LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

December 20, 2024

Members of the Arizona Legislature

The Honorable Katie Hobbs, Governor

Ms. Alissa M. Vander Veen, Executive Director
Arizona State Board of Chiropractic Examiners

Transmitted herewith is the report, *A Special Audit of the Arizona State Board of Chiropractic Examiners*. This audit was conducted by the independent firm Sjoberg Evashenk Consulting, Inc. under contract with the Arizona Auditor General and was in response to a February 12, 2024, resolution of the Joint Legislative Audit Committee. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes §41-1279.03. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona State Board of Chiropractic Examiners agrees with all the findings and plans to implement or implement in a different manner all the recommendations. My Office has contracted with Sjoberg Evashenk Consulting, Inc. to follow up with the Arizona State Board of Chiropractic Examiners in 6 months to assess its progress in implementing the recommendations. I express my appreciation to the Board, Executive Director Vander Veen, and Board staff for their cooperation and assistance throughout the audit.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey A. Perry

Lindsey A. Perry, CPA, CFE
Auditor General

cc: Arizona State Board of Chiropractic Examiners members

SJOBERG EVASHENK
CONSULTING, INC

December 18, 2024

Lindsey A. Perry, Auditor General
State of Arizona
2910 N. 44th Street, Ste. 410
Phoenix, AZ 85018

Dear Ms. Perry:

Sjoberg Evashenk Consulting is pleased to submit our report containing the results of the 2024 Special Audit State Board of Chiropractic Examiners (Board). We conducted this audit on behalf of the Arizona Office of the Auditor General pursuant to a February 12, 2024, resolution of the Joint Legislative Audit Committee.

The objectives of this audit were to determine whether the Board issued subpoenas for information related to complaint investigations; consistently applied its statutes and rules; correctly handled allegations involving criminal wrongdoing; handled its complaint backlog, including cases up to 5 years old; participated in lobbying and advocacy activities; and complied with the State's open meeting law. This audit also examined the role of the Board's Executive Director, including how it ensured consistency in Board practices and how it communicated changes in Board practices.

We appreciate the professionalism and cooperation exhibited throughout the course of this audit by the Board and its Executive Director. Also, we thank you for the opportunity to have been of service to the Office of the Auditor General as it has been our pleasure to work with you and your team.

Sincerely,

George J Skiles

George Skiles, Partner
Sjoberg Evashenk Consulting, Inc.

Arizona Auditor General

Special Audit of the Arizona State Board of Chiropractic Examiners

December 2024

SJOBERG EVASHENK CONSULTING, INC

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SJOBERG EVASHENK CONSULTING, INC

Arizona State Board of Chiropractic Examiners (Board)

The Board regularly expanded complaint investigations by subpoenaing information unrelated to complaint allegations, potentially resulting in unwarranted disciplinary actions and lengthy complaint investigations; did not always apply its statutes and rules consistently among licensees; did not report allegations of criminal wrongdoing to appropriate authorities, increasing public safety risk; made progress toward reducing its complaint backlog but did not resolve most complaints within 180 days; engaged in advocacy regarding pending legislation without clear statutory authority to do so; did not comply with some State open meeting law and conflict of interest requirements; and had not established sufficient processes to ensure consistent Board practices and communication over time.

Special audit purpose

To review Board practices for issuing subpoenas related to complaint investigations, consistently applying its statutes and rules, handling allegations involving criminal wrongdoing, reducing its complaint backlog, participating in lobbying and advocacy activities, and complying with the State's open meeting law; and the role of the Board's Executive Director, including how the Executive Director ensures consistency in and communicates changes to Board practices.

Key findings

The Board:

- Is responsible for regulating the practice of chiropractic in Arizona by issuing and renewing licenses, is responsible for regulating the practice of chiropractic in Arizona by issuing and renewing licenses, investigating and resolving complaints, and providing information to the public about licensees.
- Regularly requested or subpoenaed information outside the scope of complaint allegations contrary to statute, potentially resulting in unwarranted disciplinary actions and lengthy complaint investigations. Specifically, the Board required licensees to submit records not relevant to the original complaint allegations, including continuing education documentation for 60 of 70 complaints we reviewed and a broad range of business and patient records for 24 of 70 complaints we reviewed; as a result, in 3 of these cases, the Board subjected licensees to disciplinary and non-disciplinary actions even when the Board deemed as unfounded and/or dismissed the original complaint.
- Did not consistently apply statutes and rules regarding licensees' continuing education and recordkeeping and follow consistent practices when requiring licensees accused of sexual impropriety to undergo psychosexual evaluations, but consistently initiated investigations of complaints related to improper division of fees for patient referrals.
- Did not refer allegations of criminal wrongdoing, such as allegations of sexual contact and insurance fraud, to appropriate criminal justice agencies as required, with 1 exception, increasing public safety risks and potentially delaying or hindering criminal investigations.
- Made progress resolving complaints dating back to 2018; however, as of May 1, 2024, 69 percent of its open complaints had been open for more than 180 days and it took an average of 551 days to investigate and resolve high priority complaints we reviewed, potentially impacting patient safety and causing undue burden for licensees under investigation for lengthy periods of time. A lack of time frames for the various steps in its complaint investigation and resolution process contributed to these issues.

- Encouraged its licensees to oppose legislation without clear statutory authority to do so, making statements that were potentially misleading and using its resources for purposes other than regulating the chiropractic profession.
- Did not always comply with open meeting law requirements, including limiting the public's ability to address the Board during the call to the public, and altering 7 meeting recordings by deleting references to patients and licensees, thereby limiting the public's access to information.
- Did not comply with some State conflict-of-interest requirements and its conflict-of-interest process was not fully aligned with recommended practices, increasing the risk that Board members and employees had not disclosed substantial interests that might influence their official conduct.
- Had not established processes for ensuring consistency in some Board practices and communicating changes in Board practices to licensees and the public, such as by developing substantive policy statements as authorized by statute, contributing to issues we identified and potentially creating confusion among licensees and the public.

Key recommendations

The Board should:

- Stop subpoenaing information during investigations that is unrelated to complaint allegations, and inform licensees of their ability to petition the Board or the Courts to revoke, limit, or modify a subpoena.
- Formally review its use of psychosexual evaluations in evaluating a chiropractor's professional competence and, if appropriate, develop and implement policies, procedures, and/or guidance regarding their use.
- Revise and implement its policies to require it to report allegations of criminal wrongdoing to the appropriate criminal justice agency within 48 hours and coordinate with criminal justice agencies when investigating complaints that allege criminal wrongdoing.
- Resolve complaints within 180 days; investigate high-priority complaints before low-priority complaints; and develop and implement time frames for the various steps in its complaint investigation and resolution process.
- Immediately discontinue efforts to encourage licensees to support/oppose legislation, including using public resources to advocate for its position, and develop and implement Board policies and procedures related to lobbying and advocacy activities that comply with statute.
- Comply with all statutory open meeting law requirements including ensuring meeting notices, agendas, executive sessions, minutes/recordings, and calls to the public are handled and documented as required.
- Revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices.
- Develop and implement policies and procedures for using substantive policy statements and other methods for communicating important information about its activities and practices to external parties rather than using email notifications.

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Introduction

On behalf of the Arizona Auditor General, Sjoberg Evashenk Consulting, Inc. has completed a special audit of the Arizona State Board of Chiropractic Examiners (Board), pursuant to a February 12, 2024, resolution of the Joint Legislative Audit Committee (JLAC). As outlined in the resolution, this report addresses:

1. The Board's subpoenas for information related to complaint investigations, in particular whether the Board requests only information relevant to its investigations (see Chapter 1, pages 8 through 15).
2. The Board's application of its statutes and rules, in particular whether the Board has consistently applied its statutes and rules over time and to all licensees (see Chapter 2, pages 16 through 22).
3. The Board's handling of allegations involving criminal wrongdoing (see Chapter 3, pages 23 through 26).
4. The Board's handling of its complaint backlog (see Chapter 4, pages 27 through 34).
5. Board members' and/or staffs' participation in lobbying and advocacy activities (see Chapter 5, pages 35 through 38).
6. The Board's compliance with the State's open meeting law, in particular its compliance with requirements related to call to the public (see Chapter 6, pages 39 through 47).
7. The role of the Board's Executive Director, including but not limited to how the Executive Director ensures consistency in Board practices despite changes in Board members, and how the Executive Director communicates changes in Board practices to licensees and the public (see Chapter 7, pages 48 through 54).

History, mission, and responsibilities

The Board was established in 1921 to license and regulate the chiropractic profession. The Board's mission is to protect the health, safety, and welfare of the public. The Board's main responsibilities include:

- **Issuing licenses to qualified applicants—**Applicants for licensure must graduate from an accredited chiropractic college, pass a national exam, pass the Arizona jurisprudence exam, and pass a background check.[1,2,3,4] Licenses must be renewed annually.[5] As of fiscal year 2024, there were more than 2,550 chiropractors licensed to practice in Arizona.

[1] A.R.S. §32-921(B) and (E); AAC R4-7-502(C).

[2] Arizona requires applicants to pass the National Board of Chiropractic Examiners 4-part examination.

[3] The Arizona jurisprudence exam tests the licensee's understanding of the Arizona statutes, rules, and policies that apply to the practice of chiropractic in Arizona.

[4] According to A.R.S. §§32-922.01 and 32-922.03 applicants for licensure who are already licensed in another state must meet certain requirements for licensure, including passing the Arizona jurisprudence exam.

[5] A.R.S. §32-923(B).

- **Providing information to the public about licensees—**The Board is responsible for providing information to the public, including licensees' disciplinary and non-disciplinary histories.[6]
- **Investigating and resolving complaints—**The Board is statutorily responsible for reviewing, investigating, and adjudicating complaints.[7] Statute authorizes the Board to initiate an investigation on its own motion or in response to a complaint if there is evidence suggesting that a chiropractic doctor may be violating statute or rules pertaining to the chiropractic practice, or may be mentally or physically unfit to practice safely.[8] Statute and rule outline the specific conduct that, if a licensee commits, can result in disciplinary action (see Appendix A, pages 64 through 68, for more information about these actions). Once the Board has adjudicated a complaint, the Board is statutorily authorized to take various disciplinary and non-disciplinary actions if it determines that a statutory or rule violation has occurred or if it determines a licensee is mentally or physically unable to safely engage in the practice of chiropractic (see textbox).[9] As of April 30, 2024, the Board had 54 open complaints (see Chapter 4, pages 27 through 34, for information on the Board's complaint backlog).

  Key steps in the Board's complaint-handling process include:

  - **Complaint receipt**—Board staff receive complaints typically through an online complaint portal on the Board's website and the Board may self-initiate complaints.
  - **Complaint review**—Board staff review the complaint to determine if it is within the Board's jurisdiction, should be investigated, and its priority level (see Chapter 4, pages 29 and 32, for more information on the Board's prioritization of complaints).
  - **Board consultation—**If Board staff are unsure if a complaint falls within the Board's jurisdiction, the Board's Executive Director places the complaint on a Board meeting agenda for review as a "whether to open" agenda item; the Board reviews the complaint

Examples of disciplinary and non-disciplinary actions the Board may take

Disciplinary actions

- Issue an order to cease and desist
- Issue a letter of concern
- Issue an order of censure
- Fix a period of time and terms of probation
- Impose a civil penalty of not more than $1,000 per violation of statute
- Revoke, suspend, or refuse to renew the license
- Issue a disciplinary order of continuing education in a prescribed number of hours and area of focus

Non-disciplinary actions

- Issue a non-disciplinary advisory letter
- Issue a non-disciplinary order for completing a specified number of hours of continuing education in a prescribed area

Source: Staff analysis of A.R.S. §32-924.

[6] A.R.S. §32-3214.

[7] A.R.S. §32-924. Adjudication refers to the Board's authority pursuant to this statute to determine if information related to a complaint is grounds for a license revocation or suspensions or disciplinary or non-disciplinary actions.

[8] A.R.S. §32-924(B).

[9] A.R.S. §32-924(D) through (I).

and can decide to open an investigation or dismiss the complaint as outside its jurisdiction.

- **Notice of complaint**—Statute requires the Board to notify the licensee of the complaint against them in a reasonable time frame.[10] The Board's process related to this requirement involves sending the licensee an official "notice of complaint" letter that includes the alleged statutory violations and indicates that the Board has opened an investigation. The notice of complaint also generally includes a request for information or a subpoena requiring the licensee to provide information (see Chapter 1, pages 8 through 15, for more information on the Board's use of subpoenas).
- **Investigation**—Board investigators review documentation and information provided by the licensee and other individuals as applicable and in some cases interview the licensee and other individuals, such as the person who submitted the complaint. The investigator then prepares an investigative report summarizing the results of the investigation and in some cases provides a recommendation for Board action. The Board's Executive Director then places the complaint on a Board meeting agenda for initial action (see below).
- **Initial action—**Initial action refers to the Board's first review of a complaint investigation report during a public Board meeting. During these meetings, the Board reviews information collected during the investigation and may also ask the licensee questions about the investigation.[11] At this stage, statute authorizes the Board to dismiss the complaint, order non-disciplinary action such as additional continuing education hours, continue the matter to another meeting to enable Board staff to gather additional information, or members may forward the matter to a formal interview or formal hearing. If members deem that the complaint may warrant disciplinary action, including imposing a civil penalty or suspending or revoking a license, statute requires the Board to hold a formal interview or formal hearing (see below for information on formal interviews and hearings).[12]
- **Interim order—**Statute authorizes the Board to require licensees to undergo medical, physical, or mental examinations intended to determine a licensee's competence at any point during an investigation.[13] In practice, the Board generally issues orders requiring these evaluations to occur between Board meetings, such as after initial action and before a formal interview.
- **Formal interview**—Pursuant to statute, the Board may request a formal interview with a licensee to receive and consider pertinent documents and sworn statements of persons who may be called as witnesses in a formal hearing.[14] During these public meetings, Board and

[10] A.R.S. §32-924(B).

[11] If the Board determines there is a need to discuss confidential information during the public Board meeting, it may enter executive session. Pursuant to A.R.S. §38-431.03(A)(2), the Board may enter an executive session to discuss records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law. See Chapter 6, pages 39 through 47, for more information on executive session and the Board's noncompliance with statutory requirements for executive sessions.

[12] A.R.S. §32-924(F).

[13] A.R.S. §32-924(C).

[14] A.R.S. §32-924(F).

licensee legal counsel may be present and participate in the formal interview.[15] If a licensee refuses the Board's interview request or if a licensee accepts the request and the results of the interview indicate suspension or revocation of the license may be in order, the Board is required to order that a formal hearing be held. As described below, if the Board finds cause to suspend a licensee pending the outcome of a formal hearing, it may order a summary suspension. If, after the formal interview, the Board finds that the information provided is not of sufficient seriousness to merit suspension or revocation of the license, it may dismiss the complaint if it believes the information is without merit or does not warrant sanction of the licensee or take any of the statutorily authorized disciplinary or non-disciplinary actions previously discussed, except license suspension or revocation.[16]

- **Formal hearing**—The Board must hold a formal hearing to determine if it will suspend or revoke a license with the exception of summary suspensions (see below for information on summary suspensions). The Board's formal hearings are statutorily required to follow the State's uniform administrative hearing procedures, which are outlined in statute.[17] The Board must notify the licensee by certified mail and hold the hearing within 180 days after the date the notice is deposited in the mail.[18]
- **Summary suspension**—At any point during a complaint investigation, if the Board determines that a complaint is of sufficient risk to public health, safety or welfare and requires emergency action, the Board is statutorily authorized to order a summary suspension of a license pending a hearing for revocation or other action. Statute requires the Board to provide written notice to the licensee of a summary suspension and to inform the licensee that they are entitled to a formal hearing within 60 days.[19]

Board organization and staffing

A.R.S. §32-901 requires the Board to consist of 5 Governor-appointed members who serve 5-year terms, with 1 Board member appointed each year for a term of 5 years, to begin and end on July 1. The Board shall consist of 3 licensed chiropractors and 2 non-licensed members of the public. As of July 2024, all 5 Board positions were filled (see textbox, page 7, for more information on the Board's members).

The Board was appropriated 6 full-time equivalent (FTE) positions for fiscal year 2025, and as of October 2024, 4 FTE positions were filled by an Executive Director, 2 investigators, and 1 licensing administrator; and 2 FTE positions were vacant, including 1 administrative assistant and 1 position for which the Board's Executive Director reported it has not yet developed a position description. The Board's fiscal year 2025 budget request indicated 1 of the positions it was seeking funding for was a business entity coordinator and

[15] According to Board policies and procedures, for a formal interview, the Board has a court reporter present and legal counsel available to advise the Board as needed.

[16] A.R.S. §§32-924(F) and 32-924(G).

[17] A.R.S. §32-924(F) and A.R.S. §§41-1092 through 41-1092.12.

[18] A.R.S. §32-924(G).

[19] A.R.S. §32-924(D).

the fiscal year 2025 appropriations report states that the appropriation includes an increase of 1 FTE for a coordinator to assist business entities, however, Laws 2024, Ch. 209, Sec. 26 appropriated the Board 6 FTE positions but did not specify what those positions should be.

