiropractic Act and ensure a sound enforcement program and quality customer service.
- The Board does not appear to adequately address serious violations of the Chiropractic Act, including fraud by chiropractors involved in third-party payer systems.
- The Board has not taken advantage of chiropractic peer review committees, which are underused, largely unknown, and operate with little oversight.

##### **Conclusion**

In light of the Sunset Commission's concerns about the Board's enforcement activities in 1993, Sunset staff re-evaluated the Board's enforcement program and found that it continues to face difficulties in protecting patients. Specifically, limited staff and enforcement tools, lack of focus on resolving serious allegations against chiropractors, and limited cooperation between the Board and other state agencies have led to infrequent and weak disciplinary actions on non-administrative complaints. Sunset staff's recommendations are intended to strengthen the Board's enforcement program and to redirect the Board's enforcement efforts toward serious violations.

## Support

### **The decision to regulate chiropractic implies a commitment by the State to provide for proper control of the practice.**

- Over time, chiropractic has become a more accepted form of treatment for many individuals. It is now the nation's third largest primary health-care profession after medicine and dentistry.<sup>1</sup> Third-party payers, including private health and auto insurance, Medicare, and workers' compensation cover about three-fourths of all chiropractic treatments nationally.<sup>2</sup> After Kansas first began licensing chiropractors in 1918, all 50 states now recognize the public's interest in regulating the profession. Texas began regulating chiropractors in 1947, and has seen the profession grow almost six-fold to about 4,700 chiropractors in 2003, the fifth largest number of practitioners nation-wide.
- To regulate the profession, the State requires chiropractors to be licensed and to adhere to professional standards contained in the Chiropractic Act and Board rules. The Board processes, investigates, and prosecutes complaints filed against licensed chiropractors and non-licensed individuals practicing chiropractic in Texas. The Board receives complaints from the public, accepts referrals from other agencies, and initiates complaints – mostly for expiration of a license or facility registration. The Board has received an average of 133 complaints a year from the public over the last five years for allegations including deceptive advertising, unprofessional conduct, and inefficient practice, such as causing injury to a patient or failing to assess a patient's status. On finding that a violation occurred, possible enforcement actions include formal reprimand, administrative penalty, suspension, suspension with probation, and revocation. For individuals practicing without a license, the agency may assess an administrative fine or forward the case to a District Attorney to prosecute as a Class A misdemeanor or to the Attorney General's office to file for an injunction.
- Because chiropractic treatments are reimbursed by third-party payers, several other state agencies share an interest with the Board to ensure that chiropractors who work in the insurance systems they oversee are properly regulated. The Texas Workers' Compensation Commission (TWCC) and the Texas Department of Insurance (TDI) investigate and refer to prosecution cases involving fraud, such as billing for services not rendered.<sup>3</sup> Additionally, both TWCC and TDI mediate billing and medical necessity disputes, and TWCC reviews quality of care complaints. Approximately 2,860 chiropractors accept workers' compensation patients.
- The Board's statute contains an additional process for mediating billing and medical necessity disputes through local peer review committees. The process, established in 1985, provides for the Board to appoint chiropractors to these committees on a voluntary basis to review and mediate treatment and service disputes involving a chiropractor and a patient or third-party payer. The five local committees are located in Houston, Austin, Flower Mound, Fort Worth, and El Paso. A six-member executive peer review committee, also appointed by the Board, is



*Chiropractic is now  
the nation's third  
largest primary  
health-care  
profession.*

charged with overseeing the activities of the local committed and reviewing their findings and recommendations.

**The Chiropractic Board lacks the necessary resources and tools to adequately enforce the Chiropractic Act and ensure a sound enforcement program and quality customer service.**

- The Chiropractic Board has an enforcement staff of one to enforce the regulation of chiropractic. In recent years, the Board’s appropriations have not kept pace with the growth of the chiropractic industry. The result is that the Chiropractic Board currently has one of the highest ratio of licensees per enforcement staff among sampled health licensing agencies, as shown in the accompanying table, *Enforcement Staff to Licensee Ratio in Selected Health Licensing Agencies*.


Lack of resources limits the Board’s ability to adequately enforce its statute and rules. The staff’s limited ability to go into the field due to its workload makes it rely almost exclusively on the public to detect violations of the Chiropractic Act and Board rules by chiropractors. Because the investigation of most complaints is performed through desk reviews, staff’s ability to gather valuable information pertaining to complaint cases is limited, as is its ability to work with other agencies having concurrent jurisdiction over chiropractors to investigate fraud. Ultimately, limited resources have a negative impact on the overall soundness of the Board’s enforcement program.

- The Board lacks adequate enforcement tools necessary to most effectively enforce the Chiropractic Act. The Board does not have the authority to inspect facilities and their records during investigations, limiting its ability to adequately investigate complaints. The Board’s subpoena authority is cumbersome and time consuming and is no substitute for the staff’s ability to inspect the premises and review patient files and records on-site.

The Board also does not have adequate authority over individuals engaged in the unlicensed practice of the chiropractic profession. Specifically, the Board does not have cease and desist authority, which many agencies have increasingly used as an interim step that they can take on their own before seeking an injunction through the courts, to stop unlicensed activity. The agency’s current process of issuing a warning letter to stop an unlicensed chiropractor from practicing is ineffective and lacks real enforcement, while seeking injunctions through the Attorney General is cumbersome and time consuming. Cease and desist

<b>Enforcement Staff to Licensee Ratio in Selected Health Licensing Agencies*</b>		
<b>Agency</b>	<b>Total Enforcement Staff to Licensees</b>	<b>Licensees per Staff</b>
Pharmacy	33/21,300	1/645
Podiatric Medical Examiners	1/800	1/800
Medical Examiners	63/55,500	1/881
Psychologists	4.5/6,000	1/1,333
Veterinary Medical Examiners	4/6,600	1/1,650
Dental Examiners	10/20,900	1/2,090
Optometry	1/3,200	1/3,200
Chiropractic Examiners	1/4,700	1/4,700
Nurse Examiners	21/176,700	1/8,414

\*Number of staff based on positions filled by the agencies, and not budgeted FTEs, as of December 2003.


  
*Because staff is limited to performing investigations through desk reviews, it has difficulty gathering information on complaints.*

orders provide for faster action by regulatory agencies, especially when violators of these orders are subject to additional sanctions, such as administrative penalties.

The Board's enforcement tools are designed to bring the licensee into compliance, but not to compensate the aggrieved party in any way — even when the monetary loss is known. As a result, the Board has no authority to see that complainants receive restitution to help return them to the condition that existed before the complaint. By being able to provide for restitution, tied to the amount of the fee the consumer paid and as part of an informal settlement conference, the Board would have an opportunity to better protect patients by helping them recover the loss incurred and give an additional incentive to chiropractors to comply with the law and Board rules.

- The Board does not have user-friendly methods of providing important information to complainants and respondents or to the public. For example, the Board does not notify parties to a complaint regarding when and where their case is scheduled to be heard by the enforcement committee or the full Board. Although the agency meets legal standards by posting the information in the *Texas Register*, quality customer service dictates a more direct effort to notify the parties regarding events affecting their complaint, such as through e-mail or by telephone.

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*The Board does not have a user-friendly way of providing important information to the public.*

Additionally, the Board does not make enforcement information, such as a licensee's disciplinary history and the Health Professions' Council (HPC) toll-free complaint line number, easily accessible to consumers on its Web site. While the Board publishes a quarterly newsletter on its Web site that contains recent disciplinary orders, patients may not know to check the newsletter for disciplinary information. Texas Online indicates if disciplinary action has been taken against a licensee, but does not provide information about the type of violation committed or the sanction ordered against the licensee. To check the disciplinary history of a particular licensee, consumers must either read through old newsletters or call Board staff. Similarly, the Board includes HPC's 1-800 number on its online complaint form, which is not readily apparent to consumers unfamiliar with the regulatory process.

- While the agency staff currently reports complaint information to the Board, it does not maintain information about denials of new licenses or license renewals that may be included as part of a disciplinary action. Without this information, the Board has difficulty identifying persons — including those with criminal convictions — that it has previously deemed to be unsuitable to practice chiropractic.

