

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Staff Report
to the
Sunset Advisory Commission

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April 17, 1980

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FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas Board of Chiropractic Examiners, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

I. SUMMARY AND CONCLUSIONS

The theory of modern chiropractic was developed in the late nineteenth century by Daniel David Palmer. Official recognition of the profession occurred in 1899 when the first licensing law was enacted in the United States. Texas began the regulation of chiropractors in 1943 with the passage of legislation which attempted to distinguish clearly between chiropractic and other sciences, similar to the distinction maintained between dentistry and medicine. The stated purposes of the legislation were to respond to an increasing demand for chiropractic services and to provide more adequate public protection from unscrupulous practitioners. In 1944, the courts determined that the statute was unconstitutional because it was vague and it gave preference to a "school of medicine." Legislation passed in 1949 addressed the issues raised by the courts and re-established the Texas Board of Chiropractic Examiners.

The board, composed of nine chiropractors, presently regulates 1,340 licenses through its licensing and enforcement functions. Additional responsibilities include administration of provisions of the Act and prevention of the unauthorized practice of chiropractic. Operations of the board are supported entirely from fees collected by the board.

Review of the board operations shows that the administrative activities of the board could be more efficient. Management letters of the State Auditor have made suggestions concerning reduction of board member travel expense and improvements in financial controls which are being implemented. However, the agency has not fully implemented adequate accounting procedures and needs to strengthen its efforts to safeguard and process revenues received.

Internal management problems can be solved by hiring a full-time bookkeeper, which would give the agency two full-time employees. The additional person would also eliminate the necessity of closing the office during working hours because of scheduling difficulties. Although the additional employee would cause expenditures to exceed revenues by 1983, analysis of the fees charged by the agency indicates that an increase in current fees and the imposition of an initial license fee would be justified.

Review of the licensing process indicated that the process generally functions smoothly and that the board examination acts as an effective and appropriate screening mechanism except in the area of the practical exam. It is board policy to administer a practical exam to all applicants even though it does not have statutory authority to do so. Analysis of other areas involved with licensing showed that endorsement would be appropriate and that the system currently used to notify licensees of approved continuing education courses could be improved. The process used by the board regarding persons seeking reinstatement of a license should be changed so that reexamination rather than continuing education would be the basis for reinstatement. Finally, licensure prerequisites contained in the statutes do not lend themselves to a clear and objective determination and should be modified.

Analysis of the board's enforcement efforts indicates that the agency has a limited enforcement capacity due to funding and staffing constraints and that effective enforcement has been further hampered by board policy requiring a sworn complaint prior to initiation of most investigations. The review also indicated that the complaint process is not well-documented. In addition, certain areas of chiropractic practice have not been adequately addressed by board rule. These

areas include use of x-rays, physical therapy, vitamin and nutrition therapy, and supportive measures. Finally, some of the statutory grounds for disciplinary action are vague in definition and should be modified to give the board a more objective basis on which to base disciplinary actions.

Other aspects of the review found that the agency had generally complied with statutes relating to conflicts of interest and open records. However, three situations which could lead to conflicts of interest were noted. The first deals with board members holding leadership positions in a chiropractic association and the second with the fact that the executive secretary is related to a board member by the second degree of consanguinity, creating the potential for a conflict of interest. Finally, the agency's executive secretary is a paid lobbyist while his position as executive secretary of the board is funded through state appropriations, in violation of Article V, Section 4 of the general appropriations bill.

No difficulties were noted during the review in regard to the agency's compliance with the Open Records Act. With regard to the Open Meetings Act, the board has conducted several closed sessions to discuss and take action on complaints. The section of the Act which authorizes such meetings are not cited nor are final decisions made in open meetings, as required by law. The agency has been informed of the appropriate procedures for such actions and indicated that future meetings will be in compliance.

With regard to public participation, the agency has not always complied with public notification requirements found in general law. Public participation in the policy-making process has been minimal, but could be enhanced by the addition of public members to the board.

Need to Regulate

As in the case of other regulated activities, regulation of chiropractors should be undertaken by the state only when there is a continuing need to protect the public health, safety or welfare. The need to regulate the practice of chiropractic is recognized by all fifty states and implicitly recognizes the technical nature of chiropractic practice and the potential for harm to the public which exists in the practice of chiropractic.

Conditions which exist today indicate a continued need to protect the public, because the practice of chiropractic remains a technical profession which should only be practiced by skilled professionals and because there continues to be a potential for harm to the public from incompetent practitioners. Without state regulation, there would be no official determination of minimum levels of competency before a person could practice chiropractic. Thus, the public would be subject to an unnecessary risk of harm from incompetent and unscrupulous practitioners. It can be concluded, therefore, that there is a continuing need to license and regulate the profession from the standpoint of public protection.

Alternatives

If the legislature determines that the regulatory function and/or board should be continued, the following alternatives should be considered:

1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain an independent board to perform licensing and enforcement at no expense to the General Revenue Fund. The review indicated that the following modifications would result in more effective regulation of chiropractors:

- a) increase fees in a manner that needed expenditures can be maintained and add an initial license fee to the fee structure (page 13);

- b) employ a permanent staff person skilled in book-keeping procedures (page 16);
- c) modify the statute to permit oral examination of all applicants, with proper attention to continued use of a consistent, fair and objective exam and grading process (page 19);
- d) restructure provisions related to denial of license and disciplinary actions to include only clear objective standards related to the practice of chiropractic (page 20);
- e) modify the statute to allow approval of continuing education courses and require notification of all licensees of these courses on an annual basis (page 22);
- f) comply with general provisions of the general appropriations act in the employment of personnel (page 38); and
- g) add three public members to the board, replacing current members as their terms expire (page 42).

2. ABOLISH THE BOARD AND TRANSFER ITS FUNCTIONS TO THE DEPARTMENT OF HEALTH (page 33).

This approach would consolidate the regulation of chiropractors with the Department of Health as is done in nine states. The department currently provides administrative support services to other licensing agencies of similar size and is involved in the regulation of x-ray equipment and its use. Benefits to be derived through this alternative include: 1) utilization of personnel expertise in regulating the use of x-ray equipment; 2) utilization of complaint enforcement mechanisms already in place; and 3) utilization of existing support services for administration.

Effective implementation of this alternative would require certain modifications which include the following:

- a) retain the board in an advisory capacity; and
- b) implement the structural and substantive changes contained in the preceding alternative.