Board members and the date on which their terms expire (As of July 2024)

- Chair Dr. Wayne Bennett: Term expired June 30, 20241,2
- Vice Chair Ms. Angela Powell: Term expires June 30, 2025
- Mr. Mitchell Turbenson: Term expires July 1, 2026
- Dr. Kevin Lees: Term expires June 30, 2027
- Dr. George Camacho: Term expires July 1, 2028

Dr. Bennett and Ms. Powell served as Chair and Vice Chair, respectively, until the annual election of officers at the August 2024 meeting when Ms. Powell was voted into the Chair position and Dr. Bennett assumed the Vice Chair position.

Pursuant to A.R.S. §38-295(B), Board members may continue to serve until they are reappointed or a successor is appointed, and Dr. Bennett is eligible for reappointment to a second term. As of October 2024, the Governor had not yet reappointed Dr. Bennett or appointed another individual for the 5-year term beginning July 1, 2024.

Chapter 1: Board regularly requested or subpoenaed information outside the scope of complaint allegations contrary to statute, potentially resulting in unwarranted disciplinary actions and lengthy complaint investigations

JLAC request: Review Board's subpoenas for information related to complaint investigations and determine whether the Board requests information only relevant to its investigations.

Conclusion: The Board regularly requested information and other evidence through information requests and subpoenas that went beyond the scope of complaint allegations, contrary to statute. This practice included requiring licensees to submit continuing education records, business records, and all records related to a patient, even when such records were not relevant to the complaint allegation. For example, in one case the Board requested information on several patients who were not related to the complaint being investigated. Additionally, in multiple cases we reviewed, the Board expanded the scope of its investigations based on the information it received through subpoenas and information requests that was not related to the complaint allegation. This practice led to lengthy Board investigations and the Board issuing disciplinary and non-disciplinary actions to licensees for issues unrelated to the original complaint, even in cases when the Board deemed as unfounded and/or dismissed the original complaint.

Statute requires that the information the Board requests or subpoenas be related to complaint allegations

The Board may initiate an investigation of a licensee upon receipt of a complaint regarding a licensee or upon a motion of the Board, and statute provides the Board access to examine and obtain various records and reports maintained by licensees and other entities including hospitals, clinics, physician's offices, and laboratories to conduct these investigations.[20,21] Although this authority allows the Board to request information related to its investigations, statute also authorizes the Board to issue subpoenas to require licensees and other parties, such as patients, employees, and witnesses, to provide it with documents and other evidence, if the information or evidence relates to chiropractic competence, unprofessional conduct,

[20] Pursuant to A.R.S. §32-924(B), the Board on its own motion or on receipt of a complaint may investigate any information that appears to show that a doctor of chiropractic is or may be in violation of the Board's statutes or rules or is or may be mentally or physically unable to safely engage in the practice of chiropractic.

[21] Pursuant to A.R.S. §32-929(A), the Board or its employees shall at all reasonable times have access to reports, records, or any other physical evidence of any person being investigated or maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy, public or private agency, and any health care institution as defined in A.R.S §36-401, if such documents, reports, records or evidence relate to chiropractic competence, unprofessional conduct, or mental or physical ability of a doctor of chiropractic to safely practice chiropractic.

or the mental or physical ability of a doctor of chiropractic to safely practice.[22] Statute also indicates that any individual who is required to provide information by a Board subpoena may petition the Board or the Courts to revoke, limit, or modify the subpoena, and states that the Board or the Courts can revoke, limit, or modify such subpoena if in their opinion the evidence required does not relate to unlawful practices covered by Board statutes, is not relevant to the charge which is the subject matter of the hearing or investigation, or does not describe with sufficient particularity the physical evidence whose production is required.[23]

Board requested or subpoenaed licensees to provide information unrelated to complaint allegations for most complaints we reviewed

Our review of a judgmental sample of 70 of 215 complaints the Board investigated between July 1, 2021, and March 31, 2024, found that Board investigators requested and subpoenaed information from licensees that was unrelated to complaint allegations for 60 of 70 complaints (86 percent).[24] Specifically:

- *Board investigators regularly required licensees to provide out-of-scope continuing education documentation*

  For 60 of the 70 complaints we reviewed, the Board required licensees to submit continuing education documentation that was not relevant to the allegation(s) of the original complaint. For example:

  - In one case, a licensee self-reported a charge of Driving Under the Influence (DUI) with their annual license renewal. The Board opened a complaint investigation and issued a subpoena requiring the licensee to submit continuing education documentation for the prior 2 years, despite the fact the complaint allegations were unrelated to the licensee's completion of continuing education.
  - In another case, a complaint alleged that a licensee advertised physical therapy services without a licensed physical therapist on staff. Board investigators requested that the licensee provide continuing education records for the prior 2 years, despite the fact the complaint allegations were unrelated to the licensee's completion of continuing education.
  - In a third case, the Board issued a subpoena requiring a chiropractor accused of touching a patient's arm with his genitals to submit continuing education documentation for the

[22] Pursuant to A.R.S. §32-929(B)(1), the Board on its own initiative, or upon application of any person involved in an investigation, may issue subpoenas compelling the attendance and testimony of witnesses, or demanding the production for examination or copying of documents or any other physical evidence if such evidence relates to chiropractic competence, unprofessional conduct, or the mental or physical ability of a doctor of chiropractic to safely practice chiropractic.

[23] Pursuant to A.R.S. §32-929, within five days after the service of a subpoena on any person requiring the production of any evidence in his/her possession or under his/her control, such person may petition the Board to revoke, limit or modify the subpoena. The Board or the individual may also petition the Courts which has authority to order the individual to comply with the subpoena or revoke, limit or modify the subpoena.

[24] We judgmentally selected complaints to ensure that our sample included cases that varied based on the nature and severity of the complaint.

preceding 2 years, despite the fact the complaint allegations were unrelated to the licensee's completion of continuing education.

- *Board required some licensees to provide patient records that were likely not directly relevant to the complaint allegations*

  The Board requested patient records in 45 of the 70 complaints we reviewed, and for all 45 complaints, requested the full patient record, including but not limited to health history, examinations, daily progress notes, billing and payment records, and explanation of benefits. However, some of the patient records were likely irrelevant to the investigation for 24 of the complaints. For example:

  - In one case, the complainant alleged that a licensee initiated an inappropriate discussion regarding the patient's sex life. The Board's subpoena required the licensee to provide the full patient records, including health history, examinations, daily progress notes, billing and payment records, and explanation of benefits for the patient. Although some patient treatment records were likely relevant to investigating and resolving this complaint, such as records establishing the patient-doctor relationship, others were likely not relevant to investigating the verbal impropriety, such as the patient's health history and examinations.
  - In another case, a complainant accused a licensee of making sexually inappropriate comments about her tattoos and, that when the patient asked to be referred to another practitioner, the licensee failed to do so. While some patient treatment records were likely relevant to investigating this complaint—such as records establishing the patient-doctor relationship and showing dates of treatment when the unprofessional conduct allegedly occurred—the Board's subpoena required the licensee to provide the patient's full record, including health history, billing records, treatment records, and explanation of benefits, some of which were likely unrelated to investigating and resolving the alleged unprofessional conduct.
  - In a third case, the Board opened a complaint in response to an anonymous allegation that a licensee and their company had entered into contracts with "numerous" chiropractic clinics in Arizona in which the contracted clinics paid 50 percent of final payments in exchange for patient referrals. The Board issued a subpoena requiring the licensee who was the subject of the complaint to provide a broad range of business and patient records, including complete lists of referred patients, information on employees, clinics, and practices, fee schedules, contracts, 1099s issued, correspondence, complete patient records for all patients referred to a specific practice, and more. The Board attested to having included such a broad range of records in the subpoena to determine if any patient harm had occurred, even though the complaint did not allege or suggest any patient harm had occurred. Upon appeal by the subject of the complaint, the Board modified and narrowed the scope of its subpoena.

Board's requests and subpoenas for information unrelated to complaint allegations led to expanded and lengthy investigations, which resulted in licensees receiving sanctions even when the original complaint allegation was unfounded, added administrative burdens for licensees, increased and unnecessary risk of patients' personal and potentially sensitive health information being inappropriately accessed or otherwise compromised, and increased liability for the Board

The Board's practice of using broad subpoenas and record requests that include information that is likely irrelevant to the original complaint allegation has led to it regularly expanding its investigations beyond the scope of the complaints' allegations. For example, as seen in Appendix B on pages 69 through 89, the Board expanded the scope of its investigation in 60 of 70 complaints we reviewed. Additionally, 13 of 62 complaints we reviewed that had been closed at the time of our review resulted in the Board assessing penalties related to recordkeeping or documentation, despite the fact that recordkeeping was relevant to complaint resolution in only 7 of these 13 complaints.[25] This expansion of scope can have several negative impacts, including:

- Lengthy complaint investigations, which may also impact patient safety when licensees alleged to have violated Board statutes and rules continue to practice while under investigation or subjecting licensees to unproven allegations of professional or harmful conduct for longer than necessary (see Chapter 4, pages 27 through 34, for more information about the Board's untimely complaint investigations and its impacts).

- Licensees being subjected to disciplinary and non-disciplinary actions even when the allegations filed against them are dismissed or deemed to be unfounded, as occurred in 3 of the 70 cases in our sample. For example, in one case, the licensee was able to provide documentation that a sexual misconduct complaint against her was not founded, but the Board issued an order for the licensee to complete continuing education concerning unrelated office conduct and recordkeeping.[26]

- Additional administrative burdens on licensees when licensees who are under investigation for allegations beyond the scope of the original complaint are required to provide large volumes of information and/or be responsive to Board requests for information or documentation for a lengthy period of time.

See textbox on page 12 for an example of a complaint we reviewed that exemplifies these negative impacts.

[25] From our sample of 70 complaints, 62 were closed and 8 were open at the time of our review.

[26] In the second case, the Board was unable to substantiate a sexual misconduct allegation but ordered the licensee to take continuing education relating to recordkeeping. In the third case, the Board forwarded the original complaint to a different regulatory agency because the complaint was beyond the Board's jurisdiction but assessed unrelated continuing education hours relating to the licensee's non-compliance with annual continuing education requirements.

Case example

The Board received a complaint forwarded by the Naturopathic Physicians Medical Board alleging that a licensee did not properly maintain records associated with the Controlled Substances Prescription Monitoring Program. The Board opened an investigation into poor recordkeeping practices pursuant to Board rule and issued a subpoena asking the licensee to provide a written response to the allegations included in the notice of complaint issued by the Naturopathic Physicians Medical Board and to provide proof of annual continuing education compliance for 2018 and 2019.[1] The licensee did not provide annual continuing education documentation to demonstrate compliance with Board statute and rule.[2]

The complaint was put on the Board's agenda for initial action and at the Board meeting, 541 days after receiving the complaint, the Board dismissed the original complaint regarding the licensee's record-keeping practices, indicating that the complaint was outside the Board's jurisdiction because the records in question were not related to the licensee's chiropractic practice. However, because the licensee asserted they had completed the required continuing education but had been unable to demonstrate compliance with annual continuing education requirements, the Board continued the case to allow the licensee extra time to produce documentation demonstrating compliance with continuing education requirements for 2019. The Board ultimately issued a non-disciplinary order at a second Board Meeting for the licensee failing to comply with continuing education requirements, 630 days after receiving the initial complaint.

[1] AAC R4-7-902(5); AAC R4-7-902(6)
[2] A.R.S. §32-931; AAC R4-7-801.

Source: Auditor review of one complaint the Board investigated between fiscal year 2021 and March 31, 2024.

Additionally, the Board's practice of requesting patient records that may not be necessary to investigate complaint allegations subjects patients to an increased and unnecessary risk that their personal and potentially sensitive health information will be inappropriately accessed or otherwise compromised. Additionally, patients may not be aware that their full patient records are being provided to the Board, particularly if those patient records do not appear to be related to a complaint allegation. Further, this practice increases the amount of patient information the Board is responsible for safeguarding, thereby exposing the Board to greater liability if its data systems were to be hacked or otherwise compromised.[27]

Finally, the Board's practice of subpoenaing or requesting information that is potentially irrelevant to complaint allegations, including continuing education documentation, could be seen as arbitrary, potentially undermining its investigative process and opening it to legal challenges.

Several factors contributed to the Board requesting and subpoenaing more information than was necessary to complete an investigation of complaint allegations

We identified several factors that contributed to the Board's practice of subpoenaing and requesting more information than needed to investigate the specific allegations made in a complaint. For example, the Board used template subpoena language for each subpoena it issued, rather than tailoring each subpoena language to address specific complaints and lacked policies and procedures with guidance on how to

[27] The Board maintains complaint information in an online database. The Board scans and saves any hardcopy documents it may receive, such as patient records, in its online database.

subpoena appropriate information. In its 2010 Performance Audit and Sunset Review of the Board, the Arizona Auditor General identified similar issues with the Board's subpoenas, including the practice of requesting full patient records using standardized subpoena language when only a portion was relevant to the investigation, and recommended that the Board limit the amount and type of records requested in its subpoenas where possible and develop guidance to staff on how to subpoena appropriate information.[28] The prior audit also identified the potentially misleading language concerning the breadth of subpoenas. Although the Board had implemented recommendations relating to these findings at the initial follow up in December 2010, Board management reported not knowing why or when these improvements were no longer sustained.[29] We also identified some additional factors that contributed to the Board's practice of subpoenaing and requesting more information than necessary. Specifically:

- **Board used complaint investigations to review licensee compliance with continuing education and patient record-keeping requirements instead of implementing administrative review protocols for doing so—**The Board's rules authorize it to audit continuing education compliance "at any time."[30] However, the Board's Executive Director reported that continuing education audits were only intermittently conducted in the past, and sometimes did not take place at all over a period of multiple years. Absent a formal process to audit licensee compliance with continuing education requirements, the Board has used its complaint investigations to review licensee compliance with annual continuing education requirements.

  Similarly, according to the Board's Executive Director, the Board believed licensees were not proficient in maintaining and protecting patient records because they were not historically required to maintain robust patient records before the chiropractic profession became more widely recognized by insurance companies as a legitimate field of medicine. The Board believed that educating licensees in matters of recordkeeping was consistent with its statutory mandate, and that its complaint-handling process was an effective avenue for doing so—regardless of whether its review of licensee records was justified by a complaint allegation of poor recordkeeping. To that end, when it notifies a licensee that the Board has received a complaint related to the licensee, the notice of complaint states that it may expand the scope of the investigation to include items not included in the original allegation (see textbox for notice of complaint language). In practice, however, the Board's investigators expanded the scope of investigations for most of the complaints we reviewed prior to receiving evidence of

NOTICE OF COMPLAINT LANGUAGE

"When the Board reviews documents and/or records during the process of investigation, any possible violations of law noted in the investigation, but not noticed in the original complaint may be added to the allegations in the case; which may include but are not limited to record keeping, billing, signature and advertising violations."

Source: Auditor's review of notices of complaint in the files for 70 complaints we reviewed.

[28] Arizona Auditor General report 10-06 *Board of Chiropractic Examiners.*

[29] Arizona Auditor General follow-up report 10-06 *Board of Chiropractic Examiners.*

[30] AAC R4-7-802 states that a licensee shall retain documents to verify compliance with continuing education requirements for at least 5 years and that the Board may audit continuing education compliance at any time during those 5 years by requiring submission of documentation of course completion.

possible violations that extend beyond the scope of the original complaint. These practices subject licensees under investigation to unequal scrutiny and disregard issues that may be occurring within the larger population of licensees who are not the subjects of complaints.[31]

According to Board management, the Board's new licensee information management system that it began implementing in July 2023 requires all licensees to submit certificates of completion for all continuing education courses when renewing their licenses, and Board staff will review all licensees for compliance during renewal processing. Because of this new process, Board management reported that it stopped requiring licensees to provide continuing education information during complaint investigations in January 2024.

- **Board's Executive Director and legal counsel do not review subpoenas prior to issuance**—Our review of 70 investigations did not find evidence that the Executive Director or the Board's legal counsel reviewed the subpoenas drafted by investigators to help ensure that the information requested is directly related to the complaint filed and the scope of the investigation. The Board also lacks policies and procedures requiring this review to occur.

- **Board's policies and procedures do not include guidance for ensuring its information requests and subpoenas are consistent with statutory requirements—**The Board's policies and procedures do not include guidance for staff to ensure that information requests or subpoenas are related to complaint allegations, as required by statute.

- **Board does not notify recipients of their right to petition the Board or the Courts to revoke, limit, or modify subpoenas—**Although the Board's subpoena recipients can petition the Board or the Courts to revoke, limit, or modify a subpoena, the Board's subpoenas do not include language to inform licensees that they can do so. In some cases, the Board also included potentially misleading language that the subpoena or request constituted "the minimum information necessary for the Board to fulfill its statutory mandate." As a result, licensees and other subpoena recipients may be unaware of their ability to do so, which could contribute to the Board continuing to subpoena more information than necessary to complete an investigation. Conversely, according to the Rules of Civil Procedure for the Superior Courts of Arizona, subpoenas issued by the Superior Courts of Arizona are required to include an explanation of the process by which recipients may request that the court modify or revoke the subpoena and the circumstances under which they may make such a request.[32]

Recommendations

The Board should:

1. Cease its practice of subpoenaing and requesting information that is unrelated to complaint allegations when investigating complaints.

