

SUNSET ADVISORY COMMISSION

STAFF REPORT

Texas Board of Chiropractic Examiners



2016–2017

85TH LEGISLATURE

SUNSET ADVISORY COMMISSION

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**TEXAS BOARD OF
CHIROPRACTIC EXAMINERS**

SUNSET STAFF REPORT

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HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and action into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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**SUMMARY OF SUNSET STAFF
RECOMMENDATIONS**

SUMMARY

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.

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.

Costs to maintain an independent agency contribute to poor performance.

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.

Texas Board of Chiropractic Examiners

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

AGENCY AT A GLANCE

AGENCY AT A GLANCE

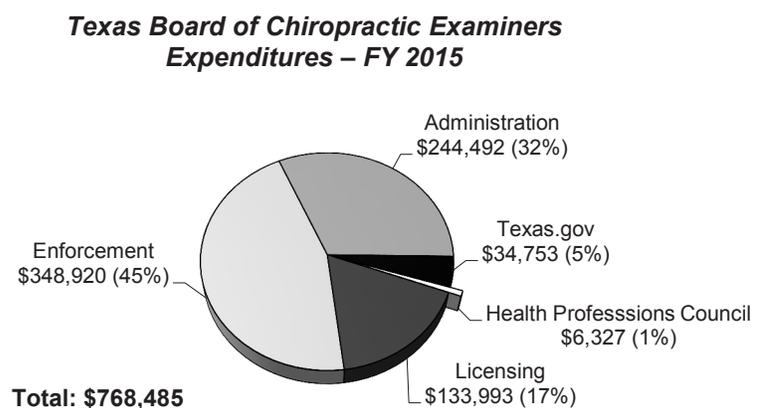
In 1949, the Legislature created the Texas Board of Chiropractic Examiners to examine and license chiropractors practicing throughout the state. To achieve its mission of protecting the health, safety, and welfare of the people of Texas, the board

- licenses chiropractors and registers chiropractic facilities, and
- enforces the Texas Chiropractic Act and board rules by investigating complaints against licensees and registrants and taking disciplinary action when necessary.

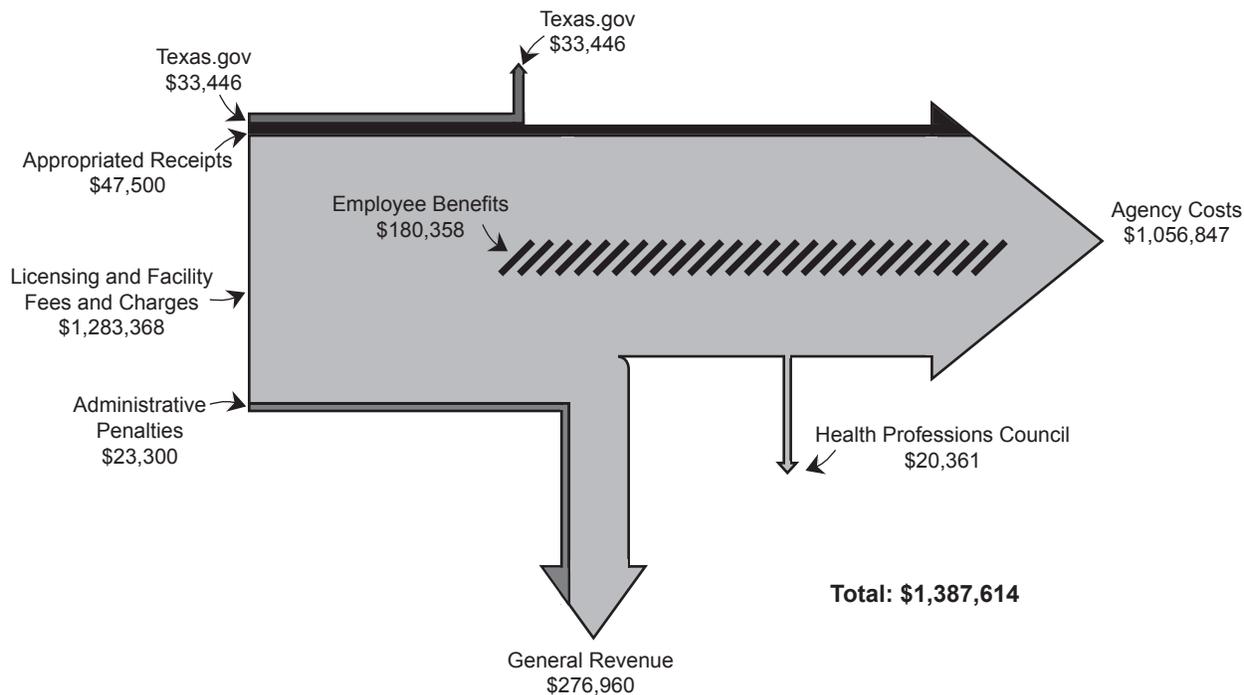
Key Facts

- **Texas Board of Chiropractic Examiners.** The board consists of nine members: six chiropractors and three public members.¹ The governor appoints all board members to serve six-year terms with a two-term limit. The presiding officer is appointed by the governor and must be a licensed chiropractor. The board has three subcommittees: Enforcement, Rules, and Licensure and Education.
- **Staffing.** The board employed 14 staff at the end of fiscal year 2015. Most of the employees work at the central office in Austin, with one investigator in Dallas and one investigator in Houston. A comparison of the board's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years is included in Appendix A, *Equal Employment Opportunity Statistics*.
- **Funding.** In fiscal year 2015, the board operated on a total budget of \$768,485, with 94 percent of its funding coming from general revenue and the remaining 6 percent coming from appropriated receipts. Revenue generated from fees paid by chiropractors, chiropractic facility owners, radiological technicians, and continuing education providers is deposited into the General Revenue Fund. The pie chart, *Texas Board of Chiropractic Examiners Expenditures*, shows the board's expenditures for each major program area. Enforcement activities account for close to half of the board's expenditures.

Historically, the agency has generated revenue through fees in excess of what is needed to cover agency expenditures. As shown in the chart on the following page, *Flow of Texas Board of Chiropractic Examiners Revenue and Expenditures*, the agency generated revenue of \$1,387,614 mainly from licensing fees. After accounting for the agency's costs, including employee benefits, the agency deposited excess revenue of an estimated \$276,960 into the General Revenue Fund in fiscal year 2016. A description of the board's use of historically underutilized businesses in purchasing goods and services for fiscal years 2013 to 2015 is included in Appendix B, *Historically Underutilized Businesses Statistics*.



**Flow of Texas Board of Chiropractic Examiners
Revenue and Expenditures – FY 2016**



- **Health Professions Council.** As a member of the Health Professions Council, the board receives supplemental information technology support. Appendix C, *Health Professions Council*, provides more information on the council.
- **Licensing and registration.** The board processes initial applications and renewals of chiropractic licenses, chiropractic facility registrations, and registrations of radiologic technicians who work in chiropractic facilities. The table, *Licenses and Registrations by Type*, shows the number of active licenses and registrations overseen by the board in fiscal year 2015.

**Licenses and Registrations
by Type – FY 2015**

Chiropractors	5,085
Chiropractic facilities	4,090
Radiologic technicians	101

Chiropractors. The textbox, *Chiropractic Licensing Requirements*, shows the requirements to practice as a chiropractor in Texas.² Once awarded a license, chiropractors must renew their license and complete 16 continuing education hours annually.³

Chiropractic Licensing Requirements

- Complete 90 semester credit hours of non-chiropractic curriculum from an accredited university.
- Earn a doctor of chiropractic degree from a chiropractic college.
- Pass all parts of the National Board of Chiropractic Examiners exam.
- Submit a license application to the board.
- Pass the Texas jurisprudence exam with a score of 75 or better.

Chiropractic facility owners. The board requires any facility providing chiropractic services to register unless the facility is already subject to other state facility regulation, such as hospitals or public health clinics. The only requirement of chiropractic facility owners is that the applicant be at least 21 years of age.⁴

Radiologic technicians. Before registering as a radiologic technician with the chiropractic board, applicants must meet training requirements and register with or receive a hardship exemption from the Texas Medical Board.⁵ Once registered with the chiropractic board, technicians must renew their registration before January 1 of every year.⁶

- **Enforcement.** The board receives and investigates complaints filed against licensees or registered facility owners and takes disciplinary action against those in violation of agency statute or rule. Examples of disciplinary actions range from minor administrative penalties to revocation of a license or registration. In fiscal year 2015, the board resolved 319 complaints, 141 of which resulted in disciplinary action. The table, *Summary of Disciplinary Actions*, provides more detail on these disciplinary actions. This same year, the board took an average of 299 days to resolve a complaint.

