

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Chiropractic Examiners, September 26, 2005.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Chiropractic Examiners (board). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for the board.

REPORT CONCLUSIONS

In our opinion, the Board of Chiropractic Examiners is operating in the public's best interest and should continue to regulate chiropractors. Except as noted in the paragraph below, the board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve its effectiveness and ensure that chiropractors are licensed in the State of Alaska.

Outside of the licensing and examination functions, the board has been ineffective in serving the interest of the public. Too much of the board's time is spent discussing and developing statutory and regulatory changes that will have little to no impact on the public, but instead benefit the profession. Discussion topics include school sports physicals and independent medical examinations.

Alaska Statute 08.03.010(c)(5) requires that the Board of Chiropractic Examiners be terminated on June 30, 2006. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date until June 30, 2014.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The board should improve the efficiency of its operations by ensuring board meeting discussions are limited to topics within its purview and are of benefit to the public overall.

The efficiency of the board is hindered by its misaimed efforts. The board repeatedly discusses topics outside of its purview, which has resulted in wasted time, increased costs,

and more meetings than necessary each year. In an effort to improve board efficiency, we recommend the following:

1. Limit agenda discussion items; exclude topics outside of chiropractic examiners' jurisdiction.

In recent years, the board spent an inordinate amount of time discussing topics that would best be left to state or national chiropractic organizations. Agenda items repeatedly discussed included the regulation of independent medical examinations (IME) and the performance of school sports physicals. From August 2000 through January 2005, the board conducted 17 meetings. IMEs were discussed at 14 of the 17 meetings; school sports physicals were discussed at 9 of the meetings. These discussions have continued over time because the board believes regulation of these areas is within its jurisdiction.

A 1991 attorney general (AG) opinion explicitly states that chiropractors are not statutorily authorized to perform school sport physicals. An AG's opinion relating to the chiropractic regulation of IMEs does not exist. On several occasions, however, the board has been informed by Department of Law (DOL) staff that they do not have statutory authority to regulate IMEs. Further, DOL staff have informed the board that legislative changes are necessary before chiropractic examiners can regulate IMEs and before they can perform school sports physicals.

2. Reduce the number of board meetings held each year.

As discussed above, the board spends a large amount of time repeatedly discussing items outside of its purview, as authorized in statute, resulting in increased operational costs. Specific increased costs include: contractual costs for DOL expertise; personal services costs for Division of Corporations, Business and Professional Licensing staff services; and board meeting costs.

We recommend that the board improve its operational efficiency by ensuring meeting discussions are limited to topics within its purview and are of benefit to the public overall. Additionally, we recommend that the board decrease the number of meetings held each year from three to two, in an effort to reduce operational costs.

September 26, 2005

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF CHIROPRACTIC EXAMINERS
SUNSET REVIEW
September 26, 2005
Audit Control Number
08-20041-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, or program subject to the sunset review process. Currently under AS 08.03.010(c)(5), the Board of Chiropractic Examiners is scheduled to terminate on June 30, 2006. The board would be allowed one year in which to conclude its administrative operations.

In our opinion, the Board of Chiropractic Examiners should continue to regulate chiropractors. The board proposes changes to regulations to improve its effectiveness and ensure that chiropractors are licensed in the State of Alaska. We recommend that the legislature extend the board's termination date until June 30, 2014.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Chiropractic Examiners (board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(5) requires the board to terminate on June 30, 2006. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

There are three central, interrelated objectives of our report. They are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public's interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed chiropractors.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

Our audit reviewed the operations and activities of the Board of Chiropractic Examiners for the period FY 02 through FY 05.

During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulations related to the licensing of chiropractors. Our evaluation addressed consideration of applications, testing of candidates, and

continuing education necessary for an individual to maintain their license in good standing.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by, the board.
- Files related to applicants for, and holders of, licenses issued by the board.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Corporations, Professional and Business Licensing (division).
- Interviews with employees of the division.
- Reading and correspondence files maintained with the division.

