



State Board of Chiropractic Examiners:

Board Members Violated State Laws and Procedural Requirements, and Its Enforcement, Licensing, and Continuing Education Programs Need Improvement

March 2008 Report 2007-117



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The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the State Board of Chiropractic Examiners' (chiropractic board) enforcement, licensing, and continuing education programs and the role and actions of the chiropractic board members.

This report concludes that board members' lack of understanding about state laws related to their responsibilities as board members, including the Bagley-Keene Open Meeting Act, resulted in some violations of state law and other inappropriate actions. The chiropractic board also did not ensure that its designated employees, including board members, complied with the reporting requirements of the Political Reform Act of 1974. Additionally, board members inappropriately delegated responsibility to approve or deny licenses to chiropractic board staff. Because staff rather than board members made final decisions on approving licenses and board members did not review staff-determined denials when applicants did not formally appeal those denials, the chiropractic board did not comply with the Chiropractic Initiative Act of California.

The chiropractic board has not developed comprehensive procedures, such as the length of time it should take to process complaints and, as a result, staff do not always process complaints promptly. Further, the chiropractic board's weak management of its enforcement program may have contributed to inconsistent treatment of complaints as well as unreasonable delays in processing. In fact, the chiropractic board's handling of complaints is so flawed that it fails to promptly process its most serious complaints—those it defines as having priority. Our review of 11 priority complaints revealed that it took the chiropractic board from one to three years to process nine of them, potentially leading to repeat offenses and a failure to protect the public. Although the chiropractic board's regulations have required it to establish chiropractic quality review panels, it has never complied with its regulation. Finally, many of the chiropractic board's current practices for administering its continuing education program are not consistent with its regulations and written policies and procedures.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

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Summary

Results in Brief

The State Board of Chiropractic Examiners (chiropractic board) was created in December 1922 through the Chiropractic Initiative Act of California (initiative act). The initiative act prescribes the terms of issuing licenses to chiropractors, specifies the penalties to impose against licensees who violate those terms, and declares the powers and duties of the chiropractic board. In general, the board is a policy-making and administrative review body with the primary responsibility of protecting California consumers against fraudulent, negligent, or incompetent chiropractic practices.

A lack of understanding among members of the chiropractic board (board members) about state laws related to their responsibilities—including the Bagley-Keene Open Meeting Act (Bagley-Keene), the state law that prescribes open-meeting requirements for all state boards and commissions—resulted in some violations of state law and other inappropriate actions. Problems were also caused by the board's inadequate policies and procedures, such as the lack of documentation to support decisions made in each of the three board programs we reviewed: enforcement, licensing, and continuing education.

In one glaringly inappropriate instance, board members did not provide required written notice to the former executive officer, fired her during a closed-session meeting, and then failed to disclose the action when reconvening the public meeting. Board members remedied these significant errors at a subsequent meeting.

The Political Reform Act of 1974 (political reform act) requires state officials and employees with decision-making authority to disclose certain financial interests by filing statements of economic interests annually and on assuming or leaving a designated position. The chiropractic board did not ensure that designated employees complied with these reporting requirements. Among the 12 board members serving in 2005, 2006, and 2007, and the four employees whose statements of economic interests we reviewed, eight did not correctly complete statements of economic interests, nine filed statements late, and two did not file statements. Finally, the chiropractic board did not require all board employees making decisions on enforcement cases to file statements of economic interests.

The chiropractic board has taken actions, such as adopting an administrative manual in October 2007 and including an agenda item at many board meetings for its legal counsel to provide training or answer questions board members might have related

Audit Highlights . . .

Our review of the State Board of Chiropractic Examiners' (chiropractic board) enforcement, licensing, and continuing education programs and the role and actions of the chiropractic board members revealed the following:

- » *Board members' lack of understanding about state laws related to their responsibilities as board members, including the Bagley-Keene Open Meeting Act, resulted in some violations of state law and other inappropriate actions.*
- » *The chiropractic board did not ensure that its designated employees, including board members, complied with the reporting requirements of the Political Reform Act of 1974.*
- » *Board members inappropriately delegated responsibility to approve or deny licenses to chiropractic board staff.*
- » *The chiropractic board has not developed comprehensive procedures, such as the length of time it should take to process complaints and, as a result, staff do not always process complaints promptly.*
- » *The board's weak management of its enforcement program may have contributed to inconsistent treatment of complaints as well as unreasonable delays in processing.*
- » *The chiropractic board does not ensure that staff process priority complaints promptly. Of 11 priority complaints we reviewed staff took from one to three years to process nine of them.*

continued on next page . . .

- » *Although the chiropractic board's regulations require that it establish chiropractic quality review panels, it has never complied with its regulation.*
- » *The chiropractic board has insufficient control over its licensing and continuing education programs.*

to Bagley-Keene. We believe the new administrative manual and continued ongoing training could assist board members to further improve in executing their board responsibilities.

Board members also inappropriately delegated the responsibility to approve or deny licenses to chiropractic board staff (staff). Because staff rather than board members made final decisions on approving licenses and board members did not review staff-determined denials when applicants did not formally appeal those denials, the chiropractic board did not comply with the initiative act. According to our legal counsel, provisions of the initiative act clearly establish voter intent that the power to issue and deny licenses must be exercised by board members, and the act has no provisions that allow the chiropractic board to delegate this task to its staff. Our legal counsel has advised us that board members could easily remedy this noncompliance by ratifying all licenses approved or denied by staff, thus making board members responsible for those approvals and denials.

Additionally, the chiropractic board has not developed comprehensive procedures. For example, staff have no guidelines on the length of time they should take to process complaints; thus, staff do not always process complaints promptly. Our review of 25 complaints that the chiropractic board's database indicated were closed in fiscal year 2006–07 revealed that the chiropractic board sometimes took excessive amounts of time to resolve complaints and allowed unexplained and unreasonable delays between phases of the complaint review process. Further, the board's weak management of its enforcement program may have contributed to inconsistent treatment of complaints as well as unreasonable delays in processing them. Chiropractic board management (management) did not adequately supervise enforcement staff and their decisions on cases. We found instances when staff processed similar types of complaints differently. Further, staff took unreasonable amounts of time to refer complaint cases, including priority cases—those alleging sexual misconduct, gross negligence or incompetence, the use of drugs or alcohol when performing the duties of chiropractic, and insurance fraud—to the Office of the Attorney General for potential disciplinary actions against the licensees.

The chiropractic board's inadequate policies and procedures resulted in insufficient guidance for staff processing complaints. For example, the board has not established adequate procedures to ensure that only designated employees—staff required to file annual statements of economic interests—make final decisions on complaint cases or that management, who are designated employees, review staff decisions. The chiropractic board also has

not established adequate procedures instructing staff on when it is appropriate to open an internally generated complaint. Additionally, the board has not established procedures requiring staff to clearly document their actions and decisions.

Further, the chiropractic board has not yet developed procedures to ensure that staff process priority cases promptly. Staff took more than one year to investigate and close five of the 11 priority complaints we reviewed; they took more than two years to process three and more than three years to close another. Also, staff did not consistently assign priority to certain types of complaints, and management did not monitor the status of open complaints on a regular basis.

The chiropractic board's regulations require that it establish chiropractic quality review panels (review panels). Although this has been a regulation since 1993, changes in executive officers and board members over the years resulted in changes in priorities and efforts to implement the review panels, and the board has never complied with its regulation.

The chiropractic board has insufficient control over its licensing and continuing education programs. It has not established timelines for processing some of its applications for licenses, certificates, and referral services. The board also could not always show whether it verified the status of chiropractors' licenses before approving applications and certificates. Additionally, many of the chiropractic board's current practices for administering its continuing education program are not consistent with its regulations and written policies and procedures. For example, it did not always follow regulations requiring board members to approve or deny the applications submitted by providers of continuing education. To further complicate an understanding of the process used, staff did not always retain appropriate documentation to demonstrate compliance with regulations, policies, and procedures.

Recommendations

To comply with Bagley-Keene, the chiropractic board should continue involving legal counsel to provide information and training to board members at each meeting.

To comply with the initiative act, the chiropractic board should modify its current process so that board members make the final decision to approve or deny all licenses. Additionally, board members should ratify all previous license decisions made by staff.

To comply with the political reform act, the chiropractic board should do the following:

- Establish an effective process for tracking whether all designated employees, including board members, have completed and filed their statements of economic interests on time, thereby identifying potential conflicts of interest.
- Periodically review its employees' responsibilities to ensure that all individuals who are in decision-making positions are listed as designated employees in its conflict-of-interest code.

To continue improving their knowledge and understanding of state laws and chiropractic board procedures, board members should consistently use their newly adopted administrative manual as guidance for conducting board business.

To adequately control its complaint review process, the chiropractic board should do the following:

- Develop procedures to ensure that staff process and resolve complaints as promptly as possible by establishing benchmarks and more structured policies and procedures specific to each step in its complaint review process.
- Establish time frames for staff to open a complaint case, complete an initial review, refer the cases to a contracted investigator or expert if necessary, and close or otherwise resolve the complaint by implementing informal discipline or referring for formal discipline to ensure that all complaint cases move expeditiously through each phase of the complaint review process.

To ensure that its enforcement procedures are complete and to provide adequate guidance to enforcement staff, the chiropractic board should develop procedures instructing staff when to open and how to process complaints generated internally.

To consistently process and resolve consumer complaints regarding the same types of allegations, the chiropractic board should strengthen its existing procedures to provide guidance for staff on how to process and resolve all types of complaints and to ensure appropriate management oversight.

To process all priority complaints promptly, the chiropractic board should establish a process to clearly identify all priority complaints. In addition, management should ensure that it monitors the status of open complaints regularly, especially those given priority status, to ensure that they do not remain unresolved longer than necessary.

To comply with all its regulations, the chiropractic board should carefully consider the intended purpose of the quality review panels and whether implementing them is the best option to fulfill that intent. If the chiropractic board decides that another option would better accomplish the intended purpose of the review panels, it should implement the process for revising its regulations.

To measure the overall efficiency of its licensing program in processing applications and petitions, the chiropractic board should establish time frames for all the types of applications and petitions it processes.

To defend its decisions on approved applications for satellite offices, corporations, and referral services, the chiropractic board should implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.

To ensure that its continuing education program complies with current regulations, the chiropractic board should do the following:

- Require board members to ratify staff approvals of continuing education providers.
- Ensure that its process to approve continuing education providers conforms to its regulations.

Agency Comments

The chiropractic board agrees with nearly all of our recommendations and states that it has already implemented most of them, and that with the restoration of its funding, the board plans to meet or exceed the recommendations. However, the chiropractic board disagrees with our recommendation that board members must vote to deny the issuance of a license and that it should fill its chiropractic consultant position. Finally, the chiropractic board states that it is committed to improving its governance, enforcement, licensing, and continuing education functions.

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Introduction

Background

The State Board of Chiropractic Examiners (chiropractic board) was created in December 1922 through an initiative measure approved by the voters of California. The Chiropractic Initiative Act of California (initiative act) prescribes the terms of issuing licenses to chiropractors, specifies the penalties to impose against licensees who violate those terms, and declares the powers and duties of the chiropractic board. The chiropractic board has the authority to adopt the regulations necessary to effectively enforce and administer the initiative act; examine applicants and issue and revoke licenses; approve chiropractic schools and colleges whose graduates may apply for California licensure; and employ the staff, investigators, and examination commissioners necessary to carry out the initiative act. According to the chiropractic board, since its creation in 1922, it has issued more than 30,500 licenses, including chiropractic licenses and satellite office and corporation certificates. These licenses and certificates are described in the text box.

Types of Licenses and Certificates the Chiropractic Board Issues

Chiropractic license: Issued to individuals for the practice of chiropractic in California.

Satellite office certificate: Issued to chiropractors who are licensed in California and have more than one place of practice.

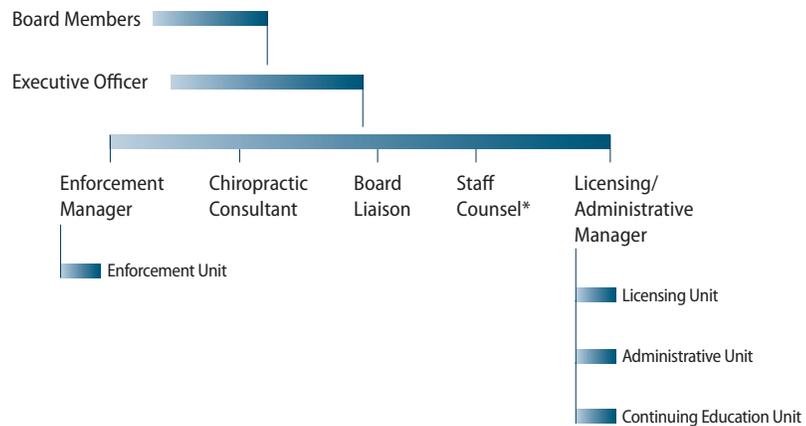
Certificate of registration as a chiropractic corporation: Issued to chiropractic corporations whose shareholders are individuals licensed as chiropractors in California.

Sources: Chiropractic Initiative Act of California; California Code of Regulations, Title 16, sections 308 and 367.

In general, the chiropractic board is a policy-making and administrative review body consisting of seven members (board members), five professional and two public members, each appointed by the governor. The board's paramount responsibility is to protect California consumers from fraudulent, negligent, or incompetent practices among providers of chiropractic care. The executive officer of the chiropractic board, hired by the seven board members, manages the daily operations of the board's four units—enforcement, licensing, continuing education, and administration. The chiropractic board establishes committees generally composed of two board members, assigned by the board chair to monitor or oversee certain aspects of the chiropractic board's operations, or to discuss ongoing issues and develop recommendations for presentation to the full board for decision. Some of the board committees include the administrative committee, which reviews policies, procedures, budget, personnel, accounting, and departmental issues; the enforcement committee, which seeks ways to improve the chiropractic board's enforcement activities; and the continuing education committee, which recommends regulations for mandatory continuing education and oversight of the continuing education program.

For fiscal year 2007–08, the chiropractic board had a proposed budget of \$3.1 million and 14.9 authorized positions. However, the Legislature authorized only \$1.5 million for the board’s funding. In November 2007 the chiropractic board’s executive officer reported that he would implement staff reductions effective January 2008 to meet the reduced funding level.

Figure 1
State Board of Chiropractic Examiners’ Organization Chart



Source: State Board of Chiropractic Examiners.

* Staff Counsel, at times, is a contracted service.

Enforcement Program

As shown in Figure 1, the chiropractic board’s enforcement unit reports to an enforcement manager. Another position shown is for a part-time chiropractic consultant. Under the supervision of the executive officer, the chiropractic consultant provides expert advice to chiropractic board staff (staff) reviewing complaints and evaluating the professional conduct of licensees who may have violated state laws or regulations. The chiropractic consultant resigned in August 2007 and the position is currently vacant.

Although the chiropractic board has in the past employed its own in-house legal counsel, it currently contracts with the Department of Consumer Affairs (Consumer Affairs) for legal services. According to the job duty statement, the legal counsel, under the direction of the executive officer, is responsible for assisting the chiropractic board in preparing legal pleadings, which requires knowledge of the initiative act and state regulations as they relate to the licensing and disciplining of chiropractors. The legal counsel, among other things, advises staff on complex and sensitive legal

aspects of criminal and civil litigation cases; advises deputy district attorneys, law enforcement agencies, and other public agencies on the law pertaining to chiropractic practices; and reviews, interprets, and advises staff on complaints received. Additionally, the legal counsel provides legal expertise pertaining to petitions and certain types of hearings.

The chiropractic board also uses the legal services of the Office of the Attorney General (attorney general). According to the executive officer, the attorney general assigns a liaison deputy attorney general to all boards and bureaus under Consumer Affairs. The liaison is the chiropractic board's first point of contact on all disciplinary matters. The liaison also counsels staff on enforcement strategy, rules, and practices; provides training to staff; and reviews proposed policies, procedures, and manuals related to disciplinary matters.

As Figure 2 on the following page shows, the enforcement process begins with a complaint to the chiropractic board.

Licensing Program

The initiative act requires a person interested in practicing chiropractic in California to submit an application to the chiropractic board for a license. The applicant must have graduated from a chiropractic college that the chiropractic board has approved and must have passed both the exam administered by the National Board of Chiropractic Examiners and California's Chiropractic Law and Professional Practice Examination. Additionally, the applicant must pass criminal background reviews at both the state and federal level. The chiropractic board's licensing unit receives applications and determines whether the applicants have met all the requirements for licensure. When applicants do not meet the requirements, licensing staff notify them of the deficiencies and their right to appeal the decision. If an applicant requests an appeal, staff initiate the process for a formal hearing before the board members. The initiative act also permits the chiropractic board, in certain instances, to consider granting licenses to individuals who are already licensed in other states.

These licenses are known as reciprocal licenses. The text box describes several other applications and petitions that the chiropractic board's licensing unit processes.

Some Applications and Petitions the Chiropractic Board Processes

Referral service: Application from a referral bureau, composed of at least five licensed chiropractors, with no fiduciary relationship to one another and with one participating office representing no more than 20 percent of the referral bureau's available practitioners.

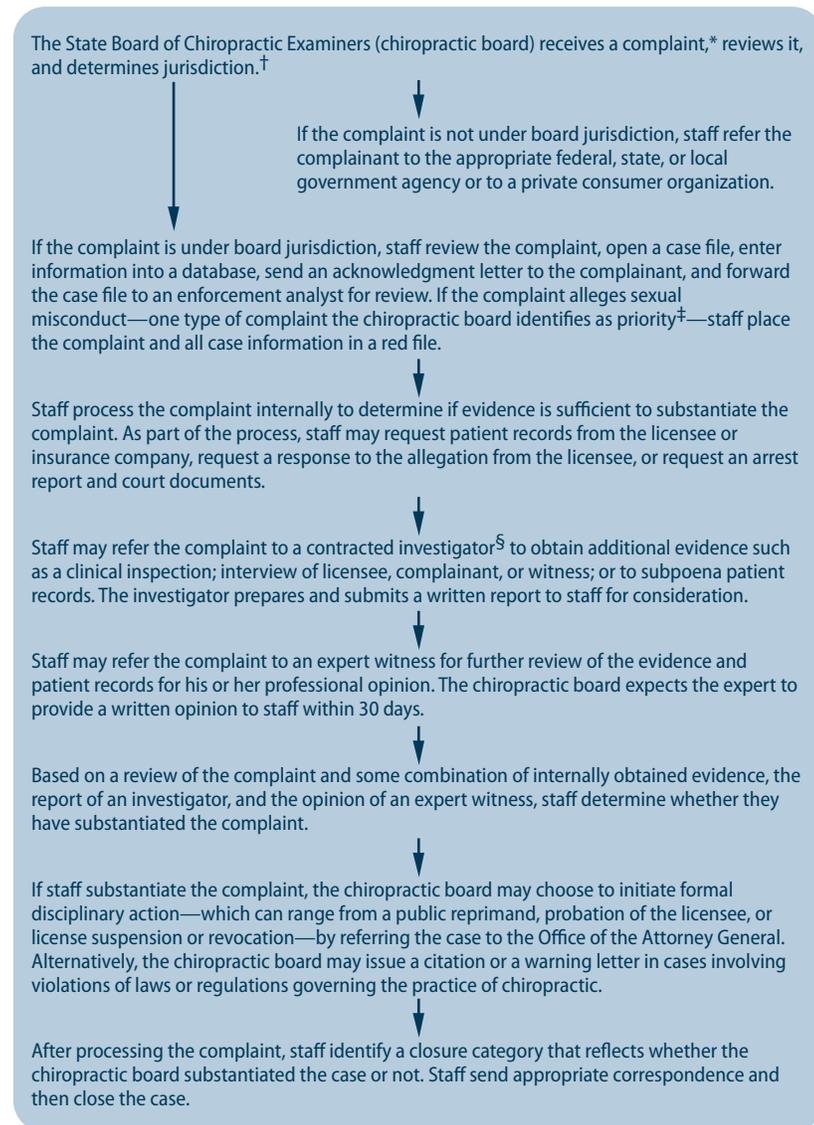
Restoration of license: Application from an individual whose chiropractic license is either in forfeiture or was canceled by the chiropractic board for nonpayment of renewal fees. Forfeiture is for nonpayment of fees between 60 days and three years after license expiration. Cancellation occurs after three years of nonpayment.

Reinstatement of license: Petition from an individual requesting reissuance of a revoked license.

Early termination of probation: Petition from an individual requesting an early end to the probationary status of a license.

Sources: Chiropractic Initiative Act of California; California Code of Regulations, Title 16, Section 317.1; State Board of Chiropractic Examiners.

Figure 2
Enforcement Process of the State Board of Chiropractic Examiners



Source: State Board of Chiropractic Examiners.

* The chiropractic board receives complaints from many sources: the public, consumers, patients, other government agencies, other licensees, professional associations, law enforcement agencies, and insurance companies. Complaints can also be generated internally.

† The chiropractic board does not have jurisdiction over fee or billing disputes or general business practices.

‡ Although the chiropractic board considers complaints alleging sexual misconduct, gross negligence or incompetence, use of drugs or alcohol when performing the duties of chiropractic, and insurance fraud to be of highest priority and may refer these complaints immediately to an investigator, staff place only sexual misconduct complaints in a red folder for expediting the complaint process.

§ The chiropractic board currently contracts with four investigators located throughout California to assist in completing its review of some complaints.

Continuing Education Program

The chiropractic board's continuing education unit is responsible for processing applications for continuing education providers (providers) and their courses, keeping the chiropractic board's Web site updated with board-approved courses for licensees, and monitoring licensees' compliance with continuing education regulations. Board regulations require that providers submit applications for approval outlining their objectives and commitment to conform to the standards set forth in the regulations. These regulations specify provisions with which applying providers must comply to become and remain eligible for approval. Provisions include requirements for the provider to demonstrate five years of experience providing continuing education; to designate a person responsible for overseeing all the continuing education activities of the provider; to use teaching methods that ensure student comprehension; and to determine procedures for monitoring, documenting, and reporting student attendance and course completion and for retaining attendance records. After approval, the chiropractic board requires providers to submit applications for the approval of specific courses they wish to offer licensed chiropractors. Further, the chiropractic board requires providers to submit attendance records within 60 days after the completion of any course.

The chiropractic board also reviews licensees' compliance with continuing education requirements. In its regulations, the board requires actively licensed chiropractors to participate annually in 12 hours of continuing education offered by board-approved providers. The chiropractic board, through its annual renewal process, requires licensees renewing with an active status to attest to their completion of the continuing education requirement and to maintain documentation for four years in case the chiropractic board requests the licensee to provide proof. To ensure that licensees are complying with continuing education requirements, the chiropractic board's regulations require that it conduct random audits of licensees' continuing education.

State Law Related to Open-Meeting Requirements

According to California public policy, public agencies exist to aid in the conduct of the people's business, and the proceedings of public agencies are to be conducted openly so that the public may remain informed. State law establishes open-meeting requirements for all state boards and commissions under the Bagley-Keene Open Meeting Act (Bagley-Keene). For example, Bagley-Keene requires boards and commissions to publicly announce their meetings,

prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by Bagley-Keene to meet in closed session.

Bagley-Keene provisions prohibit serial meetings, which involve communications among a majority of board members to develop a collective concurrence regarding action on board items outside the open meetings. Specifically, it prohibits any use of direct communication, personal intermediaries, or technological devices employed by a majority of the members of the state body to develop a collective concurrence on actions outside an open meeting.

California Administrative Procedure Act

The California Administrative Procedure Act (administrative procedure act) sets out the required procedures for administrative hearings. According to the initiative act, the chiropractic board may refuse to grant, or may suspend or revoke, a license to practice chiropractic in California, or may place a licensee on probation or issue a reprimand for violation of the rules and regulations it had adopted in accordance with the initiative act. State law requires the chiropractic board to conduct proceedings in accordance with the administrative procedure act whenever the board considers denying licensure, revoking or suspending a license, or placing a licensee on probation. The administrative procedure act specifically prohibits ex parte communication, defined as the direct or indirect communication about an issue with a board member outside the formal hearing process by agency staff or anyone having an interest in a pending licensing or disciplinary matter that affects the rights of individuals who appear before the board without providing notice and opportunity for all parties to participate in the communication.

State Laws Related to Conflict of Interest

State laws establish conflict-of-interest requirements for public officials and for consultants and contractors who do business with the State. The central conflict-of-interest law in California is the Political Reform Act of 1974 (political reform act), which contains two core obligations related to public officials and their personal financial interests. First, the political reform act requires designated public officials to disclose certain financial interests by filing a statement of economic interests. Second, it prohibits a public official from making, participating in, or in any way attempting to influence a governmental decision in which he or she has a financial interest.

State law also requires each government agency to adopt a conflict-of-interest code approved by a code-reviewing body. The chiropractic board's code-reviewing body is the Fair Political Practices Commission—the oversight body responsible for administering and implementing the political reform act. In February 1992 the chiropractic board adopted and obtained approval of its conflict-of-interest code, which includes a list of the designated positions that must file statements of economic interests annually and on assuming or leaving office. The board must retain statements of economic interests filed by designated employees and make them available for public inspection.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to review the chiropractic board's enforcement, licensing, and continuing education programs; to determine the role of the chiropractic board as defined by state laws and regulations and the board's policies and procedures; and to assess whether board members consistently act within their authority. The audit committee also directed us to review the chiropractic board's enforcement program, including its policies and procedures for opening, prioritizing, investigating, and closing complaints. Specifically, we were asked to review the chiropractic board's processes for selecting and assigning complaints to qualified staff, investigators, and expert witnesses. Additionally, the audit committee requested that we identify the number of complaints handled by each staff and investigator annually and to examine the policies and procedures the chiropractic board has established to prevent conflicts of interest. Further, the audit committee asked us to evaluate the chiropractic board's courses of action when it substantiates a complaint, whether it consistently applies those actions, and how it notifies the public and determines how much information it provides regarding substantiated complaints. The audit committee also asked us to review the role of the board's chiropractic consultant position in helping enforcement staff to review complaints and the nature of the advice the consultant gives to management and staff. Finally, related to the enforcement program, the audit committee asked us to analyze the role, function, and use of the chiropractic quality review panels (review panels) and the chiropractic board's compliance with the initiative act requirement to aid attorneys and law enforcement agencies in enforcing the initiative act.

The audit committee also asked us to review the chiropractic board's policies and procedures regarding licensing applicants and chiropractic corporations and to determine if they comply with applicable laws and regulations. Specifically, the audit

committee asked us to review a sample of closed applications (including applications from chiropractic corporations and those that have resulted in denial of licensure) to determine whether the chiropractic board consistently applied its policies and procedures, adhered to applicable laws, and appropriately handled referral services. The audit committee also asked us to evaluate the chiropractic board's policies and procedures for its continuing education program to determine whether it is effective in helping to ensure that quality education is provided to licensees. In addition, we were asked to assess the chiropractic board's procedures for reviewing continuing education and corroborating all necessary information from the providers, and whether the board's practices ensure compliance with these policies and procedures. The audit committee further requested that we compare the chiropractic board's policies and procedures to other regulatory boards to determine whether they are comparable.

