

SUNSET COMMISSION DECISIONS



TEXAS BOARD OF CHIROPRACTIC EXAMINERS

May 2004

AGENCY INFORMATION

Agency at a Glance

The mission of the Texas Board of Chiropractic Examiners is to protect the public's health, safety, and economic welfare by ensuring that chiropractic professionals are qualified and competent, and adhere to established professional standards. The State began regulating chiropractors in 1949 when the Legislature passed the Chiropractic Act and established the Board as an independent agency. To accomplish its mission, the Board:

- licenses chiropractors, registers chiropractic radiological technicians, and approves continuing professional education programs;
- registers chiropractic facilities; and
- investigates and resolves complaints, taking disciplinary action when necessary to enforce the Board's statute and rules.

Key Facts

- **Funding.** In fiscal year 2003, the agency operated on a \$344,000 budget and collected about \$1.6 million in revenue from professional and licensing fees and fines.
- **Staffing.** The agency employs six people, all of whom work in Austin.
- **Licensing and Registration.** The Board licensed 4,688 chiropractors, and registered 2,986 facilities and 157 radiological technicians in fiscal year 2003.
- **Enforcement.** The Board received 307 complaints in fiscal year 2003, and resolved 592, with almost three-quarters of them initiated by staff for practicing with an expired license or facility registration. Of the complaints submitted by the public, the most common are for unprofessional conduct, false or deceptive advertising, and grossly inefficient practice. This last category includes causing injury to a patient, failing to assess a patient's status and failing to provide direct supervision of students. The large number of complaints resolved in 2003 resulted from a backlog of complaints dating back to 2001.

ISSUES / RECOMMENDATIONS

Issue 1 The Board’s Use of Opinions to Define Scope of Practice Does Not Conform to the State’s Standard Process and Fails to Achieve Its Stated Intent.

Recommendations

Change in Statute

1.1 Require the Board to develop and adopt rules that clarify practices within and outside the scope of chiropractic practice, using stakeholder input early in the process.

This recommendation would require the Board to cease its practice of issuing Board opinions and to follow the State’s rulemaking process for clarifying scope of practice issues. Specifically, the Board would clearly define the practices and technology that chiropractors can and cannot use to diagnose and treat patients by rule, using the input of stakeholders early in the rulemaking process. The recommendation would require the Board to submit all of its previous Board opinions to this rulemaking process. As part of this process, the Board would determine whether additional training or certification is required to practice certain procedures and use certain equipments.

This recommendation would also require the Board to develop guidelines for the use of early stakeholder input. The Board could solicit stakeholder input through low-cost methods by sending e-mail or using its newsletter and that of other related health licensing agencies, such as the boards of Medical Examiners, Physical Therapy and Occupational Therapy Examiners, and Nurse Examiners. The Board would still be required to publish the proposed rules according to the Administrative Procedure Act and allow the public an opportunity to oppose the rules or suggest alternatives during the comment period.

1.2 Repeal the Advisory Commission in Statute.

This recommendation would repeal the multi-disciplinary advisory commission that had been established to advise the Board on new and experimental practices within the meaning of chiropractic. Because the advisory commission has not met in the past six years and has not been reauthorized by the Board, it has expired under the terms of the Government Code.

Management Action

1.3 The Board should comply with the Attorney General opinion on needle electromyogram, and inform chiropractors that this procedure is not within their scope.

This recommendation would direct the Board to retract its opinions on needle EMG and inform chiropractors that this procedure is not within their scope of practice, as the statute is currently worded. The recommendation would also direct the Board to enforce the Act against chiropractors who violate the Board’s statute by using needle EMG on patients. The Board should seek clarification from the Attorney General as to whether chiropractors may interpret the results of needle EMGs.

1.4 The Board should discontinue its Technical Standards Committee, and ensure adequate public membership on its Rules Committee.