ORGANIZATION AND FUNCTION

The Board of Chiropractic Examiners (board) was established under the provisions of Title 8, Chapter 20, of the Alaska Statutes. The board consists of five members appointed by the governor and subject to legislative confirmation. All board members serve terms of four years.

Alaska Statute requires that the board consist of five members, four of whom are licensed chiropractors having practiced in the state for a minimum of two years at the time of their appointment. Statutes require the fifth member to be a member of the public having no direct financial interest in the healthcare industry.

Board of Chiropractic Examiners
(As of June 6, 2005)

Gregory Culbert, Chiropractor, President

David Mulholland, Chiropractor, Vice
President

R. Clark Davis, Chiropractor, Secretary

Carol Davis, Chiropractor

Sean Siegel, Public Member

Board Duties and Powers

The board regulates chiropractic practice in Alaska by setting the following standards of practice:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling the standards of professional chiropractic practice.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedure Act when an individual has violated chiropractic statutes or regulations.

Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Professional and Business Licensing (division)

The division provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services; functions such as collecting fees, maintaining files, and receiving and issuing application forms; and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates that DCCED adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the division with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person engaged in or is about to engage in a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In our opinion, the Board of Chiropractic Examiners (board) is operating in the public's best interest and should continue to regulate chiropractors. The board safeguards the public interest by promoting the competence and integrity of those who hold themselves out to the public as qualified and competent chiropractors.

Except as noted in the paragraph below, the board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve its effectiveness and ensure that chiropractors are licensed in the State of Alaska.

Outside of the licensing and examination functions, the board has been ineffective in serving the interest of the public. Too much of the board's time is spent discussing and developing statutory and regulatory changes that will have little to no impact on the public, but instead benefit the profession. Discussion topics include school sports physicals and independent medical examinations.

Alaska Statute 08.03.010(c)(5) requires that the Board of Chiropractic Examiners be terminated on June 30, 2006. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date until June 30, 2014.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Chiropractic Examiners (board) should improve the efficiency of its operations by ensuring board meeting discussions are limited to topics within its purview and are of benefit to the public overall.

The efficiency of the board is hindered by its misaimed efforts. The board repeatedly discusses topics outside of its purview, which has resulted in wasted time, increased costs, and more meetings than necessary each year. In an effort to improve board efficiency, we recommend the following:

1. Limit agenda discussion items; exclude topics outside of chiropractic examiners' jurisdiction.

In recent years, the board spent an inordinate amount of time discussing topics that would best be left to state or national chiropractic organizations. Agenda items repeatedly discussed included the regulation of independent medical examinations (IME) and the performance of school sports physicals. From August 2000 through January 2005, the board conducted 17 meetings. IMEs were discussed at 14 of the 17 meetings; school sports physicals were discussed at 9 of the meetings. These discussions have continued over time because the board believes regulation of these areas is within its jurisdiction.

AS 08.20.100(b)(5)(A) authorizes a licensed chiropractor to sign “*within the scope of chiropractic practice, certificates of physical examinations for children before they enter school....*” Further, part (b)(5)(B) authorizes licensed chiropractors to sign “*reports for excuses from employment and from attendance at school or participation in sports activities....*” It does not, however, authorize chiropractors to perform school sports physicals.

Further, a 1991 attorney general (AG) opinion explicitly states that chiropractors are not statutorily authorized to perform school sport physicals. An AG’s opinion relating to the chiropractic regulation of IMEs does not exist. On several occasions, however, the board has been informed by Department of Law (DOL) staff that they do not have statutory authority to regulate IMEs. Further, DOL staff have informed the board that legislative changes are necessary before chiropractic examiners can regulate IMEs and before they can perform school sports physicals.