To determine the role of the chiropractic board and to assess whether the board consistently acts within its authority, we reviewed the laws, regulations, and policies governing the practice of chiropractic; the responsibilities and requirements of board members; open-meeting requirements; and administrative hearing requirements. We also reviewed minutes of chiropractic board meetings, related documentation, e-mail correspondence, and selected videotapes of the board meetings for the period from January 2006 through August 2007. We also attended some chiropractic board meetings during the period from October 2007 through January 2008. Additionally, we reviewed the chiropractic board's compliance with laws and regulations related to the training of board members by reviewing the board's documentation of training and the information provided to the 12 people who served as board members during 2005, 2006, and 2007.

To assess the chiropractic board's process for reviewing complaints, we selected and reviewed a sample of 25 complaint cases, 24 of which the chiropractic board's database indicated were closed in fiscal year 2006–07 and one that closed in fiscal year 2007–08. Using the chiropractic board's database, we randomly selected samples consisting of 14 complaints processed by staff and eight complaints the chiropractic board referred to investigators. We also selected the three most recently closed complaints against board members, one of which was closed in fiscal year 2007–08. Although we selected some samples randomly, the sample sizes were not large enough to project the audit results onto the entire population of complaints received by the chiropractic board.

For each complaint, we reviewed the documentation in the case file and determined whether the chiropractic board consistently followed state laws and regulations and its policies and procedures

for opening, prioritizing, assigning complaint cases to qualified staff, and selecting investigators and expert witnesses. We also reviewed the efforts of the chiropractic board to comply with requirements for corresponding with licensees and complainants and closing complaints, and we interviewed staff and management to understand processes that were not addressed or were unclear in the chiropractic board's procedures manuals. Additionally, we identified the length of time the chiropractic board took to process the complaint from the date received to when it initiated an investigation or closed the complaint, and the length of time from the initiation of an investigation to when it was complete. For those complaints that the chiropractic board substantiated, we determined what final course of action it imposed and, to the extent possible, whether it consistently applied final actions.

To understand the role of the chiropractic board's chiropractic consultant position in helping enforcement staff to review complaints and the nature of the advice the chiropractic consultant gave to management and staff, we reviewed documentation in the complaint files and interviewed staff and management about the chiropractic consultant's role in the enforcement process. We also interviewed the former chiropractic consultant to obtain her perspective.

To identify the average number of active complaints worked on by each staff member, we obtained information from the chiropractic board's database on the number of complaints opened and closed during fiscal years 2005-06 and 2006-07, counting each case opened and closed during the same fiscal year as one case. We also identified the number of enforcement staff handling cases at three points in each fiscal year to determine the average number of enforcement staff the chiropractic board had during both fiscal years. Using the total number of active complaint cases the chiropractic board processed each fiscal year and the average number of enforcement staff, we determined the average number of complaint cases handled by each staff member. To determine the number of investigations that each investigator conducts, we identified the total number of investigations referred to each investigator for fiscal years 2005-06 and 2006-07.

To determine whether staff and contracted investigators processing complaints were properly qualified, we identified the minimum qualifications for each person who processed complaints during fiscal years 2005-06 and 2006-07 by reviewing job descriptions, duty statements and contracts and comparing them to job applications, personnel action requests and contract documentation.

To determine if the chiropractic board has policies and procedures to prevent conflicts of interest, we reviewed its conflict-of-interest code and the annual statements of economic interests filed by all designated employees for 2005 and 2006. We also reviewed statements of economic interests that board members and staff submitted when assuming and leaving their positions from 2005 through 2007.

To determine how the chiropractic board notifies the public of the results of substantiated complaints and how much information it provides regarding civil judgments, arbitration awards, and settlements, we reviewed correspondence in our sample of complaint cases, reviewed the chiropractic board's Web site, and interviewed management to understand the information it provides the public and the methods it uses to communicate the results of substantiated complaints.

To understand the role and function of the review panels and their use by the chiropractic board, we reviewed applicable state regulations and historical records. Further, we interviewed current and former management to gain perspective on the issues challenging the chiropractic board in trying to implement the review panels.

To determine the extent to which the chiropractic board complies with the initiative act's requirement to aid attorneys and law enforcement agencies in enforcing the act, we interviewed staff and management. Also, for our sample of complaint cases, we reviewed correspondence and staff efforts to assist attorneys and law enforcement agencies to evaluate the chiropractic board's compliance with the initiative act.

To assess whether the chiropractic board consistently followed its policies and procedures for its licensing program and whether it complied with applicable laws and regulations, we selected and reviewed a sample of 29 licensing decisions, including decisions on applications for new individual licenses, for reciprocal licenses, for satellite office certificates, for corporation certificates, and for referral services; applications for restoration of licenses in forfeiture or canceled status for failure to pay renewal fees; and petitions from individuals requesting reinstatement of their licenses or early termination of probation. Using the chiropractic board's database, we randomly selected samples for some of the categories of licensing decisions we reviewed—namely, applications for new individual licenses, satellite office certificates, and corporation certificates. Although we selected some samples randomly, the sample sizes were not large enough to project the audit results onto the entire population of the chiropractic board's licensing files. For other categories of licensing decisions—applications for

a new individual license that the chiropractic board denied and the applicant appealed, restoration of licenses that were forfeited or canceled for nonpayment of renewal fees, and petitions for reinstatement of revoked licenses or early termination of probation—either we were unable to determine the completeness of the universe or the information was not located in the chiropractic board’s database, and therefore we could not use the database to select samples. However, using manual methods, we were able to judgmentally select licensing decisions to review. Generally, we selected our sample items from fiscal year 2006–07. However, for referral services, we included the most recent approval of a referral service application, which occurred in fiscal year 2004–05.

For each licensing decision, we evaluated whether staff complied with state laws and regulations and the chiropractic board’s policies and procedures. For individual license applications, we determined whether staff ensured that each applicant submitted proof of meeting all the education requirements, passing an examination administered by the National Board of Chiropractic Examiners, clearing state and federal criminal background reviews, and passing the Chiropractic Law and Professional Practice Examination. For reciprocal licenses, we verified whether staff additionally ensured that applicants were actively licensed in another state and that the respective state allows similar licensing for California licensees. For applications of satellite office or corporation certificates and referral services, we evaluated staff efforts to ensure applicants had active licenses in good standing. For applications for restoration of licenses, we reviewed whether staff verified payment of renewal and penalty fees and ensured that applicable continuing education requirements were met before restoring the licenses.

For petitions from licensees requesting reinstatement of licenses or reduction of imposed probationary periods, we evaluated staff efforts to ensure that petitioners met time requirements and submitted required documentation before initiating the process to have the matter heard by the chiropractic board. Also, we reviewed the chiropractic board’s compliance in meeting established time frames for certain portions of the process. Finally, to determine whether the chiropractic board’s licensing program complied with state laws and regulations, we compared its policies and procedures to the statutory requirements.

To evaluate the chiropractic board’s continuing education program, determine the effectiveness of its policies and procedures governing the program, and ascertain whether the chiropractic board ensured that applying providers submitted the required documentation, we judgmentally selected and reviewed a sample of 12 provider applications and 10 continuing education course applications either approved or denied in fiscal year 2006–07. We also evaluated

five recent audits of continuing education courses and evaluated the chiropractic board's process and what it did with the results of the audits. Because the chiropractic board did not track these audits, we worked with staff to identify five recent course audits to review. Finally, using the chiropractic board's database, we randomly selected 19 audits of licensees' continuing education completed by staff in fiscal year 2006–07 to determine whether the chiropractic board's policies and procedures are effective. Although we selected these samples randomly, the sample sizes were not large enough to project the audit results onto the entire population of the chiropractic board's audits of licensees' continuing education.

To determine whether the chiropractic board's policies and procedures for its enforcement, licensing, and continuing education programs are comparable to those of other regulatory agencies, we sent surveys to three similar licensing boards requesting information and documentation about their programs. To the extent possible, we have provided comparable information throughout the report. See the Appendix for details.

Government auditing standards issued by the U.S. Government Accountability Office require us to assess the reliability of computer-processed data. We assessed the reliability of the chiropractic board's data entered into the Consumer Affairs System by performing electronic testing of selected data elements and testing the accuracy and completeness of the data. We used the data to select a sample of complaints closed in fiscal year 2006–07, and one complaint that was closed in fiscal year 2007–08. The sample included complaints processed by chiropractic board staff, complaints that the chiropractic board referred to a contracted investigator, and complaints against board members. We also used the data to determine the number of complaints opened, complaints closed, complaints opened and referred to a contracted investigator and those complaints that board staff had referred to a contracted investigator in fiscal years 2005–06 and 2006–07 that were closed. We determined that the data regarding complaints were of undetermined reliability based on our accuracy testing. Because we could not review the accuracy of some records, there is a potential for errors that could have a material effect on the number of complaints the data indicate were opened, closed, or referred to an investigator in fiscal years 2005–06 and 2006–07, and the number of complaints opened and closed against board members in fiscal years 2005–06, 2006–07, and 2007–08 (through August 31, 2007). Because the data could lead to an incorrect or unintentional message, these weaknesses are potentially significant.

Additionally, we determined that the chiropractic board's data entered into the Consumer Affairs System regarding licensing transactions were not sufficiently reliable based on our accuracy

testing. We used the data to select samples of licenses for testing, for determining the number and types of licenses issued in fiscal year 2006–07 and for determining the number and types of licenses active as of June 30, 2007. Because no other criteria or data were available to replace the unreliable data, we use the data, as indicated, in this report. However, because the accuracy testing identified errors that could have a material effect on the number of licenses the data indicate were issued in fiscal year 2006–07 or the number of licenses active as of June 30, 2007, the data could lead to an incorrect or unintentional message. Thus, these weaknesses are potentially significant.

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Chapter 1

BOARD MEMBERS AND STAFF OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS TOOK INAPPROPRIATE ACTIONS, SOME OF WHICH VIOLATED STATE LAW

Chapter Summary

Members and staff of the State Board of Chiropractic Examiners (chiropractic board) violated certain requirements of the Bagley-Keene Open Meeting Act (Bagley-Keene) before and during board meetings. In addition, we noted several instances when, despite warnings, members of the chiropractic board (board members) engaged in communications that could have caused Bagley-Keene violations.

Board members also demonstrated a lack of understanding of the California Administrative Procedure Act (administrative procedure act) and their role in the enforcement process. The administrative procedure act prohibits communication about pending licensing or disciplinary matters that affect the rights of individuals appearing before the chiropractic board. We found instances when board members inappropriately invited communication between board members and licensees and inserted themselves into the enforcement process.

The chiropractic board did not comply fully with the Political Reform Act of 1974 (political reform act), the law that works to prevent conflicts of interest, by failing to ensure that all designated employees filed their statements of economic interests correctly and on time. The chiropractic board also lacked protocols to ensure that its filing official was aware of her designation to that position and of the accompanying responsibilities. Further, it did not require certain chiropractic board staff (staff) who made enforcement decisions to file statements of economic interests.

Board members also did not always understand other legal requirements. Our review of videotapes of board meetings and e-mail correspondence among board members, the executive officer, and a deputy of the Office of the Attorney General (deputy attorney general) revealed that board members attempted inappropriate actions on several occasions.

The chiropractic board recently adopted a new administrative procedure manual for board members and has increased regular training opportunities at board meetings. These two actions are

likely to improve board member knowledge and understanding of state law, which could improve their ability to effectively carry out board business.

Further, the chiropractic board inappropriately delegated to staff its responsibility to approve or deny licenses. Because staff rather than board members made final decisions on approving licenses and board members did not review staff-determined denials when applicants did not formally appeal those denials, the chiropractic board did not comply with the initiative act. Additionally, board members do not use state e-mail accounts that could ensure that privacy and confidentiality are protected as they carry out board business. Assigning state e-mail accounts to board members would also ensure that the chiropractic board has a complete record of its actions.

Finally, although the former executive officer and current staff told us that each board member received a copy of Bagley-Keene on appointment to the chiropractic board, as state law requires, few records verify that assertion. Also, staff could not demonstrate that all board members attended the required ethics training within the prescribed deadlines. Further, board members have not completed required sexual harassment prevention training, and staff could not demonstrate that all board members had attended orientation within a reasonable time of assuming office.

The Chiropractic Board's Lack of Understanding Resulted in Violations of Some Bagley-Keene Requirements

As discussed in the Introduction, Bagley-Keene is the state law that specifies the open-meeting requirements for all boards and commissions. When we reviewed the agendas and minutes of chiropractic board meetings, meeting materials provided to the board members and the public, selected videotapes of meetings, and related e-mail correspondence for the period January 2006 through August 2007, we found that board members sometimes violated Bagley-Keene requirements. Specifically, they inappropriately took disciplinary action against the former executive officer during a closed-session meeting and then failed to disclose that action when reconvening the public meeting. Although these violations were significant, board members appropriately remedied their errors at a subsequent meeting.

In three instances, the chiropractic board did not issue proper written notice to an employee about when it was intending to discuss personnel matters affecting the employee and, on another occasion, the board discussed an item during closed session that did not meet the requirements for a closed-session

meeting. Board members also did not always inform members of the general public attending board meetings that signing the guest register is voluntary. Further, staff did not retain documentation to demonstrate compliance with the Bagley-Keene requirement to provide notice of a public meeting on the Internet at least 10 days before the meeting. Finally, we noted other instances when board members did not actually violate Bagley-Keene but engaged in actions that could have triggered Bagley-Keene violations.

Some Board Member Actions Before and During Board Meetings Violated Bagley-Keene

Between January 2006 and August 2007 some actions that board members took before and during chiropractic board meetings violated Bagley-Keene requirements. In the most egregious example, board members convened a closed-session meeting on March 1, 2007, at which they fired the former executive officer without providing written notice to her in advance. At the following public session, board members failed to disclose the action they had taken during the closed session. As a condition to holding a closed session to consider disciplinary action or dismissal of a public employee, Bagley-Keene requires all public agencies to give the employee written notice, at least 24 hours in advance of the meeting, of his or her right to have the matter considered at a public hearing rather than a closed session. In three earlier instances, board members held closed-session meetings to consider another personnel issue without giving the employee the required 24-hour advance written notice of the employee's right to a public hearing.

Bagley-Keene requires that after making a decision during a closed session about disciplinary action against an employee, the board must report the decision on reconvening the public meeting. The failure of board members to report disciplinary decisions when reconvening in public session violated Bagley-Keene requirements. In one of those instances, the chiropractic board's actions were widely publicized, and the board chair acknowledged at its public meeting of March 23, 2007, that the chiropractic board had made gross errors in judgment and failed to ensure that it followed proper procedures and correct legal protocols.

The violations to Bagley-Keene nullified the decisions the board members made in the closed session regarding the former executive officer on March 1, 2007. Using remedies provided in Bagley-Keene, the board started the process over by providing proper notice to the former executive officer, holding a public hearing on March 23, 2007, regarding her continued employment with the chiropractic board, and voted to terminate her without cause. These steps fulfilled Bagley-Keene requirements.

Board members violated the law when they inappropriately took disciplinary action against the former executive officer during a closed-session meeting and failed to disclose the action when they reconvened. Board members later remedied this error and took action again using correct procedures.

Some of the board's closed session discussion at its December 2006 meeting did not meet any of the criteria for a closed-session discussion.

Board members also violated Bagley-Keene requirements that allow the board to hold closed sessions in limited circumstances. For example, Bagley-Keene allows boards to meet in closed session to consider the appointment, employment, evaluation of performance, or dismissal of a public employee, or to hear complaints or charges against the employee. Other examples of reasons boards can hold closed sessions are to examine a witness in an investigation or to deliberate on a decision to be reached following a public hearing. Although the chiropractic board's December 2006 meeting agenda included a closed-session item for discussion of personnel matters—a topic allowed in closed session—the board's closed-session discussion did not include personnel matters and in fact did not meet any of the criteria for a closed session.

In addition, for the 13 board meetings held between January 2006 and August 2007, the guest register did not indicate that signing in was voluntary. When the chiropractic board requires individuals to sign in at public board meetings without indicating the act is voluntary, it is violating Bagley-Keene requirements and is not serving the interests of the general public or the public's ability to monitor and unconditionally participate in the decision-making process. Staff modified the sign-in sheet to indicate that it is voluntary to sign in before attending the meeting and began using the modified sign-in sheet at the 2008 board meetings.

The Chiropractic Board Could Not Demonstrate That It Properly Announced Public Meetings

The chiropractic board does not have a mechanism in place to document its compliance with the Bagley-Keene requirement that it provide public notice of chiropractic board meetings at least 10 days in advance. Although staff asserted that they properly announce the meetings in advance, they could provide no documentation to support that assertion. For the three chiropractic board meetings and five committee meetings held between October 2007 and January 2008, we confirmed through observation that the chiropractic board publicly provided notice of the meetings on the Internet, including meeting agendas, at least 10 days before the scheduled meetings. However, for the board meetings that occurred from January 2006 through August 2007, we could not confirm that the chiropractic board complied with the notice requirement because it does not retain documentation showing the timing of its announcement of public meetings. The staff liaison to the board members told us that in the past she completed checklists to prepare for and announce meetings but that she discarded the checklists. Starting in November 2007 the staff liaison began retaining the checklists as documentation of compliance. Also, the executive

When board members do not follow advice from staff and legal counsel regarding their responsibilities under Bagley-Keene, they may not serve the best interests of the public.

warnings and risked violations. When board members or members of the public send e-mails to all board members regarding a board issue, board members' subsequent e-mails and communications outside board meetings regarding the issue could lead to a serial meeting in violation of Bagley-Keene. When board members engage in serial meetings, they eliminate transparency and public participation from the decision-making process.

We also noted instances when board members began discussing and deliberating on items not on the agendas for board meetings, which could have led to Bagley-Keene violations. At the September 2006 board meeting, board members began discussing an item not on the agenda. Also, during the March 1, 2007 meeting, board members deliberated and voted on a motion related to a topic that they later realized was not on the agenda and withdrew the motion. With certain limited exceptions, Bagley-Keene allows boards to consider and act only on items included in a properly announced meeting agenda. When board members attempt to deliberate or take action on items not on the agenda, the public is not afforded a fair opportunity to participate in the decision-making process.

Although individually the issues identified may not be considered serious, they collectively demonstrate a consistent pattern that is of concern and indicates that board members risk Bagley-Keene violations. When board members do not follow advice from staff and the deputy attorney general regarding their responsibilities under Bagley-Keene, board members may miss opportunities to understand and comply with its requirements and therefore may not serve the best interests of the public.

Board Members Lack Knowledge of the Administrative Procedure Act

As discussed in the Introduction, the administrative procedure act is the state law that prohibits ex parte communication.² If ex parte communication occurs, the board member involved may be required to stop participating in the case and disclose that a communication violation occurred. Our review found instances where board members demonstrated a lack of knowledge of the administrative procedure act and their role in the chiropractic board's enforcement process, thereby risking violations to the act. For example, board members invited ex parte communication by referencing a pending accusation and by encouraging licensees to

² Ex parte communication is direct or indirect communication with a board member, outside the formal hearing process by agency staff or anyone having an interest in a pending licensing or disciplinary matter that affects the rights of individuals who appear before board members, about an issue in the case, without providing notice and an opportunity for all parties to participate in the communication.

contact the board members if their problems were not addressed by staff.³ Board members also invited ex parte communications when they inappropriately inserted themselves into the chiropractic board's enforcement process by asking to discuss and receive information from staff about enforcement cases during board meetings. Moreover, one board member presented a proposal to amend board regulations to improperly give board members the authority to both file accusations and judge their merit.

Board Member Actions Invited Ex Parte Communication, Risking Violation of the Administrative Procedure Act

During the public session of the December 2006 meeting of the chiropractic board, one board member invited ex parte communication by referring to an enforcement case and presenting a copy of the pending accusation, signed by the former executive officer. When the deputy attorney general asked the board member whether the accusation was pending, the board member said that he did not know, but the former executive officer acknowledged that it was. The deputy attorney general told the board member he would have to be disqualified from hearing the case, and the board member replied that he would disqualify himself. According to the current executive officer, as of February 22, 2008, the board has not heard the case.

In a second example, at the August 2006 board meeting, a board member stated that chiropractic licensees should not be afraid to contact board members if staff do not address their problems. These remarks were in response to concerns about the chiropractic consultant expressed by members of the public during the public comment portion of the meeting. Specifically, members of the public questioned the consultant's involvement in some enforcement decisions, suspected potential conflicts of interest, and feared retaliation. When board members do not understand the administrative procedure act and invite ex parte communication, they risk receiving impermissible communications about pending enforcement cases and not being impartial when or if they hear a matter that comes before the board.

When board members invite ex parte communication, they risk receiving impermissible communications about pending enforcement cases and not being impartial when or if they hear a matter that comes before the board.

Some Board Members' Actions Led Them to Inappropriately Insert Themselves in the Enforcement Process

We found some instances when board members requested discussion at board meetings or information from staff about enforcement cases. On August 23, 2006, a board member sent

³ An accusation is a written statement of charges against a licensee that specifies the laws and regulations allegedly violated.

A board member proposed amending board regulations to inappropriately give board members the option to retain the power to file an accusation, which could threaten the fairness and transparency of the board's hearing of a case if it later comes before the board for disciplinary action.

an e-mail to the executive officer and the other board members, with copies to the staff counsel and the deputy attorney general, requesting that discussion of a specific enforcement case be added to the agenda. In another example, on September 6, 2006, a board member sent an e-mail to the executive officer requesting that the status of a licensee be placed on the agenda for the September 2006 meeting. The board had an enforcement case open on the licensee at the time. At that September meeting the same board member said he would like to be kept informed about how some enforcement cases were being dealt with. Although these examples are not violations of ex parte communication or the administrative procedure act, they demonstrate how board members risk violations. When board members request information about enforcement cases, they might inappropriately insert themselves into the case and receive impermissible communications about it, which would later disqualify them from hearing the matter if it came before the board for disciplinary action.

Moreover, in the December 2006 meeting, a board member presented a proposal to amend board regulations to include inappropriately giving board members the option, by affirmative vote, to retain powers, duties, purposes, functions, and jurisdictions previously delegated to the executive director—such as filing an accusation. When board members have the option to be involved in filing an accusation, it could threaten the fairness and transparency of a case if it later comes before the board members for formal disciplinary action.

The Chiropractic Board Did Not Comply Fully With the Requirements of the Political Reform Act

The political reform act is the central conflict-of-interest law governing the conduct of public officials in California. The legislative intent of the act is to require public officials, whether elected or appointed, to perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. Under the political reform act, the chiropractic board must ensure that board members and designated employees comply with the act's reporting and disclosure requirements and must report apparent violations of the political reform act to appropriate agencies. It requires each designated employee and board member to file an annual statement of economic interests.

However, the chiropractic board lacks adequate controls to ensure that its designated employees, including its board members, comply with the reporting requirement. Specifically, the chiropractic board did not ensure that all designated employees and board members

filed statements of economic interests as required and on time. For example, nine of the 16 employees and board members we reviewed filed their statements of economic interests after the deadline. The chiropractic board's filing official asserted she was unaware of her role and responsibilities. In addition, our review of some enforcement files revealed that some employees appeared to make decisions on behalf of the chiropractic board and the board had not required them to file statements of economic interests.

The Chiropractic Board Did Not Adequately Ensure Filings of Statements of Economic Interests

The political reform act prohibits a public official from making, participating in, or in any way attempting to influence a governmental decision in which he or she has a financial interest. It also requires each state agency to adopt a conflict-of-interest code identifying the staff positions that involve making or participating in making decisions that could have a material effect on any financial interest. Further, the political reform act requires each designated employee to file an annual statement of economic interests. The filing date for the chiropractic board's designated employees and board members is set by the political reform act and the regulations of the Fair Political Practices Commission (commission). Annual statements for 2005 were due April 3, 2006. The political reform act also requires each designated employee or board member to file a statement within 30 days after assuming a board position and another within 30 days of leaving that position. Copies of the statements must be retained by the chiropractic board and made available for public inspection. The chiropractic board's filing official also submits board members' statements to the commission.

We requested copies of the annual statements of economic interests for 2005 and 2006, as well as any statements for designated employees, including board members, assuming or leaving their positions in 2005, 2006, or 2007. We received statements for 16 employees and board members; eight of them did not complete the statements correctly. For example, two board members did not disclose income from their business activities as required. Also, three board members did not disclose their business positions on their statements of economic interests. Another two board members and one employee did not disclose the nature of their investments on their annual statements.

In addition, two employees did not file all the required statements of economic interests, and one employee and eight board members filed their statements after the applicable deadlines. For example, two board members did not file statements within 30 days after assuming their positions. One of those two board members filed

We reviewed statements of economic interests for 16 employees and board members; eight of them did not complete the statements correctly.

Although designated since 2006, the chiropractic board's filing official said she was unaware of her assignment to that role until during the audit.

his assuming-office statement 207 days after it was due, most likely in response to our request. Also, six board members did not file statements of economic interests within 30 days after leaving their designated positions, with one board member filing his leaving-office statement 199 days after it was due.

The Chiropractic Board's Filing Official Was Unaware of Her Role

The political reform act requires the chiropractic board to ensure that its designated employees and board members disclose their economic interests on or before the statutory deadline. Under the political reform act, the board must designate one employee as a filing official and give that employee the responsibility of ensuring that the chiropractic board meets the requirements of the political reform act, and state regulation requires the filing official to carry out specific duties. However, the employee whom the chiropractic board designated as its filing official said she was unaware of being assigned that role. In fact, the filing official asserted she did not learn of her designation until during the audit when she contacted the commission—the agency responsible for administering and enforcing the political reform act—to learn who the filing official was and discovered that she had been assigned that role starting in 2006. As a result, she had not been performing such duties as providing all relevant information to individuals filing statements of economic interests and notifying filers of applicable deadlines.

Effective January 2008 the duty statement of the filing official at the chiropractic board has been modified to include filing official duties; and in January 2008 the filing official sent notices to the board's designated employees informing them of the due date of annual statements of economic interests for 2007. In February 2008 the filing official attended a seminar conducted at the commission to receive training on the duties of the position.

As we discussed earlier, not all board members and designated employees submitted their required statements of economic interests on time. For example, one board member did not file his 2006 statement until October 2007, after we asked whether it had been submitted. In this example, the filing official did not send at least two notices as recommended by the commission to alert the board member that he had missed the filing deadline and of the possible consequences, such as the daily fine and an administrative penalty the commission could impose.⁴ Moreover, the filing official did not report the board member's failure to file

⁴ The political reform act authorizes the commission to impose a \$10 fine for each day a statement of economic interests is late, up to \$100, and it can also impose an administrative penalty of up to \$5,000.

his statement to the commission until we requested the statement. In another example, an employee who left the chiropractic board in August 2007 has still not filed a leaving-office statement of economic interests.

