

State Board of Chiropractic Examiners

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

REPORT NUMBER 2007-117, MARCH 2008

State Board of Chiropractic Examiners' responses as of September and December 2008

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to review the State Board of Chiropractic Examiners' (chiropractic board) 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 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.

Finding #1: The chiropractic board's lack of understanding resulted in violations of some Bagley-Keene Open Meeting Act requirements.

The Bagley-Keene Open Meeting Act (Bagley-Keene) is the state law that specifies the open meeting requirements for all boards and commissions. 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 at least 24 hours in advance of the meeting. At the following public session, board members failed to disclose the action they had taken during the closed session as required by Bagley-Keene. 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. 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 also violated Bagley-Keene requirements that allow the board to hold closed sessions in limited circumstances. 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.

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.*

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- » *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.*

We found other examples of actions that risked violating Bagley Keene. Specifically, for the 13 board meetings held between January 2006 and August 2007, the guest register did not indicate that signing in was voluntary. By not doing so, 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. In addition, 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. Finally, the minutes of chiropractic board meetings, videotapes, and e-mail correspondence reflect a number of instances when board members disregarded warnings and engaged in communications that could have triggered violations of Bagley-Keene requirements. Although these instances are not violations, they demonstrate that board members disregarded warnings and risked violations.

We recommended that the chiropractic board continue to involve legal counsel in providing instruction and training to board members at each meeting. We also recommended that the chiropractic board continue to retain documentation of the steps it takes to publicly announce its meeting.

Chiropractic Board's Action: Corrective action taken.

According to the chiropractic board, in March 2007 it recognized that board members did not fully understand the requirements of Bagley-Keene and in April 2007 the former chair instructed the acting executive officer to place Bagley-Keene training on the agenda of every board meeting. The chiropractic board's legal counsel provides interactive training at each board meeting, which is documented in the meeting minutes. In addition, to confirm the timely postings of board meeting agendas, the chiropractic board instituted a checklist that is signed by the board member liaison and confirmed by the executive officer. The board member liaison also prints the agenda from the Web site, which includes the posting date.

Finding #2: Board members lack knowledge of the California Administrative Procedure Act.

The California Administrative Procedure Act (administrative procedure act) is the state law that prohibits ex parte communication.¹ 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. We found instances where board members invited ex parte communication by referencing a pending accusation and by encouraging licensees to contact the board members

¹ 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.

if their problems were not addressed by staff.² 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. 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.

Moreover, at the December 2006 meeting, a board member presented a proposal to amend board regulations to improperly give board members the authority to both file accusations and judge their merit. 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.

We recommended that the chiropractic board members 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.

Chiropractic Board's Action: Partial corrective action taken.

In its response to the audit report, the chiropractic board reported that since April 2007, the board members have received extensive training on the requirements of Bagley-Keene and the administrative procedure act. The chiropractic board also reported that board members are committed to conducting themselves in accordance with laws related to ex parte communications and seeking legal advice whenever they have a question. The minutes of the May 2008 board meeting reflect one of the board members asking the board's legal counsel how board members recuse themselves from an agenda item. Based on our review of the chiropractic board's meeting minutes from May, July, and September 2008, the chiropractic board's legal counsel continues to guide and instruct the board members on appropriate actions related to their duties governed by the administrative procedure act. However, the board's response did not address whether any attempts at inappropriate communication have occurred and what the board members did to avert it if, in fact, such communication was attempted.

Finding #3: The chiropractic board did not fully comply with the requirements of the Political Reform Act of 1974.

The Political Reform Act of 1974 (political reform act) is the central conflict-of-interest law governing the conduct of public officials in California. 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. The chiropractic board lacks adequate controls to ensure that its designated employees, including board members, comply with the reporting requirements. 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 political reform act also requires the board to 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 asserted she was unaware of her role and responsibilities. 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.

² An accusation is a written statement of charges against a licensee that specifies the laws and regulations allegedly violated.

In addition, 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. 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.

We recommended that the chiropractic board ensure that its filing official is aware of the role and responsibilities of the position and, similarly, promptly inform anyone replacing the filing official. We also recommended that the board 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. Additionally, we recommended that the chiropractic board 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.