2. Reduce the number of board meetings held each year.

As discussed above, the board spends a large amount of time repeatedly discussing items outside of its purview, as authorized in statute, resulting in increased operational costs. Specific increased costs include: contractual costs for DOL expertise; personal services costs for Division of Corporations, Business and Professional Licensing (division) staff services; and board meeting costs.

AS 08.20.055 authorizes the board to regulate as “*necessary to effect the provisions of this chapter [Chapter 20. Chiropractors]....*” The board regulates its meetings via 12 AAC 16.020, which reads in part, “*The board will, in its discretion, meet at least twice each year....*” One stated objective of this board is to conduct a minimum of three board meetings each year. Meeting three times a year appears unnecessary given the limited topics discussed at meetings throughout the review period.

We recommend that the board improve its operational efficiency by ensuring meeting discussions are limited to topics within its purview and are of benefit to the public overall. Additionally, we recommend that the board decrease the number of meetings held each year from three to two, in an effort to reduce operational costs.

A ANALYSIS OF PUBLIC NEED D

The following analyses of Board of Chiropractic Examiners (board) activities relate to the public-need factors defined in the sunset review law at AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The board, through its administration of the licensure of chiropractors, has endeavored to present competent professionals to the public. To promote continued competence, all licensees must provide proof of continuing education for license renewal and each licensee is subject to a full continuing education audit. Licensees are required to publicly display their licenses. This notifies the public that their practitioners have met the standards for the issuance and renewal of the licenses held. The board has issued licenses in a uniform manner, held required meetings, and administered examinations in accordance with statutory requirements.

Aside from licensing qualified applicants, the board has strayed from the “public need” criteria and has moved toward operating in the best interest of the profession. As discussed in Recommendation No. 1, the board has repeatedly discussed its desire to regulate independent medical examinations (IME) and to provide school sports physicals. Such matters appear to have little or no impact on the public, but rather are changes that promote the profession.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board sets fees based on a two-year cycle, with the majority of the revenue collected in odd-numbered fiscal years. We reviewed the internal records maintained by the division for revenues and expenditures associated with the board. We did not audit this information, but present it for general information purposes.

From Exhibit 1 on the following page, it is evident revenues rose sharply when comparing FY 05 with FY 03. The increased revenues were the result of a 51% licensing fee increase that went into effect for the FY 05/FY 06 licensing period. The fee hike was precipitated by a substantial increase of both personal services and contractual expenses resulting from division staff turnover, an increase of investigative staff services, disciplinary casework, and the board repeatedly seeking Department of Law (DOL) advice relating to regulating IMEs.

Given the unpredictable nature of contractual expenses, it is likely the board will incur a substantial revenue deficit in FY 06. For this reason, the division and the board should closely monitor the financial position of the board at the end of the FY 05/FY 06 licensing period. This effort will ensure fees are appropriately set to avoid a recurring deficit in the next licensing period.

Exhibit 1 details board revenues and expenditures for FY 02 through FY 05.

Exhibit 1

State of Alaska Board of Chiropractic Examiners Schedule of License Revenues and Board Expenditures FY 02 - FY 05 (Unaudited)				
	FY 05	FY 04	FY 03	FY 02
Revenue	\$162,297	\$ 17,423	\$ 98,944	\$ 11,383
Direct Expenses				
Personal Services	49,575	47,717	43,028	26,394
Travel	8,518	5,959	10,011	8,588
Contractual	54,715	9,361	7,967	4,635
Supplies	188	114	277	37
Equipment	0	0	0	0
Total Direct Expenses	<u>112,996</u>	<u>63,151</u>	<u>61,283</u>	<u>39,654</u>
Indirect Expense	<u>12,938</u>	<u>11,680</u>	<u>11,462</u>	<u>9,225</u>
Total Expenses	<u>125,934</u>	<u>74,831</u>	<u>72,745</u>	<u>48,879</u>
Annual Surplus (Deficit)	<u>36,363</u>	<u>(57,408)</u>	<u>26,199</u>	<u>(37,496)</u>
Beginning Cumulative Surplus (Deficit)	<u>(36,995)</u>	<u>20,413</u>	<u>(5,786)</u>	<u>31,710</u>
Unallocated Administrative Indirect Revenue	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Ending Cumulative Surplus (Deficit)	<u>\$ (632)</u>	<u>\$(36,995)</u>	<u>\$ 20,413</u>	<u>\$ (5,786)</u>