II. BACKGROUND

Historical Perspective

The practice of chiropractic originates from a theory developed by Daniel David Palmer in the late 1800's. Palmer's theory was basically that misalignments of the vertebrae, called subluxations, were the primary cause of disease and illness. Modern chiropractic has updated Palmer's theory to accept some basic scientific premises regarding the roles of bacteria and virus as contributing factors in illness. Today, chiropractic emphasizes that mechanical disturbances of the nervous system are directly related to lowering the body's resistance to bacteria and virus and that chiropractic treatment can restore health to the neurological and structural systems of the body.

Regulation of chiropractic in Texas was first attempted in 1943. In response to an increasing demand for the use of chiropractic by the public and the need to protect the public from unqualified practitioners, the legislature enacted legislation creating the Board of Chiropractic Examiners. In defining the regulation of chiropractic, a constraint was placed on legislative efforts due to a constitutional provision regarding the practice of medicine. Article XVI, Section 31 of the Texas Constitution allows the legislature to prescribe the qualifications of medical practitioners and to punish persons for malpractice, but prohibits giving preference to any particular "school of medicine." The legislation enacted in 1943 defined chiropractic as treatment of the "spinal column and its connecting tissues." This legislation was ruled unconstitutional in 1944. The courts determined that the definition of chiropractic placed it within the scope of the practice of medicine and placed less stringent licensure requirements of chiropractic than on medical doctors, in violation of the Constitution.

Seeking to meet the original needs of the first chiropractic licensure act and to define and distinguish chiropractic from the practice of medicine, the legislature enacted a new practice act in 1949. The new definition of chiropractic included persons:

"who shall employ objective or subjective means without the use of drugs, surgery, x-ray therapy or radium therapy, for the purpose of ascertaining the alignment of the vertabrae of the human spine, and the practice of adjusting the vertabrae to correct any subluxation or misalignment thereof, and charge therefor, directly or indirectly, money or other compensation..."

This definition limited chiropractic to treatment of the spine, clearly removing it from the practice of medicine.

The practice of chiropractic has remained relatively unchanged over the years. Certain methods of diagnosis and treatment have become more widely accepted and used. Diagnostic methods commonly used include x-ray and laboratory tests. Methods of treatment often include such techniques as nutritional counseling, and the use of supportive devices (including diathermy, ultrasonics, infrared, muscle stimulators, vibrators, hydrotherapy, traction and other devices) in addition to manipulation of the spine by hand.

Regulation of chiropractic in Texas is carried out through a nine-member board appointed by the governor with the advice and consent of the senate. The board is composed entirely of practicing chiropractors. Day-to-day operations of the board are supervised by a half-time executive secretary who also serves as the agency investigator. In addition, the board employs a full-time administrative technician. Agency operations include regulation of 1,340 licensees and are funded by fees collected through the examination and licensure activities. All fees collected are deposited in the State Treasury. Since the creation of the board, a statutory provision has been in effect which requires that year-end balances in

excess of \$20,000 be transferred to general revenue. In fiscal year 1979, the board collected \$58,892 in revenues and expended \$58,718.

Comparative Analysis

To determine the pattern of regulation of the practice of chiropractic within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of chiropractor is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organizational patterns nineteen states, including Texas, meet this expressed need through an independent board or commission. In the remaining thirty-one states, chiropractic practice is regulated by a board or commission associated with a central state agency possessing regulatory authority over multiple professions. In five of the thirty-one states, the board or commission charged with the regulation of medical doctors also regulates the practice of chiropractic. Boards in six states, not including Texas, indicate that they perform advisory functions only. Board members are appointed by the governor in forty-four states, as in Texas. In nineteen states, including Texas, the governor's appointments must be approved by the legislature. Lay, or public, members serve on boards in twenty-four states. The Texas board is composed entirely of chiropractors. In twenty-nine states, agency activities are solely supported through fees collected by the agency.

In the areas of licensing and enforcement, forty-seven states, including Texas, require licensees to be graduates of accredited chiropractic colleges. Thirty-four states rely on the Council of Chiropractic Education to perform this accrediting function, as does Texas. Forty-two states, including Texas, require some form of continuing education for chiropractors. Chiropractors in thirty-four

states, including Texas, are allowed to practice nutritional counseling. In two states, North Dakota and Oregon, chiropractors are allowed to perform surgery. Thirty-six states, including Texas, allow chiropractors to perform laboratory tests, and all states except Washington allow chiropractors to conduct x-rays.

States which regulate the practice of chiropractic indicate the necessity of performing the basic regulatory functions of administration, review of applicant qualifications, license issuance, and enforcement.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

Organization and Objectives

The Texas Board of Chiropractic Examiners has a legislative mandate to regulate all persons who practice chiropractic. The board's stated objectives are to ensure that applicants for licensure are qualified to provide service to consumers and to ensure that licensees do not violate the Act. In order to achieve its objectives, the board performs three major functions: administration, licensing, and enforcement.

The board is composed of nine chiropractors appointed by the governor with the advice and consent of the senate for six-year overlapping terms. To be qualified for appointment, individuals must be Texas residents, and have engaged in the practice of chiropractic for at least five years immediately preceding appointment. In addition, no member of the board may be a member of the faculty or board of trustees of any chiropractic school nor have any financial interest in any chiropractic school. Statutorily required board duties include promulgating rules and regulations, reviewing qualifications of applicants, issuing licenses, conducting license revocation and suspension hearings, instituting actions to enjoin the violation of the Act and generally aiding in the enforcement of the Act.

Staff for the board consists of a full-time administrative technician and a half-time executive secretary/investigator. Activities generally performed by the staff in the traditional areas of administration, licensing and enforcement include processing license renewals, checking license applications for completeness, evaluating transcripts for compliance with educational requirements, maintaining records, accounting for board revenues and expenditures, investigating violations of the Act, and providing secretarial services to the board.

Funding for the board is provided exclusively from fees collected by the agency under provisions of the Act and deposited in the State Treasury to the credit of the Chiropractic Examiners Fund. By statute, at the end of each fiscal year, any funds in excess of \$20,000 must be transferred to general revenue.

Evaluation of Agency Activities

As with most other licensing agencies, the operations of the Board of Chiropractic Examiners can be broken down into three basic activities: administration, licensing, and enforcement. Below, each of these activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with statutory provisions; whether these provisions facilitate accomplishment of the objectives; whether agency organization, rules, and procedures are structured in a manner that contributes to cost-effective accomplishment of the agency's task; and whether procedures provide for fair and unbiased decision-making.