**The Board does not appear to adequately address serious violations of the Chiropractic Act, including fraud by chiropractors involved in third-party payer systems.**

- The Board does not have a rule or policy to prioritize complaints according to seriousness, compliance history or other criteria, such as the amount of time a complaint has been pending.<sup>4</sup> Consequently, the Board focuses much of its enforcement activities on initiating and prosecuting complaints for minor administrative violations of the Act, instead of focusing on

resolving serious allegations related to standard of care and misconduct. The Board's actual enforcement performance, especially with respect to disciplinary action against violators, is obscured because the Board combines administrative violations, such as expired licenses, with more serious complaints in reporting its enforcement efforts. Since 2001, the Board has consistently exceeded its performance target for complaints resulting in disciplinary action by large margins, primarily because of actions on complaints initiated by the Board for expired licenses and registrations. In its 2001 *Annual Report on Measures*, the agency explained this variance by saying:

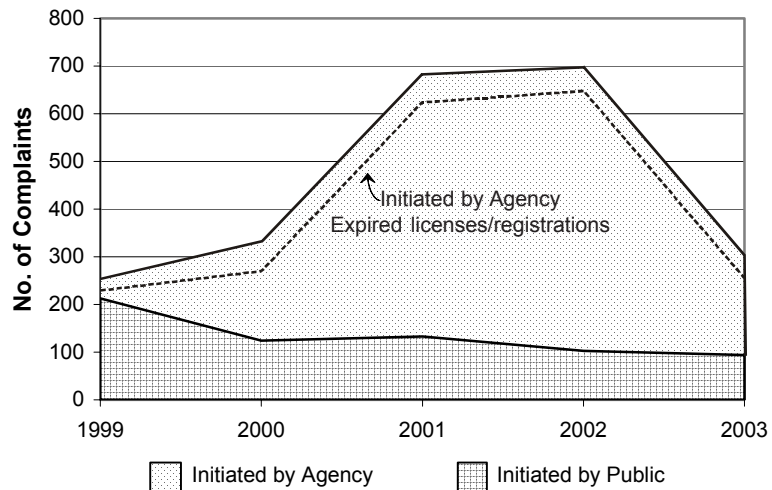
Per the Board's instructions, the Enforcement Division has maintained a more aggressive posture in regards to enforcement of more minor violations thus the percentage of disciplinary complaints increased.<sup>5</sup>

★  
*The Board focuses  
 much of its  
 enforcement activities  
 on administrative  
 complaints, instead of  
 more serious  
 violations.*

The chart, *Chiropractic Complaints by Source*, shows this bulge in the number of Board-initiated complaints in the past few years.

While the Board is in full compliance with the Legislative Budget Board's reporting requirements, this practice tends to overstate the Board's true disciplinary activities. If complaints for expired licenses and registrations were excluded from the measure, the Board would consistently lag behind the performance measure. In 2003, for example, only 4.2 percent of complaints would have resulted in disciplinary action, well short of the 17 percent performance target. The table, *Disciplinary Actions*, also shows that the Board is more likely to take disciplinary action for minor violations, such as expired licenses. Over three years, the Board took disciplinary action on 649 complaints; however, 606 of these were for expired license or registration. Only 43, or 6.6 percent of the disciplinary actions involved more serious violations of the Act.

**Chiropractic Complaints by Source  
 FY 1999 - 2003**



- Despite the significance of chiropractic fraud in insurance systems, especially workers compensation, the Board has no formal policy to aggressively discipline chiropractors who perpetrate fraudulent acts. From 2001 to 2003, TWCC's investigations concluded that \$15,837,993 in workers' compensation claims were acquired fraudulently by chiropractors, as opposed to \$2,635,200 by physicians during the same time frame.<sup>6</sup> According to TDI staff, allegations of fraud in other lines of insurance regulated by TDI also rank high although the full extent is difficult to judge because insurance carriers do not consistently report this data.<sup>7</sup> The Board has a penalty matrix for various types of violations, which provides a \$1,000 maximum sanction for a first and second offense



related to fraud, and \$1,000 and/or revocation for a third offense. This matrix may not meet recent anti-fraud efforts across health licensing agencies, and seems inadequate to seriously deter chiropractors from defrauding the worker compensation or other insurance systems.

<b>Disciplinary Actions FY 2001-2003</b>													
<b>Type of Allegation/ Violation</b>	<b>Total Complaints Resolved</b>	<b>Type of Action</b>											
		<b>Dismissed</b>						<b>Sanction Type<sup>f</sup></b>					
		No Violation	Insufficient Evidence	Closed: Compliance <sup>g</sup>	Closed: License Expired	Closed: Other <sup>h</sup>	Administrative Penalties	Written Reprimand	Suspension/Probation	Cease and Desist	Revocation		
Practice*	72	45	13	4	0	9		1	0	0	0	0	
Conduct**	155	72	30	17	1	22		6	0	5	0	2	
Unlicensed Activity	38	2	9	5	1	9		10	0	1	1	0	
Criminal Convictions	18	3	1	0	4	5		1	1	1	0	2	
Expired License/ Registration	1,248	235	3	68	178	158		605	1	0	0	0	
Advertising	72	11	1	36	0	13		7	3	0	1	0	
Other <sup>‡</sup>	34	4	6	11	1	11		1	0	0	0	0	
<b>TOTAL</b>	<b>1,637</b>	<b>372</b>	<b>63</b>	<b>141</b>	<b>185</b>	<b>227</b>		<b>631</b>	<b>5</b>	<b>7</b>	<b>2</b>	<b>4</b>	

<sup>f</sup> As a result of an agreed or board order.  
<sup>\*</sup> Complaints include gross inefficient practice, operation of a facility without proper diligence, allowing an unlicensed person to practice, and delegation of authority.  
<sup>\*\*</sup> Complaints include grossly unprofessional conduct, sexual misconduct, overtreating/overcharging, breach of patient confidentiality, billing irregularity, and release of records.  
<sup>‡</sup> Complaints include default on student loan, failure to report change of address, failure to respond to agency, fee dispute, solicitation, radiation, and other.  
<sup>g</sup> Includes complaints closed by the agency due to a licensee's compliance, such as a licensee paying in full on a defaulted student loan or renewing its expired license by paying a late renewal fee.  
<sup>h</sup> Includes the following categories – Closed: Other, Withdrawn, and No Jurisdiction.

Additionally, TDI and TWCC continue to be reluctant to share information with the Board. Until last session, the Board received little information about cases involving chiropractors from TDI and TWCC because the Board could not guarantee the confidentiality of shared information. Legislation addressed these concerns by making the Board's investigative files confidential and requiring the Board and TWCC to increase cooperation in enforcement.<sup>8,9</sup> The Board and TWCC have recently begun to discuss sharing information about fraud and high-utilization chiropractors in the workers compensation system. However, TWCC has been slow to share this information with the Board due to persistent concerns about confidentiality. No similar arrangement exists between the Board and TDI, and as a result TDI does not share information with the Board on concurrent investigations. Formalizing the same type of information sharing arrangement between the Board

and TDI would improve investigations by providing more complete findings, resulting in more appropriate sanctions and better public protection.

**The Board has not taken advantage of chiropractic peer review committees, which are underused, largely unknown, and operate with little oversight.**

- The use of the Board-appointed peer review committees to mediate billing and medical necessity disputes between chiropractors and patients or insurance companies has diminished in recent years. The committees have been functioning in a limited capacity, mediating only about five cases total in the last four years, mostly related to insurance companies denying reimbursement. Because the executive committee has not met during that period of time, it has provided no direction to the local committees it is charged with overseeing.
- The Board's connections with the peer review committees have deteriorated over time, and are now virtually non-existent. Although the Board is statutorily required to appoint peer reviewers from a list of nominees submitted by a local chiropractic association, the Board has not appointed new members in at least six years and has not established requirements for peer review training programs. Until recently, the Board has had no contact with the committees, and no longer refers cases to them or inquires about their activities as it is statutorily authorized to do. Additionally, the Board has made no efforts to make public information on the committees available to potential users on its Web site. By letting this peer review process become inactive, the Board loses a valuable tool for it to participate responsively in resolving medical necessity disputes. By not recognizing a greater role for this peer review process to review complaints, the State loses the opportunity to improve the agency's enforcement activities by using outside chiropractic expertise, especially for standard of care cases.

**The Legislature has provided other health licensing agencies with resources to augment and supplement their complaint and enforcement processes.**

- Last session, the Legislature acted to improve the enforcement programs of other health licensing agencies. To address enforcement problems at the Texas State Board of Medical Examiners, the Legislature raised doctors' fees to pay for an additional \$6.5 million appropriation for the biennium and an increase in the agency's enforcement staff by 20 employees. The appropriated funds supplemented a \$200,000 grant issued by the Governor in 2002 to hire additional enforcement staff. The Legislature also appropriated an additional \$535,000 for the biennium to State Board of Dental Examiners, by increasing license fees. The additional resources were intended to pay for five additional employees to help correct several deficiencies in the Dental Board's enforcement program.
- Other licensing agencies tap the expertise of licensees to assist in their enforcement efforts. For example, the Texas State of Board of Medical Examiners refers complaints alleging standard of care violations to a



*Last session, the Legislature increased appropriations for the Boards of Medical and Dental Examiners.*



panel of experts. Panelists review all medical records and information collected by the agency, make a clinical determination on whether standard of care was met, and report their findings to the agency. Reviewers must meet certain eligibility requirements such as being licensed to practice medicine and certified by a national medical society, have an acceptable malpractice complaint history, and have no history of disciplinary actions or license restrictions. Similarly, the Texas State Board of Podiatric Medical Examiners refers standard of care complaints to eligible podiatric medical reviewers to extend the ability of that agency's small enforcement staff, and to benefit from the expertise and additional resources provided by the peer reviewers.

## **Recommendations**

### **Change in Statute**

#### **2.1 Authorize the Board to conduct inspections as part of the complaint investigation process.**

This recommendation would authorize the Board to inspect the premises of a licensee or registrant on an unannounced basis during reasonable business hours, as part of the Board's investigation of complaints. The Board would be able to inspect facilities and review patient and third-party billing records as necessary to investigate a complaint. This recommendation would not establish a routine inspection process for chiropractic facilities.

#### **2.2 Authorize the Board to issue cease and desist orders.**

This recommendation would allow the Board to issue cease and desist orders. Cease and desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the public's health and safety. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease and desist orders.