This recommendation would eliminate the need for the Technical Standards Committee since under Recommendation 1.1, the Rules Committee would address all scope of practice questions by developing and interpreting rules related to scope of practice using stakeholder involvement early in the rulemaking

process. This recommendation would also require the Board to appoint at least one-third public membership on its rules committee.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Responses

Rec. 1.1 Scope of Practice Rulemaking

Agency Response

The Board agrees with the recommendation to develop and adopt rules that clarify practices within and outside the scope of practice, using stakeholder input early in the process. The Rules Committee will be expanded and for all scope of practice issues the Board will encourage at least three sources of stakeholder input before adoption of a rule, including consumer groups, associations, and colleges. Although the Board has sought input from stakeholders in the past, no official process was in place at the time of the Sunset review. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Other Responses

For

Jeffrey L. Brown, D.C., President – Texas Chiropractic Association, Austin

Franz Klein, D.C., President-Elect – Texas Chiropractic Association, Austin

Thimios D. Partalas, D.C., P.A., D.A.A.P.M., San Antonio

Greg Page, B.A., D.C., C.C.C.N., D.A.C.N.B.

Fabrizio Mancini, D.C., F.I.C.C., President – Parker College of Chiropractic, Dallas

Against

None received.

Modifications

1. Create statutory definitions for treatments statutorily listed as allowed and prohibited under a chiropractor's scope of practice. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
2. Clarify that a chiropractor performing manipulations on a patient that is anesthetized by a licensed anesthesiologist is not performing surgery. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
3. Delete the statutory prohibition against certifying chiropractors to perform manipulations under anesthesia. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
4. Allow the Board, by rule, to require additional educational, certification and other requirements to be certified to perform procedures within the chiropractic scope of practice that are identified by the Board as being beyond the initial training provided under the Doctor of Chiropractic degree. (Representative Burt Solomons, Chair – Sunset Advisory Commission)

5. After changing the Chiropractic Board's structure to include medical doctors, as suggested in New Issue 22, change the Board's rules committee in one of two ways:
 - a. Require the rules committee to be composed of two chiropractic doctors, one medical professional, and one public member; or
 - b. Require the rules committee to be composed of two chiropractic doctors, and two medical doctors.

(Jeff Cunningham, D.C., Sulphur Springs)

Rec. 1.2 Abolish Advisory Commission

Agency Response

The Board agrees with the Sunset recommendation to repeal the Advisory Commission. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Other Responses

For

None received.

Against

None received.

Rec. 1.3 Needle EMG

Agency Response

The Board will comply with all Attorney General opinions regarding needle EMG upon counsels' recommendation. The agency had been researching this holdover issue from prior Board actions and is only awaiting OAG permission to comply pursuant to the settlement of a lawsuit involving needle EMG. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Other Responses

For

None received.

Against

Greg Page, B.A., D.C., C.C.C.N., D.A.C.N.B.

Spiro Ioannidis, D.C, San Antonio

John Slaughter, D.C., B.S. – Advanced Medical Associates, P.C., Deer Park

Kirt W. Repp, D.C., Deer Park

Thimios D. Partalas, D.C., P.A., D.A.A.P.M., San Antonio

Brandon Brock, D.C., C.C.N., C.C.R.D., D.A.C.N.B., Mesquite

Fabrizio Mancini, D.C., F.I.C.C., President – Parker College of Chiropractic, Dallas

Modifications

6. Codify Attorney General Opinions relating to acupuncture, physical therapy, and venipuncture. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
7. Clarify in statute that chiropractors may legally practice needle EMG if they meet learning requirements in addition to regular schooling in areas of neurology and electrodiagnosis. (Thimios D. Partalas, D.C., P.A., D.A.A.P.M., San Antonio; Stephen M. Ward, D.C. – North Dallas Neuro Diagnostics, P.C., Coppell; Ralph Burton, D.C. – Burton Chiropractic and Healthcare Center, email; John Pispidikis, M.A., D.C., A.A.D.E.P., Dallas; Greg Page, B.A., D.C., C.C.C.N., D.A.C.N.B.; Jeff Cunningham, D.C., Sulphur Springs; John Slaughter, D.C., B.S. – Advanced Medical Associates, P.C., Deer Park; Brandon Brook, D.C., C.C.N., C.C.R.D., D.A.C.N.B., MesquiteRand S. Swenson, D.C., M.D., Ph.D. – Dartmouth Medical School, Hanover, New Hampshire)
8. Limit the performance of diagnostic EMG to licensed medical doctors with specialized training in electrodiagnostic medicine. (Sandra Olson, M.D., President – American Academy of Neurology, and Shirley Atkins, Executive Director – American Association of Electrodiagnostic Medicine, St. Paul, Minnesota; Claire V. Wolfe, M.D., President – American Academy of Physical Medicine and Rehabilitation, Columbus, Ohio; Sara Austin, M.D. – Texas Neurological Society, Austin)