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The Board of Chiropractic Examiners supported passage of Chapter 39, SLA 2002, which provides for licensure by credentials. No other statutory changes occurred during the review period.

The board did, however, develop both statutory and regulatory language to allow for the performance of independent medical examinations. On several occasions, DOL informed the board that it does not have statutory authority to regulate IMEs and suggested it approach the Alaska Chiropractic Society or find a sponsor for the proposed statutory addition.

Regulatory changes adopted by the board included:

- Issuance of a courtesy license.
- Increase in the number of independent study¹ continuing education hours.

The number of continuing education hours that could be obtained via independent study was increased from one-quarter to one-third of the total continuing education hours required for license renewal. The courtesy license allows chiropractors licensed outside of Alaska to practice on individuals who are in Alaska for special events such as, but not limited to, Special Olympics and Arctic Winter Games.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The locations, dates, and times of upcoming board meetings and proposed changes in regulations were published in the *Anchorage Daily News*, as well as posted on the board's website. Adequate time was provided for interested individuals to plan to attend or to submit written comment for review.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Public notices of proposed regulations are published the *Anchorage Daily News* and the Alaska Online Public Notice System. The board meeting minutes show that unlimited time was allotted for the scheduled public comment period. All proposed regulation changes are subject to the public participation process.

¹ Independent study programs must be approved by the board.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

We have reviewed the nature and extent of complaints filed involving chiropractic examiners. The division, in conjunction with the board, took appropriate investigative action, prioritized complaints in a reasonable manner, and proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

For the period July 2001 through May 2005, the division opened 35 investigative cases related to individuals either seeking licensure or licensed by the Board of Chiropractic Examiners.

The types of complaints filed included:

- Unlicensed practice (6)
- Negligence (5)
- Incompetence (5)
- Violation of ethics (4)
- Fraud/Misrepresentation (3)
- License application problems (3)
- Application problems (2)
- Sexual misconduct (2)
- Drug diversion (2)
- Other (3)

Approximately 51% of the cases were filed by clients; 26% by division staff; 20% by licensed associates; and the remaining 8% by other government agencies.

The 35 cases were open for an average of 521 days. At May 2005, six cases remained open, four of which exceeded a period of 120 days. Of the six open cases, two have since closed, two were referred for legal analysis, one resulted in a board hearing, and one remains unresolved due to inability to contact the respondent.²

No complaints or investigations specifically involving the actions and activities of the Board of Chiropractic Examiners were received or undertaken by either the Office of the Ombudsman or the Office of Victims' Rights within the audit period.

² The respondent in this case has not renewed their license and has closed their business; the division has been unsuccessful at contacting the individual.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action, in qualifying applicants. In no instance has the board denied an applicant a license based on personal attributes.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Exhibit 2 is a summary of new licenses and permits issued by the board for FY 02 through FY 05.

Exhibit 2

New Licenses and Permits Issued (exclusive of renewals)	FY 02	FY 03	FY 04	FY 05	Current Licenses (as of June 30, 2005)
Chiropractor	16	9	13	22	228
Locum Tenens ³	0	0	0	2	2
Temporary	6	4	1	5	1
Courtesy	0	0	0	0	0
Retired	0	0	0	2	2
Inactive	9	8	1	13	13

The application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Continuing education is required and adequately monitored by the board to promote a high level of quality performance and to help ensure the integrity of the profession.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The Board of Chiropractic Examiners should ensure board meeting discussions are limited to topics within its purview and are of benefit to the public overall. By limiting discussions, the board could reduce the number of meetings held each year from three to two, thereby reducing operational costs.