Chiropractic Board's Action: Partial corrective action taken.

The board's executive officer updated the filing officer's duty statement and explained the role, duties, and responsibilities of the position to the employee. According to the chiropractic board, in February 2008, the filing officer attended training provided by the Fair Political Practices Commission on the role of a filing officer. In addition, the chiropractic board established written procedures and a tracking tool to ensure that designated employees, including board members, complete and file their statements of economic interests on time. The written procedures also include a provision for the filing officer to meet with the executive officer annually to review the chiropractic board's conflict-of-interest code to ensure that individuals in decision-making positions are given notification of the filing date. Because the expected time for this meeting had not occurred when the board provided its response, the board has not had the opportunity to document that it has implemented this procedure.

Finding #4: 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, board members attempted actions that were inappropriate. For example, 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. 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.

In October 2007 board members adopted an administrative manual to serve as a guide for board members. The new manual outlines board policies, procedures, and state laws that govern chiropractic board business.

We recommended that the chiropractic board members continue to use their newly adopted administrative manual as guidance for conducting board business and to continue improving their knowledge and understanding of state laws and board procedures.

Chiropractic Board's Action: Corrective action taken.

The chiropractic board stated that it plans to update its administrative manual as needed to address issues as they arise. The chiropractic board provided minutes from its March 2008 board meeting, which indicated the board members voted to update the administrative manual.

Finding #5: Board members inappropriately delegated their responsibility to approve license applications to staff.

Staff reviewed license applications and made decisions to issue licenses without the approval of board members, contrary to the requirements of the Chiropractic Initiative Act of California (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. The initiative act does not contain provisions that allow the chiropractic board to delegate to staff the authority to approve or deny licenses. Because staff rather than board members made final decisions to approve 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. 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.

We recommended that the chiropractic board modify its current process so that board members make final decisions to approve or deny all licenses. Additionally, we recommended that board members ratify all previous license decisions made by staff.

Chiropractic Board's Action: Partial corrective action taken.

In its May 2008 response, the chiropractic board provided meeting minutes showing that the board members voted to ratify license approvals granted by staff since July 1, 2007. Additionally, our review of the board's July and September 2008 meeting minutes found that board members voted to ratify staff approvals of licenses.

In December 2008 the chiropractic board reported that it had established procedures that include the board members ratifying staff denials of applicants who did not request a hearing in response to a denial. The chiropractic board reported that in those instances when an applicant requests a hearing, the board members review and vote on a proposed decision of an administrative law judge. The chiropractic board provided us with a copy of its procedures, dated December 2008, demonstrating the establishment of these procedures. However, as of December 2008, the board had not yet voted to ratify staff denials of licenses.

Finding #6: 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. We also questioned how the chiropractic board ensures the protection of any confidential information board members might have or discuss by e-mail.

We recommended that the chiropractic board consider providing state e-mail accounts to board members 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.

Chiropractic Board's Action: Partial corrective action taken.

The chiropractic board voted at its May 2008 board meeting to approve the chiropractic board's implementation of state e-mail accounts for board members effective June 1, 2008. According to the chiropractic board, it initially established e-mail accounts for each of the board members around the beginning of June 2008. However, due to problems with the chiropractic board's transition to a new e-mail system approximately one month later, the chiropractic board has transitioned only board staff to ensure that daily operations were not affected. The chiropractic board plans to train the board members and fully implement this recommendation by January 1, 2009.

Finding #7: 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. 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.

Board members have not attended sexual harassment prevention training as required by state law. 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, one board member attended the orientation nearly two years after assuming office, and another was in office for four years before attending orientation. Best practices indicate that new board members should receive orientation 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. 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. 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.

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

Chiropractic Board's Action: Partial corrective action taken.

In its response to the audit report, the chiropractic board stated that in approximately March 2007, the board member liaison began maintaining a file that documents when copies of Bagley-Keene are provided to board members. Additionally, in its subsequent responses the chiropractic board provided us with documentation of its board member appointment checklist and stated that it plans to develop written procedures for recording and monitoring board member training by the end of December 2008. The chiropractic board also plans to update its board member

administrative manual to include a list of required training with specific time frames. Finally, the chiropractic board reported that all current board members have completed orientation training and the three newest board members completed the training within the first year of appointment.

