



Texas Board of Chiropractic Examiners

Agency at a Glance

The mission of the Texas Board of Chiropractic Examiners 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 2004, the agency operated on a \$340,220 budget and collected about \$1.8 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 4,646 chiropractors, and registered 2,625 facilities and 108 radiological technicians in fiscal year 2004.
- **Enforcement.** In fiscal year 2004, the Board received 347 complaints from the public, initiated 245 complaints mostly for administrative violations, and resolved a total of 317. Some of the most common complaints submitted to the agency include billing complaints, such as billing for services not rendered and overcharging, unprofessional conduct, inefficient practice, and false or deceptive advertising.



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Recommendations

1. Require the Board to Clarify Scope of Practice Questions Through Rules Developed With Early Stakeholder Input and in Compliance With Applicable Attorney General Opinions.
2. Strengthen the Board's Enforcement Program to Enable It to More Effectively Resolve Complaints.
3. Conform Elements of the Board's Licensing Functions to Commonly Applied Licensing Practices.
4. Increase the Number of Undergraduate Hours Required for Licensure as a Chiropractor.
5. Limit Applicants to Three Attempts to Pass the Chiropractic Jurisprudence Exam.
6. Continue the Texas Board of Chiropractic Examiners for 12 Years.

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 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.

While regulatory boards need to be able to reasonably interpret their statute to regulate the profession as the Legislature had intended, their processes should be open and objective to ensure the quality and acceptance of decisions. 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.

Recommendations

Change in Statute

1.1 Require the Board to adopt rules that clarify practices within and outside the scope of chiropractic practice, using early stakeholder input and following common definitions from the Medical Practice Act.

This recommendation would require the Board to cease its practice of issuing Board opinions and instead 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 equipment.

This change would also require the Board to develop guidelines for the use of early stakeholder input so that it may benefit from the expertise of other interested parties, including those from other related health-care professions. 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.

This recommendation would also conform the Chiropractic Act's definitions with applicable definitions of the Medical Practice Act to define treatments as allowed and prohibited under a chiropractor's scope of practice. These definitions include surgical procedure, controlled substance, and dangerous drug.

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.

The Board should retract its opinions on needle electromyogram (EMG) and inform chiropractors that this procedure is not within their scope of practice, as the statute is currently worded. The Board should also 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.

The Board would eliminate the Technical Standards Committee under the requirement to address all scope of practice questions by adopting rules using early stakeholder involvement. The Board's Rules Committee would address these scope of practice questions and should have at least one-third public membership to help with this duty.

Issue 2

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

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.

The Board continues to face difficulties in protecting patients through its enforcement efforts. Specifically, limited staff and enforcement tools, lack of focus on resolving serious allegations against chiropractors, and minimal cooperation between the Board and other state agencies have led to infrequent and weak disciplinary actions on non-administrative complaints.

Recommendations

Change in Statute

2.1 Authorize the Board to conduct inspections as part of its 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.

Allowing the Board to issue cease-and-desist orders 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 refunds as part of the settlement conference process.

This recommendation would allow the Board to include refunds as part of an informal settlement conference. Refunds would be limited to the amount the consumer paid to a chiropractor, and would not include an estimation of other damages or harm.

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. 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 the Texas Department of Insurance to improve the sharing of relevant enforcement information.

The Board would be required to adopt a stricter policy on fraud, especially with respect to insurance and workers' compensation fraud. It would also be required to cooperate with the Texas Department of Insurance (TDI) in conducting investigations, 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 would 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.

The responsibilities of the local peer review committees would be expanded to include providing advice and expertise in complaint investigations related to standard of care, while maintaining their ability to mediate medical necessity and billing disputes. 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. The Board would appoint these committees with input from local chiropractic associations, but would no longer rely solely on a list of nominees from these associations. 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 a process to refer standard of care complaints and billing disputes to the peer review committees, with input from the executive committee. For standard of care cases, the committees would review records and evidence collected by agency staff during the investigation, and 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 committee 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 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.

2.7 Specify that the practice of chiropractic while under the influence of drugs or alcohol is a state jail felony.

This recommendation would conform penalties in the Chiropractic Act for chiropractors practicing while intoxicated to penalties for physicians in the Texas Medical Practice Act.

2.8 Prohibit the same type of practices by chiropractors that are currently prohibited of physicians in the Texas Medical Practice Act.

This recommendation would conform the Chiropractic Act with provisions in the Medical Practice Act to prohibit chiropractors from performing the same acts prohibited of physicians, such as fraudulent practices, unprofessional or dishonorable conduct, or other practices to deceive and defraud the public.

2.9 Require the suspension or revocation of a chiropractor's license for conviction of the same offenses applied to physicians in the Medical Practice Act.