#### **2.3 Authorize the Board to require restitution as part of the settlement conference process.**

This recommendation would allow the Board to include restitution as part of an informal settlement conference. Authority would be limited to including a refund not to exceed the amount the consumer paid to a chiropractor. Restitution would not include an estimation of other damages or harm. The restitution would be an additional enforcement tool that could only be used in cases involving violations of the law or Board rules and may be in lieu of or in addition to a Board order assessing an administrative penalty or other types of disciplinary action.

#### **2.4 Require the Board to investigate complaints according to risk.**

This recommendation would require the Board to place complaints in priority order so that the agency handles the most serious problems first. Addressing complaints based on seriousness would ensure that the agency's attention is placed where it is most needed. This recommendation would also require the Board to take into account the number of years during which a complaint has been pending as a factor for prioritizing complaints.

#### **2.5 Require the Board to adopt a disciplinary policy with respect to fraud, and to cooperate with TDI to improve the sharing of relevant enforcement information.**

This recommendation would require the Board to adopt a stricter policy on fraud, especially with respect to insurance and workers' compensation fraud. The recommendation would also require the Board and TDI to cooperate with and assist each other when either agency is conducting an investigation, by providing information relevant to the investigation, investigating cases together and collaborating on appropriate disciplinary action whenever possible. Both the Board and TDI would be required to track cases they refer to each other. The Board should also report information on its insurance cases, including workers' compensation, to the Legislature annually.

## **2.6 Authorize the local peer review committee members to assist the Board in investigating complaint cases that require a standard of care review.**

This recommendation would issue an additional responsibility to the local peer review committees, while maintaining their ability to mediate medical necessity and billing disputes. This recommendation allows the Board to seek the advice and expertise of local committee members in complaint investigations related to medical competency. Specifically, complaint cases with possible standard of care violations would be referred to the peer review committee members. The Board would be required to make new appointments to the local and executive peer review committees by January 1, 2006, and every three years thereafter. In addition, the recommendation would eliminate the requirement that the Board appoint members of the local committees from a list of nominees submitted by a local chiropractic association. Instead, the Board could, as it deems appropriate, receive input from all relevant chiropractic associations, without being limited to members from these lists. The Board would be required to develop rules governing the eligibility requirements to serve on a peer review committee, including having a clean disciplinary record and an acceptable utilization record in the various insurance systems. Before reviewing standard of care complaints, committee members must be trained on how to investigate cases in accordance with the Chiropractic Act and Board rules.

This recommendation would require the Board to develop and adopt a process to refer complaints cases needing a standard of care review and billing complaints to the peer review committees, with input from the executive committee. Members assigned to a standard of care case would review records and evidence collected by agency staff during the investigation. Committee members would report their findings to the Board, indicating whether standard of care was met in a complaint against a licensee, the applicable standard of care, and the clinical basis for the determination. Depending on the specific requirements of a case, the agency may request a member to attend an informal conference or testify at a contested case hearing. Committee members would be immune from civil liability for any damage caused in the performance of their duties, including the review of standard of care complaints, in absence of fraud, conspiracy, or malice.

This recommendation would direct the Board to provide the public access to information on local peer review committees on its Web site. The information should include a description of the committees' services and the type of issues mediated by the committees. The executive committee would report annually to the Board on the cases mediated by the local peer review committees. The information should include the number of cases referred to the committees, broken down by type, and the number of cases resolved and the outcome of each case.

## **Management Action**

### **2.7 The Board should hire additional enforcement staff to assist in its enforcement activities.**

The Board should have two additional staff to investigate complaints and perform on-site inspections. This recommendation directs the Board to hire two level I enforcement staff by seeking an increase

in its authorized full-time equivalent employees and additional funding through the appropriation process. The Board should increase its fees to cover these additional costs.

**2.8 The Board and TWCC should start actively cooperating with each other, as required by law.**

This recommendation would direct the Board and TWCC to work out the details of recent legislation requiring the two agencies to work together in enforcement, and start sharing information. The agencies should refer cases to each other, investigate cases together, share investigative notes, and collaborate on appropriate disciplinary action whenever possible. This recommendation would direct both the Board and TWCC to track cases they refer to each other.

**2.9 The Board should make enforcement information important to consumers readily available.**

This recommendation would direct the Board to post information about disciplinary actions on its Web site in a format that consumers may access easily. Increasing accessibility could include creating an alphabetical listing of the names of all licensees who had disciplinary action taken against them, including the type of sanctions and date when the sanction was ordered. This recommendation would also require the Board to make the HPC's toll-free line more easily accessible on its Web site by including it with the Board's contact information. The recommendation would also direct the Board to notify parties to a complaint in a user-friendly way, such as by telephone or e-mail, regarding when and where their complaint will be heard by the enforcement committee and the full Board.

**2.10 The Board should track denied licenses and denied license renewals.**

This recommendation would direct the Board to track denials of new licenses and license renewals, to help the Board quickly identify people previously found to be unsuitable, who may be reapplying for a license.

## **Impact**

These recommendations are intended to improve the overall quality and effectiveness of the Board's enforcement program by providing additional tools and resources for investigating alleged violations and for bringing violators into compliance. The recommendations would also help the Board to better focus on resolving complaints of greatest concern for public safety and to provide greater customer services. Finally, improved coordination between the Board and TWCC and TDI would help ensure proper enforcement action against chiropractors charging for unnecessary services and engaging in workers' compensation and other insurance fraud.

## **Fiscal Implication**

These recommendations would have an additional cost to the General Revenue Fund of approximately \$87,600 in fiscal year 2006, and \$84,600 each year thereafter. These costs would be largely offset by a fee increase among the Board's regulated population. The Board would need about \$82,000 in fiscal year 2006 and \$79,000 thereafter for two additional employees, travel expenditures, and one-time equipment costs to strengthen the Board's enforcement program.<sup>10</sup> An additional \$5,600 would be needed annually to compensate local peer review committees at \$100 per evaluation for 56 standard of care complaints per year.<sup>11</sup>

<b>Fiscal Year</b>	<b>Cost to the General Revenue Fund</b>	<b>Gain to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in number of FTEs From FY 2005</b>
2006	\$87,600	\$82,000	\$5,600	+2
2007	\$84,600	\$79,000	\$5,600	+2
2008	\$84,600	\$79,000	\$5,600	+2
2009	\$84,600	\$79,000	\$5,600	+2
2010	\$84,600	\$79,000	\$5,600	+2

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<sup>1</sup> National Board of Chiropractic Examiners, *Job Analysis of chiropractic - A Project Report, Survey Analysis, and Summary of the Practice of Chiropractic Within the United States*, (Greeley, Co., 2000), p. 1.

<sup>2</sup> Ibid., p. 65.

<sup>3</sup> Medicaid fraud is extremely rare among chiropractors and allegations of fraud have not been made in the last several years. This is unlikely to change in the near future since the Legislature rolled back Medicaid reimbursement for chiropractic treatments in 2003 in an attempt to control costs by cutting non-essential services.

<sup>4</sup> In 1997, the Board gave assurance to the Texas Comptroller that it would adopt a policy for prioritizing complaints to comply with a Texas Performance Review recommendation that followed a special review of the agency. However, seven years later the Board has yet to develop and adopt such policy. Letter from the Texas Board of Chiropractic Examiners to the Honorable John Sharp, Comptroller of Public Accounts, February 21, 1997.

<sup>5</sup> Texas Board of Chiropractic Examiners, *Annual Report on Measures* (Austin, TX., 2001), p. 1.

<sup>6</sup> Memorandum from the Texas Workers' Compensation Commission to the Sunset Advisory Commission, November 21, 2003.

<sup>7</sup> Texas Department of Insurance, Fraud Division (November 2003).

<sup>8</sup> Texas Senate Bill 211, 78th Legislature, Regular Session (2003).

<sup>9</sup> Texas Senate Bill 1574, 78th Legislature, Regular Session (2003).

<sup>10</sup> Calculated based on a median salary for an investigator I position of \$30,000, fringe benefits of 30.1 percent of salary, travel expenditures of about \$1,000, and additional costs for purchasing equipment during the first year.

<sup>11</sup> Based on the average number of billing and standard of care complaints that the Board received from fiscal year 2001 to 2003.



### *Elements of the Board's Licensing Functions Do Not Conform to Commonly Applied Licensing Practices.*

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#### **Summary**

##### **Key Recommendation**

- Revise elements of the agency's licensing authority to reflect standard practices in the way the Board handles the appeal process for license denials, charges for late renewals, and makes exams accessible to individuals with disabilities.

##### **Key Finding**

- Some of the Board's licensing provisions do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.

##### **Conclusion**

Three of the Board's licensing processes do not match model licensing standards developed by Sunset staff from experience gained through more than 80 occupational licensing reviews over the last 25 years. The Sunset review compared the Board's statute, rules, and practices against the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring certain licensing provisions in line with the model standards. Enforcement provisions that vary from these model standards have been incorporated into Issue 2, regarding the Board's enforcement program.