³ A temporary permit is issued to a locum tenens, a chiropractor substituting for another chiropractor licensed in the state. It is valid for 60 days.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

Our review of the interactions among the Board of Chiropractic Examiners, the National Board of Chiropractic Examiners, the Alaska Chiropractic Society, and the Council on Chiropractic Education did not reveal activities duplicated by two or more organizations. The national associations offer continuing education courses; however, they do not require members to submit continuing education credits to maintain their membership. Both the national and state organizations thoroughly investigate complaints regarding their members. The state association occasionally works with the Board of Chiropractic Examiners to change statutes and regulations; however, the two organizations don't necessarily coordinate efforts to eliminate duplication of activities.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Broad objectives identified by the board included:

- Conduct a minimum of three board meetings per year.
- Monitor and appoint a peer review committee.
- Update jurisprudence examination as needed.
- Continue to work with the Federation of Chiropractic Licensing Boards (FCLB) on the national licensee database.
- Continue affiliation with FCLB and the National Board of Chiropractic Examiners (NBCE). Send a board representative to the annual and district meetings and to the national NCBE Part IV examination.
- Review chiropractic statutes and regulations for necessary changes.
- Address the requirements for school and sports physicals.
- Assess and evaluate standards for independent medical examinations.
- Pursue statutory authority for regulation of independent medical examinations.

Evidence suggests the board establishes and meets most of its operational objectives annually. The board has had difficulty finding candidates to fill peer review committee positions due to the volunteer nature of the positions. It is questionable whether some of the stated objectives are prudent to the purpose of the board overall, given the advice received from DOL staff with regard to school sports physicals and independent medical evaluations.



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NOV 25 2005
LEGISLATIVE AUDIT

OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

November 22, 2005

Ms. Pat Davidson, CPA
Legislative Auditor
Division of Legislative Audit
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, Alaska 99811-3300

Dear Ms. Davidson,

Thank you for the opportunity to respond to your Preliminary Audit concerning the Board of Chiropractic Examiners Sunset Audit.

Please consider the following comments to your findings and recommendations.

Recommendation No. 1

The Board of Chiropractic Examiners (board) should improve the efficiency of its operations by ensuring board meeting discussions are limited to topics within its purview and are of benefit to the public overall.

1. Limit agenda discussion items; exclude topics outside of chiropractic examiners' jurisdiction.

We concur with the audit findings that significant resources have been spent on the topics identified without appropriate statutory authority. The department will work with the Board to either seek the appropriate statutory changes or to limit further discussions on those topics.

2. Reduce the number of board meetings held each year.

The department concurs that meetings should be held to the absolute minimum whenever possible; and that face to face meetings should be planned only when activities can be justified by a full agenda. Teleconferences are an inexpensive method to conduct minor issues as needed throughout the year.

There is one correction we would like to note on page 9, paragraph #4 that begins “The board sets fees based on a two-year cycle ...”. That should be corrected to read: “The **division** sets fees ...”. The division does consult with the Board regarding fee adjustments, however, AS 08.01.065 assigns responsibility of fee-setting to the division.

Again, thank you for the opportunity to respond.

Sincerely,



Richard K. Urion
Director of Corporations, Business and Professional
Licensing
for
William C. Noll
Commissioner



Northern Chiropractic

Gregory M. Culbert, D.C., DABCO

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NOV 21 2005

LEGISLATIVE AUDIT

November 17, 2005

Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
Attn: Pat Davidson, Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300

RE: Chiropractic Board Sunset Audit

Dear Ms. Davidson:

I am in receipt of your November 4, 2005, letter regarding your audit of the Board of Chiropractic Examiners (board) and its impending sunset. Thank you for recommending to the legislature to extend the board's termination date until June 30, 2014. I feel, after reviewing your letter, that certain issues should be further discussed, including the board's reasoning for its actions regarding independent medical examinations, sports physicals, and meeting more than two times per year.