Because the chiropractic board did not implement proper protocols to ensure that the employee it designates as the filing official is notified of his or her appointment and responsibilities, it cannot be sure that it meets all the requirements of the political reform act. Furthermore, because it did not ensure that all designated employees and board members filed statements of economic interests, and that all designated employees and board members filed them correctly or on time, the chiropractic board may be unaware of conflicts of interest.

The Chiropractic Board Did Not Require Certain Employees Making Decisions on Enforcement Cases to File Statements of Economic Interests

Although the chiropractic board established a conflict-of-interest code specifying certain designated positions—board members, the executive and assistant executive officers, and consultants—that make or participate in making decisions that could have a material effect on any of the designated employees’ financial interests, it did not include in its code some employees who appear to make decisions on behalf of the board. In nine of the 25 complaints we reviewed,⁵ staff holding positions that were not designated in the chiropractic board’s conflict-of-interest code made key decisions on complaint cases. In one case, a staff services analyst, a position not designated in the code, reviewed the investigation report and made the decision to close the case for insufficient evidence. We did not find evidence that a designated employee subsequently reviewed and approved that decision. Because the chiropractic board has not established policies and procedures to adequately ensure that only designated employees make critical decisions, or at least review and approve decisions made by employees in nondesignated positions, it cannot ensure that it prevents potential conflicts of interest.

For nine of 25 complaints we reviewed, staff who were not designated employees in the board’s conflict-of-interest code made key decisions on complaint cases.

Board Members Did Not Always Understand Other Legal Requirements

In the minutes of certain meetings of the chiropractic board and in several communications among board members, the executive officer, and the deputy attorney general that we reviewed, board

⁵ As described in the Scope and Methodology, we concluded that the complaint data entered by the chiropractic board into the Consumer Affairs System are of undetermined reliability. However, with no other data available, we used the chiropractic board’s data to select our sample.

The board attempted to inappropriately insert itself into a personnel matter.

members attempted actions that were inappropriate. These instances demonstrate that board members did not always understand certain legal requirements. Specifically, the board attempted to inappropriately insert itself into a personnel matter.

In May 2006 the former executive officer and deputy attorney general met with the former board chair and a board member, at the board member's request, regarding complaints made to him on behalf of chiropractors against a board employee. The former executive officer asserted that during the meeting she and the deputy attorney general described the civil service disciplinary process for state employees. According to state civil service requirements, cause for discipline must meet specific criteria, and employing state agencies must perform specific steps to appropriately take disciplinary action. State agencies must also implement progressive informal and formal disciplinary steps before dismissing an employee. The former executive officer said that there was no adverse documentation, either formally or informally, registered against the chiropractic board employee.

At the June, August, and September 2006 meetings of the chiropractic board, a single personnel matter was on the agenda and discussed during closed session. On November 20, 2006, the board chair responded in an e-mail to a request from a board member for further discussion on the matter. The board chair explained the item had already been discussed at the last meeting and that further action would violate the employee's due process rights as a civil service employee.

Another incident occurred in June 2006 when another board member sent an e-mail requesting the job descriptions, resumés, and most recent performance reviews of all current employees, and the job descriptions for any outside or consulting positions they may hold. The executive officer responded that she could not provide some of the items requested because of employee privacy laws or bargaining unit contracts. When board members do not understand the legal requirements of the chiropractic board, they may not always comply with state laws and requirements or serve the best interests of the public.

Board Members' Recent Actions Demonstrate a Willingness to Improve Their Understanding of and Compliance With Relevant State Laws

Recent actions by board members, including adopting an administrative manual and conducting ongoing training at their meetings, demonstrate efforts to improve their understanding and compliance with state laws. Best practices advocate putting board

policies and procedures in writing and making them available to the public, thereby increasing the board members' awareness of state laws and helping to ensure compliance with them. In addition, when board members receive appropriate and sufficient training, it deepens and improves their understanding of state laws.

At the October 2007 meeting of the chiropractic board, board members adopted an administrative manual to serve as a guide for board members. Before October 2007 the chiropractic board did not have an administrative manual. The new manual outlines board policies, procedures, and state laws that govern chiropractic board business. For example, the manual describes the board's procedures for how board members are to conduct meetings and the role of the staff in board administration. The manual also describes the requirements of Bagley-Keene and the administrative procedure act that govern board business. The executive officer told us that the administrative manual was distributed to all current board members and will be provided to all newly appointed board members. The administrative manual is also available on the chiropractic board's Web site.

In addition to adopting the administrative manual, board members recently increased training efforts, which should improve their understanding of and compliance with Bagley-Keene, the administrative procedure act, and other board meeting procedures. Beginning with the April 2007 meeting, board members have included an agenda item at nearly all the meetings for their legal counsel to provide training or answer questions board members might have related to Bagley-Keene. Specifically, the chiropractic board's legal counsel told us she discussed the importance of keeping closed-session discussions confidential, announcing to the public decisions made at a closed session, and announcing agenda items so that the public knows the topics to be discussed. She also advised board members on the importance of not discussing enforcement cases with anyone outside the board or with other board members and not conducting their own research or investigation when reviewing a proposed decision or petition for reinstatement. According to the legal counsel, the board members requested training because they wanted to make sure they complied with applicable laws. In addition, the legal counsel worked with staff to develop a new form for board members to use when mailing their votes; implemented in September 2007, the new form includes an option for board members to disqualify themselves from the vote, if necessary.

The board's adoption of an administrative manual and the inclusion of training at most board meetings should improve board members' compliance with state laws.

Board Members Inappropriately Delegated Their Responsibility to Approve License Applications to Staff

The Chiropractic Initiative Act of California (initiative act) confers on the chiropractic board the power to issue and revoke licenses and specifies the affirmative vote of four members to authorize the issuance of any license provided for in the act. The initiative act also confers to board members the power to deny, suspend, revoke, and reissue a license, with such action requiring a majority vote. We found that staff reviewed license applications and made decisions to issue licenses without the approval of board members, contrary to the requirements of the initiative act. Additionally, whenever a license applicant did not request a formal hearing to appeal a denial, board members did not review and approve that denial, as the initiative act requires. Board members only made the final decisions in denial cases in which the applicants appealed.

According to our legal counsel, the provisions of the initiative act establish clear voter intent that the power to issue and deny licenses must be exercised by the members of the chiropractic board. The initiative act does not contain provisions that allow the chiropractic board to delegate to staff the authority to approve or deny licenses. Therefore, although the chiropractic board may be able to delegate to staff any number of licensing duties that are preliminary to its exercise of discretion in approving or denying a license, board members must make the actual decision of approval or denial.

When we asked the chiropractic board's executive officer if he was aware that the current process conflicts with state law, he told us that both he and the chiropractic board's legal counsel believe that the board's current procedures regarding the issuance and denial of license applications is consistent with the initiative act and board regulations. According to the executive officer, subdivision (c) of Section 4 of the initiative act states that the chiropractic board's authority includes the power to "examine applicants and to issue and revoke licenses to practice chiropractic"; and subdivision (h) of Section 4 states that the board may employ individuals "to carry into effect the provisions of this act, and shall prescribe the duties of such employees." The executive officer also said that determining whether an applicant meets all the qualifications for licensure and issuing the license are ministerial duties. However, we disagree with this position. The initiative act clearly requires an affirmative vote of four members of the chiropractic board to authorize the issuance of any license provided for in the act, and a majority vote of the board members is required to deny, suspend, or revoke a license.

Because staff rather than board members made final decisions on approving licenses and board members did not review staff-determined denials when applicants did not formally appeal

According to our legal counsel, the provisions of the initiative act establish clear voter intent that the power to issue and deny licenses must be exercised by the chiropractic board members.

those denials, the chiropractic board did not comply with the initiative act. Our legal counsel has advised us that board members could easily remedy this noncompliance by subsequently ratifying any license approvals and denials granted by staff, thus making those approvals and denials their responsibility.

Board Members Do Not Use State E-mail Accounts When Conducting Board Business

As a state agency, the chiropractic board is subject to the Public Records Act (public records act), which requires a state agency to respond to all requests for public records and defines public records as any writing containing information relating to the conduct of the public's business and includes electronic mailings. When the chiropractic board receives a public records request, it must notify the requester within 10 days whether it has records that may be disclosed in response to the request, and the board must provide an estimate as to when it can provide disclosable records. The executive officer told us that the chiropractic board had not considered assigning state e-mail accounts to board members and that this is consistent with all other licensing boards within the Department of Consumer Affairs (Consumer Affairs). However, he agreed that the concept might improve board governance and will be a proposed agenda item for the board's administrative committee. Because board members do not use state e-mail accounts when conducting board business, we question how the chiropractic board can ensure that it fully complies with public records requests and the prompt time frames required to respond to such requests. The executive officer stated that if staff believe a board member has information relevant to a public records request, they will ask the board member to review his or her files and provide the information.

We also question how the chiropractic board ensures the protection of any confidential information board members might have or discuss by e-mail. Because it would not know what security and privacy protections exist on board members' personal e-mail accounts, the chiropractic board risks compromising private and confidential information. Additionally, the board cannot monitor e-mail accounts outside the state system and thus may not know if or when confidential information residing on board members' personal e-mail accounts is compromised.

Because it would not know what security and privacy protections exist on board members' personal e-mail accounts, the chiropractic board may be at risk of compromising private and confidential information.

Staff Could Not Demonstrate That All Board Members Received Copies of Bagley-Keene, Attended Training Required by State Law, and Received Appropriate Orientation

Although state law requires that board members receive copies of Bagley-Keene on their appointment to office, staff were unable to show us that the chiropractic board consistently met that requirement. Staff could demonstrate that only three of the 12 board members who held office during the period we reviewed received a copy of Bagley-Keene within one month of their appointments. Specifically, staff mailed copies of Bagley-Keene and the administrative procedure act in February and March 2007 to the three board members who were appointed in February 2007. According to the former executive officer, standard practice was to provide each new board member with a copy of Bagley-Keene, other laws and regulations, and disciplinary guidelines as part of a standard packet, and everything provided to the new board member was documented in a letter to that person. The former executive officer also asserted that she maintained a separate file and checklist for each board member that indicated the documents provided to the new appointee, but current staff could not locate those files. Staff retained the board member appointment checklists to document the information they provided to the three most recently appointed board members.

Staff also could not always demonstrate that board members attended required ethics training within the prescribed deadline. State law requires board members and designated employees to receive ethics training within six months of assuming office and every two years thereafter. Further, state law requires each state agency to maintain records of ethics training attended by its board members and designated employees for at least five years, including the attendee's name and job title and the dates of the training session attended. According to staff, board members must complete the ethics training and then sign, date, and submit their completion certificates to the chiropractic board office.

Three of the 12 board members that held office during our review period did not attend state-required ethics training. Of the nine who did attend ethics training, three received the training late and three missed one of the required training sessions.

Three of the 12 board members who held office during our review period did not attend state-required ethics training. Of the nine members who attended ethics training, three received the training late and three missed one of the required training sessions. For example, staff were able to demonstrate that two board members attended the initial ethics training required for their term in office but had no record for the required training two years later. For another board member, staff had no documentation to indicate that the board member fulfilled the initial ethics-training requirement, but staff did have documentation that he completed the training required two years later. In addition, staff could not demonstrate that one of the three newest board members appointed in

February 2007 has attended his initial ethics training. The two other new board members appointed in February 2007 submitted their completion certificates in February 2008, approximately six months past the deadline.

In addition, board members have not attended required sexual harassment prevention training. State law requires board members to receive two hours of sexual harassment prevention training within six months of assuming office. State law required initial training by January 1, 2006. According to the executive officer, board members were scheduled to have sexual harassment prevention training in November 2007, but due to budget constraints he canceled the training and plans to reschedule it.

Staff were also unable to show that all board members received appropriate orientation within a reasonable time after their appointments to office. Although all but one of the 12 board members who held office during our review period attended orientation, staff could not demonstrate that several board members had attended the orientation within a reasonable period after their appointment. Best practices indicate that new board members should receive orientation within one year of assuming office. Of the 11 board members who attended orientation, six attended within one year after taking office but five were in office more than a year before attending orientation. One of those five board members attended the orientation nearly two years after assuming office, and another was in office for four years before attending orientation.

The former executive officer told us that staff stopped holding group orientations because they decided it was ineffective, based on responses from board members. She noted that the last two group orientations held at the board occurred in 2002 and 2004 and were modeled after the orientation Consumer Affairs provides. It is important for board members to take advantage of training opportunities and attend orientation within a reasonable time so that they are prepared to appropriately conduct the business of the chiropractic board. The executive officer told us that as of October 2007 all new board members will attend the orientation that Consumer Affairs provides within one year of assuming office.

Because the chiropractic board does not have policies and procedures for keeping records that board members have received required training or appropriate orientation, it cannot demonstrate its compliance with state laws or that it follows best practices. If board members do not receive required and appropriate training or receive it late, they are less able to fulfill their responsibilities to the public during their period of service on the board.

Recommendations

To comply with Bagley-Keene, the chiropractic board should do the following:

- Continue to involve legal counsel in providing instruction and training to board members at each meeting.
- Continue to retain documentation of the steps it takes to publicly announce its meetings.

To comply with the administrative procedure act, board members should limit their communications related to board business so they do not engage in ex parte communications or compromise their ability to fulfill their responsibilities in enforcement hearings.

To comply with the initiative act, the chiropractic board should modify its current process so that board members make final decisions to approve or deny all licenses. Additionally, board members should ratify all previous license decisions made by staff.

To comply with the political reform act, the chiropractic board should do the following:

- Ensure that its filing official is aware of the role and responsibilities of the position and, similarly, promptly inform anyone replacing the filing official.
- Establish an effective process for tracking whether all designated employees, including board members, have completed and filed their statements of economic interests on time, thereby identifying potential conflicts of interest.
- Periodically review its employees' responsibilities to ensure that all individuals who are in decision-making positions are listed as designated employees in its conflict-of-interest code.

To enable them to conduct their chiropractic board business in a secure and confidential environment and make their actions and correspondence accessible when requested in accordance with the public records act, the chiropractic board should consider providing state e-mail accounts to its board members.

To continue improving their knowledge and understanding of state laws and board procedures, board members should continue using their newly adopted administrative manual as guidance for conducting board business.

To comply with Bagley-Keene provisions and state laws requiring board members to attend training within specific time frames, and to ensure that board members receive orientation within a reasonable amount of time of assuming office, the chiropractic board should do the following:

- Ensure that staff retain documentation when they provide a copy of Bagley-Keene to a newly appointed board member.
- Continue to use the member appointment checklist and establish procedures to periodically record and monitor board member training.
- Continue to send new board members to the orientation that Consumer Affairs provides.

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Chapter 2

THE STATE BOARD OF CHIROPRACTIC EXAMINERS DOES NOT ALWAYS PROCESS COMPLAINTS EFFICIENTLY AND EFFECTIVELY

Chapter Summary

The State Board of Chiropractic Examiners (chiropractic board) lacks sufficient internal controls and the necessary benchmarks to ensure that it processes consumer complaints accurately and promptly. We reviewed 25 complaints the chiropractic board's database indicated were closed in fiscal year 2006–07 and found that it sometimes took excessive amounts of time to resolve complaints and allowed unexplained and unreasonable delays between phases of the complaint review process.^{6,7} As a result, we found that the chiropractic board may not be assisting attorneys and law enforcement agencies as well as it could in enforcing the Chiropractic Initiative Act of California (initiative act).

Procedures for the chiropractic board's enforcement program are incomplete and do not provide adequate guidance for chiropractic board staff (staff) charged with processing complaints. Moreover, chiropractic board management (management) does not always review decisions made by enforcement staff. In addition, we found that the chiropractic board does not report the issuance of citations to other states' chiropractic boards or other regulatory agencies as required by the chiropractic board's regulations. The chiropractic board's weak management and oversight of its enforcement program during fiscal year 2006–07 may have contributed to staff processing some complaints inconsistently.

Additionally, the chiropractic board's prioritization system for its complaint review process is seriously flawed. As a result, it does not promptly process priority complaints—those it considers the most serious. We also found that for nearly 15 years the board has not adhered to state regulations requiring it to establish chiropractic quality review panels throughout California to handle less-serious complaint cases. Because the board no longer has a chiropractic consultant on staff, it lacks the technical expertise necessary to deal with complaints that allege improper quality of chiropractic care or

⁶ As described in the Scope and Methodology, we concluded that the complaint data entered by the chiropractic board into the Consumer Affairs System are of undetermined reliability. However, with no other data available, we used the chiropractic board's data to select our sample.

⁷ The chiropractic board closed one of the complaints in fiscal year 2007–08. We included this item to ensure that our sample included the three most recently closed complaints against board members.

excessive treatment. Moreover, it does not always control the use of expert witnesses (experts) by ensuring the quality of their work or freedom from potential personal or financial conflicts of interest that would prevent them from reviewing a case judiciously.

Because the chiropractic board did not maintain complete personnel records, we were unable to determine if some of its enforcement staff were qualified for the positions they held. The board was also unable to provide documentation verifying that it ensured that the four investigators with whom it contracts actually have the five years of experience required for the position.

Our survey of the enforcement policies and procedures of three other regulatory boards in the State indicated that they process complaints more promptly and have a more structured prioritization system. In addition, two of the regulatory boards we surveyed reported that they have established enforcement procedures to ensure that they maintain adequate management oversight of their complaint review process.

The Chiropractic Board Lacks Adequate Controls Over Its Complaint Review Process

Through its complaint review process, the chiropractic board administers all phases of enforcement over licensed chiropractors, from receiving the initial complaint to overseeing the surveillance of chiropractors on probation as a result of violations, to revocation of a license to practice chiropractic. The chiropractic board receives many types of complaints against its licensees from a variety of sources, including patients, other chiropractors, insurance companies, chiropractic board staff, other health-related boards, and law enforcement agencies.

As described in the Introduction, the enforcement process begins with a complaint to the chiropractic board. Staff review the complaint to determine if a violation of the initiative act or chiropractic regulations occurred. Enforcement staff, which may include analysts, assistants, a chiropractic consultant, and contracted investigators and experts, work to resolve complaints through either informal disciplinary actions, such as a violation letter, or formal disciplinary actions. In the case of a severe violation, the chiropractic board works with the Office of the Attorney General (attorney general) to bring a legal case before an administrative law judge and take formal disciplinary action against the licensee, such as suspending or revoking the chiropractor's license. The board must initiate this process by filing an accusation—a written statement of charges against a licensee that specifies the laws and regulations allegedly violated.

Although the laws and regulations governing the chiropractic board's operations do not require the board to file an accusation within a particular period after receiving the complaint, we believe it would be good policy for the board to adopt processing timelines to ensure that it effectively manages its workload and adequately protects the public by promptly resolving complaints. Without sound policies and procedures for the staff to follow, benchmarks for how long various phases should take, and periodic reviews by management, the chiropractic board cannot ensure that staff process all complaints promptly and appropriately.

Our review of 25 complaints the chiropractic board's database indicated were closed in fiscal year 2006–07 revealed that it has no established timelines for processing complaints and as a result does not always process them promptly.⁸ We found many instances where the chiropractic board failed to take action on complaints for excessive periods of time in all phases of the complaint process, including the initial opening of the complaint, referring complaints to contracted investigators, obtaining investigation reports, referring complaints to experts, and closing complaints. In addition, when we reviewed the chiropractic board's compliance with the requirement to assist attorneys and law enforcement agencies in the enforcement of the initiative act, we found that the board does not promptly refer cases to the attorney general. Further, the chiropractic board's enforcement procedures do not ensure that only designated employees—those required to formally disclose conflicts of interest—make final decisions on cases or at a minimum, require management to review decisions of nondesignated employees. The chiropractic board's procedures also do not provide clear instructions to staff on when it is appropriate to open internally generated complaints. Finally, the chiropractic board's weak management and oversight of its enforcement program may have contributed to staff processing cases inconsistently.

Lack of Standard Procedures and Management Oversight Resulted in Slow Resolution of Many Complaints We Reviewed

Because the chiropractic board lacks adequate internal controls over its complaint review process, it cannot ensure that its staff process consumer complaints accurately and promptly. Moreover, the chiropractic board has not established benchmarks for staff to use and, as a result, they sometimes took excessive amounts of time to resolve complaints. The chiropractic board also allowed

Our review of 25 complaints closed in fiscal year 2006–07 found many instances where the chiropractic board failed to take action on complaints for excessive periods of time in all phases of the complaint process.

⁸ The chiropractic board closed one of the complaints in fiscal year 2007–08. We included this item to ensure that our sample included the three most recently closed complaints against board members.

unexplained and unreasonable delays between various phases of the complaint review process. For example, we found lengthy periods of inactivity between when the chiropractic board received a contracted investigator's report and when it referred a case to an expert. We also found unreasonable delays between when the board completed its review of a case and when it closed the case or took other final action. Because the chiropractic board does not always process complaints promptly, it may not be effectively assisting attorneys and law enforcement agencies in enforcing the initiative act.

The Chiropractic Board Sometimes Allowed Complaint Cases to Sit Without Any Activity, Causing Unreasonable Delays

The chiropractic board does not have standard procedures to ensure that staff promptly review and resolve complaints. Although it has established some policies and procedures for how it processes complaints, it has not developed benchmarks for the length of time it should take to complete various phases of the complaint review process. In fact, in reviewing 25 complaints, we found several excessive and unexplained delays between various phases of the complaint review process. Table 1 on page 46 identifies the total number of days it took the board to complete each phase for the 25 cases. In addition, management generally did not review the complaints or staff decisions on those complaints to determine whether staff processed them promptly and correctly.

We believe that best practice would be for the chiropractic board to establish processing time frames to ensure that evidence does not become stale and that it promptly disciplines chiropractors who have violated chiropractic laws or regulations to protect the public. We found that the chiropractic board referred a total of four of the complaints we reviewed to the attorney general; however, one was almost two years old and another was more than two years old when these referrals occurred. When the chiropractic board does not promptly process complaints and refer them to the attorney general, it may not enable the attorney general to file viable accusations within reasonable periods of time and thus allows licensees who may pose a threat to the public to continue practicing.

Of the four complaints we reviewed that the chiropractic board referred to the attorney general, one was almost two years old and another was more than two years old.

We identified many examples of the chiropractic board allowing complaint cases to languish, causing unreasonable and unnecessary delays in the entire complaint review process. For example, as Table 1 on page 46 shows, the chiropractic board took more than 68 days to open one case of alleged gross negligence, which is a priority complaint.

Another area where we found excessive delays was in referring a case to an investigator. According to the chiropractic board's procedures, in the case of a priority complaint, staff may immediately refer the complaint to an investigator. However, referral to an investigator does not always occur promptly. For example, Table 1 on the following page shows that for two priority complaints—one alleging sexual misconduct and another alleging insurance fraud—the chiropractic board took more than one year to refer the complaints to an investigator. The chiropractic board eventually closed the insurance fraud case with merit about 18 months later.⁹ As for the case alleging sexual misconduct, it was closed because of insufficient evidence without the prior review and approval of the chiropractic board's management. For another three of the seven priority cases referred to investigators, the chiropractic board took more than three months to make the referral.

The chiropractic board also took unreasonable amounts of time to refer complaints to an expert. After the investigation of a quality-of-care matter has been completed and the investigator and the chiropractic consultant conclude that the investigation substantiates the occurrence of a disciplinable violation, the chiropractic board retains an expert to review and confirm that conclusion. However, in one case we reviewed, the chiropractic board took nearly 16 months to refer an insurance fraud complaint to an expert for review. According to its database, the board originally referred the case to an expert in April 2004. We found no indication that any action was taken on the case until the chiropractic board again referred the case to an expert in June 2005—more than a year later. Although the board has a database that shows when a case is referred to an expert, until January 2008, it had not implemented a mechanism enabling it to track and follow up on referrals made to experts. When we questioned staff concerning this case, they could not provide an explanation, stating only that the board may not have actually referred the case to an expert in 2004. However, staff could not offer a reason for the chiropractic board taking no action from April 2004 until the referral to the expert made in June 2005. We believe it was unreasonable for the chiropractic board to allow this case to languish for more than a year without taking any action on it.

Finally, the chiropractic board took excessive amounts of time to close complaints after receiving information from either its own review or that of experts or contracted investigators. Typically, case closure occurs after the chiropractic board has substantiated a complaint and implemented informal discipline, referred the case to the attorney general for formal discipline, or

⁹ The chiropractic board closes a case with merit when it has evidence that a violation occurred but not enough to refer to the attorney general for disciplinary action. The chiropractic board keeps these types of cases on file for five years.

Table 1
Length of Time to Complete Each Phase of the Complaint Review Process

Priority	Complaint Allegation	Days to Complete Each Phase										Total Number of Days to Process Complaint
		From Complaint Receipt to Opening	From Complaint Receipt to Investigation Referral	From Investigation Referral to Report	From Investigation Referral to Expert Referral	From Expert Referral to Report	From Expert Referral to Expert Opinion	From Expert Opinion to Case Closure/Attorney Referral	From Case Closure/Attorney Referral to Expert Referral	From Expert Referral to Case Closure/Attorney Referral	From Case Closure/Attorney Referral to General Referral	
1	Insurance fraud	15	162	292	101	201	752*	85*	1,206*			
2	Insurance fraud	14	NA	NA	NA	NA	NA	NA	584*			
3	Insurance fraud	11	101	80	382	44†	474	18	655			
4	Gross negligence	4	162	385	NA	NA	174	NA	721			
5	Gross negligence/unprofessional conduct	19	NA	NA	NA	NA	NA	NA	187			
6	Gross negligence	68	NA	NA	NA	NA	NA	NA	343			
7	Insurance fraud	2	NA	NA	NA	15	NA	265	405			
8	Insurance fraud	12	26	125	485‡	35	693	173§	844			
9	Sexual misconduct/unprofessional conduct	1	379	346	NA	NA	32	NA	757			
10	Gross negligence/incompetence	1	76	112	NA	NA	280	NA	468			
11	Insurance fraud	2	434	II	NA	NA	II	NA	981			
Routine												
12	Inappropriate title	0	NA	NA	NA	NA	NA	NA	117			
13	Invalid business location	11	NA	NA	NA	NA	NA	NA	417			
14	Malpractice settlement notice	0	NA	NA	NA	NA	NA	NA	117			
15	Department of Justice notice of arrest for driving under the influence	5	NA	NA	NA	NA	NA	NA	195#			
16	Failure to release patient records	5	NA	NA	NA	NA	NA	NA	581			
17	Department of Justice notice of arrest for injuring spouse	20	NA	NA	NA	NA	NA	NA	229			
18	Improper advertising on licensee Web site	1	NA	NA	NA	NA	NA	NA	415			
19	Practicing without a license	0	71	117	NA	NA	46	NA	234			
20	Exceeding scope of practice	7	7	49	**	**	283	**	339			
21	Exceeding scope of practice††	0	NA	NA	NA	NA	NA	NA	447			
22	Inaccurate billing	57	NA	NA	NA	NA	NA	NA	543			

	COMPLAINT ALLEGATION	DAYS TO COMPLETE EACH PHASE										TOTAL NUMBER OF DAYS TO PROCESS COMPLAINT
		FROM COMPLAINT RECEIPT TO OPENING	FROM COMPLAINT RECEIPT TO INVESTIGATION REFERRAL	FROM INVESTIGATION REFERRAL TO INVESTIGATION REPORT	FROM INVESTIGATION REPORT TO EXPERT REFERRAL	FROM EXPERT REFERRAL TO EXPERT OPINION REPORT	FROM INVESTIGATION REPORT TO CASE CLOSURE/GENERAL REFERRAL	FROM EXPERT OPINION REPORT TO CASE CLOSURE/ATTORNEY GENERAL REFERRAL	FROM INVESTIGATION REPORT TO CASE CLOSURE/ATTORNEY GENERAL REFERRAL	FROM EXPERT OPINION REPORT TO CASE CLOSURE/ATTORNEY GENERAL REFERRAL	FROM INVESTIGATION REPORT TO CASE CLOSURE/ATTORNEY GENERAL REFERRAL	
23	Malpractice settlement notice	20	NA	NA	NA	NA	NA	NA	NA	NA	NA	280
24	Exceeding scope of practice	6	NA	NA	NA	NA	NA	NA	NA	NA	NA	845
25	Department of Justice notice of arrest for burglary	22	NA	NA	NA	NA	NA	NA	NA	NA	NA	184
Average number of days to process priority complaints												650
Average number of days to process routine complaints												353

Source: Bureau of State Audits' review of the State Board of Chiropractic Examiners' (chiropractic board) complaint case files.