## Support

### **Regulating occupations, such as chiropractic, requires common activities that the Sunset Commission has observed and documented over more than 25 years of reviews.**

- The Board's mission is to protect the public's health, safety, and economic welfare by ensuring that chiropractic professionals are qualified, competent, and adhere to established professional standards. To accomplish its mission, the Board examines and licenses chiropractors, registers chiropractic facilities and radiological technicians, and oversees the continuing education of chiropractors. The Board also enforces the Chiropractic Act and Board rules by investigating complaints against chiropractors and chiropractic facilities, and taking disciplinary action when necessary.
- The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 80 reviews of licensing agencies.
- Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where certain licensing provisions differ from these model standards, and describes the potential benefits of bringing the statute and rules into conformity with standard practices. Enforcement provisions that differ from model standards have been incorporated into Issue 2, relating to needed improvements to the Board's enforcement program.

### **Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.**

- *Criminal convictions.* In accordance with Chapter 53 of the Occupations Code, the Board may suspend or revoke a license, or disqualify individuals from receiving a license or taking the exam, because of specific criminal activities related to the profession. Currently, the Executive Director refers an application for licensure or registration of a person with a criminal conviction to the Board's Licensure and Education Standards Committee. The committee determines whether an applicant may sit for the examination or be granted a registration or license. If the committee denies the application, the Board's rules allow applicants to appeal to the Executive Director to reach an informal settlement before appealing to the State Office of Administrative Hearings (SOAH). Having staff consider such a matter after a Board panel has acted reverses the standard agency decisionmaking process and unnecessarily duplicates the appellate process with SOAH.
- *Late renewal penalties.* Licensees who fail to renew their licenses on time should pay a penalty set at a level that is reasonable to ensure timely payment, and that provides comparable treatment for all licensees. While



*Appeal of Board  
decisions to the  
Executive Director is  
an unnecessary  
duplication of  
SOAH's process.*



the Board currently ties the late fee to the fee for the jurisprudence exam, which it administers, this practice threatens to unfairly penalize chiropractors if the Board needs to increase its exam fee. A fairer, more reasonable practice would be to require delinquent licensees to pay a penalty of one and half to two times the *renewal* fee, instead of the examination fee.

- *Access to exams.* Disabled persons who qualify for a licensing exam should enjoy equal opportunity and access as guaranteed by the Americans with Disabilities Act. While the Board currently addresses testing accommodations on the request of a person with a disability, it does not have a policy addressing the issue, and its statute does not require the Board to adopt rules regarding exam accessibility. Referencing the Americans with Disabilities Act in the Board's statute would clarify the Board's responsibility to establish accessibility policies in rule and ensure that future applicants with disabilities are not excluded from taking exams.

## Recommendations

### Licensing

#### Change in Statute

##### **3.1 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.**

This recommendation would amend the Board's statute to ensure that testing accommodations for the Board's exam are in accordance with the Americans with Disabilities Act. The Board would need to adopt rules regarding accessibility accommodations and ensure its testing policies and procedures comply with the Americans with Disabilities Act.

##### **3.2 Change the basis for the Board's late renewal penalties.**

This recommendation would require the Board to use the standard renewal fee as the basis for its late renewal penalties, rather than the cost of the jurisprudence exam required for licensure. For example, the Board would charge a person whose license has been expired for 90 days or less the standard renewal fee plus a penalty equal to one and half times the renewal fee. For those whose licenses have been expired for more than 90 days, but less than one year, the Board would charge the standard renewal fee plus a penalty of twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on chiropractors.

### Management Action

##### **3.3 The Board should eliminate the Executive Director's role from the license denial process.**

This recommendation would eliminate an applicant's ability to appeal and settle a license denial to the Executive Director, thereby leaving SOAH as the appropriate outlet for an appeal.



## Impact

The application of these recommendations to the Board would result in efficiency and consistency of operations, fairer processes for the licensees, and additional protection to consumers. The chart, *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

<b>Benefits of Recommendations</b>				
<b>Recommendations</b>	<b>Efficiency of Operations</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Public Protection</b>
<b>Licensing</b>				
3.1 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.			✓	
3.2 Change the basis for the Board's late renewal penalties.	✓		✓	
3.3 The Board should eliminate the Executive Director's role from the license denial process.	✓		✓	✓

## Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. The recommendations are procedural improvements that should not require additional resources.

## *Decide on Continuation of the Chiropractic Board After Completion of Sunset Reviews of Other Health Licensing Agencies.*

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### **Summary**

#### **Key Recommendation**

- Decide on continuation of the Texas Board of Chiropractic Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.

#### **Key Findings**

- The mission of the Texas Board of Chiropractic Examiners is to protect the public by ensuring that chiropractic professionals are qualified, competent, and adhere to professional standards.
- Texas has a continuing need to regulate the chiropractic industry.
- The Board continues to face challenges in its ability to operate effectively and objectively.
- All 50 states regulate chiropractors, generally within umbrella licensing agencies.
- A complete study of organizational alternatives should consider the results of the Sunset Commission's reviews of other health licensing agencies this review cycle.

#### **Conclusion**

The Sunset review evaluated the continuing need for regulating chiropractors, radiological technicians, and chiropractic facilities in Texas, as well as the need for the Texas Board of Chiropractic Examiners as the agency to provide these functions. Although the State should continue to regulate the chiropractic profession, Sunset staff recommends that the Sunset Commission delay its decision on continuation of the Board as a separate agency until the Sunset reviews of other health licensing agencies are completed this year, as these reviews may show that efficiencies could be achieved in the consolidation or reorganization of the State's health licensing agencies.

## Support

**The mission of the Texas Board of Chiropractic Examiners is to protect the public by ensuring that chiropractic professionals are qualified, competent, and adhere to professional standards.**

- Texas has regulated chiropractors since 1949, when the Legislature created the Texas Board of Chiropractic Examiners to protect patients by setting and enforcing standards for the profession. In 1993, the Legislature extended the Board's oversight to chiropractic facilities by requiring their licensure, and, in 2003, it authorized the Board to discipline business owners who operate expired or unregistered chiropractic facilities.
- The Board seeks to protect the public by ensuring that only qualified chiropractors practice in Texas. To achieve this goal, the Board licensed 4,688 chiropractors and 2,986 chiropractic facilities in fiscal year 2003. The Board also seeks to ensure compliance with the Texas Chiropractic Act by investigating and resolving complaints regarding its licensees. In 2003, the Board resolved 592 complaints, with most of them initiated by staff for practicing with an expired license or registration. The Board, composed of a majority of practitioners, operates on an annual budget of approximately \$340,000 and a staff of six.



*Many Texans seek chiropractic services under Medicare, workers' compensation, or automobile insurance policies.*

**Texas has a continuing need to regulate the chiropractic industry.**

- As chiropractic has become a more mainstream form of treatment for certain conditions involving chronic back pain and injuries to the musculoskeletal system, many Texans seek chiropractic services under various insurance plans, such as Medicare, workers' compensation, or automobile insurance policies. Because chiropractic involves the hands-on treatment of patients, generally by manipulating delicate body structures, such as the spine and joints, it has the potential to harm the public's health and safety. Additionally, because of the role chiropractors play in various insurance plans, unethical practice can affect the public's economic welfare.
- The Board's statute is designed to protect the public by establishing standards for the profession and providing a recourse if these standards are violated. Board licensure requires the completion of sixty hours of undergraduate work at a school other than a chiropractic school, graduation from an accredited four-year college of chiropractic, and successful completion of all four parts of the National Board of Chiropractic Examiners examinations and the state jurisprudence exam. In addition, applicants must demonstrate that they do not have a criminal history that could affect their ability to meet the ethical standards of the profession.

The public also needs an entity that can receive and investigate complaints about chiropractors to bring them into compliance and discipline those who violate the law. Most complaints submitted by the public are for standard of care, such as grossly inefficient practice or unprofessional conduct, and false or deceptive advertising.

**The Board continues to face challenges in its ability to operate effectively and objectively.**

- While the Chiropractic Board is currently in a period of relative stability and productivity in which it has been able to quietly perform its job, over the last decade, it has been subject to legislative scrutiny and has encountered other problems that indicate ongoing challenges to its ability to function effectively.
- After making major statutory changes in 1995 to restrict certain aspects of chiropractic practice, the Legislature required a study of the Board's management effectiveness by the Comptroller.<sup>1</sup> That study, issued in 1997, focused on the Board's compliance with its statute and the need for it to do a better job defining practices within and outside chiropractic concerns that persist to this day. As discussed in Issue 1, the Board has continued to have difficulty complying with legislative mandates and Attorney General interpretations regarding the scope of chiropractic.
- In the last Sunset review in 1993, the Sunset Commission recommended sweeping the Board in an effort to get a Board more committed to enforcement. While the Legislature did not adopt this recommendation, some of the Sunset Commission's concerns about the Board's enforcement program in 1993 appear to be still valid today. The agency has continued to suffer from a lack of staff and other resources to adequately fulfill its mission, especially to enforce the Act. Issue 2 addresses the need for greater maturity in the Board's enforcement efforts.
- In recent years, the Board has suffered from management problems that exacerbate its historic lack of resources. In fiscal year 2003, the Board lost four out of its six staff, indicating a turnover of 67 percent. Only two employees currently at the Board have been there for more than three years. To address recent management concerns within the agency, the Board hired a new Executive Director in fiscal year 2003 who has started implementing beneficial changes within the agency.