You feel that the board spends an inordinate amount of time in its meetings regarding issues of independent medical examinations and school sports physicals. Since I have been a board member and attended meetings beginning May 24, 2002, less than five hours total has been designated to these particular subjects at board meetings. While much time has been spent by board members reviewing this information on their own time, relatively little time (when compared to other discussion items) has been designated to these subjects. These issues however, as you are aware, have definitely been a source of contention with the state board and the attorney general's office.

I cannot express enough that these issues are addressed more to benefit the public than they are to benefit the profession. Our problems with independent medical examinations is primarily due to public safety matters. Public safety is involved when a doctor from out of state is able to make an opinion regarding the

necessity of care for a patient. The board is supposed to maintain public safety by being sure of a chiropractor's competency via performance and chiropractic core methodology, sec. 08.20.055 (2). It is the board's belief that chiropractors practicing in the state are required to uphold the same standards, whether they are treating a patient or performing independent medical examinations. This, however, has been a problem. The board feels it has a responsibility to rein in rogue doctors to hold them to the same standards of care of the treating physician.

When interpreting the statutes and its existing regulations, we feel that the board is responsible for the practice of chiropractic in this state. We have asked for a written opinion on IMEs numerous times from the attorney general's office. Instead, we only get verbal opinions and a bill for their activities. To date, my understanding is we have still not received anything in writing from the attorney general's office regarding this issue. As we have not received anything in writing, this is an issue that was repeatedly brought up at meetings; however, as is noted in more recent agendas, this particular issue has not been a major discussion topic. Ultimately, I believe that the board expects the same accountability or responsibility that a treating chiropractor must have extended to those chiropractors performing independent medical examinations. The attorney general's office verbally feels that actual regulation of the practice of independent medical examinations must be done in a statutory manner and through the local chiropractic association. When reviewing core methodology and definitions of chiropractic care in regulations, it is the board's opinion that this should be able to be done via regulation, as it is an action performed by a chiropractor and not a separate profession.

We did not receive the majority of the information regarding the Attorney General's opinion of independent medical examinations until we had an actual meeting with Ms. Gayle Horetski, Assistant Attorney General, September 17, 2004, in Juneau. Her reasoning is that actual regulation of independent medical examinations did not fall under statute. Her opinion was that independent medical examinations performed by a chiropractor is actually an act of a different and unregulated profession. Our impression is that if a chiropractor is performing chiropractic, they should fall under the same laws as a treating chiropractor. It is difficult to explain the Attorney General's opinion to a person whose injury was dismissed by an independent medical examination; that there is no recourse for the patient is maddening, and makes the idea of a board regulating the profession of chiropractic seemingly impotent in this particular manner.

If chiropractors are not allowed to regulate chiropractors performing independent medical examinations, then who is? This is a public health concern and needs to be addressed.

Again, I feel it is difficult for patients, as well as other chiropractors, to understand that someone can be performing and giving chiropractic opinions without having

any sort of responsibility to their opinion, as they would have if they were actually treating the patient.

The school sports physical question is a problem, too. The 1991 opinion you refer to is also interesting. In that particular opinion, the reasoning that chiropractors cannot perform school physicals is partially based on the opinion that chiropractors are not considered physicians. In our board meeting September 17, 2004, with Ms. Horetski, she said that according to statute chiropractors *are* considered physicians. The quandary is further enhanced when one considers the fact that nurse practitioners and physician's assistants are allowed to perform these examinations but chiropractors are not, even though chiropractors have received training to perform these while in chiropractic school. The question arises because the act of performing school sports physicals is not specifically spelled out in statute. It does not, however, say that they *cannot* be performed by chiropractors either. Performing school physicals is generally done as a favor to our patients and certainly not done to enhance or benefit the chiropractic profession.