NA = This complaint processing step did not apply to this particular case.

* The case file and database indicated referral to the Office of the Attorney General (attorney general). However, based on our analysis, the case was not referred and is still open. We have calculated the number of days open through January 31, 2008. Both of these cases are the result of complaints filed against the same licensee.

† The chiropractic board referred the case back to the expert and received the second opinion within 30 days.

‡ The database indicates this case was referred to an expert twice. However, we were unable to confirm the first referral, therefore, we used the date of the second referral for our calculations.

§ Because the date referred to the attorney general was different than the date closed indicated in the database, we used the date referred to the attorney general.

|| Although it originally referred this case to a contracted investigator, the chiropractic board later rescinded the request and investigated the case in-house.

The chiropractic board received a subsequent Department of Justice notification for this licensee. The board reopened this complaint and referred the case to the attorney general for formal discipline.

** This complaint was one of several the chiropractic board received regarding the same licensee. As a result, the expert witness review was already in progress at the time the complaint was received; therefore, we did not calculate the number of days for this particular part of the process.

†† The chiropractic board later added the allegation of Inappropriate Title for this internally generated complaint.

For one of the 25 complaints we reviewed, which alleged insurance fraud, the chiropractic board has allowed more than three years to elapse and still had not closed the case as of January 2008.

found insufficient evidence that a violation occurred. In one of the 25 complaints, the chiropractic board allowed more than three years to elapse on a complaint and still had not closed the case as of January 2008. The board received this complaint alleging insurance fraud in October 2004. In June 2006 the Department of Justice (Justice) notified the chiropractic board of another complaint: the same licensee had been charged with filing fake workers' compensation claims. The board's database and its case files indicate that a few months later, after receiving the expert report on the first complaint, the board decided to refer both complaints to the attorney general for discipline. However, it never did so, and as of January 2008, both cases were still pending at the chiropractic board.

When the chiropractic board unreasonably delays processing complaints, it allows chiropractors accused of violating chiropractic laws and regulations—including those accused of what the chiropractic board considers the most egregious violations—to continue practicing longer than necessary without the violations being addressed, potentially exposing the public to further risk. Further, the chiropractic board could be jeopardizing the success of meritorious enforcement cases, because with the passage of time, evidence can become unavailable. In addition, when the board does not ensure that staff properly document decisions made and actions taken on complaint cases, it is unable to justify the length of time it takes to process complaints.

The executive officer explained to us that he is currently in the process of establishing performance measures that should enable the chiropractic board to adequately manage its workload and promptly process complaints. Specifically, he stated that the performance measures will also include assigning complaints to one staff person from initiation to close, which will create the accountability that was missing. He plans to have these performance measures implemented by July 2008.

The Chiropractic Board May Not Be Assisting Attorneys and Law Enforcement Agencies as Efficiently and Effectively as Possible

Section 17 of the initiative act requires the chiropractic board to assist attorneys and law enforcement agencies in enforcing its provisions. The chiropractic board refers notifications to the attorney general for disciplinary action when it substantiates a violation of the law and staff determine disciplinary action is appropriate. According to board policy, when the board receives notification from Justice that a licensee has allegedly violated a state law, staff must refer the case to the attorney general as soon as the chiropractic board has obtained the licensee's explanation and

the corresponding arrest and court information.¹⁰ Following the notification from Justice, the board works with the arresting agency and the courts to learn the circumstances of the incident and final outcome of the case. According to the executive officer, the chiropractic board also works with local district attorneys and city attorneys to aid in their efforts when they investigate or prosecute licensees for criminal violations. Further, he stated that on the rare occasion when the chiropractic board is informed of an egregious violation, such as sexual assault, it would forward an investigation report to local law enforcement.

Although the executive officer told us that all staff are expected to cooperate fully with other law enforcement agencies when called on to assist, he acknowledged the chiropractic board has not established specific protocols for staff to follow. The chiropractic board has not established the types of complaints and evidence that should exist before referring cases to law enforcement agencies or attorneys. The executive officer explained that each case is determined individually based on several factors. Moreover, as previously discussed, the board has not established any benchmarks for processing and resolving complaints and therefore does not process complaints in a timely manner. As a result, two of the 25 complaints we reviewed that the chiropractic board referred to the attorney general were 655 and 844 days old, respectively.

For the oldest case referred to the attorney general, the chiropractic board received the complaint from a county district attorney's office alleging suspected fraud because the licensee was billing the patient's auto insurance carrier and her workers' compensation insurance carrier for the same treatments and for excessive treatment. Even though the complaint involved suspected insurance fraud, which would have made it a priority, staff failed to include the allegation of suspected fraud and opened it only as a case of excessive treatment and failure to ensure accurate billing. This resulted in several long delays during the complaint review process; the complaint was more than two years old when it was finally referred to the attorney general for formal discipline.

The Chiropractic Board's Enforcement Procedures Do Not Provide Sufficient Guidance to Staff Processing Complaints

Although the chiropractic board has some good enforcement procedures, it has not established adequate policies and procedures to ensure management oversight of complaint processing and resolution. For instance, it does not ensure that only designated

Although the chiropractic board has procedures in place to assist attorneys and law enforcement, it has not established specific protocols for staff to follow.

¹⁰ One of Justice's duties is to provide criminal data and identification services to regulatory agencies. The chiropractic board refers cases to the attorney general, a division of Justice, when preparing to take administrative action against a licensed chiropractor.

employees—those who make or participate in making decisions that could have a material effect on any financial interests and are required to file annual statements of economic interests—make final decisions on cases or that such decisions are reviewed and approved by a designated manager. Board policy requires that the chiropractic consultant review each investigation report. In one case we reviewed concerning an allegation of sexual misconduct, the board's enforcement analyst (analyst) reviewed the investigation report and, without a manager's review and approval, made the decision to close the case because of insufficient evidence. In December 2006 the analyst sent closure letters to the complainant and licensee stating that the chiropractic consultant had reviewed all the available documentation and determined that the evidence was insufficient to support the allegations. In this case staff closed the complaint when the chiropractic consultant was on an extended leave of absence; however, we believe the decision still should have been reviewed and approved by management, especially because this was a priority case.

In other cases we reviewed, the board allowed nondesignated employees to make final decisions on enforcement matters. For example, in two of the 25 cases we reviewed, the staff counsel, a nondesignated position, made the final decision for case closure without obtaining any input or approval from the executive officer. In three other cases, the analyst made the final decision for case closure, even though her position is not designated. Management did not review or approve any of those decisions. Without proper policies and procedures, the chiropractic board cannot ensure that staff process complaints in a consistent manner or that it avoids possible conflicts of interest in its complaint review process.

Additionally, our review revealed that the chiropractic board issued citations in two cases but failed to report the citations to other states' chiropractic boards and other regulatory agencies. A citation is an informal disciplinary action that the board imposes against a licensee who violates laws and regulations governing chiropractic. According to its regulations, the chiropractic board must report the issuance and disposition of a citation to other states' chiropractic boards and other regulatory agencies.

The chiropractic board's current policies and procedures also do not provide clear instructions to guide staff about when it is appropriate to open and process a complaint that is internally generated. We reviewed all the chiropractic board enforcement policies and procedures and found none specific to the opening of internal complaints. Staff opened one complaint we reviewed based on a newspaper article asserting that a chiropractor was claiming to hold an advanced degree from an unaccredited school. Despite the apparent minor nature of this internal complaint, staff spent

In three of the 25 cases we reviewed, the analyst, a nondesignated position, made the final decision for case closure without obtaining management review or approval.

considerable time and effort pursuing it, including sending a letter requesting a copy of the licensee's advanced degree. Nearly four months after opening the case, the executive officer advised staff that because the school was accredited at the time the degree was awarded, this was not a violation of the law and closed the case without merit. Because it has not established clear instructions for staff to follow when considering whether they should open an internal complaint, the chiropractic board's resources are diverted from working on more serious complaints, which is not efficient.

The Chiropractic Board's Weak Management of Its Enforcement Program May Have Contributed to Inconsistent Decisions on Similar Cases

The chiropractic board did not adequately supervise enforcement staff and their decisions on cases. Specifically, many of the 25 cases we reviewed showed no evidence of management review. As a result, we found that staff resolved differently two cases alleging the same violation. The board resolved one by sending a cease-and-desist letter to the licensee, and it resolved the other with an informal education letter instructing the licensee to review the chiropractic board's Web site to become familiar with the laws of chiropractic. However, because the chiropractic board did not clearly document its reasons for resolving each case the way it did, we were unable to determine if the resolutions were reasonable. When we asked staff about these cases, they told us they have seen this type of violation resolved in various ways on a case-by-case basis.

Staff also did not always process complaints in accordance with its internal procedures. When the chiropractic board receives a malpractice settlement notice, staff send a letter to the patient or the patient's attorney to inform the patient of his or her option to file a complaint with the chiropractic board. If the chiropractic board does not receive a response within a certain time, it closes the case. In one of the two malpractice settlement notice cases we reviewed, staff appropriately sent a letter to the patient. However, the letter was returned to the chiropractic board as undeliverable, and the case file indicates that staff closed the case without any further efforts to contact the patient or attorney. When management does not ensure that staff process complaints consistently and according to its policies and procedures, it can result in the inefficient use of staff time and the chiropractic board may be unable to later justify decisions it made.

Although the chiropractic board has identified specific types of complaints it considers a priority, it frequently fails to label these complaints as such and its system for processing complaints lacks any controls to ensure that its staff correctly designate complaints as priority and process them promptly.

The Chiropractic Board's System for Prioritizing Consumer Complaints Is Seriously Flawed

The chiropractic board took excessive amounts of time to process the 11 priority complaint cases we reviewed—complaints alleging sexual misconduct, gross negligence or incompetence, use of alcohol or drugs when performing the duties of chiropractic, or insurance fraud. However, according to the chiropractic board's enforcement policies and procedures manual, staff can immediately refer a priority complaint to an investigator. Although the board has identified the types of complaints it considers priority, staff frequently have not labeled such complaints as priority, and the board's system for processing complaints lacks any controls to ensure that staff correctly designate complaints as priority and process them promptly. Consequently, we noted allegations of sexual misconduct or fraud that went unresolved for more than one year to more than three years, potentially leading to repeat offenses and failures by the chiropractic board to protect the public. As shown in Table 2, for nine of the 11 complaints we reviewed that alleged one of the five types of violations considered the most serious, staff took more than one year to investigate and close the cases.

Although staff clearly demonstrated to us that they understood which types of complaints the chiropractic board considers a priority, Table 2 also shows that for 10 of the 11 complaints we reviewed that should have been classified as priority cases, we could find no evidence that staff assigned priority to the complaints. The only complaint that staff clearly identified as being a priority was the one that alleged sexual misconduct, which staff placed in a red folder. Even though staff designated that complaint a priority, we saw no evidence that it received any faster treatment than other complaints. In fact, this complaint took more than two years to resolve.

The chiropractic board's lack of management and supervision of its enforcement staff may also contribute to the staff's failure to consistently give priority to such complaints. As previously discussed, management does not periodically monitor the status of open complaints or work with staff to ensure that they correctly identify and process priority complaints quickly. Failing to properly assign and process priority complaints as quickly as possible undermines the board's ability to protect the public, one of its primary responsibilities.

Table 2
Timelines for Processing 11 Priority Complaints Reviewed

COMPLAINT ALLEGATION	EVIDENCE OF PRIORITY IDENTIFIED BY STAFF	DAYS BETWEEN RECEIPT AND CLOSING OF COMPLAINT	COMPLAINT OPEN FOR MORE THAN ONE YEAR	COMPLAINT OPEN FOR MORE THAN TWO YEARS	COMPLAINT OPEN FOR MORE THAN THREE YEARS
Insurance fraud	No	1,206*			X
Insurance fraud	No	584*	X		
Insurance fraud	No	655	X		
Gross negligence	No	721	X		
Gross negligence and unprofessional conduct	No	187			
Gross negligence	No	343			
Insurance fraud	No	405	X		
Insurance fraud	No	844		X	
Sexual misconduct and unprofessional conduct	Yes	757		X	
Gross negligence and incompetence	No	468	X		
Insurance fraud	No	981		X	
Totals			5	3	1

Source: Bureau of State Audits' review of the State Board of Chiropractic Examiners' (chiropractic board) complaint case files.

* The case file and the chiropractic board's database indicate the case was referred to the Office of the Attorney General (attorney general) in 2006. However, based on our analysis, the case was not referred to the attorney general and is still open. We have calculated the case as open through January 31, 2008. Both of these cases are the result of complaints filed against the same licensee.

Our survey of three other regulatory boards, which we discuss more fully later in the chapter, revealed that the Osteopathic Medical Board of California (osteopathic board) assigns priority status to complaints that require immediate public protection, processing them first, and that it processes all other complaints as they are received. Similarly, the Speech-Language Pathology and Audiology Board (speech-language board) told us that it handles complaints alleging serious violations that involve an immediate threat to public safety first and refers them for formal investigation and possible disciplinary action. It also refers complaints alleging unlicensed practice, in which patient harm has occurred or is likely to occur to the district attorney's office for criminal prosecution. Similar to the chiropractic board, the Physical Therapy Board of California (physical therapy board) assigns its highest priority to complaints alleging sexual misconduct, negligence, or injury to a patient. However, unlike the chiropractic board, the physical therapy board said it processes priority complaints on an expedited basis and forwards them for formal investigation,

Although practicing the profession of chiropractic without a license is a serious violation that poses a significant threat to the public, the chiropractic board considered it to be outside of its jurisdiction until May 2007.

usually within one week of receiving the complaint. Because the chiropractic board has not established time frames for processing any of its complaints, it takes unreasonable amounts of time to process its priority complaints, which unnecessarily puts the public at risk.

Moreover, we found some allegations that we believe the board should be categorizing as priority or processing more diligently. For example, the board did not consider allegations of practicing without a license to be a priority. In fact, until May 2007, the chiropractic board considered those allegations to be outside its jurisdiction. While reviewing licensing files, we discovered an allegation of unlicensed practice and found that the board did not investigate the allegation. Instead, it forwarded the complaint to the local district attorney noting that the complaint was not within the board's jurisdiction. However, two of the boards we surveyed consider allegations of unlicensed practice to be a priority. Specifically, the physical therapy board said it processes complaints alleging unlicensed practice involving patient harm as urgent, its highest priority level. Similarly, the speech-language board told us it also processes complaints involving unlicensed practice as a priority. We believe practicing the profession of chiropractic without a valid license is a serious violation that poses a significant threat to the public and should not be treated lightly.

Additionally, we found that other boards process malpractice settlement notifications from insurance companies more diligently than does the chiropractic board. As described earlier in this chapter, when the chiropractic board receives a malpractice settlement notification, it simply sends correspondence to the patient or patient's attorney notifying them of the patient's right to file a complaint against the licensee with the board. If the patient does not file a complaint within the deadline specified, the board simply closes the case without any further effort to determine if the licensee deviated from the standard of care. However, we question this practice because a malpractice settlement could be the result of gross negligence or incompetence—a condition the chiropractic board has designated a priority.

We asked the three boards in our survey how they process malpractice settlement notifications. Their responses indicate they exert more effort and conduct a more thorough review of malpractice settlement notifications. For example, the osteopathic board told us that when it is notified of a malpractice settlement totaling more than \$30,000, it investigates to determine whether the licensee violated the practice code. During this process, the osteopathic board may employ a board consultant to determine if

the licensee deviated from the standard of care. If the osteopathic board determines that there are grounds for discipline, it will refer the case to the attorney general.

Similarly, the speech-language board said it assigns priority to malpractice settlement notices based on the nature of the settlement claim and the degree of patient harm or risk to the public. Because complaints stemming from settlement claims require additional fact finding and investigation, the speech-language board forwards those cases to its investigators to obtain the pertinent facts. After the speech-language board's internal review of the facts or the conclusive opinion of an expert, if it appears that the licensee was negligent or deviated from an acceptable standard of care, the speech-language board refers the case to the attorney general for administrative disciplinary action. The physical therapy board processes malpractice settlement notifications to obtain and review the facts to determine whether there is evidence of a violation that meets the evidentiary standards for citation or other discipline.

In contrast, when processing a malpractice settlement notification, the chiropractic board does not obtain and review documentation or conduct investigations to determine if a violation occurred or refer the matter to an expert to determine if the licensee deviated from an acceptable standard of care. When the chiropractic board does not give priority to processing complaints requiring priority attention or process other complaints more diligently, it may be unnecessarily putting the public at risk.

For Years the Chiropractic Board Has Not Adhered to Its Own Regulation to Establish Chiropractic Quality Review Panels

Since June 1993 the chiropractic board's regulations have required it to establish chiropractic quality review panels (review panels) throughout California. According to the historical documentation, the board's original intent was to reduce the amount of time between complaint intake and resolution. The chiropractic board planned to refer certain complaints—those alleging minor violations of the initiative act that do not meet the criteria for referral to the attorney general for formal discipline—to a program in which a less formal review and early corrective action could possibly prevent the cases from moving down the path of formal discipline. The relevant board regulation states that the purpose of the review panels is to review specific complaints referred by the chiropractic board's executive officer and, when appropriate, provide recommendations of continuing education or other

The intended purpose of the review panels is to review specific complaints referred by the chiropractic board's executive officer and, when appropriate, provide recommendations of continuing education or other corrective actions to strengthen aspects of the licensees' chiropractic practice.

corrective actions to strengthen aspects of licensees' chiropractic practice. Nearly 15 years after adopting the regulation, the chiropractic board still has not established review panels.

The board's rule-making file shows that over the years, when changes in executive officers and board members occurred, so did priorities and efforts to establish the review panels. For example, the chiropractic board's then-executive officer had the chiropractic consultant who was hired in June 1995 develop the groundwork to implement the review panels. By March 1996 the chiropractic consultant had developed a list of qualified chiropractors to serve on the review panels to present to the board members for approval.

However, in April 1996, the chiropractic board hired a new executive officer and asked her to review the plans for establishing the review panels and to gather information from other boards that had established similar panels. In a report dated May 1996 the then-executive officer stated that the Medical Board of California (medical board) had encountered many problems with its review panels, including inconsistent complaint resolutions, lack of control by the medical board, and an increasingly costly review and appeal process that ultimately caused the medical board to eliminate its review panels. The then-executive officer's report also noted that, although the review panel program established by the California State Board of Pharmacy was more effective than that of the medical board, it was also very expensive. In addition, the then-executive officer stated in her report that some deputy attorneys general who had handled cases for the chiropractic board as well as other regulatory boards recommended that the chiropractic board use warning letters, cease-and-desist letters, and citations as a less costly and more efficient approach to informal discipline than the use of review panels. The then-executive officer recommended that the chiropractic board table implementation of the review panels, which the board did in June 1996.

In subsequent years board members and staff have attempted to change the regulation. Specifically, in October 2004, board members tried to amend the wording of the regulation from *shall* to *may*, which would have made the establishment of review panels discretionary. However, because of public opposition, board members tabled the discussion of the regulation change pending further review by the regulation committee. Shortly thereafter, the International Chiropractors Association of California (international association) submitted to the chiropractic board a detailed proposal for the establishment of the review panels. The proposal claimed the review panels could enhance public safety by providing faster complaint resolution and could reduce costs by eliminating the costs for investigators and experts. In March 2005 the chiropractic board ended its attempt to revise the regulation by submitting

a notice to not proceed to the Office of Administrative Law. According to the previous executive officer, the board member who had been working extensively with the proposed regulation at that time was absent from the April 2005 board meeting, and his term expired soon thereafter; as a result, the review panel discussion was never resolved.

The issue of the review panels arose again in December 2006 as a discussion item in a board meeting. The topic has been active since then, with the international association submitting proposals in February 2007 and June 2007 to modify the regulations and the governor appointing a representative from the international association as a member of the chiropractic board in February 2007. Moreover, it is clear from the international association's proposals that it seeks to remove control over the complaint review and discipline processes from the chiropractic board as a state agency and place that control with the individual board members and other licensees. Specifically, the latter proposal includes the formation of a six-member chiropractic review committee, whose members would be appointed by the Legislature. The chiropractic review committee would oversee the review panels and assign them complaints filed against chiropractors. After conducting a hearing, the review panels would submit their recommendations to the chiropractic review committee for review rather than to the chiropractic board's executive officer as the regulations currently state. Under the international association's proposal, the board's executive officer would merely perform administrative duties for the chiropractic review committee.

The chiropractic board's current executive officer does not believe the review panels are the right solution for the board. In September 2007 he prepared a memo to the chair of the board's enforcement committee responding to the question of whether the chiropractic board should move forward with implementing the review panels. In the memo he recommends that the board repeal the regulation related to the review panels. He supports this recommendation by citing concerns with the cost-effectiveness of review panels, the potential for the review panels to make rulings that are inconsistent with the board's enforcement policies, and the potential for the review panels to be viewed as a peer-review system. Moreover, at the November 2007 board meeting, the executive officer noted that the board has considered only the options of using the chiropractic consultant or the review panels for the processing of complaints and that other options need to be considered.

As part of our survey of three other regulatory boards with similar enforcement programs, we specifically asked whether they require the establishment of review panels. None of the boards we surveyed

At the November 2007 board meeting the executive officer noted that the board has considered only the options of using the chiropractic consultant or the review panels for the processing of complaints and that other options need to be considered.

Although we recognize that the issues surrounding the review panels are not simple, it is clear that the board must take some action to remedy its noncompliance with its regulation.

are currently using review panels. The osteopathic board and the speech-language board told us that they do not use review panels or other similar review processes. Specifically, the osteopathic board stated that it relies instead on the case reviews by its expert consultants. The physical therapy board stated that it is currently in the process of preparing to implement a quality control program and that its planned process will include board members reviewing closed cases to ensure timely resolutions and consistency in the process.

We recognize that the issues surrounding the review panels are not simple, but it is clear that the chiropractic board must take some action to remedy its noncompliance with its regulation. In determining what that action might be, we believe the board must consider its complaint review process more broadly. As we noted in previous sections of this chapter, the chiropractic board has not developed standard procedures or required management oversight of its complaint process. Therefore, by instituting a stronger system for reviewing and taking action on complaints, the board will be better able to determine what other processes it should add to complement its ability to promptly and appropriately respond to complaints about chiropractors.

The Chiropractic Board's Recently Vacant Chiropractic Consultant Position Leaves a Gap in Its Available Technical Expertise

As noted in the Introduction, the chiropractic consultant position, under the supervision of the executive officer, provided chiropractic expertise to help staff review complaints against and evaluate the professional conduct of licensees who may have violated chiropractic laws and regulations. During our review, we found that the chiropractic board's enforcement process and its staff relied heavily on the chiropractic consultant to complete its reviews and make decisions on complaints and punishment when violations occurred. Because the chiropractic consultant position has been vacant since August 10, 2007, we asked the executive officer to provide his perspective on the impact to operations, especially to enforcement, licensing, and continuing education, of not having technical expertise on staff. The executive officer explained that because of the current budget situation, the chiropractic board is not planning to fill the vacant chiropractic consultant position. He also said that based on the chiropractic board's initial assessment of the enforcement program and the chiropractic consultant position in particular, it had concerns about the duties and use of the position and did not plan to fill the vacancy until a job analysis was conducted. At the same time, board members expressed concerns about filling the position before instituting a significant change in duties.

Instead, the chiropractic board is developing a group of expert consultants or witnesses to bridge the gap in technical expertise. The executive officer anticipates having the written procedures for handling expert consultants and witnesses in place by the end of March 2008 and to begin training staff by July 2008. He also stated that he anticipates that timeliness will not be an issue once internal enforcement staff are fully trained and able to quickly recognize when cases need referral to an expert. Further, the executive officer stated that enforcement staff will actively follow up with the consultants or experts to ensure that reports are provided promptly, and he believes that once the procedures are fully implemented, overall complaint handling times will decrease compared with prior years.

We also asked how the chiropractic board is addressing technical questions that it receives on its Web site, another function previously handled by the chiropractic consultant. The executive officer told us he was temporarily assigning scope-of-practice questions to board members to answer and confirmed that he reviews board members' responses to ensure that they are appropriate. He also stated that this is a temporary process that has been reduced and will be completely discontinued by the end of February 2008. Instead, the executive officer stated that the chiropractic board expects chiropractors, as licensed professionals, to have a clear understanding of the chiropractic scope of practice. Also, consistent with other boards within the Department of Consumer Affairs (Consumer Affairs), the chiropractic board can (1) determine if there is case law related to the question and if there is, provide the answer; (2) determine if there are attorney general opinions related to the question and if there are, provide the answer; (3) determine if there is only one reasonable interpretation of the law and if there is, provide the answer; or (4) if none of these apply, direct the individual to the relevant sections of law and recommend that if the individual still has questions, he or she should consider consulting a private attorney and the chiropractic board will review the opinion as long as it is provided in writing.

The executive officer also told us that licensing staff rarely have questions that need answers from a chiropractor, that the course approval process for continuing education is currently being reviewed to improve effectiveness, and that he anticipates the review and approval process of continuing education courses will be revamped. Finally, he stated that the chiropractic board is looking to incorporate a new structure to address gaps that may or may not include the hiring of a chiropractic consultant.

Although we acknowledge the concerns that the executive officer and board members have expressed about the chiropractic consultant position and the way that it was relied on and used in

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We encourage the chiropractic board to consider having an expert on staff to ensure that it has invaluable expertise that is readily available to staff rather than having to rely on referrals to outside experts.

the past, we encourage the chiropractic board to consider having an expert on staff. The chiropractic board can establish processes to limit the autonomy of the position while still gaining invaluable expertise that is readily available to staff rather than having to rely on referrals to outside experts. For example, the chiropractic consultant could be used much like legal counsel to provide opinions to the executive officer, who would remain the final decision maker.