Administration

The general objective of any administration activity is to provide for the efficient operation of all agency functions. The review of these activities

indicated that documents are processed by agency staff in an orderly and timely fashion and that licensee records are well organized and easily accessible. It should be noted that during the period under review, the board has had three complete turnovers in staff contributing to a lack of continuity in administrative policies and procedures. Aspects of agency administration which could be improved include funding, accounting practices and personnel needs.

In the area of funding, an analysis of board revenues and expenditures presented in Exhibit III-1 suggests that beginning in 1980, the board will deplete fund balances in order to meet operating costs, and that by 1983, revenues and fund balances will not be sufficient to cover expenditures. Consequently, the agency's present fee structure was reviewed to determine the available options for increasing revenues to meet projected expenses.

Exhibit III-1
**REVENUES AND EXPENDITURES
 1976-1985**

<u>Memo</u>	<u>Fiscal Year</u>	<u>Professional Fees</u>	<u>Unexpended Balance to Gen.Rev.</u>	<u>Total</u>	<u>Expenditures</u>	<u>Fund Cash Balance</u>
Actual	1976	\$ 48,300	\$ -0-	\$ 48,300	\$ 34,931	\$ 17,685
Actual	1977	48,190	-0-	46,602	41,223	23,064
Actual	1978	50,355	-0-	50,355	47,831	25,588
Actual	1979	58,892	-2,904	54,276	58,718	21,146
Proj.	1980	61,929	-	61,929	65,441	17,634
Proj.	1981	63,699	-	63,699	69,248	12,085
Proj.	1982	66,247	-	66,247	74,788	3,544
Proj.	1983	68,897	-	68,897	80,771	-8,330
Proj.	1984	71,653	-	71,653	87,233	-23,910
Proj.	1985	74,519	-	74,519	94,211	-43,602

The agency's current fee structure is shown in Exhibit III-2. Comparisons were made with other states and with Texas agencies of similar size and type to determine the reasonableness of fees specified by the Act. This analysis showed that fees charged by the board for examination are generally below average and that the board is not authorized to charge an initial license fee nor a late renewal penalty. The analysis indicated that an increase in the examination fee and statutory authorization of an initial license fee and a late renewal penalty would produce revenues sufficient to meet the agency's funding needs. The statute should be modified to provide for these increases. An additional fee noted in the analysis of the fee structure is the fee charged to persons who wish to waive the state written portion after having successfully completed the national exam. A fee of \$50 is required of these applicants, in addition to the regular \$50 fee for examination. Analysis of the unit costs for administering the exam indicated that such a charge was not justified and should be discontinued.

The analysis also indicated that there are costs involved in processing applications for licensure. While it has not yet done so, the board has statutory authority to charge a fee of up to \$50 for verification of basic science courses. The board should utilize this authority, which would more than offset the revenue reduction from removing the waiver-of-written exam fee, to fund these pre-examination administrative costs.

Exhibit III-2
FEE SCHEDULE

	<u>Statutory Maximum</u>	<u>Current Rate</u>
Examination	\$ 50	\$ 50
Waiver of Written Exam	50	50
Verification of Basic Science Courses	NTE 50	-0-
Re-examination	NTE 50	25
Reciprocity	50	50
Renewal	NTE 50	40
License Replacement Fee	Not Authorized	5

Inappropriate practices in collection of fees and excessive expenditures for board member expenses have increased the demand on the agency's limited resources. Management letters issued by the State Auditor in 1978 and 1979 cited excessive board member expenditures for meals and lodging during fiscal years 1976, 1977, and 1978. In response to the management letters, agency staff have formulated internal guidelines for such expenditures. A review of these expenditures for fiscal year 1979 showed that the amount of reimbursements to the board for travel, meals, and lodging had decreased by \$2,080 from fiscal year 1978. In light of the board's projected funding difficulties, as detailed above, limitation of board member expenditures must be continued in order to prevent an unnecessary drain on fund balances.

Numerous weaknesses in the agency's accounting system have been detailed in a March 1979 management letter issued by the State Auditor. Among those items which have been adequately addressed were an unauthorized bank account, loose control over annual renewal cards, delay of suspense account clearances, transfer of overage in Chiropractic Examiner's fund, lack of vacation and sick leave records and control of fixed assets.

Among those items which have not been adequately addressed are the need to post the permanent journals and ledgers in a timely fashion and to reconcile the agency's cash and appropriation balances and statements furnished by the Office of the Comptroller on a monthly basis. In regard to the posting problem, at the time of the review, agency books had not been posted for six months. However, agency staff indicated that procedures have been established to maintain a current set of books and to reconcile on a monthly basis, cash and appropriations balances and statements.

A final problem associated with the accounting processes involves lack of security of receipts pending processing. The agency staff keeps checks, money orders and cashiers checks in an unlocked desk drawer in the front office. While no losses from this procedure have been documented, the agency maintains a suspense fund in the State Treasury to hold fees pending final disposition which should be used instead of the current practice of keeping receipts in the office.

The problems noted in the accounting procedures led to a review of the agency's staffing pattern, job descriptions and personnel policies. Present staff of the board consists of a full-time administrative technician and a half-time executive secretary/investigator. In addition, a bookkeeper has been hired from time to time on a part-time basis. The review found that a person skilled in bookkeeping procedures should be employed on a permanent basis to assure that proper accounting records are maintained and kept up-to-date.

The review of staffing patterns also found problems in keeping the board offices open during normal business hours. The general appropriation act requires that all state offices remain open from 8:00 a.m. to 5:00 p.m. on regular working days. During the review, on at least six occasions, no staff members were present

at the agency to answer the telephone or attend to board business. Efforts should be undertaken by the agency to ensure that at least one staff member is routinely available to maintain an open office during the required hours. If this is not possible, the agency should investigate the use of telephone answering devices. An approach of this type is used by other small agencies when it is not possible to have staff members in the office.

Licensing

The objective of the licensing activity is to ensure that a minimum standard of competency has been achieved by individuals authorized to practice chiropractic in the state. To achieve this objective, the board evaluates and examines applicants for licensure and issues license renewals to individuals meeting the board's continuing education requirements.

An analysis of the characteristics of the licensee population was made through analysis of a sample survey of licensed chiropractors. Survey results indicate that seventy-two percent of the licensees surveyed have been licensed more than fifteen years and that forty-four percent of the survey group obtained their license through a grandfather clause. Results of the survey indicate that at least fifty-nine percent of the chiropractors require all patients to have an x-ray examination which usually is conducted in the chiropractor's office.