Finding #8: 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. Although the chiropractic board 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. Our review of 25 complaints 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, management generally did not review the complaints or staff decisions on those complaints to determine whether staff processed them promptly and correctly. 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. 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 initiative act requires the chiropractic board to assist attorneys and law enforcement agencies in enforcing the act's provisions. Although the executive officer told us that all staff are expected to cooperate fully with other law enforcement agencies when called on to assist, the chiropractic board has not established the types of complaints and evidence that should exist before referring cases to law enforcement agencies or attorneys. Because of this and the lack of benchmarks, two of the 25 complaints we reviewed that the chiropractic board referred to the attorney general were 655 and 844 days old, respectively. When the chiropractic board does not promptly refer complaints 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.

We recommended that the chiropractic board 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. We also recommended that the chiropractic board 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. In addition, we recommended that the chiropractic board periodically review the status of all open complaints and investigations and identify and resolve any delays in processing. Finally, we recommended that the chiropractic board 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.

Chiropractic Board's Action: Partial corrective action taken.

The chiropractic board provided copies of its new detailed procedures, dated September 2008, for staff to process and resolve complaints as promptly as possible. The procedures provide guidance for staff on various steps in the complaint process, including complaint intake, complaint analysis, criminal filings, information and fact gathering, complaint closure and recommendations, case referrals, and arrest and conviction cases. Additionally, the procedures establish time frames for

the phases of the complaint review process, including minimizing the amount of time it takes staff to process complaints before forwarding them to the attorney general or other law enforcement agency. Finally, the chiropractic board provided a copy of its new monitoring procedures and responsibilities, dated September 2008, for managers to use to periodically review the status of all open complaints and investigations and to resolve delays in processing. Because of the relative newness of these procedures, it is too early for the board to document the effect of their implementation.

Finding #9: 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 employees make final decisions on cases or that such decisions are reviewed and approved by a designated manager. 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, we found that the chiropractic board issued citations in two cases but failed to report the citations to other states' chiropractic boards and other regulatory agencies as required by its regulations.

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. 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 considerable time and effort pursuing it. 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. 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.

We recommended that the chiropractic board develop policies and procedures requiring that only a manager or a designated employee are allowed to make the final decisions on complaint resolution. We also recommended that the chiropractic board develop procedures to ensure that staff report the issuance of citations to other states' chiropractic boards and regulatory agencies. In addition, we recommended that the chiropractic board develop procedures instructing staff when to open and how to process complaints generated internally.

Chiropractic Board's Action: Corrective action taken.

The chiropractic board provided copies of new procedures, dated September 2008, requiring managers or designated employees to make the final decisions on complaint resolutions. The procedures also include requirements for staff to report the issuance of citations to other states' chiropractic boards and regulatory agencies. Finally, the procedures instruct staff when to open and how to process complaints generated internally.

Finding #10: 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 review 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. 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. Staff also did not always process

complaints in accordance with its internal procedures. 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.

We recommended that the chiropractic board 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.

Chiropractic Board's Action: Partial corrective action taken.

The chiropractic board provided copies of new procedures, dated September 2008, for staff to follow when processing and resolving consumer complaints regarding licensees. The procedures provide guidance to staff on how to process all types of complaints and also address management oversight of the process. Although the chiropractic board has added a field operations unit to perform investigations, it has not yet provided written procedures for its field operations staff.

Finding #11: 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. 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 from more than one year to more than three years, potentially leading to repeat offenses and failures by the chiropractic board to protect the public. 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 complaints. 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.

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. Additionally, when the chiropractic board receives a malpractice settlement notification, it simply solicits the patient to file a complaint and if the patient does not file a complaint within the deadline specified, the board closes the case without any further effort to determine if the licensee deviated from the 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.

We recommended that the chiropractic board 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. We also recommended that the chiropractic board 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.

Chiropractic Board's Action: Partial corrective action taken.