This recommendation would conform the Chiropractic Act with provisions in the Medical Practice Act to require the Chiropractic Board to suspend or revoke licenses for the same types of convictions, such as felonies, assaults, sex crimes, and drug offenses, that the Medical Board would use to suspend or revoke a physician.

2.10 Require medical malpractice settlements and expert witness reports to be submitted to the Board.

This recommendation would require the Texas Department of Insurance to share with the Board information it collects on medical malpractice settlements. It would also require insurers that have

filed expert witness reports in a malpractice action against a chiropractor to submit these reports to the Board. These reporting requirements would bring the Chiropractic Board more in line with reporting requirements of the Medical Board.

Management Action

2.11 The Board should hire additional enforcement staff to assist in its enforcement activities.

Through the appropriation process, the Board should seek an increase in its authorized full-time equivalent employees and additional funding to hire two additional level I enforcement staff to investigate complaints and perform on-site inspections. The Board should increase its fees to cover these costs.

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

The Board and the Texas Worker's Compensation Commission (TWCC) should 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. Both the Board and TWCC should track cases they refer to each other.

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

The Board should 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. The Board should make the Health Professions Council's toll-free line more easily accessible on its Web site by including it with the Board's contact information. The Board should also 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.

2.14 The Board should track denied licenses and denied license renewals.

The Board should 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.

Issue 3

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

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.

Some 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. Enforcement provisions that vary from these model standards have been incorporated into Issue 2, regarding the Board's enforcement program.

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.**

Ensuring that the Board makes reasonable accommodations for its exams would provide equal opportunity and access to all qualified applicants. The Board would need to work with the national testing organization to ensure that these rules are followed.

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

The renewal fee for chiropractors who are delinquent in renewing their licenses would be based on the normal renewal fee set by the Board, and not the examination fee. A person whose license has been expired for 90 days or less would pay a renewal fee equal to 1-1/2 times the renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year would pay an amount equal to 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 a license denial to the Executive Director, thereby leaving the State Office of Administrative Hearings as the appropriate outlet for an appeal.

Issue 4

Statutory Requirements for License Eligibility Do Not Reflect National Standards.

The Texas Chiropractic Act requires applicants for chiropractic licenses to complete 60 credit hours of non-chiropractic, undergraduate studies to be eligible for a license. However, the Council on Chiropractic Education, the accreditation board for chiropractic colleges recognized by the U.S. Department of Education, has recently increased the number of undergraduate credit hours required of chiropractic college applicants to 90.

Recommendation

Change in Statute

4.1 Increase the number of undergraduate hours statutorily required to be licensed as a chiropractor.

This recommendation would amend the Chiropractic Act to increase the number of undergraduate hours required for licensure from 60 to 90 credit hours, as required by the Council on Chiropractic Education, the accreditation body for chiropractic schools. The Board would be able to require a different number of semester hours based on a requirement of a recognized accreditation organization.

Issue 5

The Unlimited Opportunity for License Applicants to Retake the Board's Jurisprudence Exam Does Not Promote Public Protection.

The Texas Chiropractic Act requires the Board to limit the number of times an applicant may retake an examination, but the Board has not adopted rules. Allowing applicants to keep taking the Board's exam indefinitely until successful completion does not best protect the public's interest.

Recommendation

Change in Statute

5.1 Limit the number of times an applicant has to pass the chiropractic jurisprudence exam.

This recommendation would limit the number of retakes of the Board's jurisprudence exam by a license applicant to three attempts, and further help the Board keep unqualified applicants from becoming licensed.

Issue 6

Texas Has a Continuing Need for the Texas Board of Chiropractic Examiners.

Key Findings

- Texas has a continuing interest in licensing and regulating chiropractors.
- The Texas Board of Chiropractic Examiners protects the public by ensuring that qualified individuals practice chiropractic.

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 welfare. To protect the public safety and welfare, the need exists for the continued licensing and regulation of chiropractors in Texas.

Recommendation

Change in Statute

6.1 Continue the Texas Board of Chiropractic Examiners for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

The recommendations regarding the Texas Board of Chiropractic Examiners would result in a net cost to the State of \$5,600. The recommendations are discussed below, followed by a five-year summary chart.

- **Issue 2** – Hiring two additional enforcement staff would result in a cost to the State of \$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. Approximately \$5,600 would be needed annually to compensate the Board-appointed peer review committees.

<i>Fiscal Year</i>	<i>Cost to the General Revenue Fund</i>	<i>Gain to the General Revenue Fund</i>	<i>Net Effect on the General Revenue Fund</i>	<i>Change in FTEs from FY 2005</i>
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