Review of the licensing process indicates that it functions smoothly in general. Licenses and renewals are issued without unnecessary delays and notification processes concerning examinations and renewals are handled properly. Statutory exemptions from licensure as a chiropractor which include duly qualified physicians and surgeons appear to be appropriate. It was also noted that provisions of the Physical Therapy Practice Act exempt chiropractors who practice within the scope of their own act.

In reviewing the licensing process, an assessment was made of the effectiveness of statutory requirements and board action in ensuring a minimum level of competency and in providing adequate public protection. Included in the review were examination of applicants, other prerequisites for licensure, reciprocity, continuing education requirements, and reinstatement procedures.

Examination

The examination for licensure as a chiropractor is formulated and administered by the board and consists of eleven written sections, covering the basic sciences, practical and theoretical chiropractic, and x-ray interpretation, and one practical portion. In order to pass the examination, applicants must achieve an overall grade of seventy-five percent with not less than sixty percent in any one subject. Applicants who have taken and passed the national examination may sit for the practical portions of the examination only, upon payment of an additional \$50 fee. Exhibit III-3 indicates the number of persons licensed by taking the entire state exam and those taking the practical portion only, together with other data summarizing the entire licensed population.

Exhibit III-3

**NUMBER OF LICENSES ISSUED
1976-1979**

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Examination (written and practical)	9	8	15	24
Examination (practical only)	28	21	34	38
Reciprocity	-0-	-0-	-0-	-0-
Renewal	1,183	1,203	1,208	1,278
Grandfather	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Total	1,220	1,232	1,257	1,340

Statutory provisions relating to a practical-oral examination apply only to those applicants who have taken the national board exam and wish to waive the written portion of the state exam. In the case of applicants taking the written state exam, the statute provides that the entire exam be written. However, all applicants are required by the board to take the practical portion of the exam. Review of the exam indicated that the practical oral portion of the exam is a useful and appropriate mechanism to screen all applicants irregardless of the type of written examination and the board should be granted clear statutory authority to adminisiter a practical-oral examination to all applicants.

The examination process appears efficient, resulting in a comprehensive examination. Questions for the examination are drawn from a variety of sources including the National Board of Chiropractic Examiners, and Texas Chiropractic College. All questions are subject to review and evaluation by the board. The practical portion of the examination administered by the board appears appropriate, and is standardized in terms of format, questions and grading criteria. Efforts have been made by the board to remove, to the extent possible, judgmental factors in exam administration and grading. As a result, the exam is useful in determining competence and consistent in application. The examination results for the last four fiscal years are shown in Exhibit III-4. Although there appears to be wide variation over the period, this could be attributed to improvements in the examination process instituted in 1979. It appears that the present exam process is generally objective and consistent and is fairly balanced.

Exhibit III-4

LICENSING EXAMINATION PASS/FAIL RATES
FISCAL YEARS 1976-1979

<u>Year</u>	<u>Number Examined</u>	<u>Number Passed</u>	<u>Percent Passed</u>	<u>Number Failed</u>	<u>Percent Failed</u>
1976	56	56	100%	-0-	-0-
1977	55	52	95%	3	5%
1978	55	52	95%	3	5%
1979	89	69	78%	20	29%

Other Licensure Prerequisites

Review of the prerequisites to licensure specified in the statute revealed several aspects which could be improved. The first of these areas deals with the requirement in the board's statute that applicants be citizens of the United States. The courts and Attorney General's Office has stated in several opinions that such a requirement for licensure is unconstitutional under the equal protection clause of the 14th Amendment to the United States Constitution. While this citizenship provision has not been applied by the agency since the issuance of these opinions, the unconstitutional language should be removed.

As a second general area of concern, the statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination and the grounds for removal of a license once issued contains the same confusion of thought and vagueness of terminology found in the statutes of many other licensing agencies. The statute erroneously requires the licensing board in many cases to act essentially as a court of competent jurisdiction in determining the legal status of an individual and requires the board to define and apply terms which may have no legal basis. To correct this situation and to place the licensing

board in an appropriate setting, the statute dealing with the grounds for disqualification should be structured in such a manner that each of the grounds meet a two-part test. First, the grounds for disqualification should be as clear as possible and relevant to the practice and second, the grounds for disqualification should be stated in terms of a currently existing condition rather than an absolute condition which exists throughout the lifetime of the individual.

Review of the grounds for disqualification to sit for examination set out in the board's statute shows that several fail to meet the test stated above. For example, the applicant is required to be of "good moral character" to be licensed. In addition, the board may refuse to issue a license or may cancel, revoke, or suspend a license for gross immorality; or conviction of a felony or misdemeanor which involves moral turpitude; or habitual drunkenness, or drug addiction. The statute should be restructured so that such provisions comply with the two criteria.

Also in the area of other licensure prerequisites, a problem occurred in 1977 which led to the licensure of approximately forty applicants without the then requisite basic science certification. The Attorney General ruled that basic science certification was necessary to licensure as a chiropractor. Subsequently, the board has solved the problem by requiring the applicants to obtain basic science education and instituting procedures to ensure that these requirements for licensure are met by individuals sitting for examination.

Continuing Education

Licensed chiropractors are required by statute to present evidence to the board of participation in two days of continuing education courses each year for license renewal. The board approves continuing education courses on an annual

basis. Although licensees are required to attend board-approved continuing education courses, information concerning which courses have board approval is not routinely provided to licensees in a comprehensive fashion. In addition, rule changes made by the board regarding required hours and types of courses have not been routinely distributed to licensees. As a result, the potential exists for misunderstanding regarding continuing education on the part of licensees. Since licensees clearly have a need for comprehensive information on continuing education and the board has a responsibility to ensure that the continuing education is appropriate, a mechanism to distribute information on approved courses on an annual basis should be established. This mechanism could consist of a list of approved courses supplied with annual renewal notices, together with a note stating that information concerning subsequent approvals could be secured by contacting the board.

Endorsement

Another concern regarding the licensing activity was the lack of reciprocity or endorsement. Presently, an endorsement type system is statutorily authorized, however, arrangements have not been established to implement this authority. Standards such as national board scores, education records, and performance as a licensee in another state, provide the board with objective criteria upon which it could base licensure through endorsement. This approach has been adopted by the Sunset Commission on an across-the-board basis and should be instituted by the board under its present statutory authority.