**Different organizational options for regulating chiropractors offer advantages and disadvantages.**

- The regulation of chiropractors could occur through one of three basic organizational structures – an independent board, a coordinating council similar to the Health Professions Council, or a consolidation of similar licensing agencies. The chart, *Organizational Structure Options*, describes the advantages and disadvantages of each of these three organization types.
- Texas has approached the regulation of chiropractic through an independent agency that pays for itself through licensing and professional fees, focuses on customer service, and provides expertise for the regulation of its licensees. The Board currently operates as an independent agency, with a staff of six to handle the regulation of nearly 4,700 chiropractors and 3,000 chiropractic facilities.



*Over the last decade the Board has been subject to legislative scrutiny and has encountered other problems affecting its ability to function effectively.*

<b>Organizational Structure Options</b>			
<b>Type of Organization</b>	<b>Description</b>	<b>Advantages</b>	<b>Disadvantages</b>
Independent Agency	Board appointed by Governor to represent chiropractors and make final decisions for regulation with its own staff and budget.	<ul style="list-style-type: none"> <li>• Expertise in chiropractic applied to regulation of licensees.</li> <li>• Accountability for licensing and enforcement.</li> <li>• Customer service by Board and staff dedicated to single profession.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of resources and difficulty performing basic functions like enforcement.</li> <li>• Potential for undue influence by industry on regulations.</li> <li>• Duplication of effort with other licensing agencies performing common functions.</li> <li>• Lack of coordination with other agencies having similar functions.</li> </ul>
Coordinating Council	Board appointed by Governor to make final decisions for regulations, with its own staff for licensing and enforcement. Receives some or all administrative support from coordinating council composed of comparable agencies, such as the Health professions Council, which may rely on staff from member agencies or may employ its own staff.	<ul style="list-style-type: none"> <li>• Administrative efficiency from standardizing functions among member agencies.</li> <li>• Better access to equipment and staff not afforded with small appropriations.</li> <li>• Better focus of limited resources on core licensing and enforcement functions, maintaining expertise, accessibility and accountability.</li> </ul>	<ul style="list-style-type: none"> <li>• Less autonomy for Board in meeting administrative program needs.</li> <li>• Fracturing of administrative services among agencies, with some favored more than others.</li> <li>• Duplication of effort with other licensing agencies performing common functions.</li> </ul>
Consolidation of Similar Agencies	Advisory Board that makes recommendations to consolidated licensing oversight board, either for the regulation of medical practitioners specifically, or as part of the unified regulation of all health professions.	<ul style="list-style-type: none"> <li>• Single point of contact for obtaining information or lodging complaints.</li> <li>• Improved economy of scale for administrative, licensing, and enforcement functions.</li> <li>• Improved coordination and standardization of rules and policies, especially among similar professions.</li> <li>• Reduced potential for regulated profession to dominate regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• Neglect of smaller professions in favor of larger, more powerful groups.</li> <li>• Diminished customer service and accountability resulting in increased response times for licensing and enforcement actions.</li> <li>• Lack of staff expertise in a specific profession.</li> </ul>

- The Health Professions Council (HPC) currently functions as a coordinating council for 15 agencies representing 35 health professions licensing boards and programs. Member agencies collocate in one state office building to facilitate resource sharing, including shared board and conference rooms, an imaging system, courier services, and information technology staff. HPC is also currently making plans to coordinate human resources and financial activities among member agencies. The Legislature augmented the activities of HPC in 2003, by establishing the Office of Patient Protection, which will assist consumers with complaints about HPC member agencies. HPC could

be given additional authority to coordinate all of the agencies' administrative functions, leaving member agencies to perform only licensing and enforcement functions.


- The regulation of chiropractic could be consolidated with another state agency, such as the Texas State Board of Medical Examiners. Such a consolidated agency could be overseen by a single board that represents all of the medical practitioners that it regulates and makes final regulatory decisions. Alternatively, a consolidated agency could be overseen by a public board, assisted by advisory committees representing each profession. Consolidating the regulation of chiropractic with the Medical Board could improve economies of scale, especially with regard to enforcement, since the Medical Board employed 63 enforcement staff as of November 2003, compared to one for the Chiropractors. This consolidation could also promote coordination of regulation of the sometimes overlapping practices of chiropractors, medical doctors, acupuncturists, and osteopaths, who like chiropractors, employ manipulations and adjustments of the musculoskeletal system, but do so in conjunction with conventional medical diagnostics and procedures.

Alternatively, the Texas Department of Health oversees 20 regulatory and advisory boards that are administratively attached to it, including social workers, perfusionists, and midwives. A separate policy board for chiropractors could be attached to the Department with responsibility for licensing and enforcement of chiropractic.

Finally, a single umbrella health licensing agency could regulate *all* of the health professions currently regulated under 35 separate boards and programs. A public board would oversee all regulation, assisted by advisory committees that could provide expertise in the regulation of the various health professions. The structure of the agency could be modeled after the Texas Department of Licensing and Regulation (TDLR), which has a structure for occupational and professional examination, licensing, and enforcement for more than 20 regulatory programs. The agency's public board receives assistance from statutorily created advisory committees, composed of regulated trades, businesses, industries, and occupations.

**All 50 states regulate chiropractors, generally within umbrella licensing agencies.**

The chart, *Oversight of Chiropractors in the United States*, describes the structure of chiropractic regulatory agencies in the United States. Only 14 states other than Texas use a separate, stand-alone agency. Instead, 33 states place regulation of chiropractic services within an umbrella agency, although the organizational structure of such agencies varies. Of these states, 19 use a general umbrella licensing agency that is analogous to TDLR. The

  
*A consolidated agency could be overseen by a single board representing all the medical practitioners that it regulates.*

<b>Oversight of Chiropractors in the United States</b>		
<b>Structure</b>	<b>Number of States</b>	<b>States</b>
Independent Agency	15	AL, AK, AZ, CA, KY, MN, MS, NC, ND, NV, OH, OK, OR, TX, WV
Administratively attached to larger agency	2	ID, WY
Health Professions Agency	14	CT, FL, IA, IN, KS, LA, MD, NE, NH, RI, SD, TN, VA, WA
General Umbrella Agency	19	AK, CO, DE, GA, HI, IL, MA, ME, MI, MO, MT, NJ, NM, NY, PA, SC, UT, VT, WI



other 14 states regulate chiropractors through a health professions umbrella agency. One of these states, Virginia, regulates chiropractors under a Board of Medicine that also regulates medical doctors, osteopaths, podiatrists, and acupuncturists.

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*Opportunities may exist to provide greater coordination and consistent regulation among health licensing agencies.*

**A complete study of the organizational alternatives should consider the results of the Sunset Commission's reviews of other health licensing agencies this review cycle.**

- Sunset reviews of the other health licensing agencies are scheduled for completion in the fall of 2004, after the completion of this agency's review. The textbox, *Health Boards Under Sunset Review*, lists the professional licensing agencies that will undergo Sunset review by the fall of 2004.
- The results of these reviews may indicate that further administrative efficiencies can be gained among these agencies. Additionally, opportunities may exist to provide for greater coordination and consistent regulation across Texas' health licensing agencies. Delaying decisions on continuation of the Board until that time would allow Sunset staff to finish its work on all the professional licensing agencies and base its recommendations on the most complete information.

<b>Health Boards Under Sunset Review 2003 – 2005*</b>
State Board of Acupuncture Examiners
Texas Board of Chiropractic Examiners
Texas State Board of Examiners of Dietitians
Texas State Board of Examiners of Marriage and Family Therapists
Texas State Board of Medical Examiners
Texas Midwifery Board
Texas Optometry Board
Texas State Board of Examiners of Perfusionists
Texas State Board of Pharmacy
State Board of Physician Assistant Examiners
State Board of Podiatric Medical Examiners
Texas State Board of Examiners of Professional Counselors
Texas State Board of Examiners of Psychologists
State Board of Social Work Examiners
State Board of Veterinary Medical Examiners
* All the above boards are members of HPC or are attached to the Texas Department of Health, which is an HPC member.

## Recommendation

### Change in Statute

#### **4.1 Decide on continuation of the Texas Board of Chiropractic Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.**

This recommendation would postpone the Sunset Commission's decision on the status of the Board as a separate agency until completion of the Sunset reviews of other health licensing agencies being reviewed this biennium.

### Impact

Though the State should continue to regulate chiropractors, radiological technicians, and chiropractic facilities, Sunset staff recommends that the Sunset Commission delay its decision on continuation of

the Board as a separate agency until the Sunset reviews of other health licensing agencies are completed. At that time, Sunset staff will make recommendations to the Commission regarding continuing the Board. The results of each agency review should be used to determine if administrative efficiencies and greater coordination can be achieved in the organization of the State's separate health licensing agencies.

### **Fiscal Implication**

This recommendation will not have a fiscal impact to the State.

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<sup>1</sup> Texas Senate Bill 673, 74th Legislature (1995).





## **ACROSS-THE-BOARD RECOMMENDATIONS**

**Texas Board of Chiropractic Examiners**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Already in Statute	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.