**Summary of Disciplinary
Actions – FY 2015**

Administrative penalty	59
Cease and desist	44
Reprimand	22
Revocation	9
Probation	7

- **Compliance.** Staff monitors licensees' compliance with disciplinary actions before awarding license renewal to ensure licensees meet the terms and conditions of board orders.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 201.051, Texas Occupations Code.

² "Chiropractic Licensing Requirements for the State of Texas," Texas Board of Chiropractic Examiners, accessed on August 26, 2016, http://www.tbce.state.tx.us/License_Requirements.html.

³ 22 T.A.C. Section 75.5(b)(1).

⁴ 22 T.A.C. Section 73.2(e).

⁵ 22 T.A.C. Section 74.2(b).

⁶ 22 T.A.C. Section 74.2(d).

ISSUES

ISSUE 1

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

Background

The Texas Board of Chiropractic Examiners enforces the chiropractic statute by investigating complaints against licensed chiropractors and registered chiropractic facility owners and, as necessary, taking disciplinary action against violators. To conduct investigations and ensure compliance with disciplinary actions, the board employs four investigators — two of whom work remotely to cover the Houston and Dallas areas.

In fiscal year 2015, the board investigated and resolved 319 complaints, 141 of which resulted in disciplinary action. When the board finds that a chiropractor has violated statute or board rule, the board may choose from a range of disciplinary actions, examples of which are outlined in the textbox, *Disciplinary Actions*. The table in Appendix D lists all complaints against licensees and the board action taken in fiscal year 2015. The most common complaints against licensees that resulted in disciplinary action related to chiropractic standard of care, fraud, advertising, and administrative issues such as late license renewal.

Disciplinary Actions

- Administrative penalties of up to \$1,000 per day of violation
- Formal reprimand
- Continuing education
- License probation
- License suspension
- License revocation
- Cease-and-desist orders

Findings

The board's slow complaint resolution despite comparably low caseloads indicates an inefficient investigative process and could allow bad chiropractors to continue to practice.

- **Slow complaint resolution.** On average, the board took 299 days to resolve complaints during fiscal year 2015. This long complaint resolution timeline potentially allows a chiropractor whose license should ultimately be suspended or even revoked to continue to practice on an unknowing public. Quick complaint resolution is critical to protect the public from potentially harmful chiropractors in need of disciplinary action. The board's resolution timeframe exceeded its Legislative Budget Board performance measure and lagged behind complaint resolution timeframes of comparable health licensing agencies, described in the table, *Comparison of Complaint Resolution Timeframes and Complaints per Investigator*.

Comparison of Complaint Resolution Timeframes and Complaints per Investigator – FY 2015

Agency	Days to Resolve Complaints	Annual Complaints per Investigator
Board of Chiropractic Examiners	299	45
Board of Veterinary Medical Examiners	221	78
Board of Examiners of Psychologists	209	90

Although early performance measures for fiscal year 2016 indicate that the board is resolving complaints more quickly, complaint resolution timelines for the board have been chronically higher than other agencies and Legislative Budget Board goals. Without significant intervention, this recent positive trend is uncertain to continue.

- **Low caseloads.** Caseloads for board investigators were lower on average than similarly-sized agencies. The table shows that the board's average annual number of complaints per investigator was about half as many as other agencies but took longer to resolve.
- **Inefficient investigative process.** The combination of slow complaint resolution with low caseloads is unusual, raising questions about the efficiency of the board's investigative processes. Typically, long case resolution times result from increased caseloads and associated resource limitations, but this is not the case at the board. Without clear tracking of investigator time, holding investigators accountable for performance measures, or case tracking to understand bottlenecks in its investigative process, the board is unable to provide a clear explanation for its slow complaint resolution. However, the board reports that investigators initiate over 100 facility inspections annually — an activity that reveals virtually nothing but administrative violations and takes time and travel resources away from investigating higher-risk violations.¹

Slow complaint resolution despite low caseloads raises questions about efficiency.

The board does not categorize its violations according to risk, focusing on low-risk activities and potentially jeopardizing patient safety.

By failing to distinguish between violations that pose high risk to patients' safety and violations that are largely administrative in nature, the board risks dedicating its limited resources to investigating and penalizing low-risk violations at the expense of those that could result in public harm.

- **No prioritization of complaint investigations.** The board does not direct investigators to prioritize investigations that pose the greatest risk to the public, a critical component of an effective investigative process. While the board distinguishes among types of complaints when assigning investigation completion dates, it does not provide direction on which complaints to investigate first. As a result, investigators may place chiropractic patients at risk by diverting their time and attention away from resolving high-risk complaints in favor of those presenting little risk of public harm, such as late renewal of facility registrations. As a result, serious complaints about chiropractors, such as for sexual misconduct, could linger unresolved while those chiropractors continue to practice.
- **Penalties do not match severity of violation.** While the board does categorize violations for penalty purposes, this categorization is meaningless because the board categorizes nearly all violations in the highest severity category. When taking enforcement action, the board follows guidelines

Serious complaints could linger unresolved while chiropractors continue to practice.

that assign rule and statute violations to tiers, ranked tier one through tier five.² The board designed tier one to consist of the worst violations that merit up to \$1,000 in administrative penalties per day of violation and potential license revocation. The vast majority of board violations reside in tier one — 54 out of 72 potential violations. The table, *Examples of Tier One Violations*, illustrates the range of violations included in the highest-severity category.³

Examples of Tier One Violations

Demonstrably Pose High Risk to the Public	Pose Less Clear Risk to the Public
Providing chiropractic treatment below the standard of care	Grossly unprofessional conduct — unsanitary conditions
Practicing chiropractic while intoxicated	Practicing while not in compliance with board's continuing education requirements
Practicing outside the scope of practice	Performing radiologic procedures with an expired registration
Medicaid fraud	Failing to clearly differentiate a chiropractic office from another business
Failure to comply with board-ordered license suspension	Defaulting on student loan payments

Such broad categorization of tier one violations means a violation that poses real threat to public health and safety, such as causing harm to a patient with substandard care, is on equal level with a continuing education violation. While both violations merit concern and varying enforcement action, violations like providing treatment outside the chiropractic scope of practice or practicing while intoxicated pose more serious risks to the public and are not treated as such in rule.

The board's misalignment of administrative penalties and risk to patient safety continues beyond tier one. According to board rules, operating at a facility with an expired registration, an administrative violation presenting minimal public harm, merits the same administrative penalty as more a serious violation like unauthorized disclosure of patient records.⁴

- **Board rule gives equal weight to sexual misconduct and rusty machines.** The board's broad definition of "grossly unprofessional conduct" hinders the board's ability to distinguish between low- and high-risk violations. When defining grossly unprofessional conduct, the board includes the use of unsanitary or unsafe equipment along with engaging in sexual misconduct with a patient and billing for services not rendered.^{5,6} While in certain instances using unsanitary equipment during the non-invasive, non-incisive procedures chiropractors perform may put patients at risk, the board assesses administrative penalties for grossly unprofessional conduct when chiropractic facilities have rusty equipment that never touches patients' skin, have dirty refrigerators, or have construction dust on their unused adjustment tables. Such a range of conduct qualifying

as grossly unprofessional devalues the term and undermines its intent as a tier one violation. Additionally, the lack of written guidance or policy on what constitutes unsanitary equipment creates subjectivity, allowing investigators to apply the standard inconsistently.

The board's policies may discourage complaints against chiropractors.

The board's actions risk potential retaliation against complainants.

- **No attempt to maintain complainants' confidentiality.** When investigating complaints, the board sends an un-redacted photocopy of the complaint directly to the chiropractor or facility owner for response, potentially discouraging people from filing legitimate complaints. For complaints that relate to chiropractic services or care, the board's actions risk potential retaliation against complainants, who range from patients, chiropractic office staff, or other healthcare practitioners. While chiropractors may find out the identity of the patient in question and may suspect the complainant through documents available later in enforcement proceedings, other health licensing agencies do their best to protect the identity of complainants for as long as possible.
- **Forms appear to require all complainants to disclose medical records.** The board's complaint forms require the complainant to sign a medical records release form without clarification that the form would not be necessary for complaints not related to billing and quality of care. This may discourage complainants from filing complaints unrelated to the quality of care they received, such as legitimate complaints about unlicensed practice of chiropractic or deceptive advertising.
- **Board website appears to discourage submitting complaints online.** Although the board will accept complaints filed by email, the board's website directs complainants to mail in complaints and the complaint form discourages submission via email. Other health licensing boards that receive medical complaints, such as the Board of Nursing and Texas Medical Board, receive complaints through online forms without incident. Requiring complaints to be mailed into the board may discourage patients from filing valid complaints against licensees.