Enforcement

The basic objective of the enforcement activity is to protect the public by identifying and, where necessary, taking appropriate action against persons not complying with the provisions of the Act or board rules. Evaluation of the enforcement activities of the board included an analysis of the complaint process from receipt to disposition and an assessment of the adequacy of enforcement efforts. Analysis of the complaint process indicates that the agency has a limited enforcement capacity due to staffing and funding constraints and that enforcement efforts have been hampered by board policy relating to complaint initiation. The review also indicated that the complaint process is not well-documented and that referrals from other state agencies may not receive attention by the board. In addition, certain areas of chiropractic practice are not well-defined.

Except in cases where a clear public peril exists, board policy requires that all complainants must file a sworn statement with the board to initiate a complaint investigation. A review of other major licensing boards in Texas shows that these agencies either have no sworn complaint, or that the sworn complaint is only required to initiate formal hearing proceedings. In the latter instances, the agencies can investigate any complaint received and, on the basis of an investigation, can file a complaint in their own name.

The board's statute should be modified to make agency action consistent with that of other licensing agencies. Thus, a sworn complaint would be required only before formal hearing proceedings could be initiated. In addition, the board should be given clear authority to investigate any complaint and to file, under its name, a formal sworn complaint against a licensed chiropractor.

Incomplete documentation of complaints received during the period under review made a thorough analysis of the process difficult and, as a result, the complaint data listed in the agency's self-evaluation report could not be verified. However, complaints detailed in the board's minutes are presented in Exhibit III-5. Agency staff indicate that they plan to institute a cross-indexing system for complaints to allow for easier accessibility to files and for more complete documentation on complaints.

During the review, referrals to the board from the Board of Medical Examiners were cross-checked to licensee files in an attempt to ascertain complaint disposition. In two of these instances, injunctions were served on chiropractors for the illegal practice of medicine. No information to indicate that the board received or acted on these complaints could be found. Interagency cooperation in this area with an adequate tracking mechanism should be established to ensure that all complaints referred to the board are investigated.

Over the years, certain areas of chiropractic practice not expressly covered by the act have given rise to requests by licensees for board clarification. These areas include the use of diagnostic x-rays, laboratory tests and results, acupuncture, physical therapy, vitamin and nutritional therapy, and the use of supportive measures including the use of heat, light, water, electricity, and massage. The board has issued policy statements indicating support of laboratory tests, physical therapy, and supportive measures and a policy statement expressly prohibiting the use of acupuncture. However, to date, the board has not addressed these issues in a detailed comprehensive fashion, nor have they requested clarification from the Attorney General.

Exhibit III-5

COMPLAINTS PROCESSED BY THE BOARD OF CHIROPRACTIC EXAMINERS
FISCAL YEARS 1976 - 1979

FY	Nature of Complaints										Disposition					
	Total Complaints	Unauth. Prac. of Medicine	Unprof. Conduct	Advertising Violation	Other	Revocation	Suspension	Probation	Reprimand	No Viol.	No Indication					
1976	12	5	2	5	-0-	-0-	-0-	-0-	3	1	2	6				
1977	1	-0-	-0-	1	-0-	-0-	-0-	-0-	-0-	-0-	-0-	1				
1978	1	-0-	-0-	-0-	1	-0-	-0-	-0-	1	-0-	-0-	-0-				
1979	<u>9</u>	<u>1</u>	<u>2</u>	<u>5</u>	<u>1</u>	<u>1</u>	<u>-0-</u>	<u>-0-</u>	<u>3</u>	<u>-0-</u>	<u>2</u>	<u>3</u>				
Total	23	6	4	11	2	1	-0-	-0-	7	1	4	10				

In a survey conducted of a sample of Texas chiropractic licensees, fifty-nine percent indicated that they require all of their patients to undergo x-rays for diagnostic purposes. The extensive use of this diagnostic tool raised a concern as to the safety of patients as well as office personnel operating such equipment. The use of x-ray by all health care providers has become a major concern with the expanded knowledge of the effects of radiation. The Radiation Control for Health and Safety Act of 1968 provides performance standards to limit radiation emissions. Enforcement for these standards is provided through the Food and Drug Administration. On the state level, regulation in this area is under the jurisdiction of the Department of Health. Although the department has issued regulations covering the use of radiation-emitting devices in Texas, to date, funding constraints have prevented the department from monitoring these devices more frequently than once every ten years. The Board of Chiropractic Examiners should make efforts to ensure that the use of x-ray equipment by chiropractors is in compliance with standards set by the FDA and the Texas Department of Health. To date, the board has been inactive in taking such initiative.

Another concern within the area of practices used by chiropractors is that of laboratory tests and results. It is common for a chiropractor to have simple blood and urine tests performed on patients. A 1952 Attorney General's opinion held that all laboratory tests must be conducted under the supervision of a medical doctor, and further, that all test results should be given to medical doctors or their designated representative only. Yet, chiropractors do authorize such tests, receive the results and interpret them. After review of relevant information, it could not be determined precisely what information from laboratory tests is permitted or

used by chiropractors in diagnosing a patient's physical condition. The board should make an effort to clarify this issue through comprehensive guidelines and policies.

In the use of vitamin and nutritional therapy, approximately 74 percent of the licensees surveyed indicated that they provide such counseling to their patients. After review of statutory provisions, board policies and other relevant information it could not be determined whether the practice of vitamin or nutritional counseling is explicitly within the scope of chiropractic in Texas. The Federal Food, Drug, and Cosmetic Act defines vitamins as a drug and further defines a drug as any article "intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals...and intended to affect the structure or any function of the body of man or other animals...". The Texas Board of Chiropractic Examiners should make an effort to clarify this issue through comprehensive guidelines and policies.

The final concern in the area of licensee practices relates to supportive devices which utilize the principles of physical therapy, heat, light, water, electricity and massage. Physical therapy is a method which comes under the jurisdiction of the Physical Therapy Practices Act. Chiropractors are exempted from this act. However, this is an area in which the Board of Chiropractic Examiners should clarify what types of physical therapy are relevant to chiropractic. Clarification is also needed to determine what constitutes other supportive methods which involve the use of machines utilizing principles of heat, light, water, electricity and massage. These devices are categorized by the Food and Drug Administration as "medical devices" and various restrictions are placed upon persons who use them and general safety procedures in their use. Some devices used by chiropractors are classified as "restricted medical devices," the most

stringent classification, for devices which can cause harm if used improperly. Although it has generally endorsed the use of such supportive devices in the practice of chiropractic, the board has not made efforts to comprehensively guide the licensees in this area. The board should establish guidelines for the use of supportive devices in conjunction with standards set by the FDA.