The Chiropractic Board Did Not Adequately Control the Use of Expert Witnesses

Chiropractic board policies and procedures for assigning a complaint case to an expert require the chiropractic consultant to conduct a telephone interview to assess an expert's experience and expertise with the relevant procedure or treatment. Performing such an interview before assigning a specific case assists the chiropractic board in ensuring that the expert is qualified and has no conflicts or disqualifying criteria such as personal or financial conflicts of interest, complaint history, or insufficient years of practice.

Our review of five complaints referred to experts revealed no evidence in the files demonstrating that staff performed telephone interviews before assigning the cases to experts. Board procedures do not require staff to document such efforts. In addition, the chiropractic board told us that it does not enter into contracts with experts for services. Such contracts would include standard language that informs contracting parties about their responsibilities regarding conflicts of interest. Further, the chiropractic board does not require staff to obtain documentation from experts attesting that they are free of conflicts of interest. Therefore, we could not confirm whether the staff appropriately assigned the cases we reviewed to qualified experts who are free of conflicts of interest.

Experts did not always complete their reviews within 30 days as expected. According to the chiropractic board's expert procedures, it expects an expert to finish reviewing the assigned case and file a written report within 30 days of assignment. The expert in only one of the four sample cases we examined completed the review and provided a written report within 30 days.¹¹ In two other cases, the experts submitted their reports within 45 days. In the fourth, the expert took more than 200 days to provide a report. Staff told us they perform no follow-up procedures, thus allowing unnecessary delays

¹¹ In another case, the expert review was already in progress on other related complaints when the board referred it; thus, we did not calculate the total days to receive the expert report.

in the processing of complaints. By not ensuring that its experts adhere to the expected 30-day deadline, the chiropractic board imposes unnecessary delays in its complaint review process and may be putting the public at risk.

We also found that the chiropractic board does not evaluate experts' reports as required. Board policies and procedures require the chiropractic consultant to evaluate a report on receipt to determine whether the chiropractic board should continue to refer future cases to that expert. According to its procedures, for each expert to whom it refers cases, the chiropractic board should maintain an information sheet in its files for staff to use to record complaint referrals, as well as evaluations of the expert's performance. However, staff had recorded no referrals or evaluations of the experts used since 2004 in four of the five cases we reviewed.¹² When we asked the executive officer for his perspective, he told us that the board did not have adequate procedures to ensure that staff follow up on late expert reports or conduct evaluations of experts consistently. When the chiropractic board does not perform evaluations and record the results of the experts it uses, staff may improperly assign future cases to an expert who has not provided quality work.

We found no evidence that the chiropractic board performed required evaluations of the quality of the experts' reports for four of the five cases we reviewed.

Lack of Documentation Makes It Difficult to Determine the Qualifications of Chiropractic Board Staff and Investigators

We reviewed various personnel documents to determine whether the chiropractic board's enforcement staff employed during fiscal years 2005–06 and 2006–07 met the minimum qualifications to perform the functions of their job classifications. However, the chiropractic board did not maintain up-to-date personnel documents for six of the nine enforcement staff it employed over that period. Additionally, because the minimum qualifications for the chiropractic consultant position were unclear, we could not determine whether the employee that formerly held the position met them. The board was also unable to produce documentation showing that its investigators meet the minimum qualifications required to contract with the board. Finally, we determined the caseloads of the board's enforcement staff and investigators.

¹² The chiropractic board referred one of the four cases to two different experts. For one of the experts, staff recorded no referral or evaluation. For the other expert, the information sheet was missing, and there was no other documentation of the board's referral to or evaluation of the expert for this case.

The Chiropractic Board Did Not Maintain Complete Personnel Files and Has Not Clearly Defined Minimum Qualifications

We requested job descriptions, duty statements, employment applications, and personnel action requests for each employee of the chiropractic board's enforcement staff for fiscal years 2005–06 and 2006–07. As Table 3 shows, the board could not provide current job applications for six of the nine employees. The board's record retention schedule requires it to retain all standard personnel forms for three years after staff leaves employment. Three of the six employees were missing applications only for their current classifications. However, the chiropractic board had the applications for the previous classifications these employees held. For another two employees, the chiropractic board had some applications for certain previous classifications. For employee F in Table 3, the board was unable to find either a current or past application. Because, at the time of our fieldwork, the six employees had been appointed to their current classifications within the past three years, the board should still have had those documents on file. For about half of the employees, we were unable to determine whether the staff met the minimum qualifications for their previous classifications. The executive officer stated that he was unable to explain why the documents are unavailable because he was not employed at the chiropractic board at the time these personnel transactions occurred. We were able to use other personnel documents to determine that employee A met the minimum qualifications of a staff services manager. Additionally, we used other personnel documents to verify that employees D and E met the minimum qualifications for their previous classifications and also met the eligibility requirements for their transfer to the staff services analyst classification.

Our review of the three current applications the chiropractic board was able to provide revealed that two of the employees met the minimum qualifications for the positions held; we were unable to determine whether employee B, the chiropractic consultant, met the qualifications. According to the job description, the minimum qualifications for that classification are having a valid license to practice chiropractic and "five years of experience, within the last seven years, in the practice of chiropractic." The chiropractic board contracted with the Department of General Services (General Services) for personnel functions until September 2006. In 2002 after reviewing the applications for the chiropractic consultant position, General Services ranked both employee B and one other applicant first, above three other applicants. From the documentation available, it appears that General Services determined that employee B met the minimum qualifications for the position.

Table 3
Evaluation of the Qualifications of Enforcement Staff of the State Board of Chiropractic Examiners

EMPLOYEE	EMPLOYEE CLASSIFICATION	REVIEWED DOCUMENTS			PERSONNEL ACTION REQUEST	DATE OF APPOINTMENT TO CLASSIFICATION	EMPLOYEE MEETS MINIMUM QUALIFICATIONS
		JOB DESCRIPTION	DUTY STATEMENT	CURRENT JOB APPLICATION			
A	Staff services manager	Yes	Yes	No*	Yes	March 24, 2007	Yes
B	Chiropractic consultant	Yes	Yes	Yes	Yes	November 13, 2002	Unable to determine
C	Staff services analyst	Yes	Yes	No*	Yes	January 27, 2005	Unable to determine
D	Staff services analyst	Yes	Yes	No*	Yes	March 17, 2005	Yes
E	Staff services analyst	Yes	Yes	No*	Yes	May 15, 2006	Yes
F	Staff services analyst	Yes	Yes	No [†]	No [†]	No record available	Unable to determine
G	Staff services analyst	Yes	Yes	No*	Yes	May 2, 2006	Unable to determine
H	Office technician	Yes	Yes	Yes	Yes	May 2, 2006	Yes
I	Office technician	Yes	Yes	Yes	Yes	October 19, 2006	Yes

Source: Bureau of State Audits' review of the State Board of Chiropractic Examiners' (chiropractic board) personnel files.

* The chiropractic board could find applications only for certain previous classifications these individuals held at the chiropractic board.

[†] As of January 2008, the chiropractic board could not find current or past applications or personnel action requests for this individual.

On her application, employee B stated that she had been a self-employed chiropractor for the previous 17 years. However, when detailing the duties she performed, employee B stated she had acted as a “consultant to [the] chiropractic community” and had “limited medical-legal consultation.” The only other work experience she cited was related to radiology. Employee B did not include any information regarding experience working as a practicing chiropractor. Because the minimum qualifications do not clearly define the phrase *practice of chiropractic*, we were unable to determine whether the applicant met the minimum qualifications. We found one example of a clearly defined qualification in the chiropractic board’s expert witness manual. The board requires an expert to have a minimum of three years of experience and to be in “active practice” or retired from active practice for no more than two years at the time of appointment. This clearly articulates the requirement for the expert to be actively practicing chiropractic and seeing patients on a regular basis or recently retired from active practice. The job description for the chiropractic consultant does not provide this type of clarity. When the chiropractic board does not clearly define its minimum qualifications, it is unable to ensure that its consultants have the type of qualifications desired.

We also reviewed whether the chiropractic board ensured that the investigators with which it contracts met the minimum qualifications. The board contracts with four investigators who cover various areas of California. According to the May 2003

invitation for bid, an investigator must have a background and knowledge in conducting investigations with a minimum of five years of experience performing investigations as a primary duty. The board indicated it would evaluate each bid to determine its responsiveness to the State's needs, with final selection being made on the basis of the lowest responsible bid. The board intended to award one-year contracts with the option to renew for four additional years.

We were unable to determine whether the four investigators currently contracted with the chiropractic board met the minimum qualifications for the position because the board was unable to provide us with documentation to support that it verified bidders' minimum qualifications as required. The board could find only two bids, and the documentation for those did not include any information that allowed us to verify whether each investigator met the minimum qualifications. The current executive officer was unable to explain why such documentation was not retained, because he was not employed at the board at the time the invitation for bids was developed or when the bids were received and evaluated. The board is planning to send its administrative staff to formal contract training provided by Consumer Affairs and General Services. When the chiropractic board is unable to show that its investigators have the experience necessary to investigate individuals suspected of violating chiropractic law, the board may weaken its ability to defend its disciplinary actions.

Caseload Varies Among Enforcement Staff and Investigators

To determine the average complaint caseload for enforcement staff, we attempted to identify the number of staff in the enforcement unit during each month in fiscal years 2005–06 and 2006–07. However, the chiropractic board was unable to provide us with documentation indicating who worked in the enforcement unit during that period. Therefore, we estimated the number of enforcement staff at three points during each fiscal year based on staff's recollections. Our calculation indicated that during fiscal years 2005–06 and 2006–07, the number of staff reviewing complaints averaged 4.2 and 5.2, respectively.

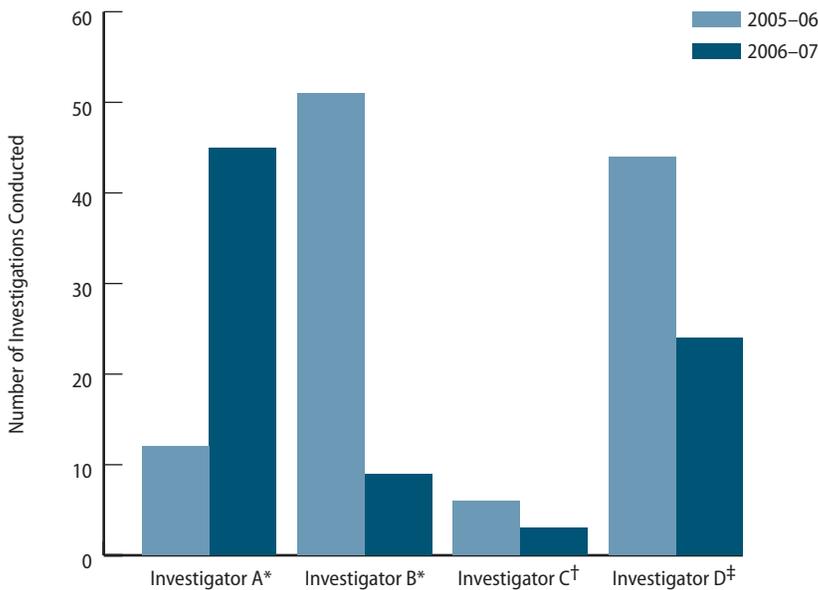
The average complaint caseload per enforcement staff at the board was 335 cases in fiscal year 2005–06 and 221 cases in fiscal year 2006–07.

In calculating the total number of active complaints worked on during the two most recent fiscal years, we identified the total number of complaints opened and closed—counting complaints opened and closed during the same year as one case—and determined that the chiropractic board worked on a total of 1,407 complaints in fiscal year 2005–06 and 1,149 in fiscal

year 2006–07. Based on this information, we calculated the average complaint caseload per enforcement staff at the board to be 335 cases in fiscal year 2005–06 and 221 cases in fiscal year 2006–07.

To determine the complaint investigation caseload of each contracted investigator, we identified the total number of cases assigned to each investigator during fiscal years 2005–06 and 2006–07. As shown in Figure 4, we found that in fiscal year 2005–06, investigator B, covering Southern California, had the greatest number of investigation cases (51), followed by investigator D, covering Northern and Central California (44 investigation cases). In fiscal year 2006–07, the investigation caseload shifted substantially. When questioned as to the change in caseload between investigators A and B, who both cover Southern California, the enforcement analyst stated that due to a family emergency, investigator B requested that the board allow him to work only his backlogged cases. In response, the chiropractic board assigned incoming cases to investigator A.

Figure 4
Investigations Conducted by Chiropractic Board Investigators
Fiscal Years 2005–06 and 2006–07



Source: State Board of Chiropractic Examiners’ (chiropractic board) database.

Note: As described in the Scope and Methodology, we concluded that the complaint data entered by the chiropractic board into the Consumer Affairs System are of undetermined reliability. However, with no other data available, we used the chiropractic board’s data to show the number of complaints referred to investigators.

* Southern California.

† San Diego.

‡ Central and Northern California.

The Enforcement Programs of Other Regulatory Boards Appear to Be More Structured Than That of the Chiropractic Board

We surveyed three other regulatory boards and compared their enforcement policies and procedures with those of the chiropractic board. Specifically, we surveyed the osteopathic board, the physical therapy board, and the speech-language board. The results of the surveys are displayed in tables A.1 through A.3 in the Appendix. Based on their responses, the other regulatory boards process complaints more promptly and have a more structured prioritization system in place. Moreover, we found that unlike the chiropractic board, two of the boards have enforcement policies and procedures to ensure that the executive officer maintains adequate oversight of the complaint process.

Other Boards Described More Structured Prioritization Systems Than the Chiropractic Board's

As described earlier in the chapter, the chiropractic board's system of prioritizing complaints is flawed. By contrast, the three other regulatory boards we surveyed generally reported well-structured prioritization systems for complaints. According to the osteopathic board, it assigns priority status to complaints that require immediate public protection, and the osteopathic board processes priority complaints first and all other complaints as received. Similarly, the speech-language board told us that it handles complaints involving immediate threats to public safety first. Additionally, its complaint initiation procedures instruct staff to identify or label as urgent complaints that the speech-language board considers priority. The speech-language board also stated that it specifies certain complaints that staff must refer for formal investigation and possible disciplinary actions; those complaints include allegations of serious violations that are substantially related to the duties of a licensee or that pose a significant risk to the public, such as felony convictions, the misuse of drugs or alcohol, or gross negligence. The speech-language board also prioritizes complaints alleging practicing without a license, which can result in the board investigating and referring the case to the district attorney's office for criminal prosecution, issuing cease-and-desist letters or ordering citations and fines.

Unlike the chiropractic board, the speech-language board told us that its complaint initiation procedures instruct staff to identify or label as urgent those complaints that the board considers a priority.

According to the physical therapy board, it prioritizes its consumer complaints using three levels: urgent, high, and routine. Generally, it assigns urgent priority to complaints alleging sexual misconduct, use of drugs or alcohol, or mental illness; notifications of felony convictions; unlicensed practice involving patient harm; complaints involving licensees on probation; and quality-of-care complaints involving recent occurrences of patient death, gross negligence, or incompetence. Also,

the physical therapy board told us that of the urgent complaints, it handles those alleging sexual misconduct or negligence resulting in injury to a patient on an expedited basis and forwards the cases to the Division of Investigation at Consumer Affairs, usually within one week of receipt.

According to the physical therapy board, complaints it classifies as high, the second level of its prioritization system, typically involve licensees with alleged nonfelony convictions or prior complaints, or quality-of-care issues involving patient death, gross negligence, or incompetence when a significant period of time has elapsed. It processes high-priority complaints after it has handled all urgent complaints. Complaints that the physical therapy board categorizes as routine, which the board usually processes after it has processed all urgent and high-priority cases, consist of false advertising, failure to release medical records, medical malpractice notices, patient abandonment, fraud, and quality-of-care complaints with little potential for patient harm.

In Contrast to the Chiropractic Board, Other Boards Have Procedures to Ensure That They Process Complaints Promptly

According to the speech-language board, it has no specific statutory or regulatory provisions specifying a requisite period within which it must process or acknowledge complaints. However, it asserted that it has established internal complaint-processing time frames that require a complaint be reviewed within three business days of receipt. Subsequently, it sends an acknowledgment letter to the complainant within 10 business days of receipt of the complaint. Further, the speech-language board asserted that it operates an efficient enforcement program that focuses on processing complaints and taking disciplinary actions thoroughly, swiftly, and objectively. The speech-language board stated that the goal of its enforcement program is to impose appropriate sanctions against any licensee operating incompetently or unprofessionally in violation of the laws and regulations governing the professions of speech-language pathology and audiology.

The physical therapy board indicated it has established timelines for its staff to follow when processing routine complaints—complaints involving violations it considers less severe than those related to the higher-priority cases. To determine and take the necessary action, it processes these less-severe complaints within one to two weeks after it sends the acknowledgment letter. The physical therapy board defines *necessary action* as sending letters to request additional information from the licensee, complainant, arresting agency, courts, medical facilities, or experts. It stated it generally requires the recipients of the letters to respond within two to four weeks.

Two of the boards we surveyed have established timelines for processing complaints.

Unlike the chiropractic board, the speech-language board's complaint processing procedures require that decisions regarding the appropriate course of action for all complaints be made by its executive officer.

Unlike the Chiropractic Board, Other Boards Have Policies to Ensure Adequate Oversight and Management of the Complaint Review Process

As discussed earlier in this chapter, the chiropractic board has not established policies and procedures that ensure adequate oversight of its complaint process by management. Specifically, the board's policies and procedures do not ensure that a manager periodically reviews and approves decisions made by enforcement staff and determines workload status. In contrast, at least two of the other boards we surveyed have established policies and procedures that ensure that a manager makes all final decisions in the complaint review process. For example, the speech-language board's complaint processing procedures require that decisions regarding the appropriate course of action for all complaints be made by its executive officer. In fact, the procedures require the enforcement analyst to prepare a recommended course of action for review by the executive officer for each case. These recommendations may include draft closure letters or referral documents for formal investigation or referral to the attorney general, as deemed appropriate.

Similarly, the osteopathic board told us that only its executive officer makes decisions to close or refer complaints. Although the physical therapy board did not provide us with information concerning management oversight and approval of complaint review decisions, it stated that its process includes having two analysts review each case before it is closed.

Recommendations

To adequately control its complaint review process, the chiropractic board should do the following:

- Develop procedures to ensure that staff process and resolve complaints as promptly as possible by establishing benchmarks and more-structured policies and procedures specific to each step in its complaint review process.
- Establish time frames for staff to open a complaint case, complete an initial review, refer the case to an investigator or expert if necessary, and close or otherwise resolve the complaint by implementing informal discipline or referring for formal discipline to ensure that all complaint cases move expeditiously through each phase of the complaint review process.
- Periodically review the status of all open complaints and investigations and identify and resolve any delays in processing.

- Strengthen its enforcement policies and procedures to minimize the amount of time it takes staff to process consumer complaints before forwarding them to the attorney general or other law enforcement agency to ensure that it adequately assists attorneys and law enforcement agencies in enforcing the laws relating to the practice of chiropractic.

To ensure that its enforcement procedures are complete and to provide adequate guidance to enforcement staff, the chiropractic board should do the following:

- Develop policies and procedures requiring that only a manager or a designated employee are allowed to make the final decisions on complaint resolution.
- Develop procedures to ensure that staff report the issuance of citations to other states' chiropractic boards and regulatory agencies.
- Develop procedures instructing staff when to open and how to process complaints generated internally.

To consistently process and resolve consumer complaints regarding the same allegation and to consistently process consumer complaints according to its enforcement policies and procedures, the chiropractic board should strengthen its existing procedures to provide guidance for staff on how to process and resolve all types of complaints and to ensure appropriate management oversight.

To ensure that its processes for prioritizing consumer complaints enable staff to clearly identify priority complaints and process them promptly, the chiropractic board should do the following:

- Implement tracking methods, such as flagging priority cases during complaint intake, using multiple levels of priority categories, and assigning specific time frames to process those priority categories.
- Establish procedures that direct board management to monitor the status of open complaints regularly, especially those given priority status, to ensure that they do not remain unresolved longer than necessary.

To comply with all its regulations, the chiropractic board should carefully consider the intended purpose of the review panels and whether implementing them is the best option to fulfill that intent. If the chiropractic board decides that another option would better accomplish the intended purpose of the review panels, it should implement the process for revising its regulations.

To ensure that it has the necessary resources to answer technical questions regarding quality of care and improper treatment that often arise, the board should fill its chiropractic consultant position. In addition, the board should require the chiropractic consultant to act only in an advisory capacity and the executive officer to make all final enforcement decisions.

To adequately control the use of experts, the chiropractic board should do the following:

- Establish policies and procedures requiring its staff to document interviews with experts, including the content of those discussions, to ensure that it refers cases to qualified experts with no conflicts of interest.
- Consider entering into formal written contracts for services from experts or require experts to attest in writing that they have no conflicts of interest in cases assigned.
- Strengthen its policies and procedures to ensure that its staff monitor experts on their adherence to the established 30-day deadline for reviewing complaint cases and submitting written reports.
- Consistently evaluate experts' written reports and thoroughly document the results of the evaluations to ensure that the chiropractic board does not inappropriately refer complaint cases to experts who have not demonstrated quality work in the past.

To demonstrate that its employees meet the minimum qualifications for their positions, the chiropractic board should retain personnel documentation on all employees according to its record retention policy. In addition, the chiropractic board should require its contractor for personnel services to comply with the same requirements.

To ensure that future chiropractic consultants are hired with the desired qualifications, the board should consider revising the position's minimum qualifications to provide additional clarity on the phrase *practice of chiropractic*, similar to the board's current requirements for experts.

Chapter 3

THE STATE BOARD OF CHIROPRACTIC EXAMINERS HAS INSUFFICIENT CONTROL OVER ITS LICENSING AND CONTINUING EDUCATION PROGRAMS

Chapter Summary

When we reviewed a sample of 29 licensing decisions generally completed in fiscal year 2006–07, we found that the State Board of Chiropractic Examiners (chiropractic board) has not established policies and procedures in some areas and needs to bolster current policies and procedures in others.¹³ Specifically, the board lacks processing timelines for more than half the types of applications and petitions it processes. We also found that the board inappropriately issued a reciprocal license despite evidence that the applicant was practicing without a license. Additionally, the chiropractic board could not demonstrate that it verified the eligibility of applicants for satellite offices, corporations, and referral services before it approved them. We also found that the board's procedures were inadequate for processing applications for restoration of licenses—applications from individuals whose chiropractic licenses the chiropractic board placed in forfeiture for nonpayment of renewal fees.

In addition, although the chiropractic board has some effective regulations and processes to ensure the quality of continuing education, it does not always follow them. In some instances, the chiropractic board did not maintain adequate documentation submitted by continuing education providers that would indicate whether the providers or courses were approved according to established policies. Also, the chiropractic board's documentation of continuing education audits is incomplete, and the board sometimes prematurely concludes its audits of licensees. We also found that because the chiropractic board has no procedures to implement corrective actions when the findings of a continuing education audit are negative, it is missing opportunities to improve the continuing education courses available to its licensed chiropractors. Finally, we offer a comparison of the chiropractic board's licensing and continuing education programs to those of three other California state regulatory boards.

¹³ As described in the Scope and Methodology, we concluded that the licensing data entered by the chiropractic board into the Consumer Affairs System are not sufficiently reliable. However, with no other data available, we used the chiropractic board's data to select some of our sample items. We also used manual methods to judgmentally select some licensing decisions to review.

The Chiropractic Board Has Not Established Timelines for Processing Some License Applications

As of June 30, 2007, the chiropractic board reported more than 13,700 chiropractors with active licenses in California. The board processes applications for licensure, issues new and renewal licenses, and maintains licensee records. An individual wishing to receive a chiropractic license in California must first graduate from a chiropractic college that the chiropractic board has approved and then pass the examination administered by the National Board of Chiropractic Examiners and the supplemental examination in California chiropractic law. The applicant must also pass criminal background reviews at both the state and federal level. According to the instructions included on the application for a chiropractic license, the time frame for processing an application is between three and five months.

Table 4 shows that the chiropractic board processes some types of applications and petitions more promptly than others. For seven of the 10 chiropractic license applications we reviewed, the board notified the applicant of its decision within 101 days. However, for the three other applications, the chiropractic board took up to 205 days to notify the applicants of its decision. Two of the three applicants who were notified late were denied licensure and elected to appeal the decision. Although its procedures outline specific steps for processing an applicant's request for appeal, the board has not established timelines for processing appeals. The only limitation is that state law requires the board to notify the applicant of its final decision within 100 days of its receipt of the proposed decision from the administrative law judge conducting the appeal hearing. One of the two denied applicants who appealed the board's decision elected to withdraw his appeal before the hearing date. The chiropractic board notified the other applicant of its decision within the 100-day requirement.

The chiropractic board has established timelines for certain phases in processing petitions for reinstatement of a revoked license and petitions for early termination of probation. The instructions for the reinstatement petition inform the petitioner to allow 45 days for processing and the setting of a hearing date. Within 30 days after the petitioner's hearing, the chiropractic board will notify the petitioner by mail of its decision. For the four reinstatement decisions we reviewed that the chiropractic board completed between May and August 2007, the board took between 102 days and 1,052 days to process the petitions and set hearing dates, and the board took

Although the board's procedures outline specific steps for processing an applicant's request for appeal, the board has not established any timelines for processing appeals.

Table 4
Established Time Frames and Processing Times for Licensing Decisions Made by the State Board of Chiropractic Examiners

APPLICATION (A) OR PETITION (P) TYPE REVIEWED	NUMBER OF LICENSES AS OF JUNE 30, 2007*	ESTABLISHED TIME FRAME	MEETING ESTABLISHED TIME FRAME	APPLICATIONS OR PETITIONS REVIEWED	RANGE OF DAYS TO PROCESS APPLICATIONS AND PETITIONS REVIEWED
Approved chiropractic license (A) [†]	13,735	3 to 5 months	Yes	7	24 to 173 [‡]
Denied chiropractic license without appeal (A)	2	3 to 5 months	Yes	1	101
Denied chiropractic license with appeal (A)	††	Initial denial: 3 to 5 months	No	2	177 to 205 ^{‡‡}
		Denial to proposed decision: None	NA	1 ^{§§}	269
		From proposed decision to board notification of final decision: 100 days	Yes	1 ^{§§}	81
Satellite office certificate (A) [§]	2,126	None	NA	4	1 to 10
Corporation certificate of registration (A)	1,289	None	NA	4	1 to 13
Referral service (A) [#]	17	None	NA	1	146
Reciprocal license (A) ^{**}	7	None	NA	2	131 to 364
Restoration after cancellation (A)	††	None	NA	1	8
Restoration after forfeiture (A)	††	None	NA	1	7
Reinstatement of revoked license (P) ^{##}	††	Application receipt to notification of hearing: 45 days	No	4	102 to 1,052 ^{***}
		Notification to date of hearing: None	NA	4	15 to 41
		Date of hearing to notification of decision: 30 days	No	4	41 to 61 ^{†††}
Early termination of probation (P) ^{†††}	††	Application receipt to notification of hearing: 45 days	No	2	164 to 305 ^{†††}
		Notification to date of hearing: None	NA	2	24 to 41
		Date of hearing to notification of decision: None	NA	2	56 to 61

Sources: Bureau of State Audits' review of State Board of Chiropractic Examiners' (chiropractic board) licensing procedures, application and petition instructions, and database; Chiropractic Initiative Act of California; California Code of Regulations, Title 16, Division 4.