Recommendations

Management Action

1.1 Direct the board to develop a plan to improve its investigative process and reduce complaint resolution timeframes.

This recommendation would direct the board to develop a plan to identify and address the factors in the investigative process that contribute to long complaint resolution timeframes. The plan should include the following:

- Identify stages of the board's investigative process that delay complaint resolution and implement changes to minimize identified bottlenecks.

- Establish and enforce performance measures for investigators, including tracking and documenting how investigators spend their time.
- Provide guidance on which complaints may merit investigator visits to facilities.
- Develop policies prioritizing high-risk cases over low-risk cases, as directed in Recommendation 1.2.

The plan should ensure board staff investigates complaints as thoroughly as necessary before closing the case, as quality should not suffer to gain more expedient case resolution. The board should develop the plan with input from staff and stakeholders, and factors identified should be cost-neutral to the board. The plan should be approved by the board and submitted to the Sunset Advisory Commission no later than June 1, 2017.

1.2 Direct the board to prioritize investigations by risk to the public.

This recommendation would direct the board to develop rules to formally guide prioritization of complaint investigations based on the risk the complaint poses to patients' safety, as well as other indicators such as repeat violations. The board should develop complaint investigation priorities with stakeholder input as necessary. The board should also adopt policies to train investigators on how to prioritize their caseloads, especially in consideration of long complaint resolution timeframes. Prioritizing complaints would ensure the most efficient allocation of scarce resources toward the highest-risk complaints. The board should adopt rules by June 1, 2017.

1.3 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.

The recommendation would direct the agency, through rule, to revise its penalty matrix, categorizing violations by the risk the violation would pose to the public and recommending appropriate penalties. The board would seek input from stakeholder groups in developing the rule, as well as in public hearings. The revised penalty matrix should ensure violations that could endanger the public, such as standard of care violations or practicing outside the scope, result in more serious penalties than administrative violations or violations that pose less direct risk to the public. The categorization of violations should align with the complaint prioritization in Recommendation 1.2, as both should be based primarily on risk to the public. The board should adopt rules by June 1, 2017.

1.4 Direct the board to clearly define grossly unprofessional conduct.

This recommendation would direct the board to more clearly define in rule what actions constitute grossly unprofessional conduct, especially as it relates to unsanitary and unsafe equipment. In implementing this recommendation, the board should consider placing the use of unsanitary and unsafe equipment in a different prioritization tier than the other actions that constitute grossly unprofessional conduct. Through rule, the board should clearly link characteristics of unsanitary and unsafe equipment to the risk the equipment poses to patient health and safety and define the specific criteria that must be present for equipment to be deemed unsanitary or unsafe. Clearly defining the risk and criteria necessary to document unsanitary and unsafe equipment would remove the subjective nature from the terms "unsanitary" and "unsafe," and would allow for greater consistency in sanctions. More narrowly defining grossly unprofessional conduct as it relates to unsanitary and unsafe equipment would allow the agency to focus on investigating violations that pose a greater risk to patients.

1.5 Direct the board to maintain complainants' confidentiality when possible.

This recommendation would direct the board to protect the identity of complainants to the extent possible, while ensuring that licensees still have access to all necessary information to fully respond to complaints. To accomplish this recommendation, the board could consider summarizing the complaint allegations or redacting copies of complaints when providing notice of a complaint to respondents. By better protecting complainants' identities, this recommendation would make the public more comfortable filing complaints without fear of retaliation.

1.6 Direct the board to develop a more user-friendly online complaint form.

This recommendation would direct the board to develop a form on their website that allows the public to submit complaints online. The form should also clarify the specific types of complaints that require patients to sign records release forms. Allowing the public to more easily submit complaints online and not requiring records release forms for each type of complaint would lower the barriers some patients may have to submitting complaints.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the state.

¹ Texas Board of Chiropractic Examiners, *Request for Legislative Appropriations for Fiscal Year 2018–2019* (Austin: Texas Board of Chiropractic Examiners), 9.

² 22 T.A.C. Section 78.10(b).

³ Ibid.

⁴ Ibid.

⁵ 22 T.A.C. Section 78.1(a)(1).

⁶ 22 T.A.C. Sections 78.1(a)(3) and (5).

ISSUE 2

Chiropractic Facility Registration Is Unnecessary to Protect the Public.

Background

In 1993, the Legislature granted the Texas Board of Chiropractic Examiners regulatory authority over chiropractic facilities.¹ As a result, all facilities providing chiropractic services must register and renew on an annual basis with the board. Board rule exempts facilities regulated under another agency's jurisdiction, such as hospitals or public health clinics, from registering with the board.² When submitting an initial facility registration application, applicants must provide basic information about themselves and the facility, such as the facility address, owner information, number of licensees practicing out of the facility, complaints against the applicant, and any criminal convictions on the applicant's record. Outside of submitting the facility registration application, the only other requirement for facility owners is to be at least 21 years of age.

Facility registration requires a \$55 initial fee and a \$65 annual renewal fee for each facility.³ The board may assess administrative penalties for violations of rule or law, such as not reporting changes of address or changes in the licensed chiropractor practicing at the facility. In fiscal year 2015, the board registered 4,090 chiropractic facilities, three percent of which were owned by non-chiropractors.⁴

Statute does not provide for inspection of these registered facilities.⁵ Enforcement staff may only go into a facility when investigating a complaint. This authority is similar to that of the Texas Medical Board, although the primary difference is the medical board does not register doctor's offices.

Findings

Facility registration is an unnecessary regulation that does not increase public safety.

Registration of chiropractic facilities does not impose any regulatory requirements on the facility that enhance public safety. To obtain a facility registration, applicants only submit an application, pay fees, inform the agency of location or staff changes, and renew on time. Registration does not include safety or other facility requirements related to the practice of chiropractic.

The risk to the recipient of chiropractic services stems from the actual chiropractor, not the facility. Due to the nature of chiropractic care, chiropractic facilities do not present the type of risk seen in other facilities that typically require registration. Unlike hospitals, ambulatory surgical centers, or pharmacies, the services provided in chiropractic facilities do not pose significant risk to the public since statute prohibits chiropractors from performing invasive procedures, administering anesthesia, or dispensing prescription drugs.⁶ Ensuring the quality of chiropractic care provided within a chiropractic facility is the responsibility of the licensed chiropractor using the equipment, treating the patient, and updating the patient's records.

Risk to patients stems from the actual chiropractor, not the facility.

Most facility-related complaints were unrelated to patient safety.

Further, board complaints and enforcement actions do not indicate public harm from chiropractic facilities. The vast majority of the violations cited in facility complaints do not pose harm to the public because they are administrative in nature, such as failure to change address, failure to timely renew expired facility registration, or failure to respond to the board. Of the 38 facility-related complaints resolved in fiscal year 2015, only three violations posed a potential threat to the public — use of unsanitary equipment and allowing an unlicensed person to practice — but both violations fall within the direct responsibility of the chiropractor using the equipment or practicing without a license, not the facility owner. The board can, and does, take enforcement action against these chiropractors.

Facility registration detracts board focus and resources from regulating higher-risk activities and offers no benefit to the public.

Facility registrations produce a significant amount of unnecessary work for both enforcement and licensing staff.

- **Enforcement.** Facility registration requirements create a subset of administrative violations and associated workload not related to public health and safety, such as failure to renew or register a chiropractic facility on time. Since statute only allows the board to inspect chiropractic facilities as part of an investigation related to a complaint, the board uses these administrative violations to open investigations and inspect the facility to generate additional violations. The board filed 33 of the 38 complaints generated against facility owners in fiscal year 2015. In some cases, investigators go beyond the board's statutory authority to inspect facilities without an established complaint.

Having enforcement staff focus on regulating minor administrative violations takes valuable staff time away from investigations related to standard of care or fraudulent billing, violations capable of causing significant public harm. Additionally, as described in Issue 1, such busy work for trivial violations likely contributes to long complaint resolution times, averaging 299 days to case resolution in fiscal year 2015. During that same time, the four enforcement staff combined spent an estimated 32 working hours per week investigating facility violations that did not pose significant harm to the public. Further, board staff spends additional time preparing for and conducting informal settlement conferences for these minor violations. Overall, enforcing facility registration wastes time and resources the agency could better allocate to protect the public.