## **AGENCY INFORMATION**

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# Agency Information

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## Agency at a Glance

The Texas Board of Chiropractic Examiners' mission is to protect the public's health, safety, and economic welfare by ensuring that chiropractic professionals are qualified and competent, and adhere to established professional standards. The State began regulating chiropractors in 1949 when the Legislature passed the Chiropractic Act and established the Board as an independent agency. To accomplish its mission, the Board:

- licenses chiropractors, registers chiropractic radiological technicians, and approves continuing professional education programs;
- registers chiropractic facilities; and
- investigates and resolves complaints, taking disciplinary action when necessary to enforce the Board's statute and rules.

## Key Facts

- **Funding.** In fiscal year 2003, the agency operated on a \$344,000 budget and collected about \$1.6 million in revenue from professional and licensing fees and fines.
- **Staffing.** The agency employs six people, all of whom work in Austin.
- **Licensing and Registration.** The Board licensed 4,688 chiropractors, and registered 2,986 facilities and 157 radiological technicians in fiscal year 2003.
- **Enforcement.** The Board received 307 complaints in fiscal year 2003, and resolved 592, with almost three-quarters of them initiated by staff for practicing with an expired license or facility registration. Of the complaints submitted by the public, the most common are for unprofessional conduct, false or deceptive advertising, and grossly inefficient practice. This last category includes causing injury to a patient, failing to assess a patient's status and failing to provide direct supervision of students. The large number of complaints resolved in 2003 resulted from a backlog of complaints dating back to 2001.

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*The Board of  
Chiropractic Examiners  
has a Web site at  
[www.tbce.state.tx.us](http://www.tbce.state.tx.us)*

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## Organization

### Policy Body

The Board consists of nine members – six chiropractors and three public members – appointed by the Governor to serve staggered, six-year terms. The chart, *Texas Board of Chiropractic Examiners*, identifies current Board members. The Board sets policy and adopts rules, appoints the Executive Director, participates in licensing and disciplinary proceedings, and approves continuing education programs. In fiscal year 2003, the Board met six times.

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*In fiscal year 2003  
the regulation of the  
chiropractic profession  
generated almost  
\$1.6 million through  
various fees and  
assessments.*

<b>Texas Board of Chiropractic Examiners</b>			
<b>Member</b>	<b>City</b>	<b>Qualification</b>	<b>Term Expiration</b>
Sandra Jensen, President	Farmers Branch	Chiropractic	2007
Robert Coburn, Vice President	West Columbia	Chiropractic	2005
Serge Francois, Secretary-Treasurer	Dallas	Chiropractic	2005
Marcia Daughtrey	Tyler	Public Member	2009
Paul Dickerson	Houston	Public Member	2005
Narciso Escareno	Brownsville	Public Member	2007
Scott Isdale	Killeen	Chiropractic	2009
Steve Minors	Austin	Chiropractic	2007
David Sime	El Paso	Chiropractic	2009

The Board has established five subcommittees that provide assistance in overseeing the agency, making rules, evaluating applications submitted by individuals with criminal histories, approving continuing education programs, reviewing enforcement cases, and answering questions related to scope of practice.

### **Staff**

The Board has six employees, all based in Austin. The Executive Director manages the day-to-day operations of the agency and implements the Chiropractic Act and Board policy. Generally, staff administers the jurisprudence exams; processes licenses, registrations, and renewals; oversees continuing education; and investigates complaints. The Board receives legal assistance from the Office of the Attorney General. The Board is also a member of the Health Professions Council, which coordinates functions among various health-care licensing agencies. The Council provides services for the agency including information technology, accounting, courier service, and access to imaging equipment. Because of the small staff size, no analysis was prepared comparing the agency's workforce composition to the overall civilian labor force.

## **Funding**

### **Revenues**

In fiscal year 2003, the regulation of the chiropractic profession generated total revenues of almost \$1.6 million through various fees and assessments. As a licensing agency, the Board covers its administrative costs through licensing, renewal, and examination fees and through appropriated receipts for services such as license verifications and Open Record requests. The table, *Chiropractic Board Licensing Fees*, illustrates the licensing fees charged by the Board. Revenue generated through these fees totaled \$586,000 during fiscal year 2003. The agency also assesses administrative penalties against licensees for violations of the Board's statute and rules, totaling \$35,000 in fiscal year 2003. In addition, the Board collects a \$200 annual professional fee from each licensed chiropractor that goes to the General Revenue Fund and a \$5 fee for the Texas Online system. Revenue from these administrative penalties and fees is not used to cover the agency's operating costs, but goes



to the General Revenue Fund to be spent for other state purposes.

### Expenditures

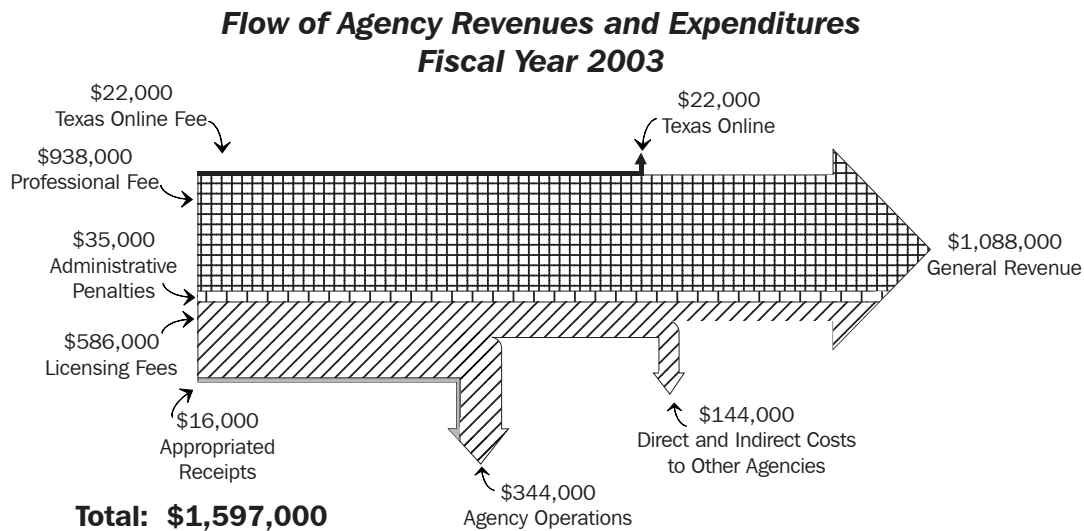
In fiscal year 2003, the Board spent about \$344,000 in two areas: licensing and enforcement. Of this amount, \$202,000, or 59 percent was spent on licensing, while \$142,000, or 41 percent, was spent on enforcement. In addition, the Legislature has directed the Board and other licensing agencies that are funded by fees to cover direct and indirect costs appropriated to other agencies that provide services to the Board. Examples of these costs include a portion of the bond payment for the building in which the agency is housed, employee benefits paid by the Employees Retirement System, and accounting services provided by the Comptroller of Public Accounts. In 2003, these indirect costs totaled about \$144,000 for the Board.

<b>Chiropractic Board Licensing Fees</b>				
<b>Fee</b>	<b>Board Fee</b>	<b>Professional Fee</b>	<b>TxOnline Project</b>	<b>Total Fee</b>
License Application	\$125	\$0	\$0	\$125
Jurisprudence Exam fee	\$125	\$200	\$0	\$325
License Renewal	\$125	\$200	\$5	\$330
Radiological Technician Registration or Renewal	\$35	\$0	\$0	\$35
Facility License or Renewal	\$40	\$0	\$0	\$40

The graph, *Flow of Agency Revenues and Expenditures*, shows the overall impact of the agency's revenues and expenditures on the General Revenue Fund. Subtracting the agency's operating expenditures and direct and indirect costs incurred by other agencies from total revenues, the agency generated about \$1.1 million to the General Revenue Fund in fiscal year 2003 to be used for state purposes other than regulating the chiropractic industry.

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*The Board generated about \$1.1 million to General Revenue in fiscal year 2003 to be used for other state purposes.*



Appendix A describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2000 to 2003. The Board uses HUBs in the categories of professional services, commodities, and other services. While the agency has fallen behind the goal for professional services, it has consistently surpassed the goal for commodities.

## Agency Operations

The Texas Board of Chiropractic Examiners seeks to protect the public by ensuring that qualified individuals provide chiropractic care in Texas, and by sanctioning individuals who violate the law and Board rules. To achieve this goal, the Board examines and licenses chiropractors, registers chiropractic facilities and radiological technicians, oversees the continuing education of chiropractors, and enforces the Chiropractic Act and Board rules. The textbox, *Practice of Chiropractic*, describes chiropractic care and identifies the two main chiropractic schools of thought.

  
*The Board seeks to protect the public by ensuring that only qualified individuals provide chiropractic care in Texas.*

### **Practice of Chiropractic**

A system of therapy and healing which holds that disease in the human body results from a lack of normal nerve function. Chiropractors employ manipulation and specific adjustment of body structures, such as the spinal column. In the chiropractic community, practitioners known as "straights" confine their treatment practices to spinal manipulation. "Mixers" have expanded beyond adjustment and manipulation by employing other treatments such as nutritional methods, herbal remedies, massage, acupuncture, and various diagnostic testing.

## Licensing and Registration

*Chiropractors* - A person may become a licensed chiropractor, known as a Doctor of Chiropractic (DC), by meeting criteria listed in the textbox, *Eligibility Requirements*, and submitting an application. Most applicants come from one of two accredited chiropractic colleges in Texas: Parker College in Dallas and Texas Chiropractic College in Houston. While in chiropractic college, students must take and pass all four parts of the national examination administered by the National Board of Chiropractic Examiners, which test a person's knowledge of basic science, clinical science, physiotherapy, clinical competency, x-ray interpretation and diagnosis, chiropractic technique, and case management.