Rec. 1.4 Technical Standards Committee

Agency Response

The Board agrees to discontinue the Technical Standards Committee and to ensure adequate public membership on its Rules Committee. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 1.1 through 1.4 with Modifications 4 and 6.

Commission Decision: Adopted Recommendations 1.1 through 1.4. Adopted Modification 1, modified to conform the definitions of the Chiropractic Act with the definitions of the Medical Practice Act, to define treatments listed as allowed and prohibited under a chiropractor's scope of practice.

Issue 2 The Board's Enforcement Program Has Not Kept Up With the Growth of the Profession.

Recommendations

Change in Statute

2.1 Authorize the Board to conduct inspections as part of the complaint investigation process.

This recommendation would authorize the Board to inspect the premises of a licensee or registrant on an unannounced basis during reasonable business hours, as part of the Board's investigation of complaints. The Board would be able to inspect facilities and review patient and third-party billing records as necessary to investigate a complaint. This recommendation would not establish a routine inspection process for chiropractic facilities.

2.2 Authorize the Board to issue cease and desist orders.

This recommendation would allow the Board to issue cease and desist orders. Cease and desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the public's health and safety. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease and desist orders.

2.3 Authorize the Board to require restitution as part of the settlement conference process.

This recommendation would allow the Board to include restitution as part of an informal settlement conference. Authority would be limited to including a refund not to exceed the amount the consumer paid to a chiropractor. Restitution would not include an estimation of other damages or harm. The restitution would be an additional enforcement tool that could only be used in cases involving violations of the law or Board rules and may be in lieu of or in addition to a Board order assessing an administrative penalty or other types of disciplinary action.

2.4 Require the Board to investigate complaints according to risk.

This recommendation would require the Board to place complaints in priority order so that the agency handles the most serious problems first. Addressing complaints based on seriousness would ensure that the agency's attention is placed where it is most needed. This recommendation would also require the Board to take into account the number of years during which a complaint has been pending as a factor for prioritizing complaints.

2.5 Require the Board to adopt a disciplinary policy with respect to fraud, and to cooperate with TDI to improve the sharing of relevant enforcement information.

This recommendation would require the Board to adopt a stricter policy on fraud, especially with respect to insurance and workers' compensation fraud. The recommendation would also require the Board and TDI to cooperate with and assist each other when either agency is conducting an investigation, by providing information relevant to the investigation, investigating cases together and collaborating on appropriate disciplinary action whenever possible. Both the Board and TDI would be required to track cases they refer to each other. The Board should also report information on its insurance cases, including workers' compensation, to the Legislature annually.

2.6 Authorize the local peer review committee members to assist the Board in investigating complaint cases that require a standard of care review.

This recommendation would issue an additional responsibility to the local peer review committees, while maintaining their ability to mediate medical necessity and billing disputes. This recommendation allows the Board to seek the advice and expertise of local committee members in complaint investigations related to medical competency. Specifically, complaint cases with possible standard of care violations would be referred to the peer review committee members. The Board would be required to make new appointments to the local and executive peer review committees by January 1, 2006, and every three years thereafter. In addition, the recommendation would eliminate the requirement that the Board appoint members of the local committees from a list of nominees submitted by a local chiropractic association. Instead, the Board could, as it deems appropriate, receive input from all relevant chiropractic associations, without being limited to members from these lists. The Board would be required to develop rules governing the eligibility requirements to serve on a peer review committee, including having a clean disciplinary record and an acceptable utilization record in the various insurance systems. Before reviewing standard of care complaints, committee members must be trained on how to investigate cases in accordance with the Chiropractic Act and Board rules.