- **Licensing.** Facility registration wastes board resources by requiring staff to spend time collecting and continuously updating basic information. Specifically, chiropractors report their practice addresses on both license and facility registration applications, creating opportunities for conflicting

Facility investigations detract staff's focus from violations capable of causing significant public harm.

address information in the board's licensing database. As a result, board staff spent about five hours per week processing facility registrations in fiscal year 2015, half of which was spent correcting address duplications caused by unnecessary facility registration efforts.

Recommendation

Change in Statute

2.1 Discontinue registration of chiropractic facilities.

This recommendation would deregulate chiropractic facilities by removing statutory provisions and related board rules requiring registration. As a result, chiropractic facility owners would no longer have to register or pay registration and renewal fees to the board. However, licensees would continue to report the addresses of their employment or practice and notify the board of any changes within 30 days, as is currently required by rule. The board would also maintain its authority to enter chiropractic facilities as part of an investigation.

Fiscal Implication

Because the General Revenue Fund receives fees in excess of the cost of regulation, a recommendation to deregulate a fee-based registration or license results in a loss to the fund. As a result, this recommendation would have an overall annual cost of \$219,175 to the General Revenue Fund. Based on the number of facilities registered at the end of fiscal year 2015, discontinuing the registration of chiropractic facilities would result in an average annual loss of approximately \$242,055 in registration fees beginning in fiscal year 2018. Any additional revenue loss to the state from the board no longer collecting administrative penalties for facility violations cannot be estimated.

However, this loss would be offset by a reduction of 0.5 of a full-time employee that would no longer be needed because of a reduction in workload from not investigating facility-related violations. Based on the average salary of the board's investigators, reduction of half of an employee would equate to a savings of \$22,880 per year.

Texas Board of Chiropractic Examiners

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

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¹ Sunset Advisory Commission, *Texas Board of Chiropractic Examiners Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, February 2004), 30.

² 22 T.A.C. Section 73.2(h).

³ 22 T.A.C. Section 78.6(a).

⁴ In fiscal year 2015, non-chiropractors owned 124 registered chiropractic facilities.

⁵ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 201.207, Texas Occupations Code.

⁶ Section 201.002, Texas Occupations Code.

ISSUE 3

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

Background

To protect the public and enforce the Texas Chiropractic Act, the Texas Board of Chiropractic Examiners needs the expertise of a trained, licensed chiropractor to determine whether chiropractic care meets appropriate professional standards. While six of the nine board members are licensed chiropractors, the board does not employ a chiropractor to assist in its enforcement efforts. To meet the board's need for expertise, in 1985, the Legislature required the board to implement peer review committees to assist the enforcement process by providing expert opinions on billing fraud and chiropractic standard of care complaints.¹ Statute outlines requirements for local peer review committees throughout the state and an executive peer review committee responsible for reviewing cases not resolved at the local peer review committee level.²

Separate from these peer review committees, the board implemented an expert review process in February 2016. The board now contracts as needed with licensed chiropractors to offer expertise on chiropractic standard of care cases. The board's expert review pool consists of four licensed chiropractors who are compensated \$150 per case reviewed. Similar to standard of care cases, the board also contracts with two billing and coding experts to aid in determining the presence of billing fraud.

Findings

The statutory peer review committee structure was never fully implemented because it is too onerous to meet the board's limited needs.

While the board made several attempts to implement the peer review committees provided in law, the committees never became fully functional and, as a result, have been inactive for years. Ultimately, these committees are not the best approach for meeting the board's need for additional expertise, as the extensive nature of the peer review committee structure does not match the present resources and needs of the board.

- **Extensive process outweighs need.** The peer review committee structure in the board's statute is too robust in comparison to the board's limited need for expert review in standard of care complaints. In fiscal year 2015, the board received 132 complaints against licensees, but only 14 complaints required chiropractic expertise. The board does not need to implement multiple local peer review committees and an overarching executive peer review committee to ensure such a small sample of complaints receive expert review.

*Few complaints
require
chiropractic
expertise.*

The extensive peer review structure in statute is unwieldy.

- **Lack of resources.** Due to its small size, the board has struggled in past years to find enough staff resources to effectively implement and manage the complex peer review structure outlined in statute. Full implementation of requirements for a tiered peer review structure with local committees intended to span various regions of the state would likely require additional staff to manage administrative responsibilities. For example, board staff would need to recruit qualified chiropractors to participate on committees, maintain communication from staff to committee members, and coordinate the collection and distribution of confidential medical records for review. Potentially hiring additional staff to implement a peer review structure that goes beyond agency need is unnecessary and costly.
- **Lack of interest.** The board reports chiropractors are largely unwilling to serve on the voluntary peer review committees. The lack of compensation for conducting time-intensive expert reviews provides no incentive for chiropractors to take time away from their practices.

While the board recently implemented an expert review process, it lacks formality and is not fully developed.

The board's new expert review process is not in statute or rule.

While the board has attempted to meet the legislative intent behind peer review committees through its recently implemented expert review process, this process is not formally established. No statutory provisions, board rules, or formal policies exist to outline implementation requirements for the process. As such, the board lacks policies to define which types of complaints merit expert review, process or content requirements to ensure quality reviews, timely evaluations from experts, or provisions to protect the confidentiality of complainant and patient information. While the board could take some steps to formalize this process on its own, an agency should also have a clear legal authority for its operations.

Other boards use an expert review process similar to the new, informal expert review process implemented by the chiropractic board. For example, the Texas Medical Board uses an expert panel composed of licensed physicians to review standard of care complaints.³ The chiropractic board applies the same underlying concept and integral components of the medical board's process to help ensure chiropractors are evaluated by qualified professionals in determining whether they practice in line with established standards. However, because the board has only needed to contract for chiropractic expertise in two cases since February 2016, adopting a complex expert review process identical to the medical board's expert review process is not needed for the board's limited standard of care caseload.

Recommendations

Change in Statute

3.1 Repeal the local and executive peer review requirements from statute.

This recommendation would remove the local and peer review committees outlined in the Texas Chiropractic Act. Instead, the board would use the expert review process outlined in Recommendation 3.2 to obtain expert opinion on standard of care complaints.

3.2 Require the board to develop an expert review process in rule to ensure chiropractic expertise in its enforcement process.

This recommendation would require the board to develop an expert review process for investigating complaints that require additional expertise. The board would determine which types of complaints merit potential expert review, including standard of care cases at a minimum, and contract as needed with a pool of qualified experts to review cases to aid in the board's investigation. The board should develop rules by March 1, 2018 to address the following:

- Qualifications for the pool of expert reviewers
- Grounds for removal of an expert reviewer
- Methods to ensure unbiased assignment of complaints to maintain confidentiality and avoid conflicts of interest
- Timelines for resolving complaints requiring expert review
- Content and format of expert review documents

As a management action, the board should also develop policies to address compensation of reviewers.

Fiscal Implication

Since the board has not implemented the statutorily required peer review committees and has already implemented an expert review process that works to meet its operational needs, the recommendations discussed above should not have any additional fiscal impact.

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¹ Sunset Advisory Commission, *Texas Board of Chiropractic Examiners Staff Report* (Austin: Texas Sunset Advisory Commission, February 2004), 14.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Subchapter F—Peer Review Committees, Chapter 201, Texas Occupations Code.

³ Section 154.0561, Texas Occupations Code.

ISSUE 4

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

Background

The mission of the Texas Board of Chiropractic Examiners is to promote, preserve, and protect the health, safety, and welfare of the public by ensuring all chiropractors overseen by the board meet professional standards. To accomplish this mission, the board performs the following functions: licenses chiropractors, investigates complaints against chiropractors, and enforces the Texas Chiropractic Act. In fiscal year 2015, the board regulated 5,085 actively licensed chiropractors and 4,090 registered chiropractic facilities.

The Sunset Advisory Commission has a long history evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind creation of the commission in 1977. Since then, the Sunset Commission has completed more than 100 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Sunset staff continues to refine and develop standards, reflecting additional experience and different or changing needs, circumstances, or practices in licensing agencies. The following material highlights areas where the board's statute and rules differ from these model standards and describes the potential benefits of conforming to standard practices.

Findings

Statutory licensing provisions and agency procedures do not follow model licensing practices, presenting unnecessary hurdles to applicants and reducing the efficiency of agency operations.