[31] As of fiscal year 2024, the Board had over 2,550 licensees. Between fiscal year 2021 and March 2024, the Board received an average of 44 complaints a year.

[32] Ariz. R. Civ. P. 45; Ariz. R. Civ. P. Form 9.

2. Cease the practice of using investigations as a means to monitor compliance with continuing education requirements and to evaluate the quality of a licensee's recordkeeping, and develop administrative procedures for reviewing these matters outside of the complaint investigation process.
3. Develop and implement policies and/or procedures that include guidance for Board staff to tailor information requests and subpoenas that are directly related to the complaint filed and within the scope of the investigation.
4. Develop and implement a documented process for the Board's Executive Director and legal counsel to review subpoenas to help ensure that the information requested or required to be provided is directly related to the complaint filed and within the scope of the investigation.
5. Include information in its subpoenas informing licensees regarding their ability to petition the Board or the Courts to revoke, limit or modify the subpoena, consistent with the practice of the Superior Courts of Arizona.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Chapter 2: Board did not consistently apply statutes and rules regarding licensees' continuing education and recordkeeping, but did consistently initiate investigations for complaints related to improper division of fees for patient referrals

JLAC request to review: Board's application of its statutes and rules and whether the Board has consistently applied its statutes and rules over time and for all licensees.

Conclusion: The Board did not consistently apply some of its statutes and rules for licensees. Specifically, it primarily reviewed continuing education documentation and recordkeeping for licensees who were subjects of complaints and it did not follow consistent practices when requiring licensees accused of sexual impropriety to undergo psychosexual evaluations. Further, our review of the Board's approach to investigating allegations of the improper division of fees for patient referrals, as requested by JLAC to review, did not identify inconsistencies in how the Board applied its statutes and rules.

Issue 1: Board did not always apply its statutes and rules consistently among licensees

The Board inconsistently applied its statutes and rules in 3 areas. Specifically, the Board:

- **Assessed compliance with continuing education requirements only for licensees who were the subject of complaints—**As reported in Chapter 1, pages 8 through 15, we reviewed a sample of 70 complaints the Board investigated between July 1, 2021, and March 31, 2024, and our review found that the Board did not consistently apply the authorizing statutes and rules to all licensees. Specifically, according to the Board's rules, the Board may require a licensee to provide documentation to verify compliance with continuing education requirements at any time.[33] However, prior to October 2022 the Board did not consistently apply this rule to all licensees because the Board reviewed continuing education only for licensees who were subjects of complaints. In October 2022, the Board reported that it began auditing compliance with continuing education requirements for approximately 5 to 10 percent of its licensees; of the remaining licensees, only those under investigation were reviewed for compliance with continuing education requirements. In October 2023, the Board began requiring all licensees to submit evidence of continuing education compliance when renewing their licenses.

- **Assessed the record-keeping practices only for licensees who were the subject of complaints, and inconsistently assessed penalties against these licensees—**Although the Board requires 2 hours of continuing education in documentation and recordkeeping for annual license renewal in even calendar years, only licensees who were subjects of complaints had their

[33] AAC R4-7-802 (A).

records reviewed or received educational penalties for substandard records.[34] Additionally, we found that the Board requested patient records in 45 of the 70 complaints we reviewed and that the Board used its complaint-handling process to assess the recordkeeping practices of these licensees and to educate licensees regarding recordkeeping.[35] However, as discussed in Chapter 1, pages 8 through 15, the Board assessed penalties against licensees related to recordkeeping or documentation in 13 of 59 cases we reviewed, although the quality of recordkeeping was relevant to deciding only 7 of these.[36]

- **Did not consistently use psychosexual evaluations in cases involving allegations of sexual misconduct**—According to statute, the Board is authorized to require medical, physical, or mental examinations necessary to evaluate a chiropractor's ability to safely engage in chiropractic practice.[37,38] The Board reported it uses psychosexual evaluations during the investigative process for serious complaints where the alleged violation(s) would not have been the result of a treatment misunderstanding or in cases where there is limited evidence to otherwise assess an allegation of sexual misconduct. However, we identified various problems related to the Board's use of psychosexual evaluations:

  - As of the end of October 2024, the Board did not have any established policy, procedure, or formal guidelines for employing psychosexual evaluations, which are lengthy (approximately 8 hours) evaluations into a licensee's personal life, including matters unrelated to the specific allegations being investigated. To ensure the proper use of such evaluative techniques, other health-related boards have established robust policies. For example, the Arizona Board of Nursing established a 17-page Substantive Policy Statement related to investigating

PSYCHOSEXUAL EVALUATION
The purpose of the psychosexual evaluation is to evaluate the respondent's continuum of sexual interest based on various assessments; potential social, cognitive and sexual deficits that may lead to deviant behavior; and whether the individual is likely to respond positively to treatment or intervention.

Source: Auditor staff review of Board's website.

[34] AAC R4-7-902(5) defines inadequate recordkeeping as unprofessional conduct and grounds for disciplinary action, but statute and rule do not otherwise require or specifically authorize the Board to conduct audits of documentation and recordkeeping.

[35] According to interviews with the Executive Director and Board members, recordkeeping quality is of consistent concern for the safe practice of chiropractic, and that standards for documentation and recordkeeping have become more stringent since health insurance companies and Medicare began covering chiropractic care.

[36] Although we did not identify any licensees who the Board sanctioned improperly, A.R.S. §12-910(D) outlines a process by which licensees may challenge a regulatory board decision in Superior Court.

[37] A.R.S. §32-924(J) requires that the Board "report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency," but does not prohibit the Board from proceeding with its administrative investigation.

[38] A.R.S. §32-929(A) states "In connection with an investigation by the board on its own motion, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documents, reports, records or any other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or any other public or private agency, and any health care institution as defined in section 36-401, if such documents, reports, records or evidence relate to chiropractic competence, unprofessional conduct or the mental or physical ability of a doctor of chiropractic to safely practice chiropractic."

potential boundary violation or sexual misconduct complaints, including guidance regarding its use of psychosexual evaluations. Specifically, its Substantive Policy Statement indicates that such evaluations should be used only after an investigation has established a series of facts, including whether it appears that the allegations of boundary violations or sexual misconduct have been substantiated.

- The Board inconsistently used psychosexual evaluations for complaints we reviewed, ordering them in 3 cases involving allegations of sexual impropriety but not in 2 other cases involving sexual impropriety. The 3 cases included the following details:

  - In one case, the complainant alleged that a licensee performed Eye Movement Desensitization and Reprocessing (EMDR) therapy and massage on her before sexually assaulting her. The complainant reported "not feeling like herself" and that she nodded "yes" when the doctor asked if she felt that he had taken advantage of her. After the formal interview, during which the licensee denied the allegations, the licensee entered into a consent agreement for Probation, which included a 12-month term, 12 hours of continuing education in case management and documentation and, discontinuation of EMDR therapy, and a successful completion of a psychosexual evaluation. During the psychosexual evaluation undertaken as a result of this agreement, the licensee admitted to committing the alleged violations. Based on this admission, the Board opened a new complaint against the licensee for making false statements to the Board during the formal interview and the licensee voluntarily surrendered their license

  - In a second case, in 2020, a patient accused a licensee of touching her with his genitals during treatment, and the Board gave an interim order for an ethics and boundaries evaluation during adjudication. When the Board received a second, very similar complaint in 2022, the Board ordered a psychosexual evaluation. The Board revoked this practitioner's license for refusing to comply with the psychosexual evaluation.

  - In a third case, the Board required the licensee to undergo a psychosexual evaluation during its investigation of an allegation that the licensee made sexual comments toward and inappropriately touched minors while serving as a high school wrestling coach. The Board ordered a psychosexual evaluation, which found that the licensee had unresolved grief issues. The Board also invited the licensee to appear for a formal interview, which the licensee declined, and issued an advisory letter to the licensee, but the Board did not take disciplinary action.[39]

[39] According to A.R.S. §32-900(1), an advisory letter is a non-disciplinary notice to a licensee that: (a) while there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee; (b) the violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; (c) the violation is a minor or technical violation, and while the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

- In our sample of 70 complaints, 23 contained allegations of sexual misconduct. Of those, the Board dismissed or assessed non-disciplinary penalties for 6 of the allegations when the Board found insufficient evidence to substantiate the allegation or because the Board found that the alleged misconduct related to treatment techniques that were not adequately communicated to the patient. The Board otherwise resolved 4 complaints of sexual misconduct without needing to complete investigation into the conduct, as in cases of voluntarily surrender of a license without appearing before the Board, the licensee already being incarcerated, or the Board revoking the license due to probation non-compliance. Of the remaining 13 substantiated allegations of sexual misconduct, the Board ordered a psychosexual evaluation in 3 cases—as described above. The Board did not order psychosexual evaluations in 10 cases. For instance:

  - From 2019 to 2021, one licensee received multiple complaints of sexual misconduct alleged to have happened many years prior, including 2 instances of alleged sexual assault. The Board did not require this licensee to undergo a psychosexual evaluation, but continued the case to multiple meetings, including a formal hearing, while awaiting decisions on the criminal cases open against him. The licensee had previously completed additional continuing education and an ethics and boundaries assessment for a probation order that resulted from a prior allegation of improper physical contact. The Board summarily suspended the license before ordering revocation when the licensee entered into a plea agreement regarding his criminal cases.

  - One complainant accused a licensee of manipulating her into a sexual relationship during treatment, and then of continuing to have sexual intercourse with her in the treatment room over the course of multiple years. The Board did not require this licensee to undergo a psychosexual evaluation, but the complaint record does not explain why. Instead, the Board entered into a consent agreement that stayed the revocation of their license and put the licensee on probation for 5 years with no possibility of early release. Terms of the order included requiring the licensee to pay the Board's costs for investigating the complaint, pass a jurisprudence exam, employ a female chaperone, and take 74 hours of continuing education in professional boundaries, treating female patients, and medical ethics.

Issue 2: Board consistently initiated investigations for all 5 complaints we reviewed related to improper division of fees for patient referrals but had not yet adjudicated these complaints, so we were not able to assess how it interpreted and applied its statutes and rules in these cases

The letter to the Arizona Joint Legislative Audit Committee requesting this special audit included questions regarding the Board's consistency in interpreting and investigating allegations of a licensee giving or receiving compensation for patient referrals, including whether the Board has the authority to review these cases and whether it has consistently approached these cases. This practice is referred to as "fee splitting," and the Arizona Criminal Code statute defines it as a class 3, 4, or 6 felony depending on the dollar value

concerned.[40] Additionally, State statute and rule authorize the Board to investigate as "unprofessional conduct" and "grounds for disciplinary action" allegations relating to the improper division of fees, including:

> "Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between providers and institutions or entering into a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law from dividing fees received for professional services among themselves as they determine necessary."[41,42,43]

We found evidence indicating that the Board investigated such allegations as far back as 2012, and the Board engaged in rulemaking in 2008 to explicitly prohibit the practice and to include such conduct as enforceable within the Board's jurisdiction. Our review of the Board's processes for investigating allegations of the improper division of fees for patient referrals, including how it applies its statutes and rules, found that the Board has consistently initiated investigations of allegations that licensees are dividing patient fees for patient referrals for complaints we reviewed. Of 54 complaints open as of April 30, 2024, 5 contained allegations of dividing fees for patient referrals.[44] As of October 2024, the Board had open investigations into all 5 complaints alleging licensees divided professional fees for patient referrals (see Exhibit 1, page 21, for additional information on these investigations). Two of these complaints concerned contractual agreements between 2 chiropractic licensees, and the Board opened a third when it discovered that a licensee billed under a different business name. However, as of October 2024, the Board has not issued decisions on any of these 5 allegations, nor has the Board ruled whether it finds what the licensees did fall within the exemption provision of Board rule or constitutes a violation. As a result, we were not able to

[40] A.R.S. §13-3713(A) "…a person who knowingly offers, delivers, receives, or accepts any rebate, refund, commission, preference or other consideration as compensation for referring a patient, client or customer to any individual…clinic or health care institution providing medical or health-related services…"

[41] AAC R4-7-902(34), as clarifying A.R.S. §32-924 (A)(5): "Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession." Board rule specifically prohibits compensation received solely for patient referral, while allowing for a regularly and properly organized business entity to divide fees received for professional services; this language indicates that "properly organized" medical professionals dividing fees are all involved in the patient's care. This rule was established in 2008 as part of a formal rulemaking process.

[42] Arizona statutes recognizes numerous types of business entities, including a corporation, foreign corporation, not for profit corporation, unincorporated associations, nonprofit corporation, close corporation, professional corporation, corporation sole or limited liability company, association or limited liability company, a cooperative, business trust, estate, partnership (general, limited, or limited liability partnership), testamentary, inter vivos or charitable trust, and individuals (sole proprietors). See A.R.S. §§20-281(1), 10-140(23), and 29-2102(17).

[43] Board statute or rule does not define "member" in the context of this provision. The term "member" could refer to limited liability companies (LLC), for which statute specifically addresses how members become part of an LLC. A.R.S. §29-3102(15)(a)(b) states that a "member" is a person who joins the LLC "by agreeing to become a member, with the affirmative vote or consent of all the members." By stating that the individual must be a "member" of a business entity recognized by Arizona statute, the term "member" may not limited to the role of members in a LLC, but may also apply to individuals that are part of a legally recognized business entity.

[44] All 5 investigations involve allegations of licensees directly or indirectly dividing a professional fee for patient referrals and entering into a contractual arrangement to that effect.

determine whether the Board consistently adjudicated allegations of licensees dividing fees for patient referrals.

EXHIBIT 1. BOARD INITIATED INVESTIGATIONS FOR ALL 5 COMPLAINTS ALLEGING IMPROPER DIVISION OF FEES FOR PATIENT REFERRALS SINCE 2022

Complaint	Allegation	Date of Allegation	Source of Allegation	Initial Action?	Status of Complaint	Days Open
Complaint A	Improper Fee Splitting	05.05.22	Anonymous	Notice of complaint sent; Board held initial action hearing	Open	910
Complaint B	Improper Fee Splitting	07.07.22	Self-Reported by Licensee	Notice of complaint sent; Board held initial action hearing	Open	847
Complaint C	Improper Fee Splitting	01.04.23	Self-Reported by Licensee	Notice of complaint sent; Board has not yet scheduled initial action hearing	Open	666
Complaint D	Improper Fee Splitting	09.13.23	Board Initiated following investigation into a separate licensee	Notice of complaint sent; Board has not yet scheduled initial action hearing	Open	414
Complaint E	Improper Fee Splitting	04.24.24	Board Initiated following investigation into sexual misconduct	Notice of complaint sent; Board has not yet scheduled initial action hearing	Open	190

Source: Auditor-generated table based on complaint data retrieved from the Board's administrative complaint log and a review of the complaint files, as of October 31, 2024.

Additionally, we were unable to obtain evidence indicating whether or not the Board has changed its approach since 2013 to investigating allegations that licensees are dividing professional fees for referrals. Specifically, the Board received complaints in 2012 that alleged that 3 licensees were engaged in compensating another entity for patient referrals, and the Board investigated the allegations against the 3 licensees. The Board dismissed all 3 complaints in May 2013 but was unable to provide documentation specifying the reasoning behind this decision because it is not required to retain complaint records for more than 5 years.[45] Therefore, we were unable to determine whether the Board had changed its approach to investigating allegations of this nature or whether it had appropriately and consistently applied its statutes and rules.

Recommendation

6. The Board should conduct a formal review of its use of psychosexual evaluations to assess and document their relevance and appropriateness in evaluating a chiropractor's professional competence. If determined appropriate, it should develop and implement policies, procedures,

[45] The Board only has record of receiving and investigating 8 complaints alleging licensees giving or receiving compensation for patient referrals—the 5 complaints that were open as of October 2024 (see Exhibit 1), and the 3 that were dismissed in 2013.

and/or guidance for when to order a licensee to complete psychosexual evaluation, including outlining how the Board will use the evaluation results.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Chapter 3: Board did not report allegations of criminal wrongdoing to appropriate criminal justice agencies as required by statute for applicable complaints we reviewed, with 1 exception, increasing public safety risks and potentially delaying or hindering criminal investigations

JLAC request to review: Board's handling of allegations involving criminal wrongdoing.

Conclusion: The Board did not consistently comply with its statutory requirement to report allegations of evidence of criminal wrongdoing to appropriate criminal justice agencies. Of the 10 complaints we reviewed involving criminal allegations that had not otherwise been reported to a criminal justice agency, the Board reported only 1 of 10 complaint allegations to a law enforcement agency, failing to report allegations of criminal wrongdoing from the other 9 complaints, such as nonconsensual sexual contact and insurance fraud. This failure to report allegations of evidence of criminal wrongdoing to criminal justice agencies increases public safety risks and may delay or hinder criminal investigations. Although the Board adopted a policy during the audit for reporting these allegations to the appropriate criminal justice agencies, inconsistent with statute, the policy allows the Board to decide not to report allegations to criminal justice agencies and may result in delayed reports, further hindering criminal investigations and increasing public safety risks.