The chiropractic board provided a copy of procedures, dated September 2008, for its complaint intake process, which outline multiple levels of priority categories for assigning to complaints received. The procedures also establish specific time frames for processing each priority level. Additionally, the chiropractic board provided a copy of procedures, dated September 2008, for managers establishing responsibility for monitoring the status of all open complaints and ensuring that cases, investigations, and applications are proceeding in an efficient and effective manner. Because of the relative newness of these procedures, it is too early for the board to document the effect of their implementation.

Finding #12: 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 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 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. 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 recommending that the board repeal the regulation related to the review panels, 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. 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. 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.

We recommended that the chiropractic board 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, we recommended that it implement the process for revising its regulations.

Chiropractic Board's Action: Corrective action taken.

At its May 2008 meeting, the chiropractic board voted to adopt regulatory language that repeals the regulation that established the chiropractic quality review panels. The chiropractic board has begun the process for making a regulatory change. Specifically, following the board's decision, staff developed and in August 2008, filed the regulation package with the Office of Administrative Law, and noticed the public pursuant to state law applicable to the rulemaking process.

Finding #13: The chiropractic board's recently vacant chiropractic consultant position leaves a gap in its available technical expertise.

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. The chiropractic consultant position has been vacant since August 10, 2007, and the executive officer explained that because of the current budget situation, the chiropractic board is not planning to fill the 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. 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 the past, 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.

We recommended that the chiropractic board fill its chiropractic consultant position. We also recommended that the chiropractic board require the chiropractic consultant to act only in an advisory capacity and the executive officer to make all final enforcement decisions.

Chiropractic Board's Action: Alternative action taken.

The chiropractic board reported that effective July 1, 2008, the chiropractic consultant position was abolished by operation of law and it does not have plans currently to reestablish the position. The chiropractic board reported that it has the technical resources necessary to investigate quality of care issues and allegations of improper treatment through a network of expert reviewers and expert witnesses. The chiropractic board developed a new expert reviewer and expert witness application to assess qualifications and identify potential conflicts of interest. According to the chiropractic board, it began recruiting candidates in April 2008, and published a manual that provides instructions, guidelines, and expectations that the experts will use to perform their services. The chiropractic board also reported that it conducted mandatory training for all the experts in conjunction with the Office of the Attorney General. The chiropractic board reported that the experts may be called upon to review a complaint prior to the board's initiating an investigation. However, most often the experts will review the evidence at the conclusion of an investigation and render an opinion. The chiropractic board management stated that it makes the final decision on all complaint cases.

Finding #14: 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. This 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. 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.

In addition, experts did not always complete their reviews within 30 days as expected. According to the chiropractic board's procedures, it expects an expert to finish reviewing the assigned case and file a written report within 30 days of assignment. In one case, the expert took more than 200 days to provide a report. Staff told us they perform no follow-up procedures, thus allowing unnecessary delays 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 by its policies and procedures. 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 recommended that the chiropractic board 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. We also recommended that the chiropractic

board 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 and 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. Finally, we recommended that the chiropractic board 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.

Chiropractic Board's Action: Partial corrective action taken.

The chiropractic board provided a copy of its application for expert witnesses as well as procedures, dated September 2008, for staff to follow when selecting, contacting, and monitoring the expert witnesses. Although the procedures require staff to document their contacts with the experts, the procedures do not require either a contract with or a written statement from the experts attesting that they have no conflict of interest in the cases assigned. The procedures do include steps and time frames for monitoring the progress of the experts. Finally, the chiropractic board established a requirement in its procedures for each expert witness to have an evaluation form completed by the referring board staff analyst after each case is returned. However, the procedures indicate that the chiropractic board has not yet developed the evaluation form.

Finding #15: Lack of documentation makes it difficult to determine the qualifications of chiropractic board staff and investigators.