- **Missing fingerprint background checks.** To help protect the public's safety, licensing agencies commonly conduct background checks using the Department of Public Safety's (DPS) fingerprint system, which accurately identifies the individual, provides automatic updates, and uncovers criminal history on applicants and licensees nationwide. The board began conducting fingerprint background checks on new license applicants in May 2004 in place of the less reliable, name-based background check system. However, the board never required existing licensed chiropractors to undergo a fingerprint background check. As a result, the board relies on these licensees to self-disclose any criminal history when renewing their license and cannot reliably track any past, present, or future criminal activity for 58 percent of its chiropractors. Directing the board to require licensees who were not fingerprinted from initial licensure to get a fingerprint-based criminal background check would help the agency more effectively assess each licensee's criminal history to better protect the public.

The board does not track criminal activity for 58 percent of chiropractors.

The board simply renews licenses of chiropractors who may face discipline in other states.

Applicants must submit three letters of recommendation from potential competitors.

- **Inconsistent review of license sanction data.** Licensing agencies should consult available enforcement information compiled by national or federal databanks to monitor disciplinary actions against practitioners licensed or seeking licensure in Texas who are also licensed in other states. Databanks provide agencies the information necessary to decide if licensees disciplined in other states should be allowed to practice in Texas or if enforcement action is warranted based on violations that reflect a practitioner's inability to safely perform his or her job. The intent is to ensure a licensee's mobility cannot be used to evade discipline. Additionally, if an applicant holds another occupational license in Texas, especially another health-related license, an agency should ensure it knows about any enforcement actions on the other license that would merit denial or sanctions on the applicant's chiropractic license.

Currently, the board does not consistently consult national practitioner databanks, such as the Chiropractic Information Network-Board Action Database (CIN-BAD), to check for disciplinary actions before awarding an initial license or renewal. The board only consults CIN-BAD before awarding an initial license to applicants who have a chiropractic license in another state or have not been licensed within a year after graduating from chiropractic college. The board does not check CIN-BAD before renewing the licenses of chiropractors who receive licenses in other states after their initial licensure, meaning the board may renew licenses for chiropractors who have faced enforcement action in other states, potentially putting Texans at risk. Further, the board does not request that applicants disclose whether they hold another occupational license in Texas and whether that license is in good standing. The board also does not have clear legal authority to sanction a licensee based on actions taken by other states or other Texas licensing boards. By inconsistently using CIN-BAD and not asking about other occupational licenses, the board cannot guarantee all licensed chiropractors meet licensure qualifications and do not pose a risk to the public.

- **Subjective qualifications for licensure.** Qualifications for licensure should not overburden applicants or unreasonably restrict entry into practice. Currently, statute requires applicants for licensure to be of "good moral character."¹ While of course Texas wants licensees to have good character, the phrase "good moral character" is a subjective, vague requirement that may be determined inconsistently. Removing the statutory requirement that applicants be of good moral character would be in line with current law that matches the agency's practice of reviewing an applicant's criminal history and denying licenses based on criminal history that is related to the practice of chiropractic.
- **Unnecessary and restrictive application requirements.** License application requirements should not restrict entry into the practice. An example of a restrictive application requirement is requiring applicants to obtain approval from licensed individuals practicing in their field of interest. Currently, the board requires first-time applicants to submit three letters

of recommendation from other licensed chiropractors as part of their application. Allowing other chiropractors to have input on whether a new applicant can become licensed is unfair, giving other chiropractors, who could be swayed by competitive business motives, undue influence over an applicant's entry into the profession. Further, requiring letters of recommendation is uncommon. Other health licensing agencies, such as the Texas Medical Board, Texas Board of Nursing, and Texas State Board of Pharmacy, do not require new applicants to provide letters of recommendation from other licensed professionals already practicing in the applicant's field.

- **Unnecessary limitations on jurisprudence exam.** Licensing agencies should require applicants to complete a jurisprudence exam to ensure their knowledge of the profession's scope of practice and board rule and laws within the state. Many licensing agencies grant applicants unlimited attempts to take and pass the exam, as the point of a jurisprudence exam is not to limit entrance into the profession, but for practitioners to demonstrate a working understanding of law and rule. Currently, the board only allows first-time applicants to take the jurisprudence exam three times.² Even though an applicant would have already completed chiropractic training, if an applicant is unable to pass the chiropractic jurisprudence exam in the three allotted attempts, the applicant would not be eligible for licensure. Limiting the number of times an applicant can take the jurisprudence exam is unnecessarily restrictive.
- **Burdensome license renewal process.** A regulatory agency should have a renewal process that helps ensure adequate oversight of regulated persons or activities. The board's statute requires chiropractors to renew their licenses annually, which adds to the administrative workload of the board's small staff. To decrease agency burden, other health licensing agencies, such as the Texas Medical Board, Texas Board of Nursing, and Texas State Board of Pharmacy, renew licenses every two years. Changing the chiropractic license renewal to every two years would ease administrative burdens and allow staff to dedicate more time toward quicker processing of licenses.
- **Unnecessary continuing education audits.** Most licensing agencies require licensees to complete continuing education hours as a condition for license renewal. These agencies audit a sample of licensees' continuing education courses to ensure licensees meet the continuing education requirements. Many of Texas' health licensing agencies, such as the medical, nursing, and pharmacy boards, audit 10 percent or less of submitted continuing education hours, depending on the agency's resources and total licensee population. The chiropractic board currently reviews continuing education hour submissions for 100 percent of chiropractors seeking renewal. As an agency with limited resources, dedicating staff time to such burdensome audits keeps the board from focusing on other operational areas with greater public risk.

*Unnecessary
education audits
take time away
from larger
areas of risk.*

- **Restrictive fee authority.** A licensing agency should have authority to set its own licensing and renewal fees. Setting a fee floor in statute limits the agency's ability to lower fees in line with the agency's actual cost to adequately regulate a program. The board's statute currently includes a floor, which requires the board to set fees at or above amounts established in 1993.³ While the board has appropriately chosen to keep fees low, currently \$150 for a license renewal, the floor requires a minimum renewal fee of \$325. Removing the statutory fee floor would improve the agency's fee management authority to ensure a funding structure that funds needed operations while also being fair to licensees.

Recommendations

Change in Statute

4.1 Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.

New licensees already undergo a fingerprint-based background check. This recommendation would require existing chiropractors who did not undergo a fingerprint-based criminal background check upon initial licensure to undergo checks. Due to the large number of chiropractors who have not undergone fingerprint background checks, the recommendation would allow for a two-year, staggered implementation timeframe, which must be complete by September 1, 2019. To ensure compliance, this recommendation would authorize the board to administratively suspend a chiropractor's license for failing to comply with the background check requirement. Obtaining up-to-date criminal history on all chiropractors would ensure the agency can effectively monitor all licensees for criminal conduct and take disciplinary action to protect the public when warranted.

4.2 Remove unnecessary provisions requiring applicants to be of good moral character.

This recommendation would remove the requirement for license applicants to be of "good moral character," a standard that is unclear, subjective, and difficult to enforce. The board would continue to receive and review criminal history information to determine the applicant's eligibility for licensure according to requirements in Chapter 53 and Section 202.253 of the Occupations Code, and the agency's current rules.

4.3 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.

This recommendation would expand the board's ability to identify problems and authorize it to take any necessary enforcement action based on actions taken by other states or other Texas licensing boards, so long as the conduct is also a violation of Texas law or board rule.

In conjunction with the above statutory change, this recommendation would direct the board's licensing staff to cross reference national practitioner databanks, such as the Chiropractic Information Network–Board Action Database, when processing initial license applications and renewals for all licensed chiropractors. Cross referencing national practitioner databanks at all stages of licensure would ensure the board facilitates safe chiropractic care for the public. Further, to ensure the board is aware of

chiropractors or applicants with sanctions on other occupational licenses that could impact eligibility for a chiropractic license, this recommendation would direct the board to require chiropractors to disclose upon application or renewal if they are licensed with other in-state occupational licensing boards, and whether that license is in good standing.

4.4 Remove the limitation on the number of times an applicant can take the board's jurisprudence exam.

This recommendation would remove the limitation on the number of times an applicant can take the board's jurisprudence exam, allowing applicants the ability to take the jurisprudence exam until passing, regardless of the number of attempts. The recommendation would also remove any established time constraints between exam attempts to eliminate unnecessarily restrictive licensure requirements.

4.5 Authorize the board to provide biennial license renewal.

This recommendation would allow the board to adopt biennial renewal for licensees. The board would determine when to start and how to implement biennial renewals. This recommendation would reduce time spent on processing renewals and alleviate burden on staff without compromising agency oversight of licensees.

4.6 Remove the statutory limitation currently restricting the agency's authority to lower fees.

This recommendation would remove the fee floor currently listed in statute. The agency would have greater discretion to set its fees, thus giving the agency increased autonomy to lower fees if the cost of administering regulation decreases.