This recommendation would require the Board to develop and adopt a process to refer complaints cases needing a standard of care review and billing complaints to the peer review committees, with input from the executive committee. Members assigned to a standard of care case would review records and evidence collected by agency staff during the investigation. Committee members would report their findings to the Board, indicating whether standard of care was met in a complaint against a licensee, the applicable standard of care, and the clinical basis for the determination. Depending on the specific requirements of a case, the agency may request a member to attend an informal conference or testify at a contested case hearing. Committee members would be immune from civil liability for any damage caused in the performance of their duties, including the review of standard of care complaints, in absence of fraud, conspiracy, or malice.

This recommendation would direct the Board to provide the public access to information on local peer review committees on its Web site. The information should include a description of the committees' services and the type of issues mediated by the committees. The executive committee would report annually to the Board on the cases mediated by the local peer review committees. The information should include the number of cases referred to the committees, broken down by type, and the number of cases resolved and the outcome of each case.

Management Action

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

The Board should have two additional staff to investigate complaints and perform on-site inspections. This recommendation directs the Board to hire two level I enforcement staff by seeking an increase in its authorized full-time equivalent employees and additional funding through the appropriation process. The Board should increase its fees to cover these additional costs.

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

This recommendation would direct the Board and TWCC to work out the details of recent legislation requiring the two agencies to work together in enforcement, and start sharing information. The agencies should refer cases to each other, investigate cases together, share investigative notes, and collaborate on appropriate disciplinary action whenever possible. This recommendation would direct both the Board and TWCC to track cases they refer to each other.

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

This recommendation would direct the Board to post information about disciplinary actions on its Web site in a format that consumers may access easily. Increasing accessibility could include creating an alphabetical listing of the names of all licensees who had disciplinary action taken against them, including the type of sanctions and date when the sanction was ordered. This recommendation would also require the Board to make the HPC's toll-free line more easily accessible on its Web site by including it with the Board's contact information. The recommendation would also direct the Board to notify parties to a complaint in a user-friendly way, such as by telephone or e-mail, regarding when and where their complaint will be heard by the enforcement committee and the full Board.

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

This recommendation would direct the Board to track denials of new licenses and license renewals, to help the Board quickly identify people previously found to be unsuitable, who may be reapplying for a license.

Fiscal Implication

Several recommendations would have a fiscal impact to the State resulting in an overall cost of \$87,600 in fiscal year 2006, and \$84,600 each year thereafter, for two additional enforcement staff and compensation for the Board's peer reviews committees. These costs would be largely offset by a fee increase among the Board's regulated population. Approximately \$5,600 would be needed annually to compensate the Board-appointed peer review committees.

Responses

Rec. 2.1 Inspections as Part of Complaint Investigations

Agency Response

The Board welcomes a change in statute to gain authorization to conduct inspections as part of the complaint investigation process. Although the agency has access to the front office of chiropractic facilities, the ability to review files will greatly enhance enforcement efforts. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Rec. 2.2 Cease and Desist Orders

Agency Response

The Board welcomes a change in statute to authorize the Board to issue cease and desist orders. The Board feels that with this additional authority to sanction individuals engaged in the unlicensed practice of chiropractic, the safety of consumers will be enhanced. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Rec. 2.3 Restitution

Agency Response

The Board welcomes a change in statute that would authorize the Board to require restitution as part of the settlement conference process. This issue addresses a frequent complaint made to the Board. The ability to require restitution should immediately impact consumers and strengthen the authority of the Board. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Rec. 2.4 Risk-based Complaint Investigations

Agency Response

The Board welcomes a change in statute that will commit the Board to adopt a formal policy to investigate complaints according to risk. Although the Board already makes this consideration, formalizing this policy will benefit the agency and place enforcement focus on risks to the patient rather than the clearing of old cases and backlogs. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Staff Comment: Focusing on complaints that put patients at risk at the expense of clearing old cases and backlogs is not the intent of this recommendation. Instead, the recommendation directs the Board to take all of these factors into consideration when prioritizing complaints.