Board did not comply with its statutory requirement to report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency, with 1 exception

The Board is statutorily required to report any allegations of evidence of criminal wrongdoing to the appropriate law enforcement agency.[46] Of the 70 complaints we reviewed, 20 included allegations of criminal wrongdoing, including allegations of sexual contact, insurance fraud, paying doctors for patient referrals, practicing without a license, and mail fraud. Of these 20 complaints, 4 involved complainants who had filed police reports on their own and 6 had existing cases with law enforcement; for the remaining 10 complaints, the Board reported 1 allegation to appropriate authorities, but did not report the remaining 9 complaint allegations to criminal justice agencies as required.[47] Examples of the 9 complaint allegations of criminal wrongdoing the Board did not report to law enforcement agencies as required by statute include:

- A complainant alleged that the licensee intentionally touched her with his genitals and told the investigator that she had tried to contact the police but was unsuccessful. The Board did not report this

[46] According to A.R.S. §32-924(J), the Board is required to "report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency." Statute includes the same requirement for the Arizona Board of Optometry and the Arizona Board of Osteopathic Examiners in Medicine and Surgery. See A.R.S. §§32-1704(L) and 32-1804(J).

[47] For the 1 complaint allegation the Board reported to appropriate authorities, the Board found that the subject of the complaint was practicing chiropractic without a license, issued a Cease and Desist order, and referred the individual to a law enforcement agency.

allegation to law enforcement, as required, but sought to assess the allegation's validity through a psychosexual evaluation.

- A complainant alleged that the licensee ran his hands between her breasts and moved her underwear down when she was on her stomach to touch her buttocks before whispering a sexual innuendo in her ear. The Board investigator documented in the complaint file discussions of the possibility that the complainant could file a police report directly, but there is no evidence of one being filed by the complainant or the Board.
- A complainant alleged that the licensee asked her to undress to only her underwear during treatment and touched her more aggressively as treatments progressed. These incidents also occurred at the end of the business day when the office was empty. The file contained no evidence the complainant or the Board filed a police report.
- An insurance company accused a licensee of insurance fraud. The Board did not report the allegation to an appropriate agency for insurance fraud investigation, such as the Arizona Department of Insurance and Financial Institutions.

Board's failure to report allegations of evidence of criminal wrongdoing to criminal justice agencies increases public safety risks and may delay or hinder criminal investigations

The Board's failure to report allegations of criminal wrongdoing to criminal justice agencies as required by statute can result in individuals who have broken the law continuing to harm the public because criminal justice agencies cannot take action to prevent further harm. For example, as reported above, several of the cases the Board did not report to criminal justice agencies involved allegations of sexual misconduct. If criminal justice agencies are not aware of these allegations they cannot investigate and determine if additional action unrelated to the individual's license should be taken to protect the public, such as determining whether the individual should be charged with a crime and potentially prosecuted.

Additionally, although the Board's statutes do not include a required time frame for reporting these allegations to law enforcement, other Arizona regulatory board statutes include required reporting time frames. For example, veterinarians licensed by the Arizona State Veterinary Medical Examining Board are required to report to law enforcement within 48 hours suspicions of animal abuse, cruelty, and neglect or that a client or other person is trying to obtain controlled substances with an intent other than to treat the patient animal. Further, any reporting delays will also delay criminal investigations from starting potentially hindering the criminal investigations, such as if witnesses cannot remember details about an incident due to the passage of time.[48]

[48] A.R.S. §§32-2239 and 32-2239.01.

Board reported it believed complainant consent was needed to report allegations, and despite being required to report these allegations since 2002, it lacked a policy for reporting allegations of criminal wrongdoing to criminal justice agencies but developed a policy during the audit; however, this policy has significant deficiencies

According to the Board's Executive Director, the Board believed that information related to complaints was confidential and that they needed a complainant's consent to report allegations of criminal wrongdoing to a criminal justice agency. As a result, the Board's Executive Director reported that its investigators generally encouraged complainants to file reports with law enforcement rather than reporting the allegations themselves. However, A.R.S. §32-929 states that information obtained as part of an investigation is not available to the public and that the Board must keep confidential the names of any patients whose records are reviewed as part of an investigation—requirements that would not prohibit the Board from reporting an allegation of criminal wrongdoing to a criminal justice agency.

Additionally, prior to July 2024, the Board had no official policy to report complaints with allegations of criminal wrongdoing to criminal justice agencies. During the audit in July 2024, the Board adopted a Criminal Referrals policy governing how it reports allegations of criminal wrongdoing to criminal justice agencies. The policy provides a list of violations that warrant a report to a criminal justice agency, such as allegations of physical abuse, sexual abuse, and financial exploitation.[49]

However, we identified multiple deficiencies with the policy. For example, the Board's policy requires the Board to first determine during a Board meeting if the Board has evidence of criminal wrongdoing before its staff can report the allegation to the appropriate criminal justice agency. This policy not only implies that the Board will assess the sufficiency of the evidence but also provides the Board the ability to decide not to forward an allegation of criminal wrongdoing to a criminal justice agency. However, statute does not provide the Board discretion not to report an allegation of criminal wrongdoing or authorize or require the Board to judge the sufficiency of the evidence before reporting it. This policy also assumes that the Board has the knowledge and expertise to evaluate whether there is sufficient evidence of criminal wrongdoing, rather than providing information to criminal justice agencies that not only have this knowledge and expertise to do so but also the responsibility for evaluating and investigating criminal allegations. Further, the Board's policy lacks any requirements or guidance for Board staff to work with criminal justice agencies when conducting complaint investigations that include allegations of criminal wrongdoing, including how its staff should work with these agencies to share information and/or coordinate investigations with criminal justice agency personnel and when and how its staff should review the results of these agencies' investigations. Finally, this process required by the Board's policy may delay an allegation of criminal wrongdoing from being reported to a criminal justice agency which could potentially impact those agencies' ability to timely and/or effectively investigate the allegations.

[49] The Board's Criminal Referrals policy includes the following allegations that are appropriate to report to criminal justice agencies: physical abuse, neglect, emotional abuse of a patient, sexual abuse, financial exploitation, theft over $250, forgery of financial documents, chiropractic physician imposters, and any other evidence of criminal wrongdoing pursuant to A.R.S. §32- 924(J).

Recommendations

The Board should:

7. Revise and implement its policy to require it to report all allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency within 48 hours.
8. Revise and/or develop and implement polices or procedures that include requirements and guidance for Board staff to coordinate with criminal justice agencies when conducting complaint investigations that include allegations of criminal wrongdoing. At a minimum, the requirements and guidance should outline how Board staff should work with criminal justice agencies to share information and/or coordinate investigations with criminal justice agency personnel and when and how its staff should review the results of these agencies' investigations.
9. Provide training for Board members and staff on its policies and procedures related to reporting allegations of criminal wrongdoing to criminal justice agencies.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Chapter 4: Board has made progress in resolving complaints dating back to fiscal year 2018 but continued to not resolve complaints within 180 days, which may affect patient safety and cause undue burden for licensees under investigation for lengthy periods of time

JLAC request to review: Board's handling of its complaint backlog.

Conclusion: The Board did not consistently resolve complaints in a timely manner, with 69 percent of complaints remaining open beyond 180 days, as of May 1, 2024. Despite making progress in resolving complaints dating back to fiscal year 2018, average resolution times remained lengthy, averaging 576 days for a sample of 70 complaints we reviewed. Factors contributing to these delays included expansion of investigation scope, a flawed process to prioritize complaints based on risk, investigators devoting time to process license renewals, and high staff turnover, all of which hindered the Board's ability to promptly address complaints, potentially impacting both public safety and causing undue burden for licensees under investigation for lengthy periods of time.

Board is responsible for investigating and resolving complaints against licensees

As reported in the Introduction, see page 4, the Board is responsible for investigating and resolving complaints against licensees. Although the Board has not established time frames for investigating and resolving complaints, the Arizona Auditor General has determined that Arizona health regulatory boards should investigate and resolve complaints within 180 days of receiving them.

Board has made progress resolving complaints dating back to fiscal year 2018 but continued to not resolve most complaints within 180 days

Although the Board has reduced the overall number of open complaints between July 1, 2021, and April 30, 2024, the percentage of open complaints over 180 days has remained consistent. Specifically, as of July 1, 2021, the Board had 78 open complaints with 56 complaints, or 72 percent, open for longer than 180 days with the longest complaint being open for 1,407 days (see Exhibit 2 for the number of open complaints by fiscal year since fiscal year 2021).[50] Similarly, as of April 30, 2024, the Board had 54 open complaints, with 37, or approximately 69 percent, open for longer than 180 days, with the longest complaint being open for 1,119 days. Exhibit 2 on page 28 shows the number of backlogged complaints open and under investigation as of July 1, 2021through April 30, 2024.

[50] A patient submitted this complaint and alleged that they requested their records from the licensee and the licensee failed to produce the requested medical records.

EXHIBIT 2: BOARD MADE PROGRESS CLOSING OLDEST COMPLAINTS IN ITS BACKLOG IN FISCAL YEARS 2021 THROUGH 2024, BUT HAS CONSISTENTLY HAD NEARLY 70 PERCENT OF ITS OPEN COMPLAINTS OPEN FOR MORE THAN 180 DAYS AS OF APRIL 30, 2024

	Open complaints at end of fiscal year			
	2021	2022	2023	2024*
Received in FY 2018	14	1	0	0
Received in FY 2019	8	1	0	0
Received in FY 2020	18	4	4	0
Received in FY 2021	38	19	7	2
Received in FY 2022	—	36	18	2
Received in FY 2023	—	—	41	18
Received in FY 2024*	—	—	—	32
Total open complaints at end of fiscal year	**78**	**61**	**70**	**54**
Total complaints open more than 180 days	**56**	**43**	**50**	**37**

Source: Auditor-generated table based on the Board's administrative "Complaint Log" and a review of the complaint files

Note: * April 24, 2024, was the last Board Meeting held prior to receipt of complete complaint log information. End date of April 30, 2024, captures actions taken by the Board at this meeting.

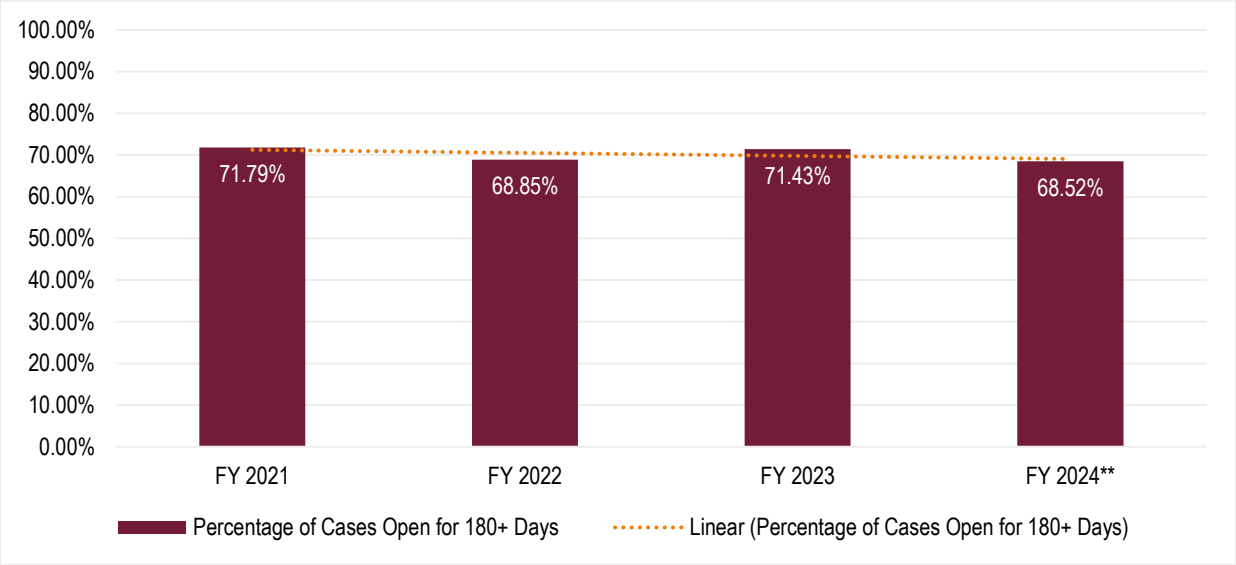
The 54 complaints open as of April 30, 2024 included 25 high-priority complaints, of which 12 complaints contained patient injury or safety allegations (see page 29 for more information on the Board's complaint severity levels).[51] Patient injury or safety complaints included allegations that the licensee caused injury during treatment, failed to properly supervise chiropractic assistants, and routinely misdiagnosed and referred patients for unnecessary treatment, as well as malpractice claims. High-priority complaints not directly relating to patient injury or safety included operating unregistered clinics, reporting actions taken in other jurisdictions including for driving under the influence, and allegations of mail fraud. These 25 high-priority complaints had been open between 35 and 726 days while the licensees continued to practice.[52]

The Board has made progress in closing out complaints dating back to fiscal year 2018. For example, as of April 2024, the Board had closed the remaining open complaints received in fiscal years 2018 through 2020 (see Exhibit 2 for more information). However, we found that the Board has not resolved the majority of complaints within 180 days. Between July 2021 and April 2024, Board records show that approximately 70 percent of its investigations take more than 180 days to complete. As shown in Exhibit 3, page 29, this trend remained stable throughout this 3-year period.

[51] Of the 54 complaints open as of April 30, 2024, 25 were medium-priority, including 4 complaints with patient injury or safety allegations, and 4 complaints were low-priority. Medium- and low-priority complaints not relating directly to patient injury or safety included allegations such as improper billing to the patient or insurer, misleading advertising, or failure to release records.

[52] The Board's complaint log database includes complainants' names but does not indicate whether they are patients, licensees, or other members of the public.

EXHIBIT 3. BOARD TOOK MORE THAN 180 DAYS TO COMPLETE COMPLAINT INVESTIGATIONS FOR 70 PERCENT OF ITS INVESTIGATIONS IT COMPLETED IN FISCAL YEARS 2021 THROUGH 2024*



Source: Auditor-generated based on the Board's administrative "Complaint Log" and a review of the complaint files.

Note: * Fiscal Year 2024 is as of April 30, 2024, to capture actions taken at the April 24, 2024, Board meeting, which was the last Board meeting held prior to receipt of complete complaint log information.

** FY 2024 represents investigations completed between July 1, 2024, and April 30, 2024.

Additionally, as shown in Exhibit 4, page 30, of 37 complaints that had been open for longer than 180 days as of April 2024, 18 were high-priority complaints (see textbox for the Board's complaint severity levels and examples of types of allegations by priority level). Of those 18 high-priority complaints, 15 licensees were still actively licensed to practice as of April 2024, and 2 of the complaints involved unregistered chiropractic clinics, for which the status of the owner's chiropractic license may not be relevant.[53]

Severity level—Indicates the severity of the potential risk to the public posed by the Board-received complaint. The Board's severity levels and example allegations by severity level are:

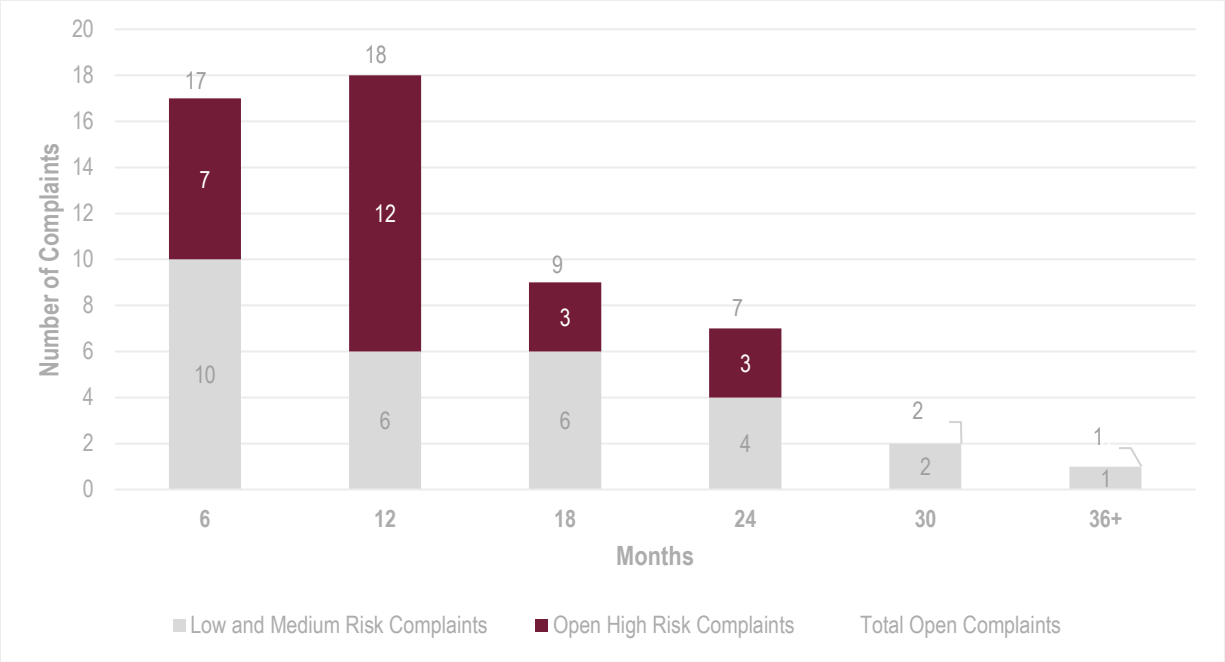
- **High priority—**Substance abuse, improper treatment, sexual misconduct, or other concerns related to patient safety.
- **Medium priority—**Documentation and record-keeping errors and billing issues.
- **Low priority—**Misleading advertising, improper use of specific terms, and failure to release records.