A very clear delineation of acceptable chiropractic practice in these areas should include an evaluation as to the educational preparation and competence of chiropractors performing the procedures and guidelines which maintain the distinction between the practice of chiropractic and medicine. Promulgation of board rules in these areas should be instituted in order to set out clearly practices which are allowed and those which are considered violations of the Act by the board.

Summary

The Board of Chiropractic Examiners is a nine-member board appointed by the governor with the advice and consent of the senate for six-year overlapping terms. The board is authorized by statute to regulate the practice of chiropractic.

The operations of the board can be categorized in three activities: administration, licensing and enforcement. With regard to administration, the board meets its objective of efficient management in several respects. However, improvements could be made in four areas. First, analysis of board revenues and expenditures indicates that, by fiscal year 1983, fees will be insufficient to meet expenditure needs. Fees charged by the board are the only source of operating funds for the agency. However, a review of licensing boards of similar size and type in Texas indicated that fees charged by the Chiropractic Examiners Board are generally below average. To alleviate funding difficulties, fees should be increased in order

to fund the agency's programs. The review of the fee structure also revealed no statutory authority to charge a fee for a replacement license. The board customarily does this at present and the statute should be modified to allow this charge. The board should also be authorized to charge a fee for issuance of initial license. Finally, the board should be authorized to discontinue the fee for waiver of written exam, but should begin to charge a fee for verification of basic science courses, under its present statutory authority.

Additionally, in the area of funding, management letters from the State Auditor have cited board expenditures for meals and lodging as excessive. A review of the 1979 expenditures indicated that the board has been effective in reducing expenditures in this area. The third area of concern regards the agency's accounting procedures. Management letters from the State Auditor identified numerous problems in the agency's accounting systems. Some of the items cited have been effectively addressed by the board. However, several difficulties still exist. The agency is currently taking steps to correct the following: posting of journals and ledgers; and reconciling agency cash balances and appropriated balances with monthly comptroller statements. The agency should take steps to correct these problems immediately. An additional concern in the area of accounting procedures involves the processing of receipts. Checks, money orders and cashiers checks are routinely kept in an unlocked front office desk drawer. While no losses due to this procedure were noted, efforts should be made to increase security and discontinue this practice. Fees pending final disposition should be held in a suspense fund in the State Treasury.

Deficiencies in the accounting systems led to a review of staffing patterns, job descriptions and personnel policies of the agency. Agency staff consists of one full-time administrative technician and a half-time executive secretary/inves-

tigator. Additionally, a bookkeeper is hired from time to time on a part-time basis. Analysis indicated that the board's accounting needs require the employment of a permanent staff person skilled in bookkeeping. In addition the small staff size has hampered compliance with the general appropriations bill requirement that all state offices remain open to the public from 8:00 a.m. to 5:00 p.m. on regular working days. The board should make an effort to see that at least one staff member is in the office at required times.

With regard to the agency's licensing activity, the review indicated that the process generally functions smoothly. However, several concerns were identified. First, the board's examination includes an oral practical portion for all applicants, although statutory authority only exists for a practical/oral examination of applicants who have taken the national board exam. Analysis of the examination process indicated that the oral examination is an appropriate screening device for this profession and that all applicants should be required to take the oral examination. Therefore, the statute should be amended to provide this authority. All other aspects of the examination were found to be well-designed and appropriately administered with due consideration to establishment of an exam and grading process which is fair, objective and consistent.

The second concern in the licensing activity regards the statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination. Requirements that applicants be United States citizens have been held unconstitutional by the courts and should be removed from the statute. Several of the statutory licensure prerequisites require the board to act essentially as a court of competent jurisdiction in determining the legal status of an individual and requires the board to define and apply terms which may have no

legal basis. These statutory provisions dealing with grounds for disqualification should be modified to require the board to base its judgement on a decision of a competent authority on the basis of a current condition.

Also in the area of licensure, prerequisites during fiscal years 1977 and 1978, due to a misinterpretation of its statute, the board licensed approximately forty applicants without the required basic science certification. However, the board has required these applicants to complete the requirements for basic science certification and has instituted procedures to ensure that these requirements are complied with in the future.

The third concern regarding the licensing process involves continuing education requirements for renewal. The statute requires evidence of two days of continuing education annually as a condition for license renewal. The board reviews courses upon application of the course sponsor, but has no systematic, comprehensive mechanism for notifying licensees of the status of courses. Analysis indicated that this is an appropriate board function and the statute should be amended to require approval of courses and notification of licensees of the approved courses on an annual basis. Additionally, in the area of continuing education, the board has made changes in the required hours and types of courses but has failed to notify the licensees of such changes, thereby creating a potential for noncompliance by licensees.

Reinstatement provisions was another area of concern in the licensure process. The provision that an inactive license may only be reinstated after completion of one week of refresher work for each year that the license is inactive hampers the board's flexibility and is unusual among licensing boards. A more appropriate approach should be instituted which would give the board some discretion in its requirements for reinstatement.

A final concern regards the lack of reciprocity or endorsement provisions. Standards upon which to base endorsement are available to the board through national board exam scores, education records, and performance as a licensee in other states. Therefore an endorsement process should be instituted under present statutory authority.

Evaluation of the board's enforcement efforts suggested several areas which could be improved without undue hardship to the board. Analysis of the complaint process indicates that enforcement efforts have been hampered by board policy regarding complaint initiation and by inadequate complaint tracking and documentation. Current board practice requires that a sworn complaint be filed before initiation of an investigation. This policy places an undue burden on complainants and should be discontinued. Verification of complaint receipt and disposition was not possible because of incomplete, and inaccessible records. Agency staff have indicated that they plan to institute a more effective tracking system to ensure that all complaints receive attention.

In addition, board policy has not been developed regarding areas of chiropractic practice not expressly defined by statute. As a result, comprehensive guidelines are not available to licensees or the public as to acceptable procedures and practices. These areas should include the use of x-rays, physical and nutritional therapy, and supportive measures. Promulgation of board rules in these areas should be instituted in order to set out clearly acceptable practices and those which are considered violation of the Act.

Finally, statutory provisions relating to grounds for disciplinary action are, in some instances, confusing and vague. The statute should be restructured to provide clear, and objective standards which are related to the practice of chiropractic.

IV. ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Consolidation Alternatives

Organizational structures in other states were reviewed in order to identify consolidation alternatives with potential for use in Texas. The review indicated that chiropractors are licensed and regulated in all fifty states. Of these states, thirty-one consolidated such regulation with agencies having other regulatory authority. Sixteen of these thirty-one states use an "umbrella" department of occupational licensing. The other fifteen states have chosen to consolidate the regulation of chiropractors within an agency with other substantive responsibilities. Of these, nine use a Department of Health, three use a Board of Healing Arts, and three use the Board of Medical Examiners.