Rec. 2.5 Improved Coordination with TDI on Fraud

Agency Response

The Board welcomes a change in statute that would require the Board to adopt a disciplinary policy with respect to fraud, and to cooperate with and to assist the Texas Department of Insurance (TDI) when either agency is conducting an investigation pertaining to fraud. Earlier attempts have not been successful since the confidentiality of enforcement files was not insured until last session. To date, the agency has still not received any enforcement information from TDI despite frequent attempts to secure investigative files when working the same cases concurrently. There have not been any names submitted to the Board in order for it to take action on insurance fraud. The Board aggressively pursues all complaints, including fraud. The Board feels that until cooperation is received from the Texas Workers Compensation Commission and TDI, the issue of insurance and workers compensation will continue to plague the state. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Affected Agency Response

The Texas Department of Insurance indicated that it has previously taken steps to increase investigative cooperation and information sharing with the Board and other State agencies. For example, in fiscal year 2003, the Department referred five fraud reports to the Board and met with the Board and other health licensing agencies to discuss information sharing processes. One issue that arises during the course of these cooperative efforts is protection of the confidentiality of information obtained in the Department's criminal investigations. It is of vital importance to the work of the Fraud Unit that information provided to another agency for possible administrative enforcement action remains confidential. In those instances where the Department assists non law enforcement agencies, it has done so to the fullest extent possible while remaining in compliance with the law. Nonetheless, enhancing the confidentiality provisions in current law would help alleviate any concerns about the sharing of information. (Jose Montemayor, Commissioner – Texas Department of Insurance, Austin)

Rec. 2.6 Peer Review of Standard of Care Complaints

Agency Response

The Board welcomes a change in statute that would authorize the local peer review committee members to assist and arbitrate for the Board in investigating complaint cases that require a standard of care review. The Board is already working on this new recommendation and will have new guidelines in place before the end of the year. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Rec. 2.7 Additional Enforcement Staff

Agency Response

The Board agrees that the hiring of two additional enforcement staff to assist in enforcement activities will enhance enforcement efforts and suggests the following modification.

Agency Modification

5. The Board should be authorized to hire a three-fourth time in-house attorney. The Board often has to wait for the Office of the Attorney General (OAG) legal counsel assigned to the Board to respond to timely issues. Delays due to heavy caseloads at the OAG often make timely resolution of cases infrequent. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Rec. 2.8 Cooperation with TWCC

Agency Response

The Board agrees that sharing efforts between it and the Texas Workers Compensation Commission (TWCC) will promote greater enforcement efforts, which will ultimately benefit the consumer. SB 1574 addresses this issue by amending Section 413.0511 (b) of the Labor Code. The Board has always been willing to share information with TWCC but in the past had found no reciprocation of effort. To date, no information has been shared with the Board. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Other Response

Modification

6. Postpone consideration of workers' compensation issues until the Texas Workers' Compensation Commission Sunset process where fraud issues can be dealt with across the board with all workers' compensation health care providers. (Jeffrey L. Brown, D.C., President – Texas Chiropractic Association, Austin)

Rec. 2.9 Enforcement Information

Agency Response

The Board will comply with the recommendation to make enforcement information important to consumers readily accessible on its Web site. Although the Board lists disciplinary actions in four different places, a special link has been added that now leads interested consumers to a listing of enforcement orders and sanctions arranged alphabetically by licensee name. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Rec. 2.10 Denied Licenses and License Renewals

Agency Response

The Board is now tracking denied licenses and denied renewals as part of the regular application process. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

For

Fabrizio Mancini, D.C., F.I.C.C., President –Parker College of Chiropractic, Dallas

Recommendations 2.1, 2.2, 2.3, 2.6, 2.7 – Jeffrey L. Brown, D.C., President – Texas Chiropractic Association, Austin; Thimios D. Partalas, D.C., P.A., D.A.A.P.M., San Antonio; Greg Page, B.A., D.C., C.C.C.N., D.A.C.N.B.

Against

None received.

Recommended Action: Adopt Recommendations 2.1 through 2.10.

Commission Decision: Adopted Recommendations 2.1 through 2.10.

Issue 3 Elements of the Board's Licensing Functions Do Not Conform to Commonly Applied Licensing Practices.

Recommendations

Licensing

Change in Statute

3.1 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

This recommendation would amend the Board's statute to ensure that testing accommodations for the Board's exam are in accordance with the Americans with Disabilities Act. The Board would need to adopt rules regarding accessibility accommodations and ensure its testing policies and procedures comply with the Americans with Disabilities Act.