The board has talked about this in past meetings because chiropractors have continually asked the board about this. We have asked for answers to these questions in writing from the attorney general's office regarding the fact that we are considered physicians via statute; however, we have not yet received anything in writing.

Finally, addressing the issue of meeting just two times per year, this would cause problems. In 2004, we had three scheduled meetings. One of our meetings, unfortunately, was canceled by Director Rick Urion. When we combined that canceled meeting in with another meeting, the resulting meeting was extremely difficult. This meeting started at 8:00 in the morning; we had to work through our lunch hour and did not finish until after 5:00 when we had to leave to catch our plane out of Juneau. All of the issues of the meeting were not adequately addressed; and while the meeting was attempted to be organized, it became relatively chaotic in trying to complete all the scheduled items.

The actual cost of board meetings is quite minimal for the information that is gained when we are actually able to meet face to face. Our current licensing dues are \$730 each for over 200 licensed chiropractors in the state. The meeting we will have October 14, 2005, will cost the profession a little over \$1,000. Every time the board meets, each board member loses a full day's worth of work. We still have to pay for the overhead of our practices, costing each of us well over \$1,000 just to attend. The members of the chiropractic board feel that the meeting, however, is well worth it, even though our personal costs to attend far outweigh the cost of the state to provide these meetings, which is in turn passed on to our licensees.

Having three meetings a year makes up less than 10 percent of the cost of our licensing fees. The information gained and the board's ability to be pro-active and to be able to actively address problems in a timely manner is well worth it. For example, the October 14, 2005, meeting was going to be canceled by our division director. If this occurred, we as a board would not have been able to discuss what to do with four licensees that we found out did not receive their continuing education for the current licensing period. This means that it would be well over a year before we were able to address this particular problem and act on it. In the meantime, these licensees are still practicing, and we, as a board, could not adequately maintain public safety by addressing this problem. (I was informed recently that these practitioners were all able to comply after the fact for their CE via 12 AAC 16.340(c). This is still, however, a concern and discussion on disciplinary sanctions needs to be done).

As you are aware, the board is held to strict rules and we cannot talk amongst ourselves about board business outside of a formal board meeting. Going at times more than six months between meetings is not acting in the best interest of the public.

At our last board meeting in Juneau, we discussed with Ms. Jenny Strickler our licensing fees. It was found that the bulk of the contractual work was due to investigational and disciplinary case work fees. Our current investigator, Ms. Margaret McQuaid, has been doing an exceptional job in trying to wrap up several old cases. It was explained to us that a large percentage of the cost for contractual work will be reduced in the future, as many of these open cases have since been closed. Unfortunately, the actual breakdown of costs towards the attorney general's review of independent medical evaluations or school physicals was not available. You insinuate it was a significant amount, however, we have yet to receive this information in writing. We also don't know how much of the fee hike was due to division staff turnover.

In summary, again, thank you for recommending the legislature continue the Board of Chiropractic through 2014. We truly are, as a board, working to appropriately safeguard the public by promoting the competency and integrity of chiropractors in the State of Alaska. I am hoping some of the reasons I gave you regarding our concern as a board with school physicals and independent medical examinations appropriately addressed your concerns.

If you have any questions, please feel free to contact me at (907) 696-4878.

Sincerely,

Gregory M. Culbert, DC, DABCO
President, Board of Chiropractic Examiners
Jlr

Northern Chiropractic
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November 25, 2005

Members of the Legislative Budget
and Audit Committee

We have reviewed the responses to our preliminary audit report on the Department of Commerce, Community, and Economic Development, Board of Chiropractic Examiners.

In its response the Department of Commerce, Community and Economic Development correctly points out that it is the Division of Corporations, Professional and Business Licensing, and not the board, that sets the fees. We acknowledge that correction.

Sincerely,

Pat Davidson
Legislative Auditor

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