NA = Not applicable.

* As described in the Scope and Methodology, we concluded that the licensing data entered by the chiropractic board into the Consumer Affairs System are not sufficiently reliable. However, with no other data available, we used the chiropractic board's data to show the number of licenses as of June 30, 2007.

† Application from an individual for the practice of chiropractic in California.

‡ The chiropractic board did not meet the established time frame for one of the items in this category. However, the board was waiting most of this time for the applicant to submit all of the required documents.

§ Application from a licensed chiropractor in California with more than one place of practice.

|| Application from a chiropractic corporation whose shareholders are individuals licensed as chiropractors in California.

Application from a referral bureau composed of at least five licensed chiropractors with no fiduciary relationship to one another and with one participating office representing no more than 20 percent of the referral bureau's available practitioners.

** Application from an individual already licensed to practice chiropractic in another state.

†† We were unable to determine whether the universe was complete, therefore, we judgmentally selected items for testing these types of applications and petitions.

‡‡ For both denied applicants, there was about a four-month delay in processing while the chiropractic board was waiting for information from the applicant or another agency.

§§ One of the two applicants who appealed the denial decision later withdrew his request for appeal.

||| Application from an individual whose chiropractic license is in forfeiture or was canceled by the chiropractic board for nonpayment of renewal fees. Forfeiture is for nonpayment of fees between 60 days and three years after license expiration. Cancellation occurs after three years of nonpayment.

Petition from an individual requesting reissuance of a revoked license.

*** The chiropractic board notified three of the four petitioners requesting reinstatement of their licenses of their hearing dates within 190 days. Based on the file documentation for each of the four petitioners, we could not determine the reasons for the delays.

††† For the items reviewed, the chiropractic board did not meet the established time frame. Based on the documentation in the files, we were unable to determine the reasons for the delays.

‡‡‡ Petition from an individual requesting an early end to the probationary status of a license.

between 41 days and 61 days to notify the petitioners of its final decisions. The chiropractic board also advises petitioners for early termination of probation to allow 45 days for processing of their petitions and the setting of hearing dates. For the two decisions on this type of petition we reviewed that the board completed in May and June 2007, the board took 164 days and 305 days, respectively, to notify petitioners of the hearing date.

Finally, the chiropractic board has established procedures but not time frames for processing satellite office certificates, corporation certificates, referral service applications, reciprocal licenses, and applications for restoration after license cancellation and forfeiture. The executive officer stated that he intends to develop performance measures for all the board's core business processes to assess its operations. He also noted that since the board is currently short staffed, it has not been able to move forward in the process. When the chiropractic board does not establish goals and measures for processing applications, appeals, and petitions or work within its established time frames, it cannot measure the overall efficiency and productivity of chiropractic board staff (staff). Additionally, unlicensed applicants are unable to begin practicing chiropractic until the board makes a final decision and notifies them.

The Chiropractic Board Approved a Reciprocal License Despite Evidence the Applicant Was Practicing Without a License

For one of the two reciprocal license applications we reviewed that the board approved in fiscal year 2006–07, we question the chiropractic board's decision to grant a reciprocal license without first resolving questions raised by its investigation into a complaint against the individual. The Chiropractic Initiative Act of California (initiative act) empowers the chiropractic board to issue a chiropractic license to any person licensed to practice chiropractic in another state, provided that state had the same general requirements at the time the license was issued as California had, and provided the other state grants reciprocal registration to California chiropractic practitioners.

Even though the applicant met the minimum licensing requirements, our review of the applicant's file indicated that the chiropractic board had received a complaint in June 2005, before the applicant applied for a reciprocal license, alleging that the applicant was practicing without a chiropractic license. In October 2006, 16 months after receiving the complaint, the chiropractic board asked one of its investigators to determine the applicant's activities and the title he was using at his place of business. Based on his visit to the business location, the investigator concluded that the applicant "is in all probability conducting

We question the chiropractic board's decision to grant a reciprocal license without first resolving questions raised by its investigation into a complaint against the individual.

chiropractic services at [the] location” and recommended that the board subpoena patient records or allow him to conduct an undercover operation. However, after reviewing the investigation report, the chiropractic board elected to approve the applicant for licensure because there was “no factual evidence that the applicant is practicing without a license based on the investigation report.” According to staff in the licensing unit, because the investigation report cited the patients’ refusal to give their names to the investigator, the board was unable to obtain medical records to determine whether the applicant was treating patients. In addition, staff indicated that a doctor at the same location claimed that the individual was employed under his supervision as an “unlicensed individual” pursuant to the chiropractic board’s regulations. Finally, staff stated that an undercover operation was not feasible because of budget constraints. Based on our review of the licensing file and the investigator’s reported findings and recommendations, we disagree with the chiropractic board’s decision not to investigate the allegation further. Specifically, the supervising doctor’s claim that the individual was employed under him pursuant to the board’s regulations is not applicable because the supervising doctor was not a licensed chiropractor. Additionally, we do not believe that budgetary constraints should limit the board’s investigative efforts when the protection of the public is at stake.

The Chiropractic Board Lacks Documentation to Show It Verified the Status of Licenses Before Approving Applications

State law and board regulations require each shareholder of a chiropractic corporation and each participating member of a referral service to hold a valid chiropractic license. The chiropractic board’s procedures require staff to ensure that applicants for corporation and satellite office certificates and referral services hold valid chiropractic licenses. These procedures also require staff to review each applicant’s enforcement file to determine whether the board has taken any action against the licensee, such as putting the license in probationary status, which may prevent him or her from holding a corporation certificate.

The Chiropractic Board Could Not Demonstrate It Verified Eligibility Before Issuing Satellite Office and Corporation Certificates

In our review of certificates the chiropractic board approved in fiscal year 2006–07, we found that none of the four satellite office certificate application files and only one of the four corporation certificate application files contained documentation indicating that staff verified the eligibility of the chiropractors’ licenses before approving the applications. Licensing staff asserted that

None of the four satellite office files and only one of the four corporation certificate application files we reviewed that the board approved in fiscal year 2006–07 contained documentation indicating that staff verified the eligibility of the chiropractors’ licenses before approval.

they followed the verification process, indicating that they either shredded the documents they reviewed or performed reviews using electronic files.

Because of this lack of documentation, we expanded our testing to review the license status of each applicant included in our sample. We verified whether each individual held an active chiropractic license at the time of the application. In addition, for the four applications for corporation certificates, we determined whether the applicants had any disciplinary actions taken against them that would make them ineligible for certification. Our review found no exceptions. However, because the chiropractic board approved 967 applications for satellite office certificates and 185 applications for corporation certificates in fiscal year 2006–07, to the extent it does not retain documentation, the board cannot demonstrate that it complied with procedures designed to protect consumers. The chiropractic board could easily rectify this situation either by maintaining paper printouts of verifications conducted or by employing a checklist for each application that would require staff to sign off when they have conducted eligibility verifications.

Referral Service Requirements

- Comprise at least five chiropractors, none of whom have a fiduciary relationship with each other. No one participating office may represent more than 20 percent of the referral bureau's available practitioners.
- File an application with the board office that properly identifies the service, structure, and members.
- Submit a nonrefundable application fee of \$25 with the referral service application.
- Have a telephone number for a separate answering service.
- Refer callers to the next chiropractor on the list on a rotating basis, with the following exceptions:
 - A request for a specialist.
 - Geographic considerations.
 - Request for services in a language other than English.
- Keep records on each referral that include the following:
 - Date of referral.
 - Name and address of patient.
 - Name and address of chiropractor referred to.
- Ensure that a member of the group is available when it offers a 24-hour emergency referral service.

Source: California Code of Regulations, Title 16, Section 317.1.

The Chiropractic Board's Role in Referral Services Is Limited

The chiropractic board's regulations allow chiropractors to establish referral services as long as they conform to certain requirements and obtain the board's approval. The text box describes the requirements.

Staff informed us that their role in the oversight and administration of referral services is limited to initial approvals and annual updates of chiropractors participating in the referral services. As long as the service is constituted as the regulations prescribe, the fee is paid, and all participating chiropractors hold valid licenses, the board will approve the application. Specifically, board procedures require staff to make sure all chiropractors are eligible to participate, that all participants' chiropractic license numbers are included on the application, that the referral service agreements are included, that a statement of fictitious business name is included, and that the referral service name includes the word *chiropractic*. As of June 30, 2007, the chiropractic board had 17 approved referral services.

The Chiropractic Board Could Not Demonstrate It Verified Eligibility Before Approving Its Most Recent Referral Service Application

We reviewed the most recent referral service application the chiropractic board approved, which was in 2005. The board’s documentation did not clearly demonstrate which chiropractors it approved to participate in the referral service. According to the application file, the applicant originally submitted five names of participating chiropractors—the minimum number required—but did not provide the contractual agreements between the chiropractors and the referral service. When the board requested additional documentation, including copies of the contractual agreements as required, the applicant provided 30 contracts. Notations in the file indicate that staff attempted to use the contractual agreements to verify the eligibility of the participating chiropractors. However, none of the contracts included the respective participant’s license number. Staff attempted to identify the license numbers of the chiropractors named in the contracts. Based on the eligibility reviews, staff identified one or more problems with 16 of the contracts. The text box identifies the specific deficiencies noted.

Deficiencies Identified in Referral Service Contracts	
Deficiency	Number of Instances
Surrendered chiropractic license	1
No valid chiropractic license	2
No corporation certificate of registration on file	1
No valid satellite office certificate for location identified on contract	2
Expired satellite office certificate for location identified on contract	1
Address provided on contract differed from that on file with the chiropractic board	8
The chiropractic board was unable to determine whether the individual had a chiropractic license based on the name provided	4

Source: State Board of Chiropractic Examiners’ referral service application files.

Although staff approved the referral service application on the same day it received the 30 contracts, it is unclear, based on documentation in the file, whether the board approved the referral service because the applicant provided the minimum number of valid chiropractors on its application or whether the board approved all 30 chiropractors on the contracts received. When we asked for clarification from the executive officer, he stated it appears that the referral service was approved for all 30 chiropractors on the same day the additional contracts were received. However, from the documentation in the file, we question whether staff were able to resolve all the discrepancies they noted in the contracts on the same day that they received them and approved the application. Current staff responsible for processing referral service applications could not explain the reason for the approval and told us the staff person that approved the application no longer works at the board. When the chiropractic board does not retain documentation of its efforts to verify licenses of referral service license applicants, it cannot demonstrate that its approval was proper.

In addition to the initial approval of this referral service, we reviewed the two annual update reviews that staff performed. Chiropractic board procedures require staff to review referral services annually. Staff sent a letter to the referral service each year requesting that it submit a current list of participating chiropractors. Based on the documentation in the file, staff completed reviews of the eligibility of the participating chiropractors and retained documentation of those efforts.

The Chiropractic Board Can Strengthen Its Administration of Forfeited Licenses by Improving Procedures

We found one instance where the chiropractic board's inadequate procedures for handling invalid payments from licensees resulted in staff making several errors in processing one of the two applications for license restoration that we reviewed. Specifically, staff did not place the license in forfeiture status and collect penalty payments, and they did not always follow up with the licensee promptly. The initiative act states that the failure, neglect, or refusal of any person holding a license or certificate to pay the annual fee during the time the license remains in force shall, after a period of 60 days from the last day of the month of his or her birth, automatically forfeit the license or certificate, and it shall not be restored except on the written application and payment of a fee equal to twice the annual amount of the renewal fee. However, the chiropractic board's procedures do not provide guidance on how to handle forfeited licenses.

We found three instances between March 2004 and July 2006 when a licensee paid his renewal or forfeiture fees with personal checks returned by the bank for insufficient funds, which should have resulted in a forfeited license. In March 2004 the licensee paid his renewal fee with a personal check that the bank returned to the board for insufficient funds. Although he made a valid payment in late June 2004, the payment was not received within 60 days of his March 31, 2004, license expiration; therefore, staff should have placed the license in forfeiture status and required him to pay double the renewal fee, or an additional \$150. They did not do so. In May 2005 the licensee again paid his renewal fee with a personal check that the bank returned for insufficient funds. This time staff notified the licensee on June 27, 2005, and requested payment; however, they did not place the license in forfeiture status nor require the licensee to pay the penalty of \$150. The licensee did not respond to that notice. The board sent a second notice, but it was dated March 9, 2006, more than eight months after the first notice. Staff eventually placed the license in forfeiture status in May 2006, nearly a year after the date required by law.

On July 7, 2006, the licensee submitted the required \$300 fee to restore his license. The board restored the license on July 14, 2006, one week after it received the forfeiture fee. However, on July 26, 2006, 12 days later, the chiropractic board was notified that the \$300 payment had been returned for insufficient funds. A notice was sent to the licensee the next day requesting valid payment, but the license remained active for an additional month. As a result of its poor administrative practices, staff inappropriately allowed a license to remain on active status for 447 days longer than it should have and failed to collect \$300 in penalty payments.

As a result of its poor administrative practices, staff inappropriately allowed a license to remain on active status for 447 days longer than it should have and failed to collect \$300 in penalty payments.

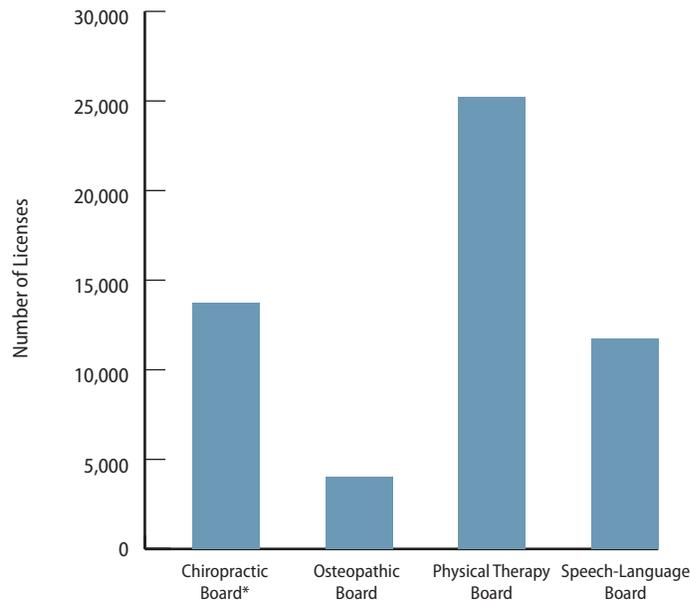
We Compared the Chiropractic Board's Licensing Program to Three Other Regulatory Boards

To benchmark the chiropractic board's licensing program, we collected information from three other state regulatory boards: the Osteopathic Medical Board of California (osteopathic board), the Physical Therapy Board of California (physical therapy board), and the Speech-Language Pathology and Audiology Board (speech-language board). We focused on three aspects of the licensing program: the total number of licenses issued by each board, the boards' established time frames for processing individual license applications, and the boards' license application requirements. Table A.4 in the Appendix displays the licensing statistics we collected.

The Total Number of Licenses Issued by the Chiropractic Board Is Most Similar to That of the Speech-Language Board

The total number of active individual licenses issued by each board as of June 30, 2007, ranged from 4,014 to 25,278. In terms of the total number of active individual licenses, the speech-language board, with 11,720 active licenses, was most comparable to the chiropractic board, with 13,735 active licenses (see Figure 5 on the following page). However, for the most recent fiscal year (2006–07), the osteopathic board issued the most comparable number of new individual licenses—438 to the chiropractic board's 392 (see Figure 6 on page 81). The chiropractic board issues only one type of individual license, the chiropractic license. Similarly, the osteopathic board issues just the osteopathic physician and surgeon license. In contrast, the physical therapy and speech-language boards each issue more than one type of license. The physical therapy board issues the physical therapist license and physical therapist assistant license, and the speech-language board issues the speech-language pathologist license and audiologist license.

Figure 5
Active Individual Licenses Issued by Four Regulatory Boards
as of June 30, 2007



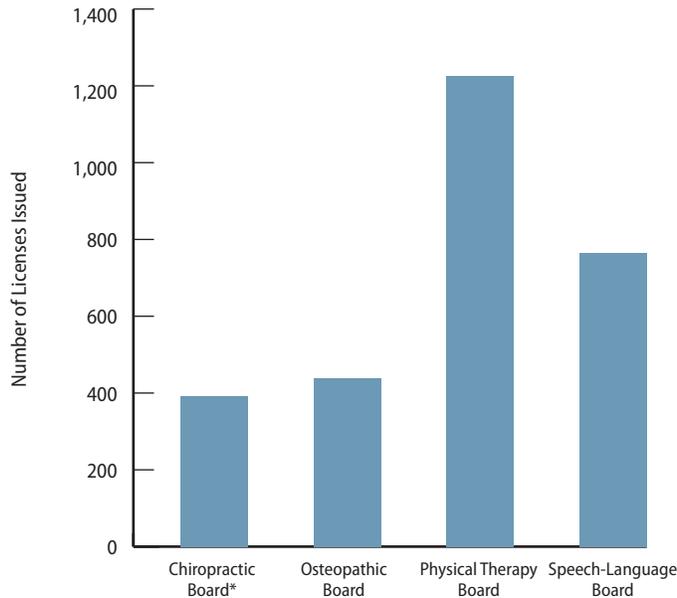
Sources: Responses to Bureau of State Audits' survey questions from the Osteopathic Medical Board of California, Physical Therapy Board of California, and the Speech-Language Pathology and Audiology Board; State Board of Chiropractic Examiners' (chiropractic board) database.

* As described in the Scope and Methodology, we concluded that the licensing data entered by the chiropractic board into the Consumer Affairs System are not sufficiently reliable. However, with no other data available, we used the chiropractic board's data to show the number of active licenses as of June 30, 2007.

The Chiropractic Board Does Not Have Regulations Dictating Time Frames for Processing License Applications, but Its Average Processing Time Is Most Similar to the Osteopathic Board

We found that the chiropractic board and the three boards we surveyed have internal policies establishing a time frame for processing license applications. The chiropractic board is the only board that does not also have regulations stipulating processing time frames. Table 5 on page 82 shows the overall processing time specified in the three boards' regulations. All three boards' regulations also stipulate time frames for specific milestones within each of their application processes.

Figure 6
Number of New Individual Licenses Issued
Fiscal Year 2006–07



Sources: Responses to Bureau of State Audits’ survey questions from the Osteopathic Medical Board of California, Physical Therapy Board of California, and the Speech-Language Pathology and Audiology Board; State Board of Chiropractic Examiners’ (chiropractic board) database.

* As described in the Scope and Methodology, we concluded that the licensing data entered by the chiropractic board into the Consumer Affairs System are not sufficiently reliable. However, with no other data available, we used the chiropractic board’s data to show the number of new individual licenses issued in fiscal year 2006–07.

For example, within 30 days of receiving an application, the physical therapy board must inform the applicant whether his or her application is complete and has been accepted for filing or is deficient. Its regulations also stipulate that within 60 days after the application is accepted, the physical therapy board must inform the applicant of its decision as to whether the applicant meets the requirements for examination. Similar requirements are present in the regulations of the speech-language and osteopathic boards.

All the surveyed boards reported that they have internal operational policies to process applications more quickly than what is required in regulation. As shown on Table 5 on the following page, with a four-month average processing time for new licenses, the osteopathic board’s processing goal was the closest to the internal processing goal of the chiropractic board. The other two boards have much shorter goals for average processing times. The physical therapy board and speech-language board reported that their internal processing goal is to process license applications on average within four weeks.

Table 5
Comparison of Established Time Frames for Processing New Individual Licenses

BOARD	INTERNAL POLICY ON PROCESSING TIME	GOALS FOR AVERAGE PROCESSING TIME FOR NEW INDIVIDUAL LICENSES	REGULATION ON PROCESSING TIME	REGULATORY MAXIMUM PROCESSING TIME FOR NEW INDIVIDUAL LICENSES
State Board of Chiropractic Examiners (chiropractic board)	Yes	3 to 5 months	No	NA
Osteopathic Medical Board of California (osteopathic board)	Yes	4 months	Yes	370 days
Physical Therapy Board of California (physical therapy board)	Yes	2 to 3 weeks	Yes	90 days
Speech-Language Pathology and Audiology Board (speech-language board)	Yes	3 to 4 weeks	Yes	74, 66, and 115 days*†

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; chiropractic board's database.

NA = Not applicable.

* Days listed apply to the following individual licenses respectively: speech-language pathologist, audiologist, and speech-language pathology assistant.

† Although the speech-language pathology assistant is not a license issued by the speech-language board, it has application requirements similar to those of licenses. Therefore, we included this category in our calculation of total individual licenses.

We also found the chiropractic board's application requirements to be comparable with one of the other three boards we surveyed. Table 6 identifies the requirements each board has for its respective license. The table shows that the physical therapy board is the most similar to the chiropractic board in license application requirements. The key differences among the boards are that the osteopathic and speech-language boards do not require an examination on California law, but both do require either an internship or clinical practice.

Table 6
Comparison of Application Requirements for an Individual License

BOARD	GRADUATION FROM BOARD-APPROVED OR ACCREDITED COLLEGE OR PROGRAM	NATIONAL EXAM	CALIFORNIA LAW EXAM	BACKGROUND CHECK	INTERNSHIP OR CLINICAL PRACTICE
State Board of Chiropractic Examiners (chiropractic board)	Required	Required	Required	Required	Not required
Osteopathic Medical Board of California (osteopathic board)	Required	Required	Not required	Required	Required
Physical Therapy Board of California (physical therapy board)	Required	Required	Required	Required	Not required
Speech-Language Pathology and Audiology Board (speech-language board)	Required	Required	Not required	Required	Required

Sources: Bureau of State Audits' review of the application processes of the chiropractic board, osteopathic board, physical therapy board, and the speech-language board.

The Chiropractic Board Did Not Follow Regulations and Written Policies and Procedures in Administering Its Continuing Education Program

Although the regulations and policies and procedures for the chiropractic board’s continuing education program include some effective processes to ensure quality course offerings for licensees, the board did not always follow them. The chiropractic board’s regulations require continuing education providers (providers) to submit applications in which they outline their objectives and commit to conform to the standards specified in the continuing education regulations. Subsequent to the initial approval of a provider, the chiropractic board requires that provider to also seek approval for each course it wishes to offer licensed chiropractors for continuing education. We reviewed the applications submitted by 12 providers (provider applications)—the 10 most recently approved and the two most recently denied. The board received the 12 provider applications between March 2004 and July 2007. Table 7 shows the results of our testing of those provider applications.

Table 7
State Board of Chiropractic Examiners’ Noncompliance With Continuing Education Regulations

REGULATION	APPLICATIONS SUBJECT TO THE REGULATION	INSTANCES WHEN STATE BOARD OF CHIROPRACTIC EXAMINERS DID NOT COMPLY WITH THE REGULATION
Provider application reviewed and approved by State Board of Chiropractic Examiners (chiropractic board) board members	10	7
Application submitted at least 30 days before scheduled chiropractic board meeting	12	1*
A 10-point mission statement included in application	12	1
Provider notification in writing of board approval within two weeks after chiropractic board meeting	10	6*
Provider notification of deficiencies within three weeks of board receiving incomplete application	2	1

Sources: Bureau of State Audits’ review of chiropractic board’s provider application files; California Code of Regulations, Title 16, Section 356.5(b).

* Based on the documentation available, we were unable to determine when another provider’s application was received.

Ten Requirements of Continuing Education Mission Statement

- A detailed statement describing the type of business the provider has been engaged in that involves providing continuing education to licensed health care professionals. The continuing education provided must consist of at least one course in each year of the five-year period immediately preceding the date of the application.
- Designation of a person responsible for overseeing all continuing education activities of the provider, and written notification to the board identifying that individual.
- Use of teaching methods that ensure student comprehension of the subject matter and concepts being taught.
- Procedures for documenting completion of courses and retention of attendance records for at least four years from the date of course completion.
- Commitment to furnish the board with a roster of persons completing the course, which includes the name and license number of each attendee, within 60 days of course completion.
- Maintenance of full-time monitoring of course attendance. If any participant's absence exceeds 10 minutes during any one-hour period, credit for that hour must be forfeited and noted in the attendance roster the provider submits to the board. The provider is responsible for seeing that each attendee is in place at the start of each course period.
- Availability to attendees of meeting rooms, study aids, audiovisual aids, and self-instructional materials designed to foster learning and ensure student comprehension of the subject matter and concepts being taught.
- Disclosure in any continuing education course advertisement if expenses of the program are underwritten or subsidized by any vendors of goods, supplies, or services.
- Immediate notice to the board of any event that might affect the provider's approval as a continuing education provider.
- Immediate notice to the board in writing of any change that would affect the date, time, or location of the course.

Source: California Code of Regulations, Title 16, Section 356.5(b).

The initiative act does not require that the chiropractic board approve provider applications, but board regulations specifically require that providers submit their applications at least 30 days before a scheduled board meeting for review at that meeting. Our legal counsel has advised us that regulations require the chiropractic board to review and approve completed provider applications at its scheduled board meetings.

Staff told us that in July 2006 the chair of the continuing education committee and the executive officer instructed staff to stop forwarding provider applications to board members for final review. However, because the chiropractic board has not taken formal action to change its regulations, the current process is not in compliance with existing chiropractic board regulations. The significance of this noncompliance is the risk that the chiropractic board may be challenged for failure to comply with its own regulations by delegating to staff responsibilities that belong to board members. According to our legal counsel, the chiropractic board can remedy this problem by ratifying any provider application approvals granted by staff at a subsequent board meeting, but in the absence of that ratification, the approvals may be subject to challenge.

We found one instance when a provider did not include five of the required 10 points in the mission statement included in his application, but the chiropractic board ultimately approved the applicant. The text box shows the 10 points that applicants must include in their mission statements. According to staff, the chiropractic board does not necessarily require all 10 points to be included, even though its regulations indicate that each is required. This practice allows for greater subjectivity on the part of staff regarding which provider applications to approve. Because the board's regulations specify what is to be included in a mission statement, we believe staff should uniformly apply that criteria in determining whether the applicant should be approved as a provider.

The chiropractic board must notify applicants that their provider applications are incomplete within three weeks of receipt. For the two incomplete provider applications that it eventually denied, the chiropractic board notified one applicant of the deficiencies 28 days after receiving the application. Chiropractic regulations also state that each provider submitting a completed application will be provided, “notification of the board’s decision . . . in writing within two weeks following the board meeting.” The chiropractic board did not comply with this regulation for six of the 10 approved provider applications we reviewed. The board sent approval letters to all six providers before the date of the board meeting, indicating that the board members did not make the decisions. Additionally, we were unable to determine when the board received another provider’s application; therefore, we were unable to verify whether the board properly notified the provider within the specified time. Staff told us the board’s regulations on continuing education are outdated and will be revised to reflect current practices. However, the chiropractic board continues to process provider applications without board member approval, which is contrary to what its current regulations state.