Source: Auditor review of Board's fiscal year 2025 budget request.

[53] Two of the 18 complaints involved the same licensee.

EXHIBIT 4. OF 54 OPEN COMPLAINTS, 37 COMPLAINTS HAVE BEEN OPEN LONGER THAN 180 DAYS (6 MONTHS), 18 OF WHICH ARE HIGH PRIORITY

AS OF APRIL 30, 2024



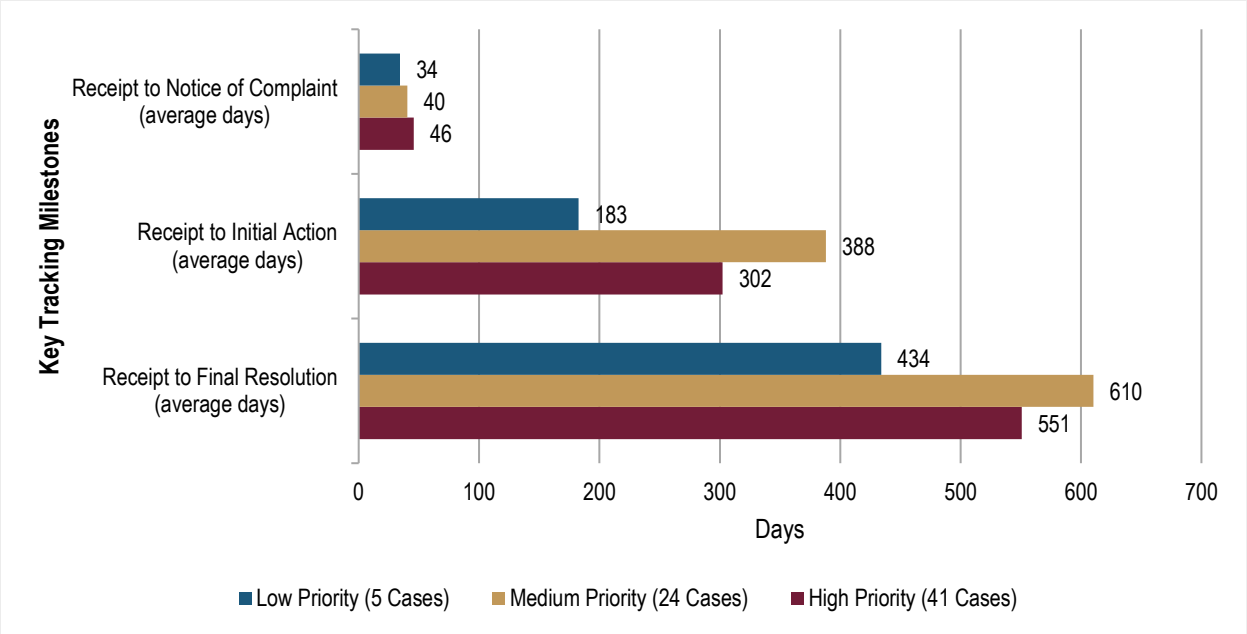
Source: Auditor-generated based on the Board's administrative "Complaint Log" and a review of the complaint files.

Further, the Board has also not investigated and resolved higher-priority complaints more quickly than those classified as lower-priority. As shown in Exhibit 5, page 31, on average the Board resolved lower-priority complaints before higher-priority complaints. Additionally, low-priority complaints moved through key complaint process milestones quicker than higher-priority complaints (see Introduction, pages 4 through 6 for steps in the Board's complaint-handling process). For example, lower-priority complaints were calendared for initial action an average of 183 days after the Board received the complaint, whereas medium- or high-priority complaints did not appear on a Board agenda for initial action for an average of over 300 days after the complaint was received.[54] In all, regardless of the seriousness of the complaint against a licensee, most complaints it received did not appear on the Board's agenda for initial action until after 180 days had already passed.

[54] As discussed in the Introduction, page 5, initial action refers to the Board's first review of a complaint investigation, including complaints that go before the Board for the first time as consent agenda items.

EXHIBIT 5. BOARD TOOK ON AVERAGE 146 DAYS LONGER TO INVESTIGATE AND RESOLVE MEDIUM AND HIGH PRIORITY COMPLAINTS COMPARED TO LOWER PRIORITY COMPLAINTS FOR 70 COMPLAINTS WE REVIEWED*

AS OF APRIL 30, 2024



Source: Auditor-generated chart based on auditor review of a sample of 70 of 215 Board-investigated complaints active between July 1, 2021, and March 31, 2024.

Note: * See Introduction, pages 4 through 6, for more information about key steps in the Board's complaint-handling process, including complaint receipt and initial action. Final resolution is the closure of the complaint, whether that be through Board dismissal, disciplinary action, or non-disciplinary action.

Board's failure to timely resolve complaints may negatively affect patient safety and may cause undue burden for licensees under investigation for lengthy periods of time

Untimely complaint resolution may negatively impact patient safety when delays allow licensees alleged to have violated Board statutes and rules to continue to practice while under investigation, even though they may be unfit to do so. For example, the Board received a complaint in July 2019 alleging sexual misconduct and related alcohol use. Although the Board revoked the license, it did so in March 2022, 966 days after receiving the complaint, and allowed the licensee to continue practicing during this time.[55]

In addition, even when the Board does not substantiate and dismisses complaints, untimely complaint handling subjects licensees to unproven allegations of professional or harmful conduct for longer than necessary. Untimely complaint handling may also create an undue burden for licensees who are under investigation, as they may be required to be responsive to Board request for information or documentation for a lengthy period of time, and as discussed in Chapter 1, the Board has requested information that is outside the scope of complaint allegations contrary to statute (see Chapter 1, pages 8 through 15, for more

[55] The Board heard the case at initial action in October 2019 and scheduled a formal Interview for April 2020. The formal interview was cancelled and rescheduled for June 2020; the licensee did not appear and the Board scheduled a formal hearing, as required by statue, for May 2021—nearly a year later. The formal hearing was rescheduled twice, and ultimately occurred in February 2022, during which the Board moved to revoke the licensee's license.

information). For example, in one complaint, a licensee faced allegations of beginning a sexual relationship with the patient within 3 months of treatment. The Board ended up dismissing the complaint after 657 days as the Board found evidence that the relationship between the patient and licensee began prior to the beginning of treatment. Finally, while licensees are under investigation, statute does not permit the Board to make information available to the public regarding complaints involving a licensee.[56] Specifically, during the investigation time period, which has included lengthy periods over 1,000 days for some Board complaints, the public cannot obtain information about the chiropractor's behavior that could impact their provider choice.

Several factors—such as the Board's practice of expanding complaints beyond the original scope without reasonable cause, lack of time frames, using investigators to process license renewals, and high staff turnover—contribute to long resolution timelines

Several factors have led to the Board's long complaint-handling time frames. These include the practice of expanding investigations beyond the original scope of complaints, administrative inefficiencies, and challenges related to staffing. Specifically:

- **Board expanded scope of complaint investigations by requesting/subpoenaing and reviewing information not relevant to the original complaint allegation(s), which may delay resolution of complaints and unnecessarily consume staff resources—**As reported in Chapter 1, see pages 8 through 15, the Board expanded the scope of its investigations in 60 of 70 complaints we reviewed to include items not related to the original complaint allegation(s), such as continuing education. This may have contributed to the Board's untimely complaint handling. For example, in a complaint in which the complainant alleged the chiropractor dismissed her as a patient due to her weight and non-compliance with the chiropractor's orders, after the initial Board meeting, the Board issued the licensee 2 separate subpoenas for additional information not relevant to the original complaint, such as a complete list of patients seen in the previous 6 months, and complete records for 10 patients for the purpose of a records assessment. There was a 4-month delay between when the Board first heard the complaint to when it heard the complaint a second time, which may have been caused by staff subpoenaing and reviewing additional information not related to the original complaint. Further, extended complaint investigations may also unnecessarily consume staffing resources that could otherwise be used to investigate additional complaints.

- **Board lacks time frames for prioritizing, investigating, and resolving complaints based on severity level—**Although the Board has established a severity ranking system to prioritize complaints based on the risk to the public, this priority-system does not include time frames for starting and/or completing complaints based on the severity ranking. A prioritization process, including having time frames for higher versus lower severity complaints, focuses resources on investigating the highest priority allegations, which pose the highest risk to the public, first. This helps ensure that investigations posing immediate risks to public safety are initiated, investigated, and resolved quicker than those that pose lower risk to the public. It also clarifies expectations

[56] A.R.S. §32-3214(A) "A pending complaint or investigation may not be disclosed to the public."

regarding low-priority complaints so that they are not delayed for unreasonable periods of time. Establishing timelines as measurable goals would provide an opportunity for the Executive Director to measure workload and staff performance, and to identify opportunities for improvement if goals are not being met. Without established timelines, complaints progress through the complaint-handling process at a pace determined by staff, the Executive Director, or the Board, and not based on the urgency presented by the severity of the complaint.

- **Investigators were processing license renewals rather than investigating complaints—**Prior to October 30, 2023, statute required license renewals to be submitted at year-end for all licensees. The Executive Director reported that the high volume of renewals, approximately 2,550, that the Board received annually at year-end resulted in investigators assisting with the licensing renewal applications. Specifically, prior to October 2023, statute required that the Board, at least 30 days before the renewal period, send notices to all licensees that renewal applications and license fees were due by December 31 of each year.[57] Board rule requires the Board to send, by January 20, a written notice of administrative suspension to all licensees who failed to file the renewal application and pay the license fee before January 1, and to issue license renewal certificates by February 1 to all licensees that complied with renewal requirements.[58] Further, the Executive Director stated that the reduction in staff attention to complaints handling over the 4-month license renewal period directly correlates to the total number of complaints open for over 180 days. However, Laws 2023, Chapter 139, Section 1 changed the license renewal time frame from year-end to the end of the licensee's birth month, annually. By spreading license renewals out over the calendar year, the Board expects that this process will no longer negatively impact the complaints process.[59]

- **Board delayed adjudication of complaints involving parties subject to civil litigation—**Our sample of 70 complaints included 3 instances in which the Board delayed adjudication of complaints against a single licensee because of civil litigation. These complaints alleged that a licensee had a nonspecific alcohol problem, courted romantic partners through the licensee's practice, had begun a sexual relationship with the complainant within 3 months of treating the complainant, and engaged in other unprofessional business practices. The licensee was also involved in civil litigation that was subject to a court order sealing some information, and the Board reported that information it had subpoenaed for its investigation was covered by the order. However, despite the civil case still being in progress, the Board eventually obtained the information, which included evidence establishing the time frame of when the licensee and the complainant began their relationship. The Board ultimately dismissed the three complaints in April 2024, after being open for 664, 657, and 631 days, respectively. Although the Board believed the delay was necessary to ensure the licensee was able to submit all relevant evidence, had the Board received and reviewed the information when the complaints were first scheduled to appear

[57] A.R.S. §32-923(B).

[58] AAC R4-7-503(D) and (L).

[59] Due to staff turnover that occurred at the beginning of calendar year 2024, we were unable to determine if the change to the licensing renewals process improved the Board's complaint-handling timeliness.

before the Board for initial action, the complaints could have been adjudicated 273 days earlier than they were ultimately dismissed.[60]

- **Board staff turnover—**During fiscal years 2021 and 2022, the Board reported having 4 different Executive Directors and experiencing 150 percent turnover across various staff positions. Specifically, the Board had a turnover of 6 employees occupying 4 positions. According to the Board's budget requests during this time frame, low staff salaries contributed to this turnover, and the Board eliminated its Deputy Director position in part to help increase its staff salaries.[61] Additionally, prior to April 2022, the Board's investigator position was part time. Board management determined that employing only a part-time investigator was a contributing factor to the complaints backlog and its decision to eliminate its Deputy Director position also allowed it to convert its investigator position to a full-time role. The legislature appropriated an additional position to enable the Board to hire a second investigator position for fiscal year 2024. During the audit period, both investigator positions experienced turnover; but, as of August 2024, both investigator roles have been filled.

Recommendations

The Board should:

10. Resolve complaints within 180 days.
11. Develop and implement time frames for the various steps in its complaint investigation and resolution process based on severity-ranking, including notice of complaint, initial action, and final resolution.
12. Ensure high priority complaints are investigated and prioritized for Board review before low priority complaints by investigating and prioritizing Board review for high-priority complaints according to the developed time frame.
13. Avoid delaying complaint adjudication when the parties of the complaint may be subject to civil litigation unless necessary, and ensure timely completion of all complaints based on their severity level regardless of whether related complaints may be adjudicated by other agencies or courts unless otherwise ordered to do so by an appropriate authority.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

[60] The Board received these 3 complaints on June 30, 2022, July 7, 2022, and August 2, 2022, respectively, and scheduled initial actions on the complaints for July 26, 2023.

[61] The Board's fiscal year 2024 Budget Request and Five-Year Plan attributed its high staff turnover to staff salaries being on the low-end of the State's Pay Scale, between $13.50 and $16.00 per hour, and the competitive job market for positions paying below $18.00 per hour.

Chapter 5: The Board engaged in advocacy activities with its licensees without clear statutory authority to do so, and in these efforts, made statements that were potentially misleading to its licensees, and used its resources for purposes other than regulating the chiropractic profession

JLAC request to review: Board members' and/or staffs' participation in lobbying and advocacy activities.

Conclusion: Board members and staff are authorized to lobby the Legislature directly on behalf of the Board to oppose pending legislation. However, during the 2024 Fifty-Sixth Legislature—Second Regular Session, the Board encouraged its licensees to oppose Arizona Senate Bill (SB) 1233, without clear statutory authority to do so, and in reliance on a statute that does not apply to the Board. In this effort, the Board made statements that were potentially misleading to its licensees and used its resources for purposes other than regulating the chiropractic profession.

Board members and staff are authorized to lobby the Legislature directly on behalf of the Board to oppose pending legislation

A.R.S. §41-1232.01 allows public bodies to lobby for or against pending legislation by directly communicating with members of the Legislature as long as they register every authorized public lobbyist for the public body with the Arizona Secretary of State (see textbox for definition of lobbying).[62] Consistent with statute, the Board's Executive Director, the Board Chair, the former Board Chair, and 1 other Board member are registered with the Secretary of the State as the Board's lobbyists.

LOBBYING

"attempting to influence the passage or defeat of any legislation by directly communicating with any legislator or attempting to influence any formal rulemaking proceeding pursuant to chapter 6 of this title or rulemaking proceedings that are exempt from chapter 6 of this title by directly communicating with any state officer or employee."

Source: A.R.S. 41-1231(11)(a).

Rather than focusing its efforts exclusively on lobbying legislators directly to express its opposition to pending legislation, the Board encouraged its licensees to oppose Senate Bill (SB) 1233, without clear statutory authority to do so, issued potentially misleading statements, and used its resources for purposes other than regulating the chiropractic profession

At the beginning of calendar year 2024, during the Fifty-Sixth Legislature—Second Regular Session, Arizona SB 1233 was introduced to modify statute governing the Board's complaint handling jurisdiction. Prior to the bill being introduced, the Board's Chair and Executive Director participated in a stakeholder

[62] A.R.S. §41-1232.01.

meeting coordinated by the Senate and were provided a draft of SB 1233 as well as invited to propose or further discuss possible draft changes.

Then, on February 2, 2024, during an emergency Board meeting, the Board formally voted to oppose the bill, which included proposed changes to the Board's regulation of paying for patient referrals. Afterward, the Board sent 2 emails to licensees, strongly encouraging licensees to not support the bill, despite having no explicit authority to do so.[63] Specifically, the first email on February 5, 2024, encouraged licensees to contact the members of the Arizona Senate Health and Human Services Committee and express their strong opposition to the bill, and the second on May 1, 2024, explained the Board's position that it has jurisdiction to investigate licensees alleged to be paying other licensees for patient referrals, a practice referred to as "fee-splitting" (see Appendix C, pages 90 through 93, for text of the 2 emails).