Management Action

4.7 Direct the board to stop requiring letters of recommendation as part the initial application process.

Under this recommendation, the board would no longer require new applicants to submit letters of recommendation as part of their initial licensure application. As a result, the board should no longer request or use letters of recommendation from potential competitors to determine whether to award a license.

4.8 Direct the board to limit its continuing education audit process.

This recommendation would direct board staff to no longer audit 100 percent of continuing education submissions for all licensed chiropractors each year. To align the board with most state health licensing agencies, this recommendation would give the board authority to determine what percentage of continuing education submissions staff would be required to audit each year. Adopting a smaller audit sample would allow staff to spend more time licensing qualified chiropractors or investigating complaints for poor chiropractic care instead of spending time auditing all continuing education submissions. Auditing a risk-based or random sample of continuing education submissions would continue to provide incentive to comply.

Fiscal Implication

Overall, while several recommendations would reduce administrative burdens on agency staff, the recommendations would not have a significant fiscal impact to the state. Recommendation 4.1 would not have a fiscal impact to the agency, but would require many licensed chiropractors to pay about \$40 for a fingerprint background check through DPS. The board could handle any increased workload related to background checks within current resources.

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- ¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 201.302, Texas Occupations Code.
- ² Section 201.307, Texas Occupations Code.
- ³ Section 201.153, Texas Occupations Code.

ISSUE 5

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

Background

The practice of chiropractic, as defined by Texas statute, includes a range of activities related to analyzing, examining, evaluating, and improving the biomechanical condition of the spine and musculoskeletal system of the human body through nonsurgical, noninvasive procedures, including adjustment and manipulation.¹ Many Texans seek chiropractic services under various insurance plans, such as Medicare, workers' compensation, or automobile insurance policies, for conditions such as chronic back pain or joint injuries.

The Legislature created the Texas Board of Chiropractic Examiners in 1949 to protect patients by setting and enforcing standards for chiropractors. The Legislature expanded the board's authority in 1993 by requiring registration of all chiropractic facilities and again in 2003 by authorizing the board to take action against individuals who operate unregistered chiropractic facilities.

The board seeks to protect public health by issuing licenses and registrations, investigating and resolving complaints related to the practice of chiropractic and supporting functions, and enforcing the Chiropractic Act. In fiscal year 2015 the board regulated 5,085 actively licensed doctors of chiropractic, registered 4,090 chiropractic facilities, and resolved 319 complaints.

Findings

Texas has a continuing need to regulate the practice of chiropractic.

- **Potential for harm.** Chiropractic care involves the hands-on treatment of patients, generally including the manipulation of delicate body structures such as 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. Additionally, chiropractic care generally involves assessments and treatments beyond a patient's ability to judge need or address on their own. Improper practice may not just impact patients' health and safety, but may also impact patients' financial well-being due to the costs of unnecessary treatment or the costs of fixing poorly performed treatment. If improper practice is suspected, the state is best positioned to investigate complaints about chiropractors or individuals posing as chiropractors and take disciplinary action as necessary.
- **Qualified practice.** To ensure the safe practice of chiropractic, the board requires chiropractors to demonstrate competence by graduating from an accredited four-year college of chiropractic, successfully completing all parts of the National Board of Chiropractic Examiners examinations,

Improper practice of chiropractic may result in significant harm to patients.

and passing Texas’ jurisprudence exam. In addition, applicants must pass criminal background checks and maintain continuing education credits. The board functions to minimize harm to the public by ensuring individuals practicing chiropractic meet established standards of care and comply with regulations to ensure safe practice. Further, the board investigates, disciplines, or removes from practice chiropractors who do not act within or meet chiropractic standards.

Texans face increased risk as the board struggles to ensure timely and effective regulation of chiropractors.

Poor operations raise questions about the best structure for regulation.

The chiropractic 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. At best, this forced inefficiency results in a higher cost to the state and a less-robust regulatory structure; at worst, the lack of best practices potentially puts Texans at risk. The review found that the board has operational deficiencies, described below, that raise questions about the best structure to regulate chiropractic.

- **Slow complaint resolution.** As outlined in Issue 1 of this report, the agency averaged 299 days to resolve complaints in fiscal year 2015 — leaving the public in the dark about potential infractions committed by their chiropractor and unnecessarily placing chiropractors in regulatory limbo while they await the board’s decision on the future of their livelihood. The board’s resolution timeframe exceeded its Legislative Budget Board performance measure and lagged behind complaint resolution timeframes of similarly-sized health licensing agencies, described in the table, *Comparison of Complaint Resolution Timeframes*.

**Comparison of Complaint Resolution Timeframes
FY 2015**

Agency	Days to Resolve Complaints
Board of Chiropractic Examiners	299
Board of Veterinary Medical Examiners	221
Board of Examiners of Psychologists	209

- **Unknown criminal history of more than 3,000 chiropractors.** When the board received its fingerprint background check authority in 2004, the agency did not implement fingerprint background checks for chiropractors already licensed with the board. As a result, the board remains unaware of criminal convictions and potential risks to the public of 58 percent of all licensed chiropractors. As outlined in Issue 4 of this report, the agency relies on these licensees to self-report criminal convictions and does not check criminal history upon license renewal.

- **Risk to continued operations.** In fiscal year 2016, the board had a turnover rate of 42 percent — six of its 14 staff. The majority of these positions are central to administration of the agency. Staff that left included the executive director, chief financial officer, and general counsel. At agencies this size, even a small bout of turnover can paralyze an agency’s functions, presenting significant risk to continued operations. Additionally, time spent recruiting and hiring to fill these positions and administering a succession plan, if one exists, is time taken away from core responsibilities.
- **Manual processes lack sophistication.** While the board is largely able to process license applications and investigate complaints day-to-day, overarching resource limitations prevent the board from matching the sophistication of other regulatory agencies in state government. While license renewals can be processed online, the board still requires new applicants to mail, fax, or email photocopies of their applications. Board staff also manually enters continuing education information for each of the agency’s more than 5,000 licensees. In addition, the board’s website directs the public to file complaints by mail. Although the state is rarely on the cutting edge of innovation, basic improvements such as email submissions can offer efficiencies and are common practices of health licensing agencies with larger licensee populations.
- **Limited stakeholder involvement.** Despite statutory and previous Sunset recommendations requiring the board seek stakeholder input early in the rulemaking process, stakeholders continue to raise concerns about the board not garnering their input or considering their concerns.^{2,3} The board does post rules in the Texas Register and opens their meetings for public comment, as required. However, the board does not engage stakeholders early or regularly enough in the process to demonstrate true consideration of stakeholder input, such as through regular stakeholder meetings or workgroups.

The board’s 42 percent turnover included three key executive staff.

The board does not engage stakeholders early or regularly enough.

The board’s statute does not reflect standard language typically applied across-the-board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed reflecting “good government” standards designed to ensure open, responsive and effective government. One such standard in the board’s statute relates to board member training. The board’s statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. The board complies with this requirement. However, statute does not require the agency to create a training manual for all board members or specify that the training must include a discussion of the scope of and limitations on the board’s rulemaking authority.

While the agency's functions should continue, its organizational structure must be evaluated in conjunction with the Sunset Commission's review of other comparable health licensing agencies.

The Texas Board of Chiropractic Examiners is one of many agencies that regulate healthcare professionals in Texas. Although chiropractors have

***Health Licensing Agencies Under
Sunset Review 2016–2017***

Texas Board of Chiropractic Examiners
 State Board of Dental Examiners
 Texas State Board of Examiners of Marriage and Family Therapists
 Texas Medical Board
 Texas Board of Nursing
 Texas Board of Occupational Therapy Examiners
 Texas Optometry Board
 Texas State Board of Pharmacy
 Executive Council of Physical Therapy and Occupational Therapy Examiners
 Texas Board of Physical Therapy Examiners
 Texas State Board of Podiatric Medical Examiners
 Texas State Board of Examiners of Professional Counselors
 Texas State Board of Examiners of Psychologists
 Texas State Board of Social Worker Examiners
 State Board of Veterinary Medical Examiners

an independent and distinct scope of practice from other healthcare professionals, the licensing, regulation, and enforcement of the profession under the agency's enabling act require activities that mirror those taken by comparable health licensing boards, many of which are under Sunset review at this time, as shown in the textbox, *Health Licensing Agencies Under Sunset Review*.