The Chiropractic Board Did Not Always Retain Appropriate Documentation in Continuing Education Files

The chiropractic board did not always maintain documentation to support its decisions to approve providers and courses. Specifically, the chiropractic board could not demonstrate that the board’s continuing education committee reviewed all course applications before their approval. Additionally, although it has established specific application requirements for its providers and courses, the board does not always ensure that providers comply with the established regulatory requirements. Further, its own regulations require the chiropractic board to conduct audits of its licensees to ensure that they are complying with continuing education requirements. However, it has an incomplete record of the audits it has conducted. We also found that the board concluded audits prematurely. The overall lack of documentation for complying with established regulations and procedures casts doubt on the effectiveness of the chiropractic board’s continuing education program.

The Chiropractic Board Could Not Show That It Followed All the Required Steps to Approve Providers and Courses

Chiropractic board regulations require that provider applications include certain documentation. The board's written instructions accompanying the application specify that the provider must submit relevant course materials—including course literature, brochures, and outlines—for continuing education courses, one from each of the five preceding years. This documentation proves the provider has furnished education to licensed health care professionals for the five consecutive years immediately preceding the date of the application. For one of the 10 approved provider applications we

reviewed, the chiropractic board could not locate the relevant documentation. When the chiropractic board does not retain documentation indicating providers' eligibility and experience to teach continuing education courses, it is unable to defend its decisions to approve providers.

An approved provider must then submit an application for any course it proposes to offer (course application). Its written instructions require each course application to include the documents shown in the text box as part of the application.

The chiropractic board's processing of course applications entails the four general steps depicted in Figure 7. We reviewed 10 course applications submitted in fiscal years 2005–06 and 2006–07 by six of the 10 approved providers we discussed previously. The remaining four approved providers had submitted no course applications at the time of our review. Of the 10 course applications we reviewed, staff could not demonstrate that

continuing education committee members reviewed four applications as required by the continuing education desk manual. Our review of the chiropractic board's meeting minutes shows that the full board approved two of these four applications. Staff sent approval letters for the other two courses, but they could not produce documentation of approval by either the continuing education committee or the full board. Lack of documentation weakens the chiropractic board's ability to ensure quality education for its licensees through the proper approval of the courses.

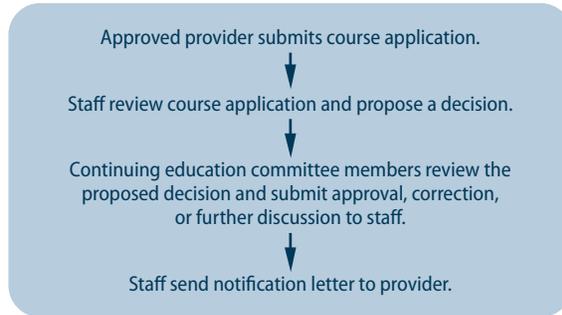
For another two of the 10 course applications we reviewed, the chiropractic board could not show that the course applications included copies of the handouts, notes, and other materials to be distributed to attendees. Staff told us that around March 2007 the chiropractic board no longer required course applications to include

Application Requirements for Continuing Education Courses

- Description of course content to be delivered in each hour of the course.
- Final copy of the syllabus or schedule that is to be made available to all attendees.
- Attendance-monitoring sample or statement.
- Copy of all handouts, notes, and other materials to be distributed to attendees, or a statement indicating that no handouts and notes will be used.
- Copy of course brochure and all other promotional material to be used.
- Resumé for each instructor.

Source: State Board of Chiropractic Examiners' application instructions for continuing education courses.

Figure 7
State Board of Chiropractic Examiners' Continuing Education Course Approval Process



Source: State Board of Chiropractic Examiners.

copies of all handouts because it is not required in the regulations. However, because it approved both of the applications in January 2006 before changing that requirement, the chiropractic board should have received those documents. Staff told us that the former executive officer instructed staff to destroy these types of materials. Although the board's practice may have changed in March 2007, the course application instructions and the written policy requiring applicants to submit copies of all handouts and notes was still present on the chiropractic board's Web site at the time of our review.

The chiropractic board's regulations require each approved provider to furnish the board with a roster of persons completing each course, including the names and chiropractic license numbers, within 60 days of course completion. However, board staff do not always ensure that providers comply with this requirement. For two of the six approved providers we reviewed, staff could not demonstrate that the attendance logs were submitted on time. Further, staff could not explain why the board does not currently monitor this requirement. The executive officer recognizes that the current monitoring process is inadequate and needs to be reformed, and he indicated it is being reviewed.

After our initial request, staff provided us with two certificates of attendance from one provider, but the certificates contained no indication of when the board received the documents; thus, we could not determine if the 60-day benchmark had been met. Staff requested that the other provider submit a copy of its attendance logs. The provider stated that none of the attendees requested California accreditation, so there was no list to send. We do not believe that this response complies with chiropractic board

For two of the six approved providers we reviewed, staff could not demonstrate that the course attendance logs were submitted on time.

regulations, which clearly require each provider to furnish a roster of persons completing the course. In our review of continuing education audits that we discuss in the next section, there were two additional instances when the chiropractic board had to ask the provider to submit attendance logs for our review. When the chiropractic board does not ensure that providers promptly submit attendance logs, it may be unable to corroborate information regarding completion of continuing education requirements for license renewal.

Some of the Chiropractic Board's Audits Do Not Conclusively Show That Licensees Met Their Continuing Education Requirements

Its regulations require the chiropractic board to conduct random audits of active licensees to verify their compliance with continuing education requirements. Because the board has not established written procedures for selecting random audits, staff explained to us that generally each week they select two licensees, one male and one female, residing in different locations, to be audited. The chiropractic board also initiates audits when licensees fail to submit or properly complete their license renewal documents, or an inactive licensee requests to return to active status. Its record retention schedule does not specifically address the retention of licensee audits; it does indicate, however, that the board will retain license files permanently. Because license files include renewal documents, we would expect an audit to become part of a licensee's file.

We randomly selected for review 19 licensee audits that staff performed during fiscal year 2006–07. The chiropractic board could not provide documentation for three of the licensee audits we selected, and for another 10 audits, the board did not retain copies of the top portion of the audit notification letters. The audit notification letter is divided by a dotted line into two parts: the top portion informs the licensee about the audit and requests proof of continuing education by a specified date; the bottom portion includes questions for the licensee to answer and return with the continuing education certificate of completion. Although one staff kept a copy of the audit letter to remind her of audits initiated, she told us that she was verbally instructed by the then-executive officer to destroy the copy once the board received the completed bottom portion. The chiropractic board recently changed its process and removed the dotted line separating the notification letter into two parts, enabling the licensee to return the entire form.

In two other cases, the chiropractic board inappropriately concluded licensee audits. Moreover, as a result of the errors made in reviewing the audit results in these cases, staff did not

As a result of the errors made in reviewing the audit results, staff did not forward the licensees' audit results to the enforcement unit for possible disciplinary action as they should have.

forward the licensees' audit results to the enforcement unit for possible disciplinary action, as they should have. The board's auditing procedures dictate that on receipt of the continuing education certificate from the licensee, staff must verify board approval of the course, the attendance date, the number of hours attended, and whether the licensee completed the continuing education course before the expiration date of his or her license. According to the chiropractic board, when licensees complete continuing education courses after their licenses expire, staff must forward audit results to the enforcement unit for further action.

In the first case, staff did not notify the enforcement unit that the licensee took continuing education after his license expired. Additionally, in the same case, we found a discrepancy between the number of credits earned as reflected on the attendance log and what was indicated on the licensee's continuing education certificate. It was unclear whether the licensee met the continuing education requirement, and staff were unable to explain the variance between the two documents. This indicates that the chiropractic board did not adequately verify and corroborate information it received from the licensee before concluding the audit.

In the second case, the chiropractic board did not verify during the audit the licensee's claim of being on inactive status and improperly concluded the continuing education audit. If the board had investigated the licensee's claim that her license had been inactive since 2000, it would have discovered the claim was not true and would have referred the case to the enforcement unit for possible disciplinary action. When the chiropractic board does not follow its procedures to verify information it receives from the audited licensees, it fails to adequately ensure that licensees are taking the necessary continuing education courses to practice in California.

The Chiropractic Board Has Not Established Complete Procedures for Its Audits of Continuing Education Courses

The chiropractic board's regulations allow any board member or board designee to inspect or audit any approved chiropractic course in progress. Course audits are similar to class evaluations and cover topics such as the registration process, appropriateness of subject matter, and evaluation of the instructor's teaching style. Although the board conducts some course audits, we were unable to determine the total number of audits it performed because it does not track such audits.

Of the five course audits conducted between February 2005 and June 2007 that we reviewed, only one reported negative results, and the chiropractic board did not follow up on them. The course

If the board had investigated the licensee's claim that she had been on inactive status since 2000, it would have discovered this was not true and referred the case to enforcement for possible disciplinary action.

Although chiropractic board regulations give it the power to withdraw approval of any continuing education course, staff told us that there are no procedures for when the board receives a negative course evaluation.

reviewer indicated that the instructor had no attendance monitor present, granted excessive breaks, and improperly classified the number of credit hours for the portion of the course covering adjustive techniques. The report also noted that the reviewer would never recommend any colleagues attend this or any other seminar presented by the instructor. The reviewer concluded the report by stating, "Other than meeting [California] requirements of license renewal, [the] seminar was a complete waste of my time." Although chiropractic board regulations give it the power to withdraw approval of any continuing education course, staff told us the board has no procedures for responding to a negative course evaluation. As a result, the chiropractic board did not take any corrective action, thus missing an opportunity to improve the continuing education courses available to its licensed chiropractors.

In Some Ways, the Chiropractic Board's Continuing Education Policies Are Comparable to Three Other Regulatory Boards

To benchmark the chiropractic board's continuing education program, we compared it with the programs of the same three state regulatory boards we used when comparing enforcement and licensing programs. We focused on two subsections of the continuing education programs of the four regulatory boards: the boards' processes to approve continuing education providers and their continuing education requirements for each licensee. Tables A.5 and A.6 in the Appendix summarize the information we collected.

The Chiropractic Board Appears to Perform Comparably to the Speech-Language Board in Its Provider Approval Process

The osteopathic board and the physical therapy board were not similar enough to draw comparisons to the chiropractic board because neither approves providers of continuing education for their licensees. Instead, the osteopathic board accepts continuing education approved by the American Osteopathic Association and the American Medical Association. The physical therapy board will not be requiring continuing education of its licensees until 2010; however, it is seeking to establish a process similar to the osteopathic board's, using providers not approved by the board but approved instead by a recognized organization. Although the chiropractic board has continuing education providers that are part of national chiropractic associations, it does not approve them solely because of those affiliations.

The chiropractic board appears to be performing comparably to the speech-language board in terms of approving continuing education providers on average within 30 days of application. Our testing of the chiropractic board's provider approval process discussed earlier is consistent with this time frame. According to the speech-language board, it had 149 approved providers as of June 30, 2007, while the chiropractic board had 72 providers. Similar to the chiropractic board, the speech-language board allows for many different types of providers. These include individuals, partnerships, corporations, associations, health facilities, government agencies, and institutions of higher learning. However, the speech-language board does not require all providers to be approved by the board. Specifically, accredited universities and organizations approved as providers by select associations are exempt from approval by the speech-language board.

The chiropractic board's eligibility requirements for potential providers appear to be slightly more stringent than those of the speech-language board. Three differences between the two boards were revealed by our review. First, the speech-language board does not require the approval of courses. An approved provider may offer any courses that meet the speech-language board's criteria. Second, the speech-language board does not mandate a certain amount of teaching experience. Instead applicants are required to meet at least two of the four established instructor qualifications. These include a license, registration, or certificate in an area related to the course subject matter; a valid, current certification in the subject area issued by the American Speech-Language-Hearing Association; training, certification, or experience in teaching courses in the subject matter; or at least two years of experience in an area related to the subject matter of the course. In contrast, the chiropractic board's regulations stipulate that providers have five years of experience educating licensed health care professionals immediately preceding the date of application. Finally, the speech-language board approves providers for only two years, whereas chiropractic board providers remain approved indefinitely as long as they meet certain conditions.

We also looked at how each board ensures the quality of their continuing education offerings. The chiropractic board relies mainly on its approval process to ensure that providers have the necessary experience to offer quality continuing education courses. Additionally, unlike the other boards we surveyed, the chiropractic board requires providers to submit course applications for approval. This provides the chiropractic board with an additional opportunity to review the instructors and course content. Moreover, chiropractic board regulations allow board members or their designee to inspect or audit any approved course in progress. Similar to the chiropractic board, the speech-language board

relies on its provider approval process as its primary method for ensuring the quality of its continuing education. This process can include performing licensing background checks and verifying an instructor's credentials and professional experience. In contrast, the osteopathic board depends on professional associations to ensure the quality of the providers they approve.

The Chiropractic Board and the Speech-Language Board Appear to Be Similar in Their Continuing Education Requirements and Verification of Licensees

As shown on Table 8, our comparison revealed a wide range of continuing education requirements, spanning from 12 credits (chiropractic board) to 150 credits (osteopathic board) taken in each renewal period, which varies from one to three years. Of the three boards we surveyed, only the physical therapy board currently does not require continuing education in its license renewal process, although that will change for holders of physical therapy licenses beginning in 2010. The chiropractic board and the speech-language board both require the same number of continuing education hours over a two-year period.

Table 8
Comparison of Continuing Education Requirements

BOARD	CONTINUING EDUCATION CREDITS REQUIRED	CONTINUING EDUCATION RENEWAL PERIOD (YEARS)
State Board of Chiropractic Examiners (chiropractic board)	12*	1
Osteopathic Medical Board of California (osteopathic board)	150†	3
Physical Therapy Board of California (physical therapy board)	30‡	2
Speech-Language Pathology and Audiology Board (speech-language board)	24§	2

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; California Code of Regulations, Title 16, Section 356.

* Four of the 12 hours must be taken in adjustive techniques.

† A minimum of 60 hours of the 150 hours must be taken from a specific category of the American Osteopathic Association's continuing education program.

‡ The physical therapy board does not currently require continuing education for its licensees; however, Business and Professions Code, Section 2676(a), requires continuing education for physical therapists as a condition for renewal. The physical therapy board will be implementing this starting in 2010.

§ A maximum of four hours may be in self-study and an additional four hours in related or indirect client care.

In verifying licensees' proof of continuing education, the speech-language board and the chiropractic board are the most similar. Both boards require licensees to attest, under penalty of perjury, to the number of continuing education credits taken in each renewal period. In contrast, the osteopathic board requires licensees to submit all continuing education certificates to the board for renewal.

When licensees fail to meet their continuing education requirements, chiropractors have the option to go on inactive status or refrain from practicing until the continuing education requirement has been completed. Licensees of the speech-language board may also request to be placed on inactive status when they do not complete their continuing education. The osteopathic board grants extensions, when requested by the licensee, to meet their continuing education requirements, and information about noncompliant licensees is forwarded to its enforcement program for further action. The chiropractic, osteopathic, and speech-language boards still require an inactive licensee to pay a renewal fee but prohibit the person from practicing. For licensees to be reactivated, each of these three boards has different requirements. The speech-language board requires inactive licensees to "complete continuing education equivalent to that required for a single license renewal period," whereas the osteopathic board requires inactive licensees to complete only 20 of the total 150 credits required for renewal. The chiropractic board's requirement is the most stringent because licensees must show evidence of board-approved continuing education for each 12-month period the license was inactive.

Currently, the three boards conduct audits of their licensees' continuing education courses, but each board has different methods of selecting licensees for audit. The chiropractic board initiates audits for several reasons, including when the licensee does not properly complete the renewal documents or the licensee requests changing from inactive to active status. The chiropractic board also told us it randomly selects two licensees each week for audit. The osteopathic board audits every licensee at the time of renewal, because it requires its licensees to submit proof of the continuing education for renewal. The speech-language board uses an automated extraction program to randomly select licensees for a continuing education audit; the board indicated that it annually audits about 5 percent of licensees who are required to take continuing education.

Recommendations

To ensure that it is able to measure the overall efficiency of its licensing program in processing applications and petitions, the chiropractic board should do the following:

- Establish time frames for all the types of applications and petitions the board processes.
- Establish a tracking system for applications and petitions to analyze where delays are occurring and ensure that applications and petitions are processed promptly.
- Establish a time frame for resolving appeals that includes milestones for each phase of the process.

To ensure that it licenses only individuals who are committed to following state laws and regulations, the chiropractic board should develop specific policies and procedures for staff to follow when the board receives a complaint against an applicant seeking licensure.

To defend its decisions on approved applications for satellite offices, corporations, and referral services, the chiropractic board should implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.

To ensure that it is placing licenses in forfeiture status according to the initiative act, the chiropractic board should do the following:

- Establish specific procedures for staff to follow when a licensee submits invalid payment with a license renewal.
- Establish a tracking method to ensure that requests for repayment are sent promptly and all penalties are paid.

To ensure that its continuing education program complies with current regulations, the chiropractic board should do the following:

- Require board members to ratify staff approvals of providers.
- Ensure that its process to approve providers conforms to its regulations.
- Comply with requirements for notifying a provider of board approval within two weeks following a scheduled board meeting and for notifying a provider of application deficiencies within three weeks of receiving the application.

- Establish a process to track and monitor whether providers submit attendance rosters within 60 days of course completion.
- Establish procedures for maintaining accurate documentation of continuing education audits of licensees.
- Establish a mechanism to ensure that all relevant steps are taken before continuing education audits are considered complete.
- Establish a process to track course audits conducted and a procedure for taking corrective action when the course reviewer identifies a deficiency.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: March 25, 2008

Staff: Nancy C. Woodward, CPA, Audit Principal
Tammy Lozano, CPA, CGFM
Heidi Broekemeier, MPA
Beka Clement, MPA
Katrina Solorio

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at (916) 445-0255.

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Appendix

COMPARISONS OF THE ENFORCEMENT, LICENSING, AND CONTINUING EDUCATION PROGRAMS OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS AND THREE OTHER REGULATORY BOARDS

Tables A.1 through A.6 on the following pages show detailed data on the enforcement, licensing, and continuing education programs of the State Board of Chiropractic Examiners (chiropractic board) and three other regulatory boards. The boards we selected for comparison are the Osteopathic Medical Board of California, the Physical Therapy Board of California, and the Speech-Language Pathology and Audiology Board. We selected these three boards because they are regulatory boards of the healing-arts professions and are similar in certain aspects to the chiropractic board.

Table A.1 shows the total number of complaints and investigations opened and closed in fiscal years 2005–06 and 2006–07. Table A.2 provides information about each board's complaint processing policies. Table A.3 identifies the types of enforcement and disciplinary actions that each board makes public. Table A.4 shows the overall size of the chiropractic board's licensing program in comparison to the three other boards, and it shows how many new licenses or certificates each board processed in fiscal year 2006–07. Tables A.5 and A.6 compare the chiropractic board's continuing education program with those of the other three boards. Table A.5 focuses on the four boards' approval processes for continuing education providers, and Table A.6 focuses on the continuing education requirements the boards have set for their licensees.

Table A.1
Comparison of Enforcement Statistics

BOARD	FISCAL YEAR 2005–06				FISCAL YEAR 2006–07			
	COMPLAINTS OPENED	COMPLAINTS CLOSED	INVESTIGATIONS OPENED	INVESTIGATIONS CLOSED	COMPLAINTS OPENED	COMPLAINTS CLOSED	INVESTIGATIONS OPENED	INVESTIGATIONS CLOSED
State Board of Chiropractic Examiners (chiropractic board)*	774	867	93	85	708	576	52	55
Osteopathic Medical Board of California (osteopathic board)†	219	212	48	46	191	173	27	31
Physical Therapy Board of California (physical therapy board)†	430	431	114	103	529	534	41	95
Speech-Language Pathology and Audiology Board (speech-language board)†	89	108	10	5	76	68	4	4

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; chiropractic board's database.

* As described in the Scope and Methodology, we concluded that the complaint data entered by the chiropractic board into the Consumer Affairs System are of undetermined reliability. However, with no other data available, we used the data to show the number of complaints opened and closed and investigations opened and closed in fiscal years 2005–06 and 2006–07.

† We did not verify the numbers of complaints and investigations reported by the board.

Table A.2
Comparison of Complaint Review Policies as of June 30, 2007

BOARD	COMPLAINT PROCEDURES		
	BOARD HAS AN ESTABLISHED POLICY FOR MANAGEMENT REVIEW OF COMPLAINTS	BOARD HAS ESTABLISHED PROCESSING TIMES FOR PROCESSING COMPLAINTS	BOARD HAS ESTABLISHED POLICIES FOR PROCESSING PRIORITY COMPLAINTS
State Board of Chiropractic Examiners (chiropractic board)	No	No	Yes. Cases alleging sexual misconduct, improper care, negligence, incompetent care, use of drugs or alcohol while performing the duties of chiropractic, or fraud are prioritized. Priority cases may be referred to a chiropractic board investigator immediately.
Osteopathic Medical Board of California (osteopathic board)	Yes. Only the executive director is authorized to close or refer cases.	No. Complaints are processed as received.	Yes. Cases that will result in immediate public protection.
Physical Therapy Board of California (physical therapy board)	No. However, two analysts review each case before it is closed.	Yes. Acknowledged within 10 days of receipt. Less severe complaints reviewed within 1 to 2 weeks to determine and take initial action.	Yes. Alleged sexual misconduct and negligence cases are immediately forwarded to the Department of Consumer Affairs' Division of Investigation.
Speech-Language Pathology and Audiology Board (speech-language board)	Yes. Analyst reviews and proposes action to executive officer who makes decision for each case.	Yes. Complaints are reviewed within 3 business days to determine initial action. Acknowledgment letter is sent within 10 business days.	Yes. Allegations of violations substantially related to duties of the licensee or that pose a significant risk to the public are referred for formal investigation and possible disciplinary action. Unlicensed activities causing actual or potential harm are investigated and referred to the district attorney for criminal prosecution.

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; chiropractic board's enforcement manual.

Table A.3
Comparison of Disciplinary Actions Made Public as of June 30, 2007

BOARD	DISCIPLINARY ACTIONS						BOARD HAS ANY TYPE OF QUALITY REVIEW PROCESS
	BOARD ISSUES CITATIONS	BOARD ISSUES FINES	FORMAL DISCIPLINARY ACTIONS PROVIDED TO THE PUBLIC	INFORMAL DISCIPLINARY ACTIONS PROVIDED TO THE PUBLIC	SETTLEMENT INFORMATION PROVIDED TO THE PUBLIC	ARBITRATION DECISION INFORMATION PROVIDED TO THE PUBLIC	
State Board of Chiropractic Examiners (chiropractic board)	Yes	No	Disciplinary actions taken; notice of malpractice; judgment, arbitration, or settlement decisions; and felony criminal convictions.*	Citations.	Yes	Yes	No
Osteopathic Medical Board of California (osteopathic board)	Yes	Yes	Disciplinary actions taken; malpractice decisions; settlement decisions; and malpractice judgments.	Citations, fines, and letters of reprimand.	Yes [†]	No [‡]	No. The only outside review is accomplished by expert consultants.
Physical Therapy Board of California (physical therapy board)	Yes	Yes	Disciplinary actions taken; referral to attorney general (post-accusation); and settlement decisions.	Citations, fines, and letters of reprimand.	Yes	NA	No, however, the physical therapy board is preparing to implement a quality control process.
Speech-Language Pathology and Audiology Board (speech-language board)	Yes	Yes	Disciplinary actions taken; arbitration decisions; referral to attorney general (pre-and post-accusation); settlement decisions; civil judgments; malpractice decisions; and felony criminal convictions.	Citations, fines, and letters of reprimand.	Yes	Yes	No, however, the speech-language board is considering implementing a quality control process.

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; California Code of Regulations, Title 16, Division 4, Article 9; and the chiropractic board.

NA = Not applicable.

* The information is public only if a licensee discloses a conviction of a crime on his or her application.

† Settlements greater than \$30,000 are public information.

‡ If the osteopathic board's review results in citation or disciplinary action, that action would be public information.

Table A.4
Comparison of Licensing Programs

	ACTIVE LICENSES AS OF JUNE 30, 2007	NEW LICENSES ISSUED IN FISCAL YEAR 2006-07
State Board of Chiropractic Examiners (chiropractic board)*		
Chiropractic [†]	13,735	392
Satellite office certificate	2,126	967
Corporation certificate of registration	1,289	185
Referral service	17	-
Total Individual Licenses	13,735	392
Totals	17,167	1,544
Osteopathic Medical Board of California (osteopathic board)[‡]		
Osteopathic physician and surgeon [†]	4,014	438
Total Individual Licenses	4,014	438
Totals	4,014	438
Physical Therapy Board of California (physical therapy board)[‡]		
Physical therapist [†]	20,233	987
Physical therapist assistant [†]	4,988	239
Electromyographer ^{†§}	57	-
Total Individual Licenses	25,278	1,226
Totals	25,278	1,226
Speech-Language Pathology and Audiology Board (speech-language board)[‡]		
Speech-language pathologist [†]	9,771	544
Audiologist [†]	1,461	73
Speech-language pathology assistant ^{†§}	488	147
Aides	147	59
Temporary required professional experience	540	527
Temporary licenses/speech-language pathologist [#]	5	17
Temporary licenses/audiologists [#]	1	1
Total Individual Licenses	11,720	764
Totals	12,413	1,368

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; chiropractic board's database.

* As described in the Scope and Methodology, we concluded that the licensing data entered by the chiropractic board into the Consumer Affairs System are not sufficiently reliable. However, with no other data available, we used the chiropractic board's data to show the number of active licenses as of June 30, 2007, and the number of new licenses issued in fiscal year 2006-07.

[†] Used to calculate total number of individual licenses issued by the respective board.

[‡] We did not verify the numbers of licenses reported by the board.

[§] Although the physical therapy electromyographer and speech-language pathology assistant are not licenses issued by the respective boards, the application requirements are similar to those of licenses. Therefore, we included these categories in our calculation of total individual licenses.

^{||} The temporary required professional experience license is a provisional license that authorizes an applicant to obtain the professional work experience required for permanent licensure. We did not include these numbers in calculating the total number of individual licenses issued so we would not double-count the number of licenses issued.

[#] Provisional licenses are issued for a period of six months to individuals who are licensed in another state and who are seeking permanent licensure in California. The temporary license allows for a six-month provisional practice until all licensing documentation has been submitted and approved and the permanent license has been issued by the speech-language board. We did not include these numbers in calculating the total number of individual licenses issued so we would not double-count the number of licenses issued.