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

This recommendation would require the Board to use the standard renewal fee as the basis for its late renewal penalties, rather than the cost of the jurisprudence exam required for licensure. For example, the Board would charge a person whose license has been expired for 90 days or less the standard renewal fee plus a penalty equal to one and half times the renewal fee. For those whose licenses have been expired for more than 90 days, but less than one year, the Board would charge the standard renewal fee plus a penalty of twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on chiropractors.

Management Action

3.3 The Board should eliminate the Executive Director's role from the license denial process.

This recommendation would eliminate an applicant's ability to appeal and settle a license denial to the Executive Director, thereby leaving SOAH as the appropriate outlet for an appeal.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. The recommendations are procedural improvements that should not require additional resources.

Responses

Agency Response

Recommendation 3.1: The Board agrees to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act (ADA.) Although the Board provides accessibility to all persons informally, an adopted rule will solidify our commitment to the ADA.

Recommendation 3.2: The Board agrees with the recommendation to change the statute to ensure that the basis for the renewal penalty is based upon standard renewal fee instead of the jurisprudence exam. Although the current exam fee is the same as the renewal fee, it is worthwhile to ensure that the late fee charged directly corresponds to the type of license being charged.

Recommendation 3.3: The Board agrees to eliminate the Executive Director's role from the license denial process.

(Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

For

Jeffrey L. Brown, D.C., President – Texas Chiropractic Association, Austin.

Thimios D. Partalas, D.C., P.A., D.A.A.P.M., San Antonio.

Fabrizio Mancini, D.C., F.I.C.C., President – Parker College of Chiropractic, Dallas

Greg Page, B.A., D.C., C.C.C.N., D.A.C.N.B.

Against

None received.

Recommended Action: Adopt Recommendations 3.1 through 3.3.

Commission Decision: Adopted Recommendations 3.1 through 3.3.

Issue 4 Decide on Continuation of the Chiropractic Board After Completion of Sunset Reviews of Other Health Licensing Agencies.

Recommendation

Change in Statute

4.1 Decide on continuation of the Texas Board of Chiropractic Examiners as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.

This recommendation would postpone the Sunset Commission’s decision on the status of the Board as a separate agency until completion of the Sunset reviews of other health licensing agencies being reviewed this biennium.

Fiscal Implication

This recommendations will not have a fiscal impact to the State.

Responses

Agency Response

Recommendation 4.1: The Board agrees with the continuing need to license and regulate chiropractors, radiological technologists, and chiropractic facilities in Texas.

Agency Modification

1. Continue the Board as an independent agency to provide the most cost-effective and consumer-friendly form of operation. As a member of the Health Professions Council, and the new Office of Patient Protection, the agency is already consolidating in certain areas such as information technology, courier services, sharing of imaging equipment and many other efforts.

(Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

For

None received.

Against

None received.

Other Responses

Modifications

2. Continue the Texas Board of Chiropractic Examiners as a separate and independent agency. (Jeffrey L. Brown, D.C., President – Texas Chiropractic Association, Austin; Franz Klein, D.C., President-Elect – Texas Chiropractic Association, Austin; Dr. Todd Ruland – Chiroplus Clinic, e-mail; Thimios D. Partalas, D.C., P.A., D.A.A.P.M., San Antonio; Greg Page, B.A., D.C., C.C.C.N., D.A.C.N.B.)
3. Improve administrative efficiencies by enhancing the effectiveness of the Health Professions Council. (Fabrizio Mancini, D.C., F.I.C.C., President – Parker College of Chiropractic, Dallas)

4. Do not put responsibility for the Chiropractic Act under the Board of Medical Examiners.
(Jeff Cunningham, D.C., Sulphur Springs)

Recommended Action: None. The Sunset Commission has already decided to postpone action on the continuation of health licensing agencies until all such agencies have been reviewed.

Commission Decision: The Commission had already decided to postpone action on the continuation of all health licensing agencies until all such agencies have been reviewed.