This action has possible negative impacts for the Board and those it serves, including:

- **Issuing communications that could be construed as misleading when informing its licensees of legislation the Board deemed problematic**—Specifically:
    - The Executive Director's communication on February 5, 2024, stated:

        > On February 2, 2024, the Arizona Board of Chiropractic Examiners held an emergency Board Meeting to discuss Senate Bill 1233, which was drafted with no input or comments from the Board, the primary stakeholder in this proposed legislation.[64]

        This statement implies that the Board did not have an opportunity to provide input to the legislation prior to the February 2, 2024, emergency Board meeting. However, on January 22, 2024, the Executive Director and Board Chair attended a stakeholder meeting with the bill's sponsor during which the Board was provided a draft version of SB 1233 and invited to give feedback and suggest changes to the draft; however, the Executive Director and Board Chair did not provide any input in response to this invitation.
    - The Board Chair's communication on May 1, 2024, states emphatically that fee-splitting is illegal in all 50 states including Arizona and is also prohibited by federal law. This statement could be misconstrued by the reader because fee-splitting is prohibited in some circumstances, and it is allowed in other circumstances. For example, according to Board rule, dividing fees for referrals between 1 business entity and another is considered unprofessional conduct, but dividing fees within a business entity for professional services provided is permitted. This communication over-simplified a complex matter, and would have been more appropriately communicated through a carefully vetted substantive policy statement, as described in Chapter 7, pages 52 through 53.

[63] According to the Board, it received approximately 12 messages from licensees in response to the February and May 2024 emails, and licensees responded with general questions about the proposed legislation or communicated support for the Board.

[64] The underlined text was contained in the original email.

- **Using its resources for purposes other than regulating the chiropractic profession**—As discussed in the Introduction, the Board was established to license and regulate the chiropractic profession (see page 3). To accomplish this responsibility the Board relies on revenues consisting of fees paid by licensees intended for the Board's administration and enforcement of its statutes and rules. In sending the first email, the Board used these revenues, which are public monies, to pay its staff and used other public resources including its technology resources and licensee contact information to "encourage" the licensees, that the Board is charged to regulate in their professional practice, to oppose potential legislation. Licensees also received this unsolicited email strongly encouraging them to engage in opposing the legislation. Licensees who did not agree with the Board's position were potentially faced with a choice of opposing the Board that regulates their professional practice, altering their position on the bill, or staying silent.

Board believed its actions were authorized by statutes relevant to nonhealth profession regulatory boards, and that it was providing objective information to licensees regarding matters that would affect them

The Board's Executive Director reported that the Board relied upon a statute for nonhealth profession regulatory boards when it sent the first email encouraging licensee participation in efforts to oppose SB 1233. Specifically, A.R.S. §41-3505(F) authorizes an executive director of a nonhealth regulatory board to advocate on the board's behalf, for or against a legislative proposal once the board has taken a formal position on the proposal in a public meeting. However, this statute does not apply to the Board because it is a health regulatory board, and we found no other statute authorizing health regulatory boards to engage in advocacy beyond the definitions of lobbying, as described above. Further, during the Senate and House Commerce Committee hearings related to legislation that established A.R.S. §41-3505(F), the legislative sponsor of the bill indicated the intent of the legislation was to ensure that an executive director of a nonhealth regulatory board had approval from their respective board before advocating a position on pending legislation directly to legislators; and there was no discussion indicating that the legislation was intended to authorize nonhealth regulatory boards to engage in advocacy with parties other than the Legislature during these 2 Committee hearings.[65]

Relating to the second email, the Board Chair asserted that the email notice sent to licensees was designed to be objective and informational related to the issue of fee-splitting. However, as previously discussed, the email contained information that could be misconstrued by readers.

Recommendations

The Board should:

14. Immediately discontinue efforts to persuade licensees to support/oppose legislation, including using public resources to advocate for its position.

[65] SB 1272, 2021, Fifty-Fifth Legislature, First Regular Session.

15. Develop and implement Board policies and procedures related to lobbying and advocacy activities, including:
    a. Specifying that any efforts to influence legislation should be conducted through the Board's designated public lobbyist and within the framework provided by statute.
    b. Developing a protocol for communicating with licensees about legislative issues to ensure the Board is providing complete and accurate information.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Chapter 6: Board did not always comply with open meeting law, including the call to the public, and altered 7 meeting recordings by deleting references to patients and licensees, limiting the public's access to information on Board decisions and the public's ability to address Board during public meetings

JLAC request to review: Board's compliance with the State's open meeting law, and whether it complied with requirements related to the call to the public.

Conclusion: The Board did not consistently comply with open meeting law requirements, including properly conducting calls to the public, providing sufficient notice for executive sessions, and posting meeting minutes within required time frames. Specific issues included limiting public speech, improper noticing of executive sessions, incomplete meeting minutes, altering meeting recordings by deleting information (such as the names of patients, licensees, or public comment speakers), and delayed or missing postings. These practices limited transparency, restricted public participation, and impeded access to Board activities. Insufficient training and inconsistent procedures between July 2021 and March 2024 contributed to these compliance issues, and although the Board has since taken some corrective actions, we made several recommendations to further ensure it complies with open meeting law requirements, and have forwarded this matter to the Arizona Attorney General's Office for further review.

Board did not always comply with open meeting law requirements or follow recommended practices, limiting public's access to information on Board decisions and public's ability to address the Board during public meetings

The Board is required to comply with Arizona open meeting law provisions, as well as statutory provisions pertaining specifically to health professionals and licensing authorities.[66] However, our review of agendas and meeting minutes and/or recordings from all 31 Board meetings the Board held between July 1, 2021 and March 31, 2024, and 21 executive session minutes from the same time frame, found that the Board did

[66] A.R.S. §§38-431.01 through 38-431.03, 32-4801, and 32-3222.

not always comply with open meeting law requirements and did not implement other open meeting law recommended practices.[67,68] Specifically, the Board:

- **Did not comply with statutory requirements and recommended practices for call to the public—**Public bodies must provide an opportunity to allow members of the public to comment without interference on agendized items and non-agendized items, which is referred to as a "call to the public," but we identified 3 issues with the Board's handling of calls to the public from these meetings, all involving the same public member.[69]

    - In the first instance on September 13, 2023, although the Board included a call to the public on its agenda, the Board Chair specifically invited 2 members of the public to speak and when they declined his offer, the Board Chair ended the meeting without providing an opportunity for other members of the public to speak. After the Board Chair ended the meeting, a member of the public indicated she had been waiting to address the Board and still wanted to do so, but the Board Chair indicated that the meeting was over. When the member of the public continued to insist on being able to speak, rather than allowing her to do so, the Board Chair referred her to Board staff who would relay her comments to the Board. In this instance, the Board Chair did not allow all members of the public the opportunity to speak. See Appendix D, page 94, Instance 1, for a full transcript of the exchange between the Board Chair and the member of the public who wanted to speak.

    - In the second instance on January 17, 2024, the Board's Executive Director twice interrupted the speaker when the speaker named a licensee who was the subject of an open complaint stating that the licensee's name was confidential. The Board Chair prohibited the speaker from sharing the rest of her comments. According to the Board, it restricted this individual from sharing the licensee's name because A.R.S. §32-3214(A) prohibits health profession regulatory boards from disclosing a pending complaint or investigation to the public. However, although statute allows the Board to put reasonable time, place, and manner restrictions on the call the public, it does not define or otherwise provide guidance on the meaning of "reasonable" or "manner restrictions" and it is unclear whether this statute authorizes the Board to limit a public citizen's speech by applying its

[67] We reviewed the written meeting minutes and listened to the recording of meeting opening and closing, including call to the public, for every recorded meeting. Our methodology was designed primarily to focus on the call to the public. We also reviewed the recorded portions of the selected meetings during which any of the 70 complaints we reviewed were being heard (see Appendix B, pages 69 through 89, for more information on the sample of complaints we reviewed).

[68] The Board provided 20 executive session minutes from the audit time frame, some of which include multiple executive sessions held within a single Board meeting. Our review of public meeting recordings also identified 1 executive session recording that was missing from the provided recordings, and it was provided separately when we identified it. Within these 21 recordings, we listened to the recordings for 6 executive sessions that we judgmentally selected to ensure a varied selection of topics. However, because we reviewed selected portions of the public session recordings and did not review the full recordings for all 31 meetings, our review may not have included the total population of executive sessions held during the audit time frame.

[69] Open Meeting Law 101 by the Arizona Ombudsman—Citizens' Aide, January 2023; see also Arizona. Attorney General. Opinion 199-006; Arizona Attorney General Agency Handbook.

statutory prohibition on public disclosure to a member of the public who has no such prohibition. The Open Meeting Law Enforcement Team within the Attorney General's Office, which is responsible for enforcing open meeting law, could help the Board determine if it is appropriate to apply its statutory prohibition to members of the public. Additionally, the Arizona Attorney General opined that it is best practice for a public body to decide in advance which restrictions, if any, are necessary and permitted, so that speakers have prior notice about the restrictions that the public body has set, but the Board had not done so prior to this incident.[70,71] See Appendix D, page 95, Instance 2, for a full transcript of the exchange between the Board Chair and a member of the public who wanted to speak.

- In the third instance on March 6, 2024, while a member of the public spoke during the call to the public, the Board Chair interrupted her, and when she said she was not finished, the Board chair said, "You are finished." When the member of the public continued to insist on being able to speak, after several interjections, the Board Chair allowed the member of the public to continue speaking. See Appendix D, pages 95 through 96, Instance 3, for a full transcript of the exchange between the Board Chair and a member of the public.

By preventing members of the public from speaking or not allowing them to speak without interruption, the Board unfairly limits the public's opportunity to speak and opens the Board to the possibility of a lawsuit.

- **Did not comply with statutory requirements for executive sessions—**Statute authorizes public bodies such as the Board to enter "executive session," meaning the public must be excluded from the meeting, under certain circumstances. During executive session, the Board may discuss certain confidential matters, as listed below, but the Board cannot take action or vote. Public bodies such as the Board may enter executive session upon motion of the public body for the purpose of discussing the following matters:[72]
  - Matters of employment, including assignment, appointment, promotion, demotion, dismissal, salaries, and discipline or resignation of a public officer, appointee, or employee.
  - Records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
  - Consultation for legal advice with the attorney(s) of the public body.

[70] A.R.S. §38-431.01(I); see also Arizona Attorney General Opinion 199-006.

[71] In this instance, the Executive Director issued a reminder before the Board Chair opened the call to the public that "we cannot discuss confidential Board investigative material that has not been presented in a public meeting in these forums." However, given that the Executive Director was referring to the prohibition on the Board discussing complaint information and her use of the word "we" it is not clear that this reminder applied to members of the public.

[72] A.R.S. §38-431.03(A).

- Consultation with attorney(s) of the public body regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions to avoid or resolve litigation.
- Consultation with designated representatives of the public body regarding negotiations with employee organizations concerning salaries, salary schedules, or fringe benefits compensation.
- Discussion, consultation, or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.
- Discussions or consultations with designated representatives of the public body to consider its position and instruct its representatives regarding negotiations for the purchase, sale, or lease of real property.
- Discussion or consideration of matters relating to school safety operations or school safety plans or programs.
- Discussions or consultations with designated representatives of the public body regarding security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure.

Public bodies including the Board must post a meeting notice at least 24 hours prior to a public meeting that includes any intent to hold an executive session, the statutory provision authorizing the executive session, and a description of matters to be considered in executive session.[73]

Our review of a judgmental selection of 6 executive sessions from the 31 Board meetings held between July 1, 2021, and March 31, 2024, identified that the Board made 3 types of noticing errors related to the 6 meetings, as follows:[74]

- **Improper grounds for holding an executive session**—During the July 28, 2021, Board meeting, the Board voted to move into executive session to "review and approve interview questions" in preparation for its interviews with Executive Director candidates, which was problematic for 2 reasons. First, the applicable statutory provision authorizing the executive session related to personnel matters does not include discussion of interview questions as one of the applicable discussion items.[75] Second, the executive session as

[73] A.R.S. §38-431.02 and Arizona Attorney General Agency Handbook, Chapter 7, section 7.6.7.

[74] For each of the 6 meetings, the Board made 1 or more of the identified noticing errors.

[75] A.R.S. §38-431.03(A)(1): Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with

noticed on the July 28, 2021, agenda included 3 statutory provisions that were cited in a manner that applied these 3 provisions to 5 agenda items, instead of identifying a specific provision for each applicable agenda item, and thus it was unclear which statutory provision applied to which agenda item. This violated the statutory requirement that legal grounds for executive sessions be specific to the item and the exemption.[76]

- **Misuse of the *ad hoc* executive session provision**—The Attorney General has opined that public bodies may include a general statement on its notices and agendas indicating that matters on the meeting agenda may be discussed in executive session on an ad hoc basis to receive legal advice that may be required during the course of a public meeting but which cannot be anticipated at the time the agenda was prepared.[77] The *Attorney General Agency Handbook* specifically states that generic or *ad hoc* "statements are not sufficient for other types of executive sessions."[78] However, the Board routinely included on its agenda cover pages a statement that it may enter into executive session on agenda items as needed, not only for legal advice, but also to discuss confidential records or information, despite the Attorney General's opinions indicating the ad hoc provision is only to be used for legal consultation.

- **Incorrectly noticed executive sessions**—The June 1, 2022, Board meeting, included a motion to move into executive session to discuss "salary" and "personnel" but the intent to enter executive session was not noticed on the agenda. In 2 other cases, the agendas included a notice of intent to enter executive session citing the exempt records provision, but the motion made to go into executive session during the meeting indicted the reason was "to clarify point of law," which is inconsistent.[79]

Posting ambiguous or improper notices of executive sessions obstructs transparency and public participation and potentially violates State law.

- **Did not post meeting minutes within statutory time frames, posted minutes that did not include all statutorily required items, and altered meeting recordings**—Although the Board is required to post its meeting minutes on its website within 5 business days, at the time of our review in April 2024, the Board has not posted minutes for 3 meetings held in calendar years 2021 and

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the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting."

[76] A.R.S. §38-431.02.

[77] Arizona Attorney General Agency Handbook, Chapter 7, section 7.6.7.

[78] Arizona Attorney General Agency Handbook, Chapter 7, section 7.6.7.

[79] The July 26 and October 25, 2023, Board meetings.

2022 and had posted the minutes for 3 additional meetings held in calendar year 2024 late, after the 5 day requirement had passed. [80,81,82,83]

In addition, statute requires meeting minutes, which can consist of audio recordings, to include the date, time, and place of the meeting; roll call of the Board; general descriptions of the matters discussed, even if no formal action was taken; description of all legal actions proposed, discussed or taken, and how each member voted; names of the members who proposed each motion; and the names of those who spoke before the Board, and to which item they spoke.[84] Of the 28 available meeting minutes we reviewed, 3 were incomplete; each of these 3 minutes consisted of audio recordings, and the audio began after the meeting began, either part-way through the roll call or after discussion of the first agenda item began.[85]

The audio recordings we reviewed were also frequently missing statutorily required information. For example, statute requires that the individual proposing each motion be named, but the recordings were frequently missing the name of the proposer.[86] We also documented at least 1 instance of the Board failing to state in the authorizing motion the grounds for moving into executive session.[87]

The Board also altered meeting minutes, consisting of audio recordings by deleting information from recordings, such as the names of individuals related to open investigations, for 7 Board meetings between July 2023 and March 2024.[88] The alterations were similar in nature in 6 instances, in that the Board deleted the names of patients, complainants, and licensees from the recordings. For example, on February 2, 2024, during an emergency Board meeting to discuss pending legislation (SB 1233), the Board Chair mentioned the name of a licensee's business as a supporter of the bill in the context of a meeting the Board Chair and Executive Director had with legislators during the prior week. In the meeting minutes/recording the Board posted on its website, it deleted several seconds of the public meeting recording, including the Board Chair's mention of the chiropractic licensee and business. Although statute does not indicate that the Board must post full recordings of its meetings, the Board failed to post a notice that the recording was altered at the time of posting the minutes/recording, which limited the public's knowledge that the recording did

[80] A.R.S. §§32-4801(A)(1) and (2); and 32-3222(B)(1) and (2).

[81] A.R.S. §38-431.01(B), (C), and (E).

[82] The 3 instances occurred at a July 14, 2021 meeting of the "Executive Director Hiring Committee," an August 18, 2021 Board meeting, and a January 18, 2022 virtual meeting of the Executive Director Hiring Committee.

[83] This included minutes for the April 24, July 1, and August 28, 2024 meetings.

[84] A.R.S. §38-431.01(C).

[85] This included minutes for the September 22, 2021; March 4, 2022; and January 17, 2024 meetings.

[86] A.R.S. §38-431.01(C)(4) states "…the minutes shall also include the names of the members who propose each motion…"

[87] A.R.S. §38-431.03(A) and Arizona Attorney General Agency Handbook, Chapter 7, section 7.9.1. A quorum must vote in the public meeting to hold the executive session with the motion stating the grounds for the session. Out of compliance example: October 25, 2023, Motion to move to executive session does not state the grounds for the session.

[88] As of March 31, 2024, 6 of the 7 Board meeting recordings on the website remained altered.

not include the full contents of the meeting. After a member of the public who attended the meeting notified the Board that they believed the recording had been altered and questioned the Board's decision to do so, in March 2024, the Board reported it made an error in deleting information from the recording, indicating it did so out of caution and with the intent not to divulge confidential information, and restored the full recording on its website.