Table A.5
Comparison of Processes for Approving Providers of Continuing Education

BOARD	PROVIDER APPROVAL		NEW PROVIDERS		AVERAGE PROCESSING TIME FOR PROVIDER APPROVALS IN FISCAL YEAR 2006-07	PROCESS FOR ENSURING QUALITY OF CONTINUING EDUCATION	LAWS AND REGULATIONS	
	BOARD APPROVES PROVIDERS	NUMBER OF PROVIDERS AS OF JUNE 30, 2007	FISCAL YEAR 2005-06	FISCAL YEAR 2006-07			BOARD HAS CONTINUING EDUCATION REGULATIONS	CODE THAT GOVERNS CONTINUING EDUCATION
State Board of Chiropractic Examiners (chiropractic board)	Yes	72	8	3	30 days	Approval process, course audits	Yes	California Code of Regulations, Title 16, sections 355 to 360
Osteopathic Medical Board of California (osteopathic board)	No	NA	NA	NA	NA	American Osteopathic Association and American Medical Association approval	Yes	Business and Professions Code, Section 2454.5
Physical Therapy Board of California (physical therapy board)	NA*	NA	NA	NA	NA	NA	Yes*	Business and Professions Code, Section 2676
Speech-Language Pathology and Audiology Board (speech-language board)	Yes	149	11	21	20 days [†]	Approval process	Yes	California Code of Regulations, Title 16, sections 1399.160 to 1399.160.13

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; chiropractic board's database.

NA = Not applicable.

* The physical therapy board currently does not require continuing education for its licensees. However, the board will be implementing a new continuing education program starting in 2010.

† The speech-language board reported that its average processing time for approving providers was 20 days; however, the board's regulations allow it 60 days to process and decide on applications.

Table A.6
Comparison of Continuing Education Requirements of Licensees as of June 30, 2007

BOARD	CONTINUING EDUCATION REQUIRED OF LICENSEES	CONTINUING EDUCATION HOURS REQUIRED PER RENEWAL PERIOD	CONTINUING EDUCATION RENEWAL PERIOD IN YEARS	HOW BOARD VERIFIES LICENSEE'S CONTINUING EDUCATION	WHAT HAPPENS WHEN LICENSEES FAIL TO MEET CONTINUING EDUCATION REQUIREMENTS	LICENSEE AUDITS CONDUCTED	HOW ARE AUDITEES SELECTED	AUDITS CONDUCTED PER YEAR
State Board of Chiropractic Examiners (chiropractic board)	Yes	12	1	Renewal slip, audits	Licensees can request to be placed on inactive status or refrain from practicing until completing continuing education	Yes	Random, triggered*	Approximately 900 to 1,000 audits, including an average of two randomly selected audits per week
Osteopathic Medical Board of California (osteopathic board)	Yes	150	3	Must submit continuing education certificates	Extension, or can be charged with practicing without a license	Yes	All licensees are audited every two years	Every renewed license is audited
Physical Therapy Board of California (physical therapy board)	No	30 [†]	2	NA	NA	NA	NA	NA
Speech-Language Pathology and Audiology Board (speech-language board)	Yes	24	2	Renewal slip, random audits	Licensees may request to be placed on inactive status	Yes	Random selection using electronic process generated by the Department of Consumer Affairs	5 percent of speech-language pathologists and 5 percent of audiologists

Sources: Responses to Bureau of State Audits' survey questions from the osteopathic board, physical therapy board, and the speech-language board; chiropractic board.

NA = Not applicable.

* Audits are triggered when a licensee fails to submit or properly complete license renewal documents or an inactive licensee requests to return to active status.

† The physical therapy board does not currently require continuing education of its licensees, but the Business and Professions Code, Section 2676, effective January 1, 2007, establishes the credit hours required. The physical therapy board will begin requiring its licensees to comply with continuing education hours in 2010.

(Agency response provided as text only.)

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931

March 10, 2008

Elaine M. Howle, State Auditor*
California Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is the State Board of Chiropractic Examiners' (BCE) response to your draft audit report. The BCE thanks you for the opportunity to respond to the recommendations.

We would like you to know that the (BCE) welcomed this audit from its inception. For the past two years, board members have expressed concerns about the effectiveness and efficiency of BCE operations including personnel, enforcement procedures, financial and legal aspects. We believe the audit may have been improved if board members who were present during the audit period were interviewed. ①

Additionally, we found that many facts and findings of the audit were based on what occurred at the BCE prior to March of 2007; however, the draft audit report does not clearly articulate the significant improvements that were implemented after March of 2007. We believe the readability of the final audit report would be improved if the time periods were identified. ②

We concurred with all but two of the forty-three recommendations. Most of your recommendations, as you will read from the responses, have already been implemented, with plans to meet or exceed your recommendations pending restoration of our funding. The BCE has been, and continues to be, very committed to improving Board governance, enforcement, licensing, and continuing education functions.

Sincerely,

(Signed by: Dr. Fredrick N. Lerner)

Dr. Frederick N. Lerner, D.C., Ph.D.
Board Chair

Sincerely,

(Signed by: Brian J. Stiger)

Brian J. Stiger
Executive Officer

* California State Auditor's comments begin on page 113.

Bureau of State Audit Recommendations and Agency Responses Chapter One

(The following responses to the BSA recommendations were prepared by the board chair and executive officer. The full audit report and agency response will be placed on the agenda for a future public board meeting for a full discussion and possible board action.)

To ensure that it complies with all Bagley-Keene requirements, the chiropractic board should:

- *Continue to involve legal counsel in providing instruction and training to board members at each meeting.*

The Board of Chiropractic Examiners (BCE) concurs with this recommendation. The BCE recognized in March 2007, that all board members did not fully understand the requirements of Bagley-Keene. With the appointment of three new board members on or about March 1, 2007, the former board chair instructed the acting executive officer to place Bagley-Keene training on the agenda of every board meeting beginning April 2007. Senior staff counsel from the Department of Consumer Affairs (DCA) provides the training and serves as the BCE in-house counsel. This interactive training has been well received by the board members and continues to be an important part of each board meeting.

- *Continue to retain documentation of the steps it takes to publicly announce its meetings.*

The BCE concurs with this recommendation. Since March 23, 2007, the BCE has publicly posted meeting agendas on its website in accordance with Bagley-Keene. In an effort to confirm the timely postings of future board meeting agendas, the BCE has instituted a check list that will be signed by the board member liaison and confirmed by the executive officer. Additionally, the board member liaison will print the agenda from the website, which includes the posting date.

To ensure that the chiropractic board complies with administrative procedure act requirements, board members should ensure they limit their communications related to board business so they do not engage in ex parte communications or compromise their ability to fulfill their responsibility in enforcement hearings.

The BCE concurs with this recommendation. Since April 2007, the board members have received extensive training on the requirements of Bagley-Keene and Administrative Procedure Act. The board members are committed to conducting themselves in accordance with these laws and seeking legal advice whenever they have a question. DCA staff counsel has noted on several occasions that the board members have been conducting themselves in an exemplary manner since receiving their initial training.

To ensure compliance with the initiative act, the chiropractic board should modify its current process so that board members make the final decision to approve or deny all licenses. Additionally, board members should ratify the previous license decisions staff made.

The BCE needs to consider options to implement this recommendation. The BCE agrees that absent a regulation delegating the decision to issue a license to BCE staff, the members must make the final decision to approve a license application.

However, the BCE respectfully disagrees that the board members must vote to deny issuance of a license. This would be a direct conflict with current BCE regulations that delegate to the executive officer the filing of all statements of issues. It would also violate the ex parte prohibitions contained in the Administrative Procedure Act and would result in any board member who voted to deny the issuance of a license having to recuse himself or herself if a proposed decision came to the board members for a vote. ③

To comply with the political reform act, the chiropractic board should do the following:

- *Ensure that its filing official is aware of the role and responsibilities and similarly, promptly inform anyone replacing the filing official.*

The BCE concurs with this recommendation. The executive officer updated the filing officer's duty statement and explained the role, duties, and responsibilities of the position to the employee. On February 27, 2008, the filing officer attended and completed training provided by the Fair Political Practices Commission on the role of a filing officer. The BCE will develop a desk manual for the filing officer by July 1, 2008.

- *Establish an effective process for tracking whether all designated employees, including board members, have completed and filed their statements of economic interests on time, to identify potential conflicts of interest.*

The BCE concurs with this recommendation. The BCE plans to address this issue in the filing officer's desk manual, which will be completed by July 1, 2008.

- *Periodically review its employees' responsibilities to ensure that all individuals who are in decision-making positions are listed as designated employees in its conflict-of-interest code.*

The BCE concurs with this recommendation. On a yearly basis the BCE will review the duties of all employees and ensure those in decision-making positions are designated employees pursuant to the conflict-of-interest code.

The chiropractic board should consider providing state e-mail accounts to its board members so they conduct their chiropractic board business in a secure and confidential environment and make their actions and correspondence accessible under public records act requests.

The BCE will place this item on the agenda for the next administrative committee meeting for discussion and possible action. If adopted by the committee it will be placed on the agenda for a future public board meeting.

To ensure that they continue to improve their knowledge and understanding of Bagley-Keene, other state laws, and board procedures, board members should continue to use their newly adopted administrative manual as guidance for conducting board business.

The BCE concurs with this recommendation. The BCE developed and adopted its first Board Member Administrative Manual on October 25, 2007, as a tool to improve board governance. The BCE will update the manual as needed to address issues as they arise.

To ensure that it complies with Bagley-Keene requirements and state laws requiring board members to attend training within specific time frames, and to ensure board members receive orientation within a reasonable amount of time of assuming office, the chiropractic board should:

- *Ensure staff retain documentation when they provide a copy of the Bagley-Keene to each board member.*

The BCE concurs with this recommendation. Beginning with the appointment of three new board members on or about March 2007, the board member liaison has maintained a file that documents when copies of Bagley-Keene are provided to board members.

- *Continue to use the member appointment checklist and establish procedures to periodically record and monitor board member training.*

The BCE concurs with this recommendation and has been utilizing the board member appointment checklist since March 2007. The BCE plans to have written procedures in place by July 1, 2008, to record and monitor board member training. Further, the Board Member Administrative Manual will be updated to include a listing of required training with specific timeframes.

- *Continue the practice of sending new board members to the orientation that Consumer Affairs provides.*

The BCE concurs with this recommendation. All current board members have completed this orientation offered by the DCA. The three newest board members completed this training within the first year of appointment. The BCE considers board member orientation as required training and will update the Board Member Administrative Manual to reflect this requirement.

Bureau of State Audit Recommendations and Agency Responses Chapter Two

To ensure that it has adequate controls over its complaint review process, the chiropractic board should do the following:

- *Develop procedures to ensure that the chiropractic board processes and resolves complaints as promptly as possible by establishing benchmarks and more structured policies and procedures specific to each step in its complaint review process.*

The BCE concurs with this recommendation. The BCE is currently collecting and analyzing data to propose performance measures to the board members at its July 2008 meeting. The BCE will complete internal policies and procedures to monitor complaint handling time and address problematic areas.

- *Establish time frames for staff to open complaint cases, complete initial review, refer cases to an investigator or expert if necessary, and close or otherwise resolve complaints through implementing informal discipline or referring for formal discipline to ensure that all complaint cases move expeditiously through each phase of the complaint review process.*

The BCE concurs with this recommendation. The BCE expects all consumer complaints to be acknowledged and opened in our database within 10 days of receipt. The BCE anticipates establishing timeframes for each phase of the enforcement process by July 2008.

Beginning with the FY 07/08, the BCE implemented steps assigned case management responsibilities to the enforcement analysts. In this role, the same enforcement analyst has responsibility to monitor the case from complaint analysis through the formal discipline phase. The BCE has established a monthly reporting requirement of pending cases generated through the enforcement database and status reports compiled by the enforcement analysts. These reports are reviewed monthly by BCE management.

- *Periodically review the status of all open complaints and investigations and identify and resolve any delays in processing.*

The BCE concurs with this recommendation. The BCE management reviews monthly workload reports, status reports, conducts staff meetings, and meets with individual staff members to resolve delays in processing.

- *Strengthen its enforcement policies and procedures to minimize the amount of time it takes staff to process consumer complaints before forwarding them to the attorney general or other law enforcement agency to ensure that it adequately assists attorneys and law enforcement agencies in enforcing the laws of chiropractic.*

The BCE agrees that improving the complaint handling and investigative process has positive effects on the ability of the attorney general and other law enforcement agencies to perform their jobs. The BCE collaborates with state and federal agencies and local law enforcement to protect the health and safety of California consumers.

To ensure that its enforcement procedures are complete and provide adequate guidance to enforcement staff, the chiropractic board should do the following:

- *Develop policies and procedures requiring that only a manager or a designated employee are allowed to make the final decisions on complaint resolution.*

The BCE concurs with this recommendation. The BCE implemented a review and approval process beginning in December 2007 in which all final decisions on complaint cases are made by the executive officer. The enforcement analysts review and analyze all of the available information and submit written recommendations along with the complaint file to the executive officer. The executive officer conducts a final review and makes the final decision. The BCE anticipates hiring an enforcement manager in the future who will assume this role.

- *Develop procedures to ensure that staff reports the issuance of citations to other states' chiropractic boards and regulatory agencies.*

The BCE reports disciplinary actions to the Federation of Chiropractic Licensing Boards which serves as a clearing house for all chiropractic licensing boards across the United States. The BCE is currently evaluating the most effective way to report the issuance of citations to other agencies keeping mind that citations are not considered discipline. The BCE expects to resolve this issue by July 1, 2008.

- *Develop procedures instructing staff when to open and how to process complaints generated internally.*

The BCE concurs with this recommendation. The BCE's updated procedures will define an internal complaint and include guidelines to assist staff determine when to generate an internal complaint. Potential internal complaints that fall outside the guidelines will require management review and approval.

To ensure that it processes and resolves consumer complaints regarding the same allegations consistently and that it consistently processes consumer complaints according to its enforcement policies and procedures, the chiropractic board should strengthen its existing procedures to provide guidance for staff on how to process and resolve all types of complaints and to ensure appropriate management oversight.

The BCE concurs with this recommendation. The BCE's updated procedures will provide instructions and guidelines to assist staff process complaints and make recommendations on disciplinary matters.

Additionally, the BCE will provide staff with formal training from the Attorney General's office, in-house staff counsel, and on the job training to ensure staff have the necessary tools to perform their duties.

To ensure that its processes for prioritizing consumer complaints are adequate and effective to ensure that staff clearly identify and process priority complaints promptly, the chiropractic board should do the following:

- *Implement tracking methods, such as flagging priority cases during complaint intake, using multiple levels of priority categories, and assigning specific time frames to process those priority categories.*

The BCE concurs with this recommendation. Effective April 1, 2008, the BCE will implement a new complaint review process that places consumer complaints into three categories: Urgent (Highest Priority), High, and Routine. Urgent complaints will receive the most focus and the shortest time frames for completion.

- *Establish procedures that direct board management to monitor the status of open complaints regularly especially those given priority status, to ensure that they do not remain unresolved longer than necessary.*

The BCE concurs with this recommendation. The BCE anticipates filling the vacant enforcement manager position in July 08 pending budget approval. The enforcement manager will be responsible and held accountable to ensuring all complaint investigations are processed timely.

To ensure that it is in compliance with all of its regulations, the chiropractic board should carefully consider the intended purpose of the quality review panels and whether implementing them is the best option to fulfill that intent. If the chiropractic board decides that another option would better accomplish the intended purpose of the quality review panels, it should implement the process for revising its regulations.

The BCE concurs with this recommendation. The Board has begun the review of both the feasibility and the intended purpose of the "quality review panels" found in Section 306 of its regulations. The Board has heard from licensees, associations, representatives from the Center for Public Interest Law, DCA staff counsel and the liaison deputy attorney general assigned to the Board regarding the options to ensuring that the Board's enforcement program is operating in the best manner possible.

To ensure that it has necessary resources to answer technical questions regarding quality of care and improper treatment that often arise, the board should fill and maintain its chiropractic consultant position. In addition, the board should ensure that its chiropractic consultant acts only in an advisory capacity and that the executive officer makes the final decision.

The BCE respectfully disagrees with the recommendation that the Board fills and maintains its chiropractic consultant position. The BCE does not want to limit its initial review of complaints to only one person because he or she would only be able to bring his or her own education, training, and experience to the position. This is too limiting and would inevitably lead to a myopic review of complaints. Additionally, no single consultant would have expertise in each practice style and school of thought plus the specialties within these various practice styles to provide competent expert advice.

④

To ensure that it adequately controls the use of experts, the chiropractic board should do the following:

- *Establish policies and procedures requiring its staff to document interviews with experts, including the content of those discussions to ensure that it refers cases to qualified experts who are free of conflicts.*

The BCE concurs with this recommendation. On March 27, 2008, BCE staff will present to the full board a proposed Expert Witness Guideline handbook, conflict of interest policy for all expert reviewers, and criteria for evaluating the qualifications of those of wish to become experts for the Board.

The BCE plans to follow up with the Attorney Generals Office providing training to those who wish to be hired as expert witnesses. The BCE is also looking into utilizing the same software program the Medical Board of California uses to document expert witness training, evaluations, areas of expertise and other pertinent information.

- *Consider entering into formal written contracts for services from experts or require them to provide written attestations that they are free of conflicts in cases assigned.*

The BCE concurs with this recommendation. The BCE has gathered examples of other licensing boards' expert witness contracts including conflict of interest and confidentiality provisions. The BCE will review these samples and create its own contract containing conflict of interest and confidentiality provisions.

- *Strengthen its policies and procedures to ensure that its staff monitor experts on their adherence to the established 30-day deadline for reviewing complaint cases and submitting a written report.*

The BCE concurs with this recommendation. The BCE has drafted procedures that enforcement analysts will use to monitor and follow up on performance expectations.

Prior to the case being sent to the expert, the analyst will contact the expert and provide a brief overview of the case and discuss any potential conflicts. Within three days of receiving the case, the expert must contact the analyst and confirm that a report will be submitted within 30 days. The analyst will follow up with the expert at approximately 15 days for a status update. Depending on the specifics of the case, an extension may be granted for good cause. The BCE will not tolerate any unacceptable delays.

- *Consistently perform an evaluation of the expert's written report and thoroughly document the results of the evaluations to ensure that it does not inappropriately refer complaint cases to experts who have not demonstrated quality work in the past.*

The BCE concurs with this recommendation. The BCE will draft evaluation reports that will be completed by BCE staff and the deputy attorney general assigned to the case. These evaluations will be kept on a file and reviewed prior to assigning cases to expert witnesses.

To ensure that the chiropractic board can demonstrate that its employees meet the minimum qualifications for their positions, it should retain personnel documentation on all employees according to record retention policy. In addition, the chiropractic board should require its personnel contractor to comply with the same requirements.

The BCE concurs with this request. On March 14, 2007, the BCE contracted with the Department of Consumer Affairs for personnel services. Subsequent to the initiation of the contract, the BCE began the process of disbanding its personnel office. The DCA personnel office reviews and approves all personnel transactions and maintains relevant documents in the headquarters office.

To ensure that future chiropractic consultants are hired with the desired qualifications, the board should consider revising the position's minimum qualifications to provide additional clarity on the term practice of chiropractic, similar to the board's current requirements for experts.

④ The BCE does not intend to use the chiropractic consultant at this time.

⑤ If the BCE decides to use this classification in the future, it will first revisit the classification concept and most certainly revise the classification specification to clarify minimum qualifications and typical duties. The BCE is currently reviewing the scope of practice as it was defined in 1922 according to the Chiropractic Act. The BCE can only define the term "practice of chiropractic" according to the Act.

Bureau of State Audit Recommendations and Agency Responses Chapter Three

To ensure that it is able to measure the overall efficiency of its licensing program in processing applications and petitions, the chiropractic board should do the following:

- *Establish time frames for all types of applications and petitions the board processes.*

The BCE concurs with this recommendation. The BCE will analyze current processes to identify opportunities to reduce cycle time, improve quality, and decrease costs. Once completed, the BCE will establish performance measures to monitor the processing times.

- *Establish a tracking system for applications and petitions to analyze where delays are occurring and ensure that applications and petitions are processed promptly.*

The BCE concurs with this recommendation. As stated above, the BCE will analyze current processes to identify opportunities to reduce cycle time, improve quality, and decrease costs. Once completed, the BCE will establish performance measures to monitor the processing times.

- *Establish a time frame for resolving appeals that includes milestones for each phase of the process.*

The BCE concurs with this recommendation. As stated above, the BCE will analyze current processes to identify opportunities to reduce cycle time, improve quality, and decrease costs. Once completed, the BCE will establish performance measures to monitor the processing times.

To ensure that it only licenses those who are committed to following its laws and regulations, the chiropractic board should develop specific policies and procedures for staff to follow when the board has received a complaint against an applicant seeking licensure.

The BCE concurs with this recommendation. The BCE will update its procedures to include a reference and training on Business and Professions Code section 480.

To ensure that the chiropractic board is able to defend its decisions on approved applications for satellite offices, corporations, and referral services, it should implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.

The BCE concurs with this request. The BCE will include signed checklists in licensing files to document that eligibility verifications were completed.

To ensure that it is placing licenses on forfeiture status according to the initiative act, the chiropractic board should do the following:

- *Establish specific procedures for staff to follow when licensees submit invalid payment when renewing licenses.*

The BCE concurs with this recommendation. The BCE will consult with the Department of Consumer Affairs to establish procedures to address dishonored checks.

- *Establish a tracking method to ensure that requests for repayment are sent promptly.*

The BCE concurs with this recommendation. The BCE will consult with the Department of Consumer Affairs to establish procedures to address dishonored checks and track repayments.

To ensure that the chiropractic board's continuing education program complies with current regulations, it should do the following:

- *Have board members ratify staff approvals of continuing education providers.*

The BCE concurs with this request. The BCE will incorporate board member ratifications of continuing education providers as appropriate.

- *Ensure its process to approve continuing education providers conforms with its regulations.*

The BCE concurs with this request. The BCE is in the process of reviewing the current process and identifying areas for improvement. Once completed, the BCE anticipates promulgating regulations to reflect these changes.

- *Comply with requirements for notifying providers of board member approval within two weeks following a scheduled board meeting and for notifying providers of application deficiencies within three weeks of receiving the application.*

The BCE concurs with this recommendation. The BCE will work with staff to coordinate board member ratifications and provider notifications pursuant to existing regulations. BCE management will monitor to ensure timeframe are being met.

- *Establish a process to track and monitor whether continuing education providers submit attendance rosters within 60 days of course completion.*

The BCE concurs with this recommendation. The BCE will develop a tracking tool to use to ensure providers are submitting rosters with 60 days of course completion.

- *Establish a procedure for maintaining accurate documentation of continuing education audits of licensees.*

The BCE concurs with this recommendation. The BCE will draft procedures to ensure accurate record keeping.

- *Establish a mechanism to ensure that all relevant steps are taken before continuing education audits are considered complete.*

The BCE concurs with this recommendation. The BCE will include a staff checklist and management review to ensure all relevant steps completed.

- *Establish a process to track course audits conducted and a procedure for taking corrective action when the course reviewer identifies a deficiency.*

The BCE concurs with this recommendation. The BCE is revamping its course audit function to increase course audits and take appropriate action to correct deficiencies.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE STATE BOARD OF CHIROPRACTIC EXAMINERS

To provide clarity and perspective, we are commenting on the response to our audit report from the State Board of Chiropractic Examiners (chiropractic board). The numbers below correspond to the numbers we placed in the margins of the chiropractic board's response.

We are not convinced that interviewing the members of the chiropractic board (board members) would have improved the audit. The main audit question concerning the board members was whether they consistently acted within their authority. Our audit procedures allowed us to gather information and documentation to answer this question without the need to interview them. As we state in our Scope and Methodology, we reviewed the laws, regulations, and policies governing the practice of chiropractic; the responsibilities and requirements of board members; open-meeting requirements; and administrative hearing requirements. We also reviewed minutes of chiropractic board meetings, related documentation, e-mail correspondence, and selected videotapes of the board meetings for the period from January 2006 through August 2007. Additionally, we attended some chiropractic board meetings during the period from October 2007 through January 2008. Moreover, we believe that our audit procedures, observation, and collection of information and documentation provided an accurate picture of the deficiencies in the board's processes that we note throughout the report.

①

The chiropractic board's comment that many facts and findings of the audit were based on what occurred at the chiropractic board before March 2007 is inaccurate. We ensured that our audit period extended through June 30, 2007, to enable us to identify any improvements the board may have made after March 2007. In addition, we disagree with the chiropractic board's claim that the audit report does not clearly articulate significant improvements that it implemented after March 2007. We included time periods in our report where they were appropriate and verifiable in an effort to present the most complete picture of the board's operations. For example, on pages 24, 30, and 33 our report clearly gives the board credit for improvements it has made to its board meeting sign-in sheets, board member training, and filing official training and accountability, all of which occurred in fiscal year 2007-08. However, unlike those improvements many of the other improvements that the board is undertaking are in the early stages and are not yet fully implemented or documented.

②

- ③ The board is incorrect in asserting that the board members are legally precluded from voting to deny licenses. It is also incorrect in asserting that by adopting a regulation the board members could delegate the authority to approve licenses to staff. As we discuss on page 34 of the report, the Chiropractic Initiative Act of California (initiative act) expressly requires the board members themselves to decide whether to approve or deny licenses, and does not authorize the board to delegate this important responsibility to anyone else. In approving the initiative act, the voters plainly expressed their intent that the board members must decide whether to approve or deny licenses, and the board cannot use a regulation to substitute its judgment for that of the voters. In addition, the board asserts that a board member who voted to deny the issuance of a license would have to recuse himself or herself if a proposed decision later came to the board on that matter, based on the provisions of the California Administrative Procedure Act (administrative procedure act) that prohibit certain ex parte communications. Although the board has not provided an explanation of why it believes a vote by the board to deny a license presents a conflict with the administrative procedure act, we believe its assertion does not have merit because the administrative procedure act does not prohibit board members from making decisions, and any concerns about ex parte communications may be addressed by adhering to procedures that give all parties access to the information that a decision is being based upon and a fair opportunity to contest it.
- ④ We do not understand the chiropractic board's assertion that hiring a chiropractic consultant would limit its initial review of complaints to one person. As we state in our recommendation on page 70, the chiropractic consultant should be used as a resource to answer technical questions regarding quality of care and improper treatment. As was its practice when the position was filled, the chiropractic consultant would be able to identify those complaints that require further analysis by an expert witness. The use of a chiropractic consultant does not have to limit the ability of the board to use other technical experts as needed. Further, our recommendation called for the board to limit the chiropractic consultant to an advisory role with the executive officer making the final decision.
- ⑤ Our concern was not with the definition of the term *practice of chiropractic* as it relates to the initiative act, but rather with the board's lack of specificity in defining the phrase when using it to describe the experience required of the chiropractic consultant. As we discuss on page 63 of the report, the chiropractic board should clearly specify what type of experience it expects the chiropractic consultant to have, similar to how it screens for the expert witnesses it uses.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
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