Of the consolidation alternatives identified in other states, neither an "umbrella" agency nor a Board of Healing Arts is a feasible option for Texas since these organizational forms do not exist in this state. The state does, however, have a Board of Medical Examiners, as well as a Department of Health which perform some of the regulatory functions found in other state's agencies.

To determine the feasibility of these options, each agency was reviewed to determine whether its goals and functions were reasonably compatible with those

of the Board of Chiropractic Examiners. In addition, possible alternatives were considered from the standpoint of whether consolidation of functions would result in identifiable benefits.

The analysis of the organizational alternatives available in Texas indicates that the Department of Health best satisfies the requirements of closely related operations with identifiable benefits resulting from consolidation.

From a review of the organization of the Department of Health, it would appear that consolidation would result in identifiable benefits. The Department of Health is involved in providing administrative support services for other regulatory boards of similar size and currently supplies computer services to the Board of Chiropractic Examiners. In addition, the department regulates the use of X-ray equipment, the primary chiropractic diagnostic tool. Benefits to be derived from consolidating the regulation of chiropractors within the Department of Health can be seen through a review of the functions performed by the agency. First, the department has an established mechanism for investigating complaints and for enforcement through the department's regional offices. Second, the department has the administrative capacity to provide support services for license issuance and renewal, record-keeping, and accounting.

Regulatory Alternatives

In contrast to the various types of organizational structure used to regulate chiropractors in other states, a single regulatory method is used in all states to protect the public from incompetent practitioners. This type of regulation generally includes licensure upon successful completion of an examination and other licensure prerequisites, annual renewal of licenses, and enforcement of the statutory provisions.

While not currently used to regulate the practice of chiropractic in any state, two regulatory methods which are commonly used with respect to other occupational groups were reviewed as alternatives to licensing of chiropractors. The first of these general methods is certification. Under this option, the ability to practice chiropractic would be contingent on an applicant taking and passing a one-time certifying examination. The second general method is registration. Under this option, any person wishing to practice chiropractic would be required to be registered with the state, without regard to qualifications. Under either of these alternative regulatory methods, continued public protection would be reduced because of the lack of any enforcement activity.

Before any of the regulatory alternatives reviewed can be considered as a reasonable alternative to current regulation in Texas, the option should offer at least the same degree of public protection as the current method. In addition, the alternative should be less restrictive than the present system. With respect to the regulatory alternatives identified above, both certification and registration are less restrictive than the current regulation, but each of these options offers less public protection than currently provided. Therefore, neither option provides a desirable alternative to licensure of chiropractors.

Summary

A review of consolidation alternatives in other states was conducted to determine the potential for combining chiropractic regulation with the functions of another agency. All states currently regulate the practice of chiropractic, with thirty-one having consolidated regulation within another agency. Of these, sixteen states use a department of occupational licensing. While Texas has no "umbrella".

licensing agency, other agencies exist in Texas that are used in other states for chiropractic regulation. These are the State Board of Medical Examiners and the Department of Health.

Of the two agencies mentioned above, the Department of Health appears to be the most reasonable alternative for consolidation. The Department of Health is experienced in the area of licensing administration, and currently provides support services for other licensing agencies of similar size. Benefits from consolidation could also result from the use of the department's regional offices for investigation of chiropractic-related complaints as well as the availability of computer and other support services from experienced personnel.

With regard to regulatory alternatives, all states presently license chiropractors. While not currently used in other states, alternative methods of regulation of chiropractors, which can be considered due to their use by other occupational groups, include certification and registration. Certification would continue the requirement that applicants exhibit a minimum level of competency prior to licensure. Registration would only require that a person desiring to practice chiropractic register with a designated state agency. Neither certification nor registration involve an enforcement mechanism to assure continued competence. While both certification and registration are less restrictive forms of regulation than licensure, neither provides as much public protection as the present licensing system. Therefore, neither is a desirable alternative to continuation of the present method of regulation.

V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b, V.A.C.S.). A review of the documents filed with the Office of the Secretary of State indicates that both the board members and the executive secretary of the agency have complied with the filing requirements set out in the state's general statute dealing with conflict of interest. However, two situations which could constitute conflicts of interest on the part of board members have been noted. The first deals with board members who hold leadership positions in a chiropractic association and the second concerns the relationship of the executive secretary to a board member.

Neither the board's enabling statutes nor general state law presently prohibit board members from serving as either lobbyists for, or officers in a professional association. During the review, it was noted that one former board member served as an officer and registered lobbyist for a chiropractic association during his term as board president. Presently three members of the board serve as officers in a chiropractic association and an additional four members serve actively on committees of the association. While no problems resulting from these overlapping memberships were identified in the review, the possibility of conflicts between the goals of persons involved in regulating a profession and the goals of promoting and preserving a profession exist within such a relationship. A statutory prohibition against board members holding positions of leadership in the regulated profession's association would help to prevent conflicts from arising.

A second area of potential conflict of interest exists because a new board member is related to the executive secretary by the second degree of consanguinity. Since the executive secretary was employed prior to the board member's appointment, no conflict existed in his employment. A potential for conflict of interest exists if the related member participates in future employment decisions of the board concerning the executive secretary.

Article V, Section 4 of House Bill 558 (Sixty-sixth Legislative Session) prohibits the payment of appropriated funds for the "full or partial salary of any State employee who is also the paid lobbyist of any individual, firm, association or corporation." The executive secretary of the Board of Chiropractic Examiners is registered with the Secretary of State as a lobbyist for nine associations or interest groups, while at the same time, his position as part-time executive secretary and investigator for the board is funded through state appropriations. The board has indicated that this situation is being corrected.

Open Meetings - Open Records

As evidenced by publications in the Texas Register, board meetings have been preceded by adequate and timely notice to the public. However, the board has not complied with procedures required for closed meetings as outlined in Article 6252-17, V.A.C.S. The Act requires that the presiding officer must announce that a closed meeting will be held and must identify the section of the Act authorizing such a meeting. The Act also requires that all final actions taken on subjects discussed in a closed meeting be made in an open meeting. The board has conducted closed sessions frequently to discuss and take action on complaints. The section(s) of the Act which authorizes such meetings are not cited nor are final decisions made in open meeting. The executive secretary has been informed of the appropriate procedures for closed meetings and has indicated that future meetings will be in compliance.