Although the board's record retention schedule requires it to retain all standard personnel forms for three years after staff leaves employment, the board could not provide current job applications for six of the nine employees we reviewed. For about half of the employees, we were unable to determine whether the staff met the minimum qualifications for their 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. For one employee, the chiropractic consultant, we were unable to determine whether the employee 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 for personnel functions until September 2006. On her application, the chiropractic consultant stated that she had been a self-employed chiropractor for the previous 17 years. However, when detailing the duties she performed, she stated she had acted as a "consultant to [the] chiropractic community" and had "limited medical-legal consultation." 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. In contrast, the board requires an expert to have a minimum of three years of experience 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. Because the job description for the chiropractic consultant does not provide this type of clarity, the chiropractic board is unable to ensure that its consultants have the type of qualifications desired.

Moreover, we were unable to determine whether the four investigators with whom the chiropractic board contracted 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 would allow us to verify whether each investigator met the minimum qualifications. 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.

We recommended that the chiropractic board retain personnel documentation on all employees according to its record retention policy and to require its contractor for personnel services to comply with the same requirements. Additionally, we recommended that the chiropractic board consider revising the chiropractic consultant position's minimum qualifications to provide additional clarity on the phrase practice of chiropractic, similar to the board's current requirements for experts.

Chiropractic Board's Action: Corrective action taken.

In its response to the audit, the chiropractic board agreed to retain personnel documentation on all employees according to its record retention policy and to require its personnel contractor to comply with the same requirements. Additionally, in a subsequent response, the chiropractic board reported that it established a personnel liaison within its office who maintains copies of job applications and other personnel documentation, pursuant to the record retention policy, for all board staff appointed after February 2008. The chiropractic board reported that its personnel liaison works closely with its personnel contractor to ensure that the contractor maintains original personnel documents pursuant to the record retention policy. The chiropractic board provided copies of personnel documents for new hires and promotions.

As discussed previously, the chiropractic board's chiropractic consultant position was abolished effective July 1, 2008, and the board does not plan to reestablish the position. Instead, the board reported that it obtains technical expertise through a network of expert reviewers and expert witnesses.

Finding #16: The chiropractic board has not established timelines for processing some applications.

When we reviewed a sample of 29 licensing decisions generally completed in fiscal year 2006–07, we found that the chiropractic board has not established policies and procedures in some areas and needs to bolster current policies and procedures in others. Specifically, the board lacks processing timelines for more than half the types of applications and petitions it processes. 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 failed to adhere to its established timelines for processing licensee applications. In addition, although its procedures outline specific steps for processing an applicant's request for appeal, the board has not established timelines for processing appeals. The chiropractic board has also established timelines for certain phases of processing petitions for reinstatement of a revoked license and petitions for early termination of probation, however, it does not always adhere to them. Finally, the chiropractic board also has not established time frames for processing satellite office certificates, corporation certificates, referral service applications, reciprocal licenses, and applications for restoration after license cancellation and forfeiture. 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. Additionally, unlicensed applicants are unable to begin practicing chiropractic until the board makes a final decision and notifies them.

We recommended that the chiropractic board establish time frames for all the types of applications and petitions it processes. We also recommended that the chiropractic board establish a tracking system for applications and petitions to analyze where delays are occurring and ensure that applications and petitions are processed promptly. Finally, we recommended that the board establish a time frame for resolving appeals that includes milestones for each phase of the process.

Chiropractic Board's Action: Partial corrective action taken.

The chiropractic board provided copies of procedures, dated September 2008, for staff to follow when processing licensing applications and petitions. These procedures also include time frames for processing each phase of a license denial appeal. Additionally, the chiropractic board developed tracking spreadsheets for application and petition processing to analyze where delays are occurring and ensure that applications and petitions are processed promptly. The chiropractic board

anticipated implementing the tracking spreadsheets on October 1, 2008. Because of the relative newness of these procedures, it is too early for the board to document the effect of their implementation.

Finding #17: 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. 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 referred it to an investigator. Based on his visit to the business location, the investigator concluded that the applicant “is in all probability conducting chiropractic services at [the] location” and recommended that the board subpoena patient records or allow him to conduct an undercover operation. However, the chiropractic board elected to approve the applicant for licensure.

We recommended that the chiropractic board develop specific policies and procedures for staff to follow when the board receives a complaint against an applicant seeking licensure.

Chiropractic Board’s Action: Corrective action taken.

The chiropractic board provided a copy of specific procedures, dated September 2008, for staff to follow when addressing complaints against an applicant seeking licensure.

