

EXECUTIVE SUMMARY

Texas Board of Chiropractic Examiners

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Full Report Here
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The Texas Board of Chiropractic Examiners has long been dogged by litigation and a reputation for using its authority to expand chiropractors' scope of practice in lieu of focusing on protecting the public. While scope of practice is still the most contentious issue within the profession, Sunset staff found no evidence that the board continues to engage in practices that would merit this reputation. Although the board has taken positive steps toward improvement, ultimately the limited resources available for regulating such a small licensee population and the cost of maintaining an independent structure contribute to poor performance in core licensing and enforcement functions. Specifically, by failing to resolve complaints in a timely manner and not conducting criminal background checks on more than half of all chiropractors, the board's poor performance could jeopardize public safety.

Instead of focusing on high-risk enforcement activities first, the board fills much of its time drumming up administrative complaints through facility inspections conducted under questionable statutory authority. Facility registrations create administrative work for staff and investigators, but requirements impose no standards related to patient safety or quality of chiropractic care. At the same time, complaints that relate to patient safety fall victim to the board's lack of complaint prioritization and get buried in long complaint resolution timeframes.

Costs to maintain an independent agency contribute to poor performance.

While significant concerns exist about the agency's ability to improve its performance within an independent structure, the decision to recommend an alternative organizational structure for the agency cannot be made until after Sunset completes its reviews of other health licensing agencies. Together, these reviews will consider the potential benefits of consolidation and determine if these benefits are significant enough to justify a major organizational change. Regardless of the organizational structure, the agency should refocus its efforts on the largest risks to the public and implement the best practices outlined in this report to better ensure fair and effective regulation of chiropractic services in Texas.

The following material summarizes Sunset staff recommendations on the Texas Board of Chiropractic Examiners.

Issues and Recommendations

Issue 1

Slow Complaint Resolution and Misplaced Focus on Low-Risk Enforcement Activities Could Present Risks to Patient Safety.

By focusing too much time and resources on administrative violations, the board risks delays in investigating violations that could jeopardize patient safety. The board's slow complaint resolution time, despite comparably low caseloads, raises concerns about the investigation process. The board cannot clearly account for its investigators' time, does not formally prioritize complaints according to public risk, and uses an overly broad definition of "gross unprofessional conduct" that does not distinguish between high- and low-risk violations. When investigations find a violation requiring enforcement action, the board's penalty guidelines put almost all violations in the highest severity category — effectively equating providing substandard chiropractic care with defaulting on student loan payments.

Key Recommendations

- Direct the board to develop a plan to improve its investigative process and reduce complaint resolution timeframes.
- Direct the board to prioritize investigations by risk to the public.
- Direct the board to revise its penalty matrix to more closely align the severity of penalties with the risk a violation poses to the public.
- Direct the board to maintain complainants' confidentiality when possible.

Issue 2

Chiropractic Facility Registration Is Unnecessary to Protect the Public.

The board requires facilities providing chiropractic services to register with the board. However, registration of chiropractic facilities does not impose any regulatory requirements on the facility that enhance public safety or relate to the practice of chiropractic. The vast majority of violations cited in facility complaints do not pose harm to the public because they are administrative in nature, such as failure to change address or failure to timely renew expired facility registration. Because the risk to a recipient of chiropractic services stems from the actual chiropractor, and not the facility, board efforts aimed at regulation of facilities are misplaced and unnecessary.

Key Recommendation

- Discontinue registration of chiropractic facilities.

Issue 3

The Board Lacks Formal Mechanisms to Ensure Chiropractic Expertise in Its Enforcement Process.

Statute requires the board to implement peer review committees to provide expertise on billing and chiropractic standard of care complaints. However, the peer review committee structure outlined in statute is too cumbersome for the limited number of complaints requiring chiropractic expertise. To fill the need for chiropractic expertise, the board recently implemented an expert review process under which it contracts with licensed chiropractors to provide expert reviews of standard of care complaints as needed. Although the board's new expert review process is a step in the right direction, the process lacks clear legal authority and formal policies and requirements.

Key Recommendations

- Repeal the local and executive peer review requirements from statute.
- Require the board to develop an expert review process in rule to ensure chiropractic expertise in its enforcement process.

Issue 4

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

In reviewing the board's regulatory authority, Sunset staff found some of the board's administrative and licensing processes do not match model standards or common practices observed in other regulatory agencies. Specifically, the board does not require fingerprint background checks as a condition for licensure or check if licensees have disciplinary actions in other states. The board also imposes restrictive requirements that limit an applicant's ability to obtain a chiropractic license.

Key Recommendations

- Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Authorize the board to check for disciplinary actions in other states or from other licensing boards for license applications and renewals, and to pursue any necessary enforcement action.
- Remove the limitation on the number of times an applicant can take the board's jurisprudence exam.
- Direct the board to stop requiring letters of recommendation as part the initial application process.

Issue 5

Texas Should Continue Regulating Chiropractors, but Decisions on the Structure of the Texas Board of Chiropractic Examiners Await Further Review.

Texas has a continuing need to regulate the practice of chiropractic. Chiropractic care involves the hands-on treatment of patients through manipulation of delicate body structures like the spine and joints. Improper practice of chiropractic may result in physical harm to patients, such as impaired range

of motion, further injury, and potentially paralysis. However, the board's small size requires the agency to devote a greater portion of its staff and resources to basic administrative and operational functions rather than focusing on ensuring public safety through effective licensing and enforcement activities. Such limitations contribute to slow complaint resolution times, a lack of criminal background checks for thousands of licensees, and misplaced focus on low-risk enforcement activities.

These issues raise the question of whether the agency's functions should continue in a stand-alone or consolidated organization. Several health licensing agencies are under Sunset review at this time. Through these reviews, Sunset is considering the benefits of consolidation, such as enhanced administrative efficiencies and increased available time to perform critical licensing and regulatory functions. Sunset staff will complete the analysis of these benefits in November 2016.

Key Recommendation

- Continue the regulation of chiropractors, but postpone the decision on continuation of the Texas Board of Chiropractic Examiners until completion of the Sunset reviews of other health licensing agencies.

Fiscal Implication Summary

Overall, recommendations in this report would result in a small negative fiscal impact to the state over the next five years from ending the registration requirement for chiropractic facilities.

Issue 2 — Based on the number of registered facilities at the end of fiscal year 2015, the recommendation to discontinue the registration of chiropractic facilities would result in the loss of approximately \$242,055 per year to the General Revenue Fund. However, due to the reduction in workload from not investigating facility-related violations, this loss of general revenue would be offset by salary savings of \$22,880 per year from a reduction of one half of a full-time position.

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Fiscal Year	Loss to the General Revenue Fund	Change in the Number of FTEs From FY 2017
2018	\$219,175	-0.5
2019	\$219,175	-0.5
2020	\$219,175	-0.5
2021	\$219,175	-0.5
2022	\$219,175	-0.5