However, 1 of the instances in which the Board altered a recording by deleting information was not consistent with statute. Specifically, on January 17, 2024, during a call to the public, a speaker referenced an ongoing complaint and named the licensee under investigation. In this case, in the meeting minutes/recording the Board posted on its website, inconsistent with statute, it deleted several seconds of the recording to remove the name of the speaker, who was the complainant in the investigation. The Board also removed the name of the licensee who was the subject of the investigation.[89] The Board also failed to post a notice that the recording was altered at the time of posting the minutes/recording, which limited the public's knowledge that the recording did not include the full contents of the meeting. As of October 31, 2024, the altered version of this recording remained on the Board's website as the publicly available version of the meeting minutes.

Failing to timely post and/or posting incomplete minutes or altering recordings of meetings limits the public's access to information regarding Board actions, such as actions related to licensees and potentially violates State law.

A lack of proper understanding of statutory requirements and administrative errors contributed to the Board's violations of open meeting law

This audit revealed numerous problems with the Board's application of open meeting law, including improper posting of meeting minutes, altering meeting minutes/recordings, handling of executive sessions, and calls to the public. Several causes contributed to these problems:

- With respect to the improper posting of minutes, the cause is not entirely known. According to the current Executive Director, those minutes would have been posted by the previous Executive Director and the minutes in question cannot be located. All meeting minutes/recordings have been posted since the current Executive Director was appointed in June 2022.

- With respect to properly recording meetings, the Executive Director explained that these were administrative errors that occurred during a time of high turnover and a lack of experienced staff to train new employees.

- With respect to executive session, the Executive Director indicated that the Board was not fully aware that the practice to include the *ad hoc* executive session provision was insufficient in the cases noted, or that that the grounds cited for executive session were not always sufficient. Both

[89] As previously discussed, statute requires the minutes/recordings of public meeting to include the names of speakers along with several other items, but does not indicate if meetings/recordings must include all contents of the meeting.

the Executive Director and the Board Chair noted that neither received training regarding the administrative requirements related to running Board meetings upon taking office. However, the Executive Director reported the Board received training from the Board's legal counsel in September 2023 on topics relating to open meeting law, conflict of interest, public records, and more. See Chapter 7, pages 48 through 54, for more information on the Executive Director's responsibility to ensure the Board is trained and informed.

- With respect to the Board altering meeting minutes/recordings by deleting information, the Board reported it altered the recordings in an effort to comply with A.R.S. §32-3214(A), which prohibits health profession regulatory boards from disclosing a pending complaint or investigation to the public. However, subsections (D) and (E) of the same statute state that this confidentiality provision does not prohibit a health profession regulatory board from conducting its authorized duties in a public meeting nor does it apply to meeting minutes and notices pursuant to open meeting law. Additionally, despite the Board asserting that it altered meeting minutes in an effort to comply with confidentiality provisions for pending complaints or investigations, it altered its February 2, 2024, Board meeting minutes to remove the Board Chair's mention of a chiropractic licensee and business as a supporter of pending legislation.

- With respect to calls to the public, the Executive Director recognized that the incidents in question were not handled correctly, and in December 2023, developed a script for the Board Chair to use for calls to the public. This script provides the public with an explanation of the call to the public, specifies that the call to the public is not a two-way dialogue and that the Board may not discuss matters raised during the call to the public. In addition, it puts a 2-minute time restriction on members of the public and specifies that speakers who discuss confidential information, that dialogue will be terminated. However, the script is not clear as to what constitutes confidential information and if/how it will determine during a meeting which confidentiality laws would apply to members of the public. Despite this guidance developed in December 2023, the Board Chair appeared to limit a speaker's public comment in the January and March 2024 meetings, as described in Appendix D.

Consistent with the Arizona Auditor General's standard practice for assessing potential violations of the State's open meeting law, we are forwarding this matter to the Arizona Attorney General's Office for further review.

Recommendations

The Board should:

16. Comply with all statutory open meeting law requirements including but not limited to ensuring meeting notices, agendas, executive sessions, minutes, and calls to the public are handled and documented as required by statute.
17. Consult with the Open Meeting Law Enforcement Team within the Attorney General's Office to determine what type of manner restrictions it can place on speakers during the call to the public,

including whether it can prohibit speakers from discussing information the Board is required to keep confidential.

18. Develop and implement a policy and revise its call to the public script to specify the time, place, and manner restrictions for calls to the public that are consistent with guidance it receives from the Open Meeting Law Enforcement Team within the Attorney General's Office.
19. Post unaltered meeting recordings as required by statute, and cease the practice of deleting information from recordings.
20. Provide regular training, during onboarding and annually, for all Board members and staff on Arizona's open meeting law, including specific requirements for meeting notices, agendas, executive sessions, minutes, and the call to the public.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Chapter 7: Board's Executive Directors—past and present—have not established processes for ensuring consistency in some Board practices and communicating changes in Board practices to licensees and the public, resulting in several issues we identified during this audit and potential confusion among licensees and the public

JLAC request to review: The role of the Board's Executive Director, including how the Executive Director (1) ensures consistency in Board practices despite changes in Board members and (2) communicates changes in Board practices to licensees and the public.

Conclusion: The Board's Executive Director is responsible for managing and overseeing the Board's operations. However, inconsistent with recommended practices, past and current Board Executive Directors have not updated and or developed comprehensive complaint handling policies and procedures, developed training materials for Board members, or developed and implemented an effective recordkeeping system to receive, record, and monitor its complaint-handling process. These problems have likely contributed to several of the issues we identified during this audit, including the Board not consistently or timely prioritizing and resolving complaints with serious allegations and inconsistently treating licensees. The Board also used an email notification rather than a statutorily authorized substantive policy statement to clarify its approach to enforcing statute, potentially resulting in licensees and the public being confused about or unaware of its stated positions and practices and lacks a process for doing so in the future.

Board's Executive Director is responsible for managing the Board's day-to-day operations.

A.R.S. §32-905 requires the Board to appoint an Executive Director who is not a member of the Board and who shall serve at the pleasure of the Board. The Executive Director's statutory responsibilities include keeping a record of Board proceedings, serving as custodian of the Board's minutes and records, and other duties assigned by the Board.[90] The Board has assigned its Executive Director responsibility for managing and overseeing Board operations that enable the Board to fulfill its statutory responsibilities, including issuing and renewing licenses, receiving and investigating complaints, and providing licensee information to the public (see Introduction, pages 3 through 7, for more information of the Board's statutory responsibilities).

Additionally, according to best practices developed by the U.S. Government Accountability Office (GAO), a government entity's management, such as the Board's Executive Director, should:

[90]A.R.S. §32-905.

- Design and implement internal controls to provide reasonable assurance that the entity's objectives will be achieved.
- Document internal control responsibilities and activities in policies and procedures.
- Periodically review policies, procedures and related control activities for continued relevance and effectiveness in achieving the entity's objectives.
- Communicate information to external parties relating to the entity's events and activities that impact the internal control system.[91]

Written policies and procedures can also help ensure consistency in an entity's practices over time and when management, staff, and Board members change.

The Board's past and present Executive Directors have not established and/or updated policies and procedures designed to ensure consistent application of Board statutes and rules and communicate important information to external parties which likely contributed to several of the problems identified earlier in this report

The Board's complaint-handling policies and procedures had not been updated since at least 2012 and did not include and/or lacked guidance for key activities in its complaint-handling process, contributing to inconsistent treatment of licensees and inconsistent complaint prioritization

Our review of the Board's Policies and Procedures manual ("manual") chapter pertaining to complaints and investigations as of April 2024, found the "Inspection/Investigation Procedures" section had not been updated since 2002, and that the remaining chapter provisions relating to complaint handling had not been revised since 2012—more than 12 years ago.[92] These procedures were outdated and described business practices, primarily manual paper-driven practices, that were no longer in place. For example, the manual outlines a procedure relating to an investigator visiting the office or home of a licensee under investigation; however, our review of 70 Board complaints found that in-person visits are no longer part of the Board's investigative practices (see Appendix B, pages 69 through 89, for more information on the 70 complaints we reviewed).

The Board's manual also lacked procedures to guide key activities related to its complaint handling process, such as outlining procedures or providing guidance for complaint intake, review, and prioritization as they are received by the Board, or standard protocols for the Board to follow when adjudicating complaints and determining non-disciplinary or disciplinary action for similar complaints. For example the Board's classification of complaints lacked specific definitions, including having an allegation code for "improper diagnosis" despite Board statute and rules not including an improper diagnosis as grounds for disciplinary action or otherwise indicating which statute or rule would authorize an improper diagnosis to warrant disciplinary action. Additionally, the Board lacked guidance, such as a disciplinary matrix, to help

[91] External parties may include but are not limited to individuals the entity regulates and the general public.

[92] The manual section "Inspection/Investigation Procedures" was last revised March 2002, and the manual sections "Complaint Processing" and "Consent Agreements" were each revised in March 2012.

Board members determine appropriate and consistent disciplinary and non-disciplinary actions in response to licensee violations.

Absent updated and comprehensive policies, procedures, and guidance, the Board lacked the ability to ensure consistent practices over time, which likely contributed to some of the issues discussed previously. For example, as discussed in Chapter 2, the Board did not consistently require licensees accused of sexual misconduct to undergo psychosexual evaluations. In addition, as discussed in Chapter 4, the Board did not consistently prioritize and resolve complaints and resolved most lower-severity complaints, such as a licensee's failure to release treatment records to a patient in a timely manner or that a licensee did not update their address in a timely manner, more quickly than those with serious allegations, such as sexual misconduct or patient safety.

Prior to the February 12, 2024, JLAC resolution approving this special audit, in February 2022, during a public Board meeting, the Board's Executive Director reported several problems with the Board's policies and procedures. Additionally, at the beginning of this audit in April 2024, the Executive Director had begun to develop for Board adoption *Disciplinary and Sanctioning Guidelines* that provide direction to investigators and Board members in adjudicating complaints, which the Board adopted in July 2024. These guidelines define 10 categories of violations representing the potential grounds for disciplinary action described in statute and rule (see Appendix B, pages 69 through 89), assign a risk ranking to each of the 10 categories, and identify a possible range of resolutions, including disciplinary or non-disciplinary action, applicable to each possible violation.[93] As of October 2024, the Executive Director also reported working to update and revise the Board's policy and procedure manual, including developing a complaint intake and review process that requires the review of complaints by the Board's legal counsel to ensure all investigations are classified based on an alleged statutory violation.

As of October 2024, the Board's Executive Directors that served during our audit period had not developed comprehensive training materials for Board members, likely contributing to Board's open meeting law violations and inappropriate advocacy activities

Although the Board's Chair stated that he received no training when he assumed his role with the Board, its Executive Director reported that Board members received training from the Board's legal counsel in September 2023 on topics relating to open meeting law. However, there was no indication the Board developed its own training regarding the call to the public prior to this audit.[94] Additionally, as of October 2024, the Board lacked any training materials or requirements to help educate new Board members on their responsibilities related to open meeting law, reviewing complaint investigations, determining non-disciplinary or disciplinary actions in response to licensee violations, or proper protocols for lobbying legislators on pending legislation. These training deficiencies likely contributed to some of the issues discussed previously, such as the Board not fully complying with the State's open meeting law, including

[93] The 10 categories relate to general professional competency, potential criminal conduct, sexual misconduct, billing and business transactions, advertising, impairment/fitness to practice, practicing outside the scope of practice, practicing without a license, patient records, and other misconduct.

[94] The Executive Director started as Interim Executive Director in February 2022 and was appointed to the position in June 2022, and the Board members have been on the Board for between 1 and 5 years.

the Board Chair not allowing some members of the public to speak during the call to the public (see Chapter 6, pages 39 through 47).

In October 2024, the Board's Executive Director reported that she is in the process of developing open meeting law training for Board members in conjunction with updating the Board's open meeting law policies and procedures.

The Board had not developed or implemented an effective recordkeeping system to receive, record, and monitor its complaint-handling process, contributing to its inability to timely investigate and resolve complaints and increasing the risk of inconsistent complaint-handling practices

Between July 1, 2021, and March 31, 2024, the Board used several different information technology (IT) systems and databases to manage key operations, including initial licensing, license renewals, and complaint handling. For example, the Board logged complaints in a Microsoft Access Database, but as it began to receive more digital rather than hard copy documents, the Board also adopted Google Drive for file storage, including Google Sheets. The Board also allowed some licensees to continue to submit hard copy paper records after its implementation of electronic processes. Further, upon assuming her role in February 2022, the Board's Executive Director discovered that Board staff had not been logging documents or records in its Access Database consistently since 2019.

As a result of these issues, prior to 2024, the Board and Board management lacked accurate and reliable data necessary to oversee the Board's complaint-handling process, including monitoring Board staff's timeliness when investigating complaints, which likely impacted its ability to address its complaint backlog and ensure it resolves complaints within 180 days (see Chapter 4, pages 27 through 34, for more information on the Board's complaint-handling timeliness issues). Absent accurate and reliable data, the Board also lacked historical complaint-handling and adjudication information necessary to ensure continuity in investigative practices and Board disciplinary and non-disciplinary actions, in particular because of turnover among Board members, staff, and management.

In July 2023, the Board began transitioning to a new cloud-based IT system that is intended to provide online licensing and license renewal for applicants and licensees. As of October 2024, the Board's Executive Director reported that she is in the process of updating all relevant procedure manuals to reflect this key system change and has also notified the public of the change via advertisement on the Board's website as well as via direct email to all licensees. Board staff reported that they had also digitized all complaint records from 2018 onward for inclusion in the new IT system and, going forward, complaints will be submitted through the online portal and complaint records will be maintained and tracked in this new system. However, as of October 2024, the Board reported that the new system was still not fully developed, and that it had hired an IT consultant to complete the development of the system, including building management reports.

The Board used an email notification rather than a statutorily authorized substantive policy statement to clarify its approach to enforcing statute, potentially resulting in licensees and the public being confused about or unaware of its stated positions and practices

As a part of the request to the Joint Legislative Audit Committee to authorize this audit, several questions were raised regarding the Board's approach for communicating its interpretation of statutes and changes in its interpretations and/or regulatory approach to licensees and the public. In part, these questions related to the Board's regulation of the practice of licensees and other healthcare professionals paying or sharing fees for patient referrals, also known as "fee-splitting." As discussed in Chapter 2 (see pages 16 through 22), this question involved a May 2013 Board decision to dismiss a complaint involving this practice.

Given this question, in May 2024, the Board sought to publicly clarify its position that it believes it has the authority to investigate allegations involving licensees paying or sharing fees for patient referrals. However, rather than issuing a substantive policy statement and posting it on the Board's website, as authorized by statute, the Board sent an email to all licensees and some members of the public explaining its position.[95] As a result, its position was available only to current licensees who received the email, some of whom may have missed or deleted the email, and was not available for members of the public or future applicants and licensees, potentially resulting in licensees and the public being confused about or unaware of its position. By attempting to inform all licensees of the Board's approach to regulating improper dividing of fees for referrals through an email campaign that was designed to encourage licensees to advocate in opposition to SB 1233 (see Chapter 3, pages 23 through 26, for more information on the Board advocacy related to SB 1233), instead of through a substantive policy statement, the Board risked convoluting its approach to regulating unprofessional conduct with its position on SB 1233.

The Board lacks policies and procedures for developing and using substantive policy statements and other methods for communicating important information about its activities and practices to external parties, which likely contributed to it not considering the use of a substantive policy statement in this instance. Additionally, according to the Board's Executive Director, the Board has not issued substantive policy statements since 2013 in part because the Board believed Executive Order 2021-02 discouraged regulatory Boards from issuing substantive policy statements.[96] Although the current administration repealed this executive order and instead memorialized it in statute, the Administrative Procedure chapter of statute specifically authorizes the Board to issue substantive policy statements as an advisory tool.[97] Accordingly, a substantive policy statement was a statutorily authorized method for the Board to inform

[95] Pursuant to A.R.S. §41-1001(24), a substantive policy statement is a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure, or method of action based upon that approach or opinion. A substantive policy statement is advisory only.

[96] Executive Order 2021-02 states: "A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by the Arizona Revised Statutes or Arizona Administrative Code. Any material that is not specifically authorized must be removed immediately."

[97] Executive Order 2023-021 repealed Executive Order 2021-02 and memorialized the content relevant to this discussion in A.R.S. §41-1039. A.R.S. §41-1091 authorizes boards to issues substantive policy statements, and the relevant language has been in place since at least 2012.

licensees of its approach to enforcing statute at the time the emails to licensees were sent. Finally, as discussed in Chapter 5 (see pages 35 through 38), the email the Board developed contained misleading and potentially inaccurate information, indicating its process for developing its stated position statement may not have been sufficient. Although we did not identify standard processes or recommended practices for developing substantive policy statements, several State agencies and other health regulatory boards have developed substantive policy statements and posted them on their websites, and the Board could contact these agencies and other boards to obtain information about their processes for developing substantive policy statements.