These reviews will explore the benefits of consolidation, with the goal of eliminating duplication of effort and maximizing agency time spent on core licensing and regulatory functions. Additionally, opportunities may exist to achieve administrative efficiencies, provide greater coordination, and deliver more consistent regulation across Texas' health licensing agencies. These reviews, including an analysis of the benefits of consolidation, will be completed in November 2016.

Recommendations

Change in Statute

5.1 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.

While state regulation of chiropractors should be continued, this recommendation would postpone the Sunset Commission's decision on the status of the board as a separate agency until completion of the Sunset reviews of other health licensing agencies under review this biennium. The results of these reviews should be used to determine if administrative efficiencies and greater coordination could be achieved in the organization of the state's separate health licensing agencies. Delaying the decision on continuation of the agency would allow Sunset staff to finish its work on all the professional licensing agencies, and base its recommendation on the most complete information.

The Texas Board of Chiropractic Examiners would be a likely candidate for consolidation. As shown in the findings, the agency struggles to ensure the most effective and efficient regulation of chiropractic, and consolidation could allow for a focus on the implementation of best practices and more robust regulation designed to better protect the public.

5.2 Update the standard across-the-board requirement related to board member training.

This recommendation would require the agency to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the state.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 201.002(b), Texas Occupations Code.

² Sections 201.1526(b) and (c), Texas Occupations Code.

³ Sunset Advisory Commission, *Texas Board of Chiropractic Examiners Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, February 2004), 10–11.

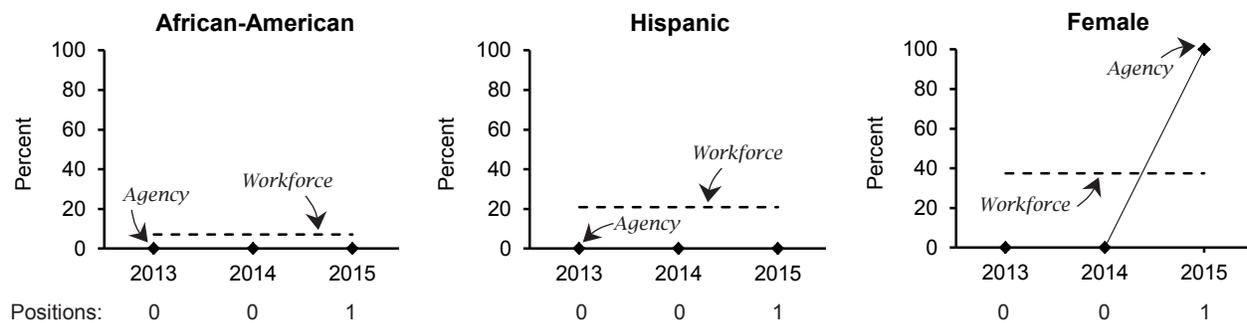
APPENDICES

APPENDIX A

Equal Employment Opportunity Statistics 2013 to 2015

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Board of Chiropractic Examiners.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2013 to 2015. The board had difficulty meeting statewide civilian workforce percentages for the job categories discussed below. In the professional job category, which constitutes the majority of the board's small staff, the board exceeded statewide civilian workforce percentages for African-Americans all three fiscal years, but fell short in its employment of females in all three years and Hispanics in 2013 and 2015. In its next-largest category, administrative support, the board exceeded statewide civilian workforce percentages for females, but not for African-Americans or Hispanics, from 2013 to 2015.

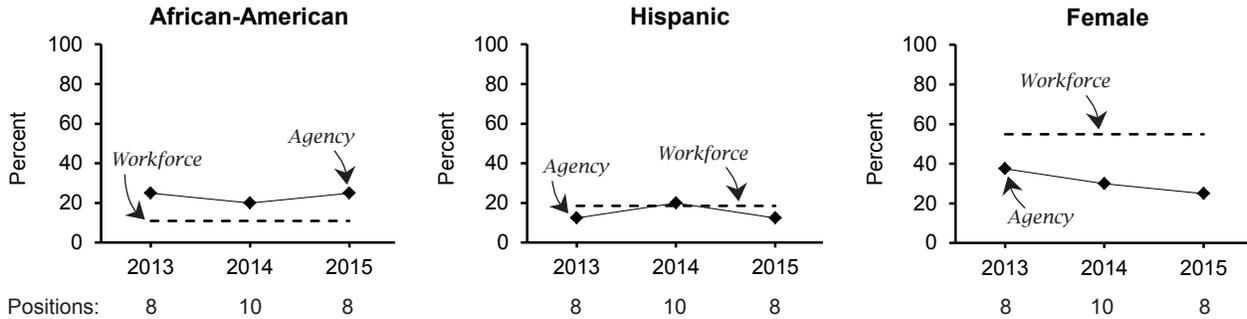
Administration



The board did not meet the statewide civilian workforce percentages for African-Americans or Hispanics for fiscal year 2015, which is the only year the agency had an administration category position. However, the agency exceeded workforce percentages for females during that year.

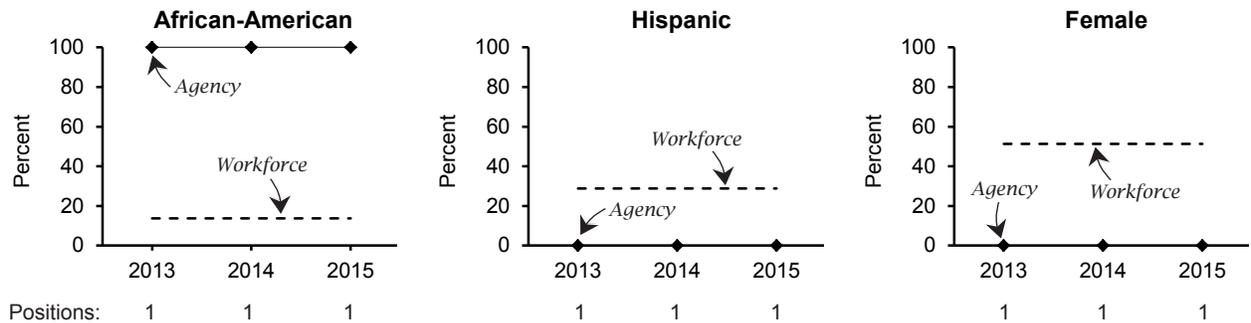
Appendix A

Professional



The board met the statewide civilian workforce percentages for African-Americans for all three fiscal years and for Hispanics in fiscal year 2014. However, the agency did not meet professional workforce percentages for Hispanics in fiscal year 2013 and 2015 or for females during all three fiscal years.

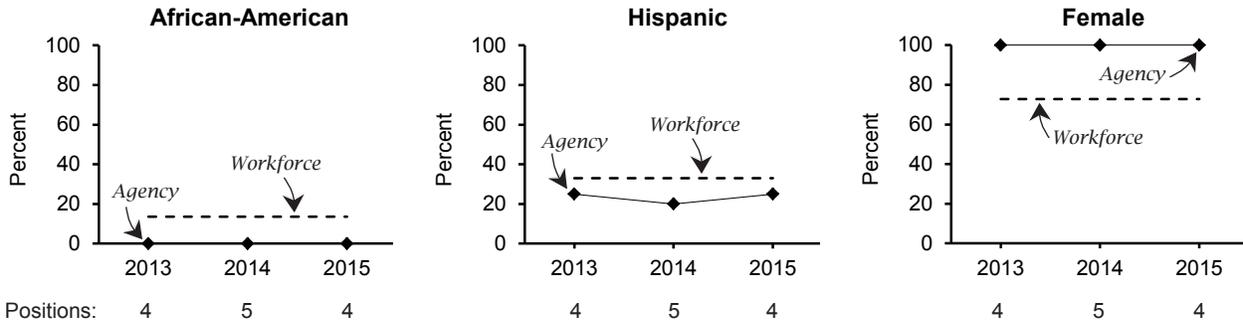
Technical



The board exceeded the statewide civilian workforce percentages for African-Americans for fiscal years 2013 through 2015 with its single position in this category.

Appendix A

Administrative Support



The board did not meet the statewide civilian workforce percentages for African-Americans or Hispanics, but exceeded workforce percentages for females during all three fiscal years.