Finding #18: 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. 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 they followed the verification process, indicating that they either shredded the documents they reviewed or performed reviews using electronic files. However, to the extent it does not retain documentation, the board cannot demonstrate that it complied with procedures designed to protect consumers.

In addition, 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. 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.

We recommended that the chiropractic board implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.

Chiropractic Board's Action: Corrective action taken.

The chiropractic board provided copies of specific procedures, dated September 2008, which include required documentation identifying when and who conducted eligibility verifications.

Finding #19: 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. 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 recommended that the chiropractic board establish specific procedures for staff to follow when a licensee submits invalid payment with a license renewal. We also recommended that the chiropractic board establish a tracking method to ensure that requests for repayment are sent promptly and all penalties are paid.

Chiropractic Board's Action: Corrective action taken.

The chiropractic board provided copies of specific procedures, dated September 2008, for staff to follow when a licensee submits an invalid payment when renewing a license. The procedures also include a tracking spreadsheet for staff to document and ensure that requests for repayments are sent promptly.

Finding #20: The chiropractic board did not follow regulations and written policies and procedures in administering its continuing education program.

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 the provider also seek approval for each course it wishes to offer licensed chiropractors for continuing education. Staff told us 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 regulation, the current process is not in compliance with existing chiropractic board regulations. As a result, the chiropractic board may be challenged for failure to comply with its own regulations. 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 also 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. 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. 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.

Further, although the chiropractic board must notify applicants that their provider applications are incomplete within three weeks of receipt, for one of the two incomplete provider applications that it eventually denied, the chiropractic board notified the 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.

Chiropractic board regulations also require that provider applications include certain documentation to prove 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.

Finally, the chiropractic board’s regulations require each approved provider to furnish the board with a roster of persons completing each course within 60 days of course completion. However, board staff do not always ensure that providers comply with this requirement. 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.

We recommended that the chiropractic board ensure its continuing education program complies with current regulations including requiring board members to ratify staff approvals of providers and ensuring that its process to approve providers conforms to its regulations. We also recommended that the chiropractic board 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. In addition, we recommended that the chiropractic board establish a process to track and monitor whether providers submit attendance rosters within 60 days of course completion.

Chiropractic Board’s Action: Partial corrective action taken.

Regarding the recommendation of having board members ratify staff approvals of continuing education providers, at the July 2008 board meeting, the executive officer stated that board approval of course providers would be a standing agenda item. The meeting minutes for September 2008 indicate that the board members voted to approve the list of staff-approved continuing education course providers.

The chiropractic board provided a copy of its procedures, dated December 2008, related to our recommendation that it 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 chiropractic board reported that it plans to demonstrate compliance with these requirements by retaining copies of the written correspondence beginning in January 2009. Finally, the chiropractic board provided a copy of its procedures, dated September 2008, which include a tracking spreadsheet for documenting the timing of receipt of attendance rosters from continuing education providers.

Finding #21: 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. The chiropractic board’s 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 that informs the licensee about the audit and requests proof of continuing education by a specified date. In two other cases, the chiropractic board inappropriately concluded licensee audits. As a result of the errors made in reviewing the audit results in these cases, staff did not forward the licensees' audit results to the enforcement unit for possible disciplinary action, as they should have. 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.

We recommended that the chiropractic board establish procedures for maintaining accurate documentation of continuing education audits of licensees. We also recommended that the board establish a mechanism to ensure that all relevant steps are taken before continuing education audits are considered complete.

Chiropractic Board's Action: Corrective action taken.

The chiropractic board provided a copy of its procedures, dated September 2008, for staff to follow when completing continuing education audits of licensees. Further, the procedures include a tracking spreadsheet for staff to record the completion of relevant steps before considering the audit complete.

Finding #22: 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. 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.

We recommended that the chiropractic board establish a process to track course audits conducted and a procedure for taking corrective action when the course reviewer identifies a deficiency.

Chiropractic Board's Action: Corrective action taken.

The chiropractic board provided a copy of its procedures, dated September 2008, for staff to record course audits conducted. The procedures also include a process for referring course complaints for further review and action.