The agency cites several categories of records which it considers to be confidential and not available to public inspections: 1) personnel files; 2) information regarding litigation; and 3) medical records of individuals under board investigation. The agency indicated that no requests for confidential information have ever been received.

Employment Policies

The Board of Chiropractic Examiners submitted an Affirmative Action Plan in 1974 which has never been updated. Although the board currently has no grievance procedures, this is not unusual for agencies with only two employees. The board has never received a formal complaint on employment practices.

Summary

Board members and the executive secretary have complied with conflict-of-interest reporting procedures. However, conditions currently exist which have the potential of placing board membership in conflict of interests because board members hold leadership in chiropractic associations and because the executive secretary's relative sits on the board. The executive secretary of the board is in violation of Article V, Section 4 of the Appropriations Act by serving as both a registered lobbyist and a salaried state employee. Board meetings have not been conducted within the requirements of the Open Meetings Act. Meetings have improperly been closed to the public and final decisions have been made in closed meetings. The executive secretary has assured future compliance with the Open Meetings Act. No difficulties have been noted in the agency's compliance with the Open Records Act. However, no problems were noted with agency employment policies.

VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

Agency Activities

Review of pertinent records indicates that the board has adopted four changes to its rules in the last four fiscal years. The rules adopted relate to continuing education, use of supportive measures and hearing procedures. The adoption of three of these rules has been in compliance with public participation requirements found in general state law; however, in one instance, the requirements for filing and public hearings were not observed. Rules pertaining to continuing education were adopted without meeting necessary filing and public comment requirements. These rules have not been made available to public inspection and have never been provided to licensees. There has been no public involvement in these processes.

Public awareness of the provisions of the Texas Chiropractic Act and the functions of the board is limited. The board has made efforts to increase

understanding of the Act and responsibilities of the board, but has directed these efforts to members of the profession.

Public Membership

A review of the statutory composition of the board shows that there are no members from the general public. The lack of public members eliminates one means by which the point of view of the general public in the development of rules and deliberations on other matters can be represented.

Since the board presently has nine members, it would not appear feasible to add additional members. A more desirable option would be to replace three of the licensee members with public members as the terms of present members expire. This approach would achieve the desired one-third public membership without increasing the size of the board or removing present members during their term of appointment.

Summary

The board has not complied with public notification requirements. Additionally, public participation in the policy processes of the board has been minimal. The board's efforts to inform the public through speaking engagements and other public information efforts has been primarily directed to licensees. To help ensure that the public's point of view is properly represented, three public members should be placed on the board replacing present members as their terms expire.

VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Past Legislative Action

The original regulatory legislation governing chiropractors was passed in 1943 by the Forty-eighth Legislature. In 1944, the statute was declared in violation of Article XVI, Section 31 of the Texas Constitution by the Court of Criminal Appeals. This section of the constitution allows the legislature to prescribe the qualifications of medical practitioners and to punish persons for malpractice, but prohibits giving preference in licensure requirements to any particular "school of medicine". The court interpreted the 1943 chiropractic act to allow chiropractors to practice medicine without meeting the same licensure requirements as medical doctors. The current enabling legislation was enacted in 1949 by the Fifty-first Legislature, at the same time as a separate statute mandating basic science requirements for chiropractors and medical and osteopathic physicians. Subsequent to enactment, statutory changes have increased licensing requirements and have expanded the board's enforcement authority.

The first change in the area of licensure occurred in 1957 with the addition of

a mandatory continuing education requirement for annual license renewals. The board's enforcement authority was also expanded in 1957 by amendments which gave the board the power of subpoena and the right to institute an action in its own name. In addition, requirements for proceedings and appeal were delineated. The amendment also added as cause for board action the following: advertising of professional superiority; purchase or alteration with fraudulent intent of a chiropractic degree, license or diploma for licensure purposes; impersonation of an applicant for licensure or a licensee; and, proof of insanity or failure to use proper diligence in practice (House Bill 392, Fifty-fifth Legislature).

A subsequent amendment passed in 1971 required individuals seeking reinstatement of licensure to attend a chiropractic school for at least a week for each year the license was suspended, cancelled or revoked. The effect of both amendments was to help ensure that all licensees remain current with educational developments in the field. Additional causes for action were also added in 1971 with prohibitions against advertising, failure to differentiate a chiropractic office or clinic from other businesses, and the personal solicitation of patients by the use of case histories. The 1971 amendment also authorized the board to require evidence of proper training, precaution, and safety in the use of analytical and diagnostic x-ray (Senate Bill 327, Sixty-second Legislature).

An amendment passed in 1973 allowed an exemption from the board's written examination for applicants who passed the nation examination (House Bill 487, Sixty-third Legislature). In 1975 the legislature allowed chiropractors practicing in Texas to elect a peer review committee to serve as a review committee and arbitrator in disputes involving fees. Other major changes in the area of licensure passed in 1975 focused on increasing licensure prerequisites by adding subjects covered by the examination, and by increasing the education requirements to

include sixty semester hours of undergraduate work (Senate Bill 39, Sixty-fourth Legislature).

Finally, in 1977 the board became subject to the Texas Sunset Act. (Senate Bill 54, Sixty-fifth Legislature). In 1979 the Board of Basic Sciences was abolished. The Board of Chiropractic Examiners was given the responsibility of verifying an applicant's completion of college courses in anatomy, physiology, chemistry, bacteriology, pathology, hygiene and public health, in order to assure that all licensees are adequately trained in the basic sciences (House Bill 1249, Sixty-sixth Legislature).

Proposed Legislative Action

Apart from the successful legislation mentioned above, one other bill concerning the board's operations was unsuccessfully proposed over the past three legislative sessions. This bill, House Bill 1415, was introduced in the Sixty-sixth Legislature in 1979. House Bill 1415 would have transferred the functions of the board to the Board of Health. The agency's self-evaluation report indicates that no statutory changes have been recommended by the board during the last three legislative sessions.

Summary

The agency's first enabling legislation was passed in 1943. In 1944 the statute was held unconstitutional by the Texas Court of Criminal Appeals. The second enabling statute was passed in 1949. Since then, the agency's statute has been amended five times. Generally, these bills increased education requirements, modified basic science qualifications, and added provisions for continuing education requirements for license renewals and Sunset review. Other bills added requirements for reinstatement of a license, and increased the board's enforcement

authority. Legislation approved in 1957 and 1971 added causes for action against licensees related to advertising and solicitation and fraudulent use of chiropractic degree or license. Proposed legislation involved transfer of the board's functions to the Department of Health in 1979.