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¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

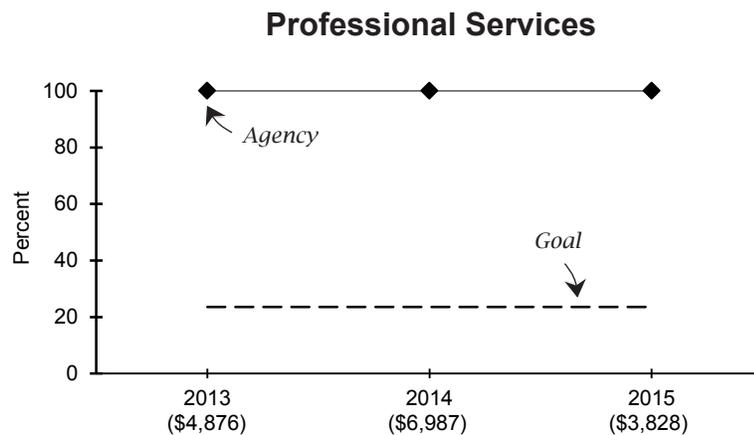
APPENDIX B

Historically Underutilized Businesses Statistics 2013 to 2015

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Board of Chiropractic Examiners' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2013 to 2015. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

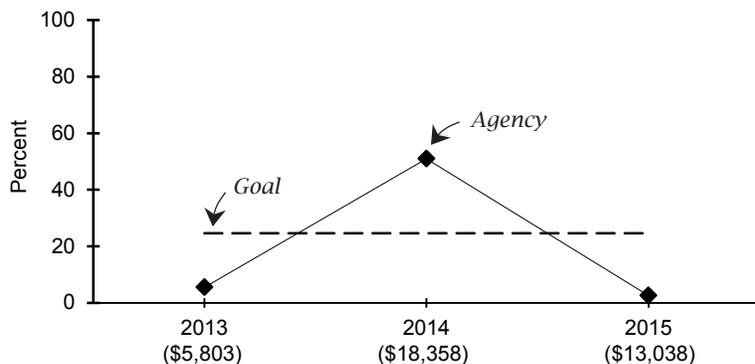
The board met or exceeded HUB program requirements in the professional services and commodities purchasing categories, but the agency did not meet statewide HUB purchasing goals in the category of other services in fiscal years 2013 and 2015.



The board exceeded the statewide HUB goal for professional services for all three fiscal years.

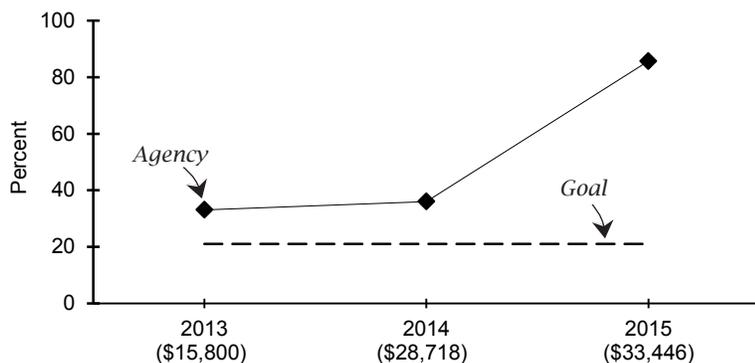
Appendix B

Other Services



The board exceeded the statewide HUB goal for other services during fiscal year 2014 but did not meet the statewide goal for fiscal years 2013 and 2015.

Commodities



The board met or exceeded the statewide HUB goal for commodities during the last three fiscal years.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 325.011(9)(B), Texas Government Code.

² Chapter 2161, Texas Government Code.

APPENDIX C

Health Professions Council

In 1993, the 73rd Legislature created the Health Professions Council (HPC) to increase efficiency across member agencies by providing administrative support services. The council consists of representatives from 12 independent licensing boards and the Department of State Health Services Professional Licensing and Certification Unit (PLCU), as reflected in the table, *HPC Member Agencies*.

HPC Member Agencies – FY 2016

Agency	Licenses (at start of FY16)	Funds Transferred to HPC in FY16
Texas Board of Chiropractic Examiners	6,537	\$20,361
State Board of Dental Examiners	31,280	\$257,118
Texas Funeral Service Commission	4,811	\$43,845
Texas Medical Board	85,244	\$32,378
Texas Board of Nursing	419,685	\$71,651
Texas Board of Occupational Therapy Examiners	13,985	\$33,527
Texas Board of Physical Therapy Examiners	24,412	
Texas Optometry Board	4,409	\$27,715
Texas State Board of Pharmacy	113,806	\$331,400
Texas State Board of Podiatric Medical Examiners	1,162	\$13,401
Texas State Board of Examiners of Psychologists	9,512	\$52,774
Department of State Health Services – PLCU	175,140	\$11,846
State Board of Veterinary Medical Examiners	9,770	\$31,038
Non-Member Agencies Receiving Limited Services		
Texas Board of Professional Geoscientists receives information technology support services		\$13,000
Texas Board of Professional Land Surveying receives database administration and support		\$11,808
Texas State Board of Plumbing Examiners receives database administration and support		\$130,658
Office of Public Insurance Counsel receives information technology support services		\$6,641
Total		\$1,089,161

- **Funding and staffing.** The council's funding comes from transferred appropriations from member agencies, with each agency paying for services it receives. Council members elect a chair and vice chair to preside over the council for two-year terms. The council has seven employees to perform its main functions and occasionally uses staff from member agencies to carry out specific programs. For

Appendix C

example, an Optometry Board staff member provides added technology support to the eight smallest member agencies, and a Board of Nursing staff member offers new employee Equal Employment Opportunity (EEO) training to all member agencies.

- **Services.** HPC offers the following services to member agencies:
 - Website, information technology, and document imaging software support
 - Shared regulatory database and database administration
 - Purchasing, payroll, and human resources support
 - Trainings relating to state finance, accounting, auditing, and EEO guidelines
 - Shared toll-free telephone line for consumer complaints

APPENDIX D

Texas Board of Chiropractic Examiners Enforcement Actions – FY 2015

	All Complaints Resolved	Standard of Care	Administrative ¹	Facility Registration-Related ²	Fraud ³	Advertising ⁴	Failure to Furnish Records	Solicitation	Criminal Conviction	Failure to Report Criminal Conviction	Practicing Without a License	Failure to Disclose Charges	Failure to Comply With Board Order	Default on Student Loan	Gross Unprofessional Conduct – Unsanitary Conditions	Allowing Unlicensed Chiropractor to Work at Facility	Dishonorable Conduct	Utilization
License Revocation	8	2	1	0	2	0	1	0	2	0	0	0	0	0	0	0	0	0
Facility Registration Revocation	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
License Suspension	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
License Probation	7	3	0	0	3	0	0	0	1	0	0	0	0	0	0	0	0	0
Administrative Penalty	59	14	19	7	4	2	7	0	1	0	0	1	0	1	2	1	0	0
Reprimand	22	6	3	0	0	1	0	0	0	5	1	0	4	2	0	0	0	0
Letter of Warning	31	18	3	3	1	2	2	0	0	0	0	0	0	1	0	1	0	0
Cease and Desist	42	4	5	30	1	0	0	0	0	0	2	0	0	0	0	0	0	0
No Violation ⁵	154	54	10	10	34	8	13	9	0	0	2	2	10	0	0	0	1	1
Total Actions Taken Per Type of Complaint	325	101	41	50	46	13	23	9	4	5	5	3	15	4	2	2	1	1

¹ Includes complaints related to failure to report change of address, failure to respond to board inquiries, and expired license.

² Includes complaints related to expired facility registration, practicing in an expired facility, failing to report a change of facility address, and operating an unregistered facility.

³ Includes complaints related to fraud, billing for services not rendered, and overtreating/overcharging.

⁴ Includes complaints related to advertising, failure to differentiate businesses, and superiority.

⁵ Includes complaints dismissed for lack of evidence, no violation, administratively closed, withdrawn, and nonjurisdictional.

APPENDIX E

Staff Review Activities

During the review of the Texas Board of Chiropractic Examiners, Sunset staff engaged in the following activities that are standard to all sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Attended enforcement, rules, and licensure and education committee meetings
- Reviewed agency complaint files
- Toured chiropractic facilities
- Attended chiropractic facility inspections with board enforcement staff
- Surveyed board stakeholder groups, licensees, and registered facility owners
- Attended informal settlement conferences to observe agency enforcement actions against licensees and registrants
- Observed an emergency suspension hearing held by the board and an enforcement hearing at the State Office of Administrative Hearings

Sunset Staff Review of the *Texas Board of Chiropractic Examiners*

————— *Report Prepared By* —————

Carissa Nash, *Project Manager*

Krystal Duran

Brittany Calame

Sarah Kinkle, *Project Supervisor*

Ken Levine
Director

Sunset Advisory Commission

Location
Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail
PO Box 13066
Austin, TX 78711

Website
www.sunset.texas.gov

Email
sunset@sunset.texas.gov

Phone
(512) 463-1300