ACROSS-THE-BOARD RECOMMENDATIONS

| Texas Board of Chiropractic Examiners | |
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| Recommendations | Across-the-Board Provisions |
| Already in Statute | 1. Require public membership on the agency's policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Already in Statute | 3. Require unbiased appointments to the agency's policymaking body. |
| Already in Statute | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Apply | 6. Require training for members of the policymaking body. |
| Update | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Already in Statute | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted the staff recommendations.

NEW ISSUES

New Issues

The following issues were raised in addition to the four issues raised in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

5. Limit chiropractic facility ownership to chiropractors. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)
6. Authorize chiropractors to use the term “chiropractic physician.” (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)
7. Authorize chiropractors to issue temporary handicap-parking permits to patients. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)
8. Clarify that the Board has the ability to offer and charge a fee for board-sponsored continuing education to licensees. (Sandra Smith, Executive Director – Texas Board of Chiropractic Examiners, Austin)

Staff Comment: The agency indicates that no entity currently provides continuing education to licensees on the Chiropractic Board's rules and statute. While the Board has approved providing this continuing education, questions arose as to whether it has the authority to provide these classes and charge fees for doing so.

9. Require passage of both the required chiropractic and optional acupuncture and physiotherapy parts of the National Board exams to be eligible for a chiropractic license in Texas. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
10. Exempt from the Texas Public Information Act the Chiropractic Board's jurisprudence exam questions, examinations, and the deliberations and records relating to the determination of the fitness of an applicant to hold a license. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
11. Modify provisions regarding a chiropractor's authority to delegate to assistants to more closely resemble comparable authority for physicians to delegate in the Texas Medical Act. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
12. Increase the number of undergraduate hours statutorily required to be eligible for a license to match those required of the Council on Chiropractic Education, the accreditation board recognized by the U.S. Department of Education for chiropractic colleges. (Representative Burt Solomons, Chair – Sunset Advisory Commission)
13. Increase the prerequisite required to enter chiropractic school from 60 semester hours to a minimum of 120 semester hours. (Fabrizio Mancini, D.C., F.I.C.C., President – Parker College of Chiropractic, Dallas.)

Staff Comment: The Council on Chiropractic Education, which accredits chiropractic institutions, requires a minimum of 90 semester hours of pre-professional education as a prerequisite.

14. Add a statutory limit to the number of times an applicant has to pass the jurisprudence exam to three attempts to reflect comparable requirements in the Texas Medical Act. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
15. Specify that performing the practice of chiropractic while under the influence of drugs and alcohol is a state jail felony. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
16. Prohibit the solicitation of patients by a chiropractor and create a Class A misdemeanor to reflect comparable penalties in the Texas Medical Act. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
17. Prohibit the same practices by chiropractors that are currently applied to physicians in the Texas Medical Act regarding such matters as fraudulent practices, advertisement and employment of a person whose license has been suspended or revoked. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
18. Require the suspension or revocation of a chiropractor’s license for conviction of the same offenses as applied to physicians in the Texas Medical Act, such as felonies and sex crimes. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
19. Allow the Board to impose a non-disciplinary rehabilitation order on an applicant or a licensee for the same reasons as provided for physicians in the Texas Medical Act, such as drug or alcohol addiction and mental deficiencies. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
20. Require the Department of Insurance to report to the Board medical malpractice settlements, and insurers to submit expert witness reports filed involving chiropractors. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
21. Require the Board to investigate chiropractors who have had three or more expert reports filed in three separate lawsuits within five years. (Senator Jane Nelson, Vice-Chair – Sunset Advisory Commission)
22. Modify the Board’s composition to eliminate one Doctor of Chiropractic position and replace it with a public member, requiring that three of the public members be licensed by the Texas Board of Medical Examiners as doctoral level appointments, and one public member represent public interest. (Jeff Cunningham, D.C., Sulphur Springs)
23. Require that the Board’s Executive Director position be filled by a Doctor of Chiropractic. (Jeff Cunningham, D.C., Sulphur Springs)
24. Remove the current members from the Board and replace the vacant positions with new staggered gubernatorial appointments. (Jeff Cunningham, D.C., Sulphur Springs)

Recommended Action: Adopt New Issues 12, 14, 17, and 20.

Commission Decision: Adopted New Issues 12, 14, 15, 17, 18 and 20.