### **Eligibility Requirements**

To qualify to be licensed as a chiropractor, a person must:

- be at least 18 years of age;
- be of good moral character;
- have completed sixty hours of college courses at a school other than a chiropractic school;
- be a graduate of an accredited four-year college of chiropractic; and
- have taken and passed the National Board of Chiropractic Examiners examinations.

Upon qualifying, applicants must pass the Board's jurisprudence examination which tests the applicants' knowledge of the Chiropractic Act and Board rules. The Board offers the exam in Austin four times a year, and will begin offering it online in 2004 at local area testing centers throughout the state. The agency administered the exam for 255 applicants in fiscal year 2003,

with an 86 percent pass rate. The chart, *Licensed Chiropractors*, shows the number of individuals licensed by the Board over the last five years.

Once licensed, chiropractors must renew their licenses and complete 16 hours of approved continuing education each year. The agency reviews continuing education courses developed by providers to determine their acceptability. Trade associations and chiropractic colleges offer most continuing education seminars and courses.

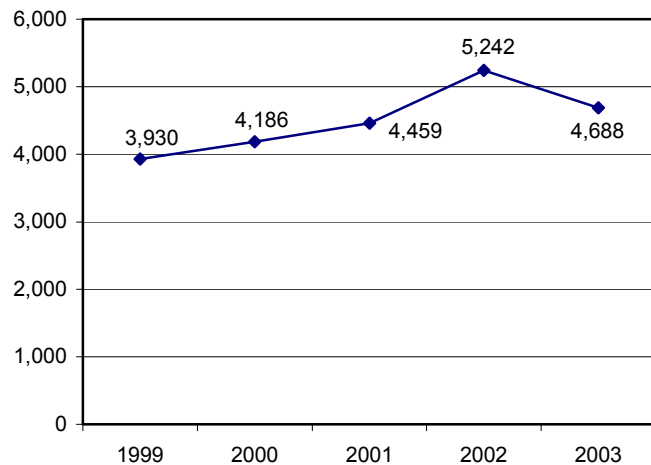
The Board also verifies the qualifications of out-of-state applicants seeking to practice in Texas. Out-of-state applicants must meet the same eligibility requirements as in-state applicants, including passing the National Board and the State's jurisprudence exams. If out-of-state applicants have not passed all four parts of the National Board's examination, but have practiced chiropractic or have been a chiropractic educator for at least three years directly preceding their application, they may substitute the Special Purpose Exam for Chiropractic, administered by the National Board of Chiropractor Examiners, to demonstrate their clinical competency to practice chiropractic.

*Chiropractic facilities* - A facility providing chiropractic care must be registered with the Board and renew its registration annually. To satisfy requirements, a facility owner submits an application with basic information, and pays a \$40 application and yearly renewal fee. Registration allows the Board to track each chiropractic facility operating in the state.

State law does not require facilities to be owned by licensed chiropractors. The graph, *Chiropractic Facilities*, shows the number of facilities registered with the Board from fiscal years 1999 through 2003, broken down by DC-owned facilities and non-DC owned facilities. After a slight dip in the number of non-DC owned facilities in fiscal year 2000, these facilities grew by more than 50 percent over the next three years – a rate almost six times greater than the increase of DC-owned facilities. In the 2003 session, the Legislature gave the Board authority to discipline non-DC owners who operate an expired or unregistered facility in the same manner the Board is able to discipline license holders.

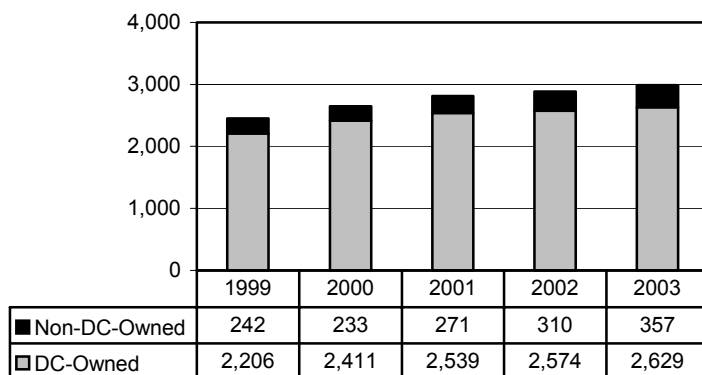
*Radiological technicians* - The Board registers radiological technicians who perform x-rays and work under the supervision of chiropractors. In fiscal year 2003, the Board registered 157 radiological technicians. Technicians must also register with the Texas

**Licensed Chiropractors  
FY 1999 - 2003**

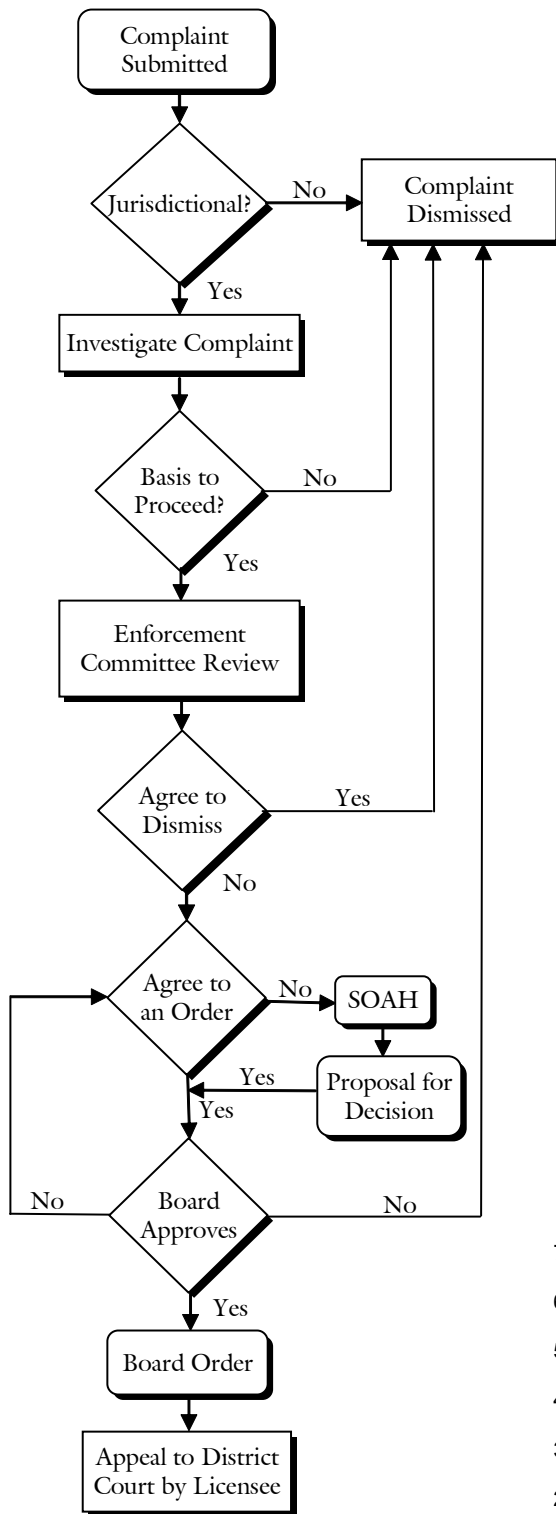


*Non DC-owned  
facilities grew by  
more than 50 percent  
from fiscal year 2000  
to 2003.*

**Chiropractic Facilities  
FY 1999 - 2003**



**Texas Board of  
Chiropractic Examiners  
Complaint Process**



Department of Health (TDH) to meet the Department's minimum training and supervision, and must complete six hours of continuing education annually.

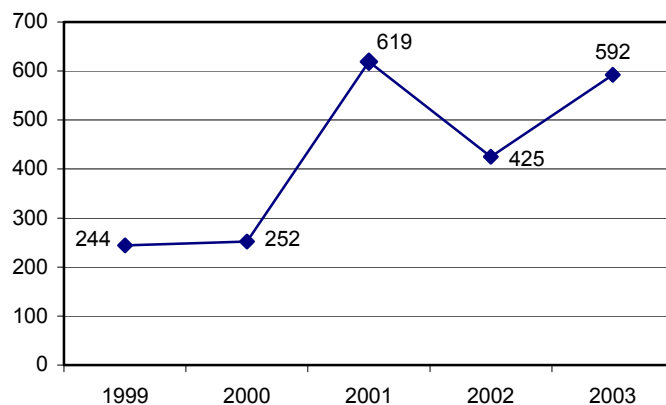
**Enforcement**

The Board regulates chiropractors by investigating complaints against licensees, and taking enforcement action, if necessary, against violators of the Chiropractic Act or Board rules. The chart, *Texas Board of Chiropractic Examiners Complaint Process*, shows how the Board processes complaints administratively. The Board has established minimum standards of professional conduct and efficient practice for licensees. The types of complaints the agency receives from the public include advertising violations; unprofessional conduct; and inefficient practice, such as causing injury to a patient, failing to assess a patient's status, and failing to provide direct supervision of a student or radiological technician. Using its authority, the Board also initiates complaints, mostly for expiration of a license or facility registration.

The chart, *Chiropractic Complaints by Source*, in Issue 2 on page 17, shows the recent rise and fall of the total number of complaints processed by the Board that is attributable to the large number of Board-initiated complaints. The spike in the number of complaints initiated by the Board was due to mass dockets of administrative penalties for practicing with an expired license and operating an expired facility registration.

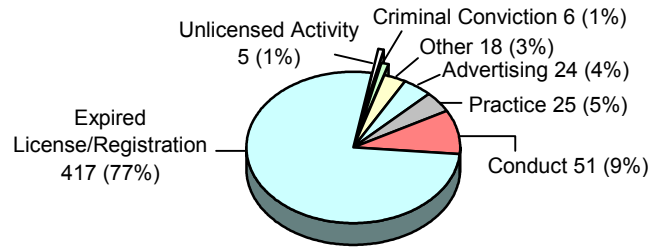
In fiscal year 2003, the Board resolved 592 complaints, as shown in the chart, *Number of Complaints Resolved*. The number of complaints resolved in a year is not the same as the number of

**Number of Complaints Resolved  
FY 1999 - 2003**



complaints received because of the time required to investigate and resolve complaints. Almost three-quarters of the complaints resolved by the Board relate to expired licenses or facility registrations, as illustrated in the chart, *Average Number of Resolved Complaints by Type of Violation or Allegation*.

**Average Number of Resolved Complaints by Type of Violation or Allegation  
FY 2001 - 2003**



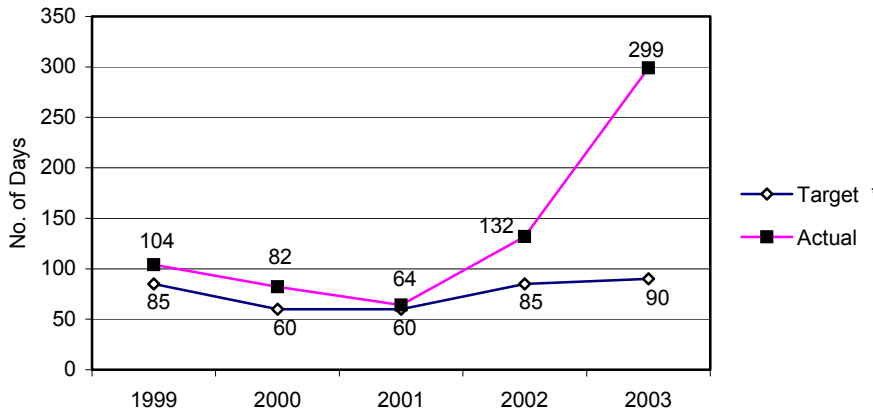
Sanctions available to the Board include formal reprimands, administrative penalties, suspensions, suspensions with probation, and revocations. The Board may also include other conditions in a final disposition, such as requiring additional continuing education, depending on the type of complaint. For individuals practicing without a license, the agency's recourse includes assessing an administrative fine, forwarding the case to a District Attorney to prosecute as a Class A misdemeanor, or referring the complaint to the Attorney General's office to file for an injunction.

The chart, *Average Time for Complaint Resolution*, shows that the Board took an average of 299 days to resolve a complaint in fiscal year 2003, compared with an average of 132 days the previous year. The average time of complaint resolution increased that year because the Board ran fewer mass dockets of complaints for practicing with an expired license and operating with an expired facility registration.



*Almost three-quarters of resolved complaints relate to expired licenses or facility registrations.*

**Average Time for Complaint Resolution  
FY 1999 - 2003**



\* LBB performance measure



# APPENDICES



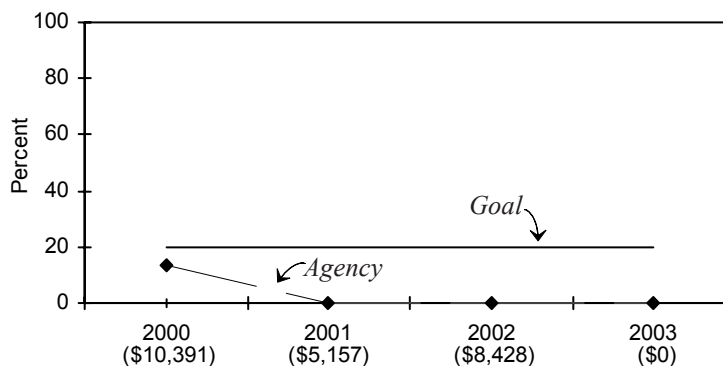
## Historically Underutilized Businesses Statistics

### 2000 to 2003

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Texas Board of Chiropractic Examiners revealed that the agency is not fully complying with state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules.

The following material shows trend information for the Texas Board of Chiropractic Examiners use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond-dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 2000 to 2003. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The Board has fallen short of the state goal for professional services, but has consistently surpassed the goal for commodities.

#### Professional Services

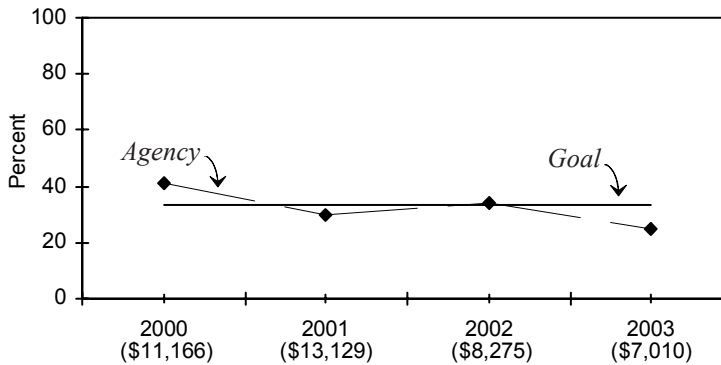


The Board fell below the state goal for HUB purchasing of professional services from 2000 to 2002, although expenditures in this category were not significant.

## Appendix A

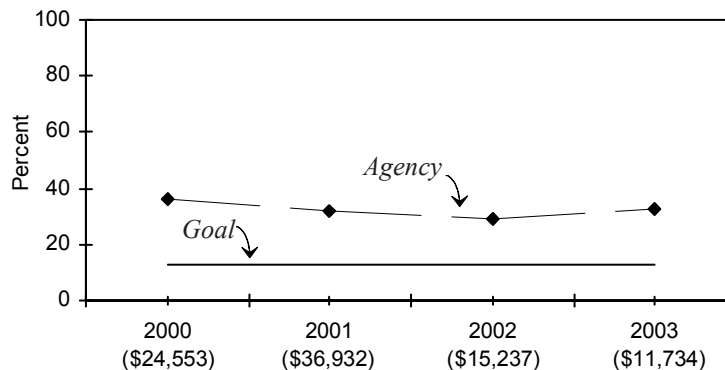
### Historically Underutilized Businesses Statistics

#### Other Services



The Board exceeded the state goal for other types of services in 2000, but fell below this goal in 2001 and 2003.

#### Commodities



The Board has consistently exceeded the state goal for HUB purchasing of commodities from 2000 to 2003.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

## Staff Review Activities

Sunset staff engaged in the following activities during the review of the Texas Board of Chiropractic Examiners.

- Worked extensively with agency staff.
- Attended Board and committee meetings, reviewed Board and committee minutes, and interviewed Board members.
- Reviewed the Board's statute and rules, documents and reports, opinions, previous legislation, complaints files, and performed background and comparative research using the Internet.
- Met with and solicited comments from professional associations and other interested parties with a stake in the regulation of chiropractors.
- Conducted an Internet survey of complainants and individuals licensed and registered by the Board.
- Met with, or interviewed by phone, staff from the Texas Workers' Compensation Commission, Texas Department of Insurance, Office of the Attorney General, Health and Human Services Commission, Health Professions Council, Texas State Board of Medical Examiners, Texas State Board of Podiatric Medical Examiners, the Board of Nurse Examiners, Texas State Board of Dental Examiners, Executive Council of Physical Therapy and Occupational Therapy Examiners, and Texas Department of Health's Professional Licensing and Certification Division.
- Interviewed by phone current and former chairs and a member of local peer review committees and the Executive Peer Review Committee.
- Talked with staff from the Governor's Office, Lt. Governor's Office, Speaker's Office, State Auditor's Office, Legislative Budget Board, and legislative committees.
- Reviewed reports and documents by the Comptroller of Public Accounts, State Auditor's Office, Legislative Budget Board, and the previous Sunset review.
- Reviewed Attorney General's opinions, and court and State Office of Administrative Hearings' cases.
- Observed the jurisprudence examination administered by agency staff.
- Compiled information about chiropractic regulatory programs and agencies in other states by speaking with staff from those agencies, the Federation of Chiropractic Licensing Boards and the National Board of Chiropractic Examiners.



**SUNSET REVIEW OF THE  
TEXAS BOARD OF  
CHIROPRACTIC EXAMINERS**

Report Prepared By:

**EMILIE LEROUX**  
PROJECT MANAGER

**MICHELLE LUERA**  
**DAWN ROBERSON**

**JOE WALRAVEN**  
PROJECT SUPERVISOR

**JOEY LONGLEY**  
DIRECTOR