The Board has not taken steps to change its approach to registering business entities and during the audit reported it does not have plans to do so

As a part of the request to the Joint Legislative Audit Committee to authorize this audit, additional questions were raised regarding the Board's approach for communicating changes in its statutory interpretations and/or regulatory approach to licensees and the public related to registering business entities.[98] Our review of Board meeting minutes found that the Board discussed at a public meeting in January 2024 the possibility of changing its approach to registering business entities. Specifically, pursuant to A.R.S. §32-934, the following businesses are exempt from the requirement to register as a "business entity:"

- A facility owned by a person who is licensed pursuant to this chapter.
- A sole proprietorship or partnership that consists of persons who are licensed pursuant to this chapter.
- A professional corporation or professional limited liability company, the shares of which are owned by persons who are licensed pursuant to this chapter.
- An administrator or executor of the estate of a deceased doctor of chiropractic or a person who is legally authorized to act for a doctor of chiropractic who has been adjudicated to be mentally incompetent for not more than one year after the date of the doctor of chiropractic's death or incapacitation.
- A health care institution that is licensed pursuant to title 36.
- A health professional who is not licensed pursuant to this chapter but who acts within the scope of practice as prescribed by the health professional's regulatory board.

The Board's approach has been to exempt businesses from the registration requirement if 1 of the owners (in a partnership or corporation, for instance) was a licensed chiropractor. However, during the meeting, the Board's legal counsel advised the Board that this was an incorrect interpretation, and that the Board should require all owners to be licensed chiropractors in order to be exempt. The Board discussed this matter and planned to issue an advisory letter to that effect.

[98] A.R.S. §32-934 requires businesses to register with the Board if they offer chiropractic services, unless the business is exempt from registering, such as businesses owned by a licensee or a health care institution licensed pursuant to A.R.S. Title 36.

However, as of October 2024, the Board reported it had not taken further steps to change its approach, and that it did not have any plans to do so. Additionally, our review did not identify any changes in its approach to registering business entities. Further, as discussed in the Introduction (see page 6), the Board's fiscal year 2025 appropriations report included an increase of 1 FTE for a coordinator to assist business entities, however, the Board's Executive Director reported the Board has not yet determined a position description for its 1 vacant FTE position.

Recommendations

The Board should:

21. For all complaints received moving forward, use the Disciplinary and Sanctioning Guidelines adopted in July 2024 when adjudicating complaints to determine appropriate disciplinary and non-disciplinary actions to address violations.
22. Develop and provide training to Board members regarding key Board functions, including but not limited to complaint handling, the State's open meeting law, and authorized lobbying/advocacy activities.
23. Continue to develop and implement its IT system, including developing and implementing management reports for overseeing its licensing and complaint-handling processes.
24. Conduct research to identify standard processes or recommended practices for developing substantive policy statements, including but not limited to contacting and requesting information from other State agencies and health regulatory boards about their substantive policy statement processes.
25. Develop and implement policies and procedures for creating and using substantive policy statements and other methods for communicating important information about its activities and practices to external parties, including but not limited to clarifying and/or communicating changes to its practices.
26. Discontinue using emails to licensees to communicate information that instead should be communicated through substantive policy statements.
27. Review prior communications issued through less formal methods and determine whether those communications should have been issued as a substantive policy statement and, if so, issue a substantive policy statement on the matter.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Chapter 8: Board did not comply with some State conflict-of-interest requirements and recommended practices, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

Background: While performing our work to understand the Board members' and/or staffs' participation in lobbying and advocacy activities for Chapter 5, we also assessed whether the Board complied with statutory and policy requirements related to State conflict-of-interest requirements and recommended practices. Chapter 8 outlines Board noncompliance with statutory and Board policy requirements and misalignment of Board processes with recommended practices in several areas concerning conflicts of interest.

Statute addresses conflicts of interest for public agency employees and public officers

Arizona law requires employees of public agencies and public officers to avoid conflicts of interest that might influence or affect their official conduct. To determine whether a conflict of interest exists, employees/public officers must first evaluate whether they or a relative has a "substantial interest" in (1) any contract, sale, purchase, or service to the public agency or (2) any decision of the public agency.

If an employee/public officer or a relative has a substantial interest, statute requires the employee/public officer to fully disclose the interest and refrain from voting upon or otherwise participating in the matter in any way as an employee/public officer.[99,100] The interest must be disclosed in the public agency's official records, either through a signed document or the agency's official minutes. To help ensure compliance with these statutory requirements, the Arizona Department of Administration's (ADOA) State Personnel System Employee Handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The ADOA disclosure form also requires State employees to attest that they

Key Terms

- **Substantial interest—**Any direct or indirect monetary or ownership interest that is not hypothetical and is not defined in statute as a "remote interest."
- **Remote interest—**Any of several specific categories of interest defined in statute that are exempt from the conflict-of-interest requirements. For example, an employee or public officer who is reimbursed for actual and necessary expenses incurred while performing official duties.

Source: Auditor staff review of A.R.S. §38-502 and the *Arizona Agency Handbook*. *Arizona agency handbook*. Phoenix, AZ. Retrieved 2/28/2024 from https://www.azag.gov/outreach/publications/agency-handbook.

[99] See A.R.S. §§38-502 and 38-503(A) and (B).

[100] A.R.S. §38-502(8) defines "public officer" as all elected or appointed officers of a public agency established by charter, ordinance, resolution, State constitution, or statute. According to the *Arizona Agency Handbook*, public officers include directors of State agencies and members of State boards, commissions, and committees—whether paid or unpaid.

do not have any of these potential conflicts, if applicable, also known as an "affirmative no." In addition, A.R.S. §38-509 requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes, and to make this file available for public inspection.

In response to conflict-of-interest noncompliance and violations investigated in the course of the Arizona Auditor General's work, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, the Auditor General has recommended several practices and actions to various school districts, State agencies, and other public entities.[101] The Auditor General's recommendations are based on recommended practices for managing conflicts of interest in government and are designed to help ensure compliance with State conflict-of-interest requirements by reminding employees/public officers of the importance of complying with the State's conflict-of-interest laws.[102] Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually. Recommended practices also indicate that the form include a field for the individual to provide an "affirmative no," if applicable.[103] These recommended practices also indicate that agencies should develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

Board did not comply with some State conflict-of-interest requirements and its conflict-of-interest process was not fully aligned with recommended practices

The Board did not comply with some State conflict-of-interest requirements, and its conflict-of-interest process was not fully aligned with recommended practices designed to help ensure that employees/public officers comply with State requirements. Specifically:

- **Board's conflict-of-interest policy did not comply with State conflict-of-interest requirements—**The Board's conflict-of-interest policy did not require Board members to refrain from participating in any manner as an officer or employee in a decision in which they have a substantial interest. Instead, the Board's policy required Board members only to declare any conflict of interest, which the Board recorded in its meeting minutes. As discussed earlier (see Chapter 6, pages 39 through 47), we reviewed the Board's compliance with open meeting law and

[101] See, for example, Auditor General Reports 24-211 *Concho Elementary School District*; 21-404 *Wickenburg Unified School District—Criminal Indictment—Conflict of Interest, Fraudulent Schemes, and False Filing*; 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*; and 17-405 *Pine-Strawberry Water Improvement District—Theft and misuse of public monies*.

[102] Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2024). *Recommendation of the council on OECD guidelines for managing conflict of interest in the public service.* Paris, France. Retrieved March 8, 2024, from https://legalinstruments.oecd.org/public/doc/130/130.en.pdf; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource.* Arlington, VA. Retrieved 3/8/2024 from https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining-Preventing-Identifying-Addressing.pdf; and Controller and Auditor General of New Zealand (2020). *Managing conflicts of interest: A guide for the public sector.* Wellington, New Zealand. Retrieved June 24, 2024, from https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf

[103] As previously discussed, the ADOA disclosure includes a field for the individual to provide an "affirmative no."

requirements related to the call to the public. During this review, we identified 4 meetings between July 1, 2021, and March 31, 2024, during which the meeting minutes indicated Board members recused themselves. Although we did not identify any instances in which Board members participated in decisions for which they had disclosed a substantial interest, absent a policy requirement that they refrain from such decisions, Board members were at risk of violating State conflict-of-interest laws.

- **Board did not ensure all Board members and employees completed a disclosure form upon appointment/hire or when circumstances changed—**As of July 2024, none of the Board's employees had completed an ADOA disclosure form as required by State policy. Additionally, although the Board developed a disclosure form in fiscal year 2023, as of July 2024, 3 of 5 Board members had not completed a disclosure form.

- **Board used a disclosure form that did not address all statutorily required disclosures—**The Board's disclosure form that it began using in fiscal year 2023 required Board members and employees to affirm they had no conflicts of interest to report and to disclose conflicts related to business interests and family relations with business interests in the Board's decisions. However, the form did not require them to disclose all substantial interests related to the Board, as required by statute.[104] Specifically, the Board's fiscal year 2023 form required Board members and employees to disclose spousal involvement in nonprofit and for-profit boards but not involvement by other relatives.[105]

  The Board updated its form in fiscal year 2024 to require that Board members and employees list the decisions and cases in which the member or employee would have a substantial interest in advance of Board meetings. However, the Board's fiscal year 2024 update to the form required Board members to report less than what is statutorily—or even previously—required to be reported. Specifically, the Board's fiscal year 2024 form did not include the requirement to provide an affirmative no or to disclose any business interests, family business interests, secondary employment, family secondary employment, and family employment with the State of Arizona.

- **Board lacked a special disclosure file as required by statute—**The Board did not have a special disclosure file to store disclosures of substantial interest for public inspection, as required by statute.[106] Instead, the Board recorded disclosures of substantial interest in the Board's meeting minutes, but did not put the meeting minutes into a special file.

[104] A.R.S. §38-503.

[105] A.R.S. §38-502(9) defines a family relation, or "relative," as the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse. A.R.S. §38-503 does not include any exceptions for reporting relatives with substantial interests.

[106] A.R.S. §38-509.

Finally, although not required by statute or ADOA, the Board had not fully aligned its conflict-of-interest process with recommended practices, as follows:

- The Board's disclosure form did not require Board members or employees to attest that they do not have any substantial interests, if applicable, also known as an "affirmative no."
- The Board did not annually remind its employees to update their disclosure forms when their circumstances changed. Similarly, it did not require Board members, who are public officers, to complete a disclosure form when appointed or annually remind them to update their disclosure form when their circumstances changed.
- The Board had not developed and implemented a remediation process for disclosed conflicts or periodic training for Board members and employees related to their unique programs, functions, or responsibilities.

The Board's noncompliance with State conflict-of-interest requirements and not following recommended practices increased risk that Board members and employees did not disclose substantial interests that might influence or affect their official conduct

The Board's noncompliance with State conflict-of-interest requirements and not following recommended practices increased the risk that Board members and employees did not disclose substantial interests that might influence or affect their official conduct, and not fully aligning its conflict-of-interest process with recommended practices increased Board members' risk of violating State conflict-of-interest laws. For example, by not requiring Board members/employees to complete a disclosure form that addressed all statutorily required disclosures upon appointment/hire, or by not reminding them to update their disclosure form at least annually—a recommended practice—or as their circumstances changed, the Board could not ensure that all Board members and employees disclosed both financial and decision-making substantial interests and refrained from participating in any manner related to these interests, as required by statute.[107] Consequently, the Board might have been unaware of potential conflicts and the need to take action to mitigate those conflicts.

Finally, because the Board did not store completed forms disclosing substantial interests in a special file or have a listing of employees who completed disclosure forms, it lacked a method to (a) track which and how many Board members/employees disclosed an interest and (b) make this information available in response to public requests, as required by statute.

Board lacked comprehensive conflict-of-interest policies and oversight of its procedures

As of June 2024, the Board had not developed comprehensive conflict-of-interest policies and procedures. For example, the Board had not developed policies or procedures requiring employees and Board members to complete a disclosure form upon hire or appointment or establishing processes for tracking Board members' and employees completion of disclosure forms, remediating any disclosed conflicts of interest, and providing periodic conflict-of-interest training to Board members and staff. The Board attributed the lack of comprehensive policies and procedures to previous Board management. However,

[107] A.R.S. §38-503.

although State employees are required to complete ADOA's disclosure form at the time of initial hire and anytime there is a change, as previously discussed, in fiscal year 2023, Board management in place during the audit developed a disclosure form for use by both employees and Board members that was inconsistent with statute and recommended practices. Additionally, as previously discussed, Board management in place during the audit further revised the Board's disclosure form in fiscal year 2024 to be inconsistent with statute and recommended practices, including removing statutory requirements and recommended practices that had been in the previous version of the form.

Recommendations

The Board should:

28. Revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:

    a. Requiring Board members and employees to complete a conflict-of-interest disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change.

    b. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

    c. Developing and implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.

    d. Establishing a process to review and remediate disclosed conflicts.

    e. Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

Board response

As outlined in its response, the Department agrees with the finding and will implement the recommendations.

Summary of recommendations

Sjoberg Evashenk Consulting makes 28 recommendations to the Board

The Board should:

1. Cease its practice of subpoenaing and requesting information that is unrelated to complaint allegations when investigating complaints (see Chapter 1, pages 8 through 15, for more information).
2. Cease the practice of using investigations as a means to monitor compliance with continuing education requirements and to evaluate the quality of a licensee's recordkeeping, and develop administrative procedures for reviewing these matters outside of the complaint investigation process (see Chapter 1, pages 8 through 15, for more information).
3. Develop and implement policies and/or procedures that include guidance for Board staff to tailor information requests and subpoenas that are directly related to the complaint filed and within the scope of the investigation (see Chapter 1, pages 8 through 15, for more information).
4. Develop and implement a documented process for the Board's Executive Director and the Board's legal counsel to review subpoenas to help ensure that the information requested or required to be provided is directly related to the complaint filed and within the scope of the investigation (see Chapter 1, pages 8 through 15, for more information).
5. Include information in its subpoenas informing licensees regarding their ability to petition the Board or the Courts to revoke, limit or modify the subpoena, consistent with the practice of the Superior Courts of Arizona (see Chapter 1, pages 8 through 15, for more information).
6. Conduct a formal review of its use of psychosexual evaluations to assess and document their relevance and appropriateness in evaluating a chiropractor's professional competence. If determined appropriate, it should develop and implement policies, procedures, and/or guidance for when to order a licensee to complete psychosexual evaluation, including outlining how the Board will use the evaluation results (see Chapter 2, pages 16 through 22, for more information).
7. Revise and implement its policy to require it to report all allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency within 48 hours (see Chapter 3, pages 23 through 26, for more information).
8. Revise and/or develop and implement polices or procedures that include requirements and guidance for Board staff to coordinate with criminal justice agencies when conducting complaint investigations that include allegations of criminal wrongdoing. At a minimum, the requirements and guidance should outline how Board staff should work with criminal justice agencies to share information and/or coordinate investigations with criminal justice agency personnel and when and how its staff should review the results of these agencies' investigations (see Chapter 3, pages 23 through 26, for more information).

9. Provide training for Board members and staff on its policies and procedures related to reporting allegations of criminal wrongdoing to criminal justice agencies (see Chapter 3, pages 23 through 26, for more information).
10. Resolve complaints within 180 days (see Chapter 4, pages 27 through 34, for more information).
11. Develop and implement time frames for the various steps in its complaint investigation and resolution process based on severity-ranking, including notice of complaint, initial action, and final resolution (see Chapter 4, pages 27 through 34, for more information).
12. Ensure high priority complaints are investigated and prioritized for Board review before low priority complaints by investigating and prioritizing Board review for high-priority complaints according to the developed time frame (see Chapter 4, pages 27 through 34, for more information).
13. Avoid delaying complaint adjudication when the parties of the complaint may be subject to civil litigation unless necessary, and ensure timely completion of all complaints based on their severity level regardless of whether related complaints may be adjudicated by other agencies or courts unless otherwise ordered to do so by an appropriate authority (see Chapter 4, pages 27 through 34, for more information).
14. Immediately discontinue efforts to persuade licensees to support/oppose legislation, including using public resources to advocate for its position (see Chapter 5, pages 35 through 38, for more information).
15. Develop and implement Board policies and procedures related to lobbying and advocacy activities, including (see Chapter 5, pages 35 through 38, for more information):
    a. Specifying that any efforts to influence legislation should be conducted through the Board's designated public lobbyist and within the framework provided by statute.
    b. Developing a protocol for communicating with licensees about legislative issues to ensure the Board is providing complete and accurate information.
16. Comply with all statutory open meeting law requirements including but not limited to ensuring meeting notices, agendas, executive sessions, minutes, and calls to the public are handled and documented as required by statute (see Chapter 6, pages 39 through 47, for more information).
17. Consult with the Open Meeting Law Enforcement Team within the Attorney General's Office to determine what type of manner restrictions it can place on speakers during the call to the public, including whether it can prohibit speakers from discussing information the Board is required to keep confidential (see Chapter 6, pages 39 through 47, for more information).
18. Develop and implement a policy and revise its call to the public script to specify the time, place, and manner restrictions for calls to the public that are consistent with guidance it receives from the Open Meeting Law Enforcement Team within the Attorney General's Office (see Chapter 6, pages 39 through 47, for more information).
19. Post unaltered meeting recordings as required by statute, and cease the practice of deleting information from recordings (see Chapter 6, pages 39 through 47, for more information).

20. Provide regular training, during onboarding and annually, for all Board members and staff on Arizona's open meeting law, including specific requirements for meeting notices, agendas, executive sessions, minutes, and the call to the public (see Chapter 6, pages 39 through 47, for more information).
21. For all complaints received moving forward, use the Disciplinary and Sanctioning Guidelines adopted in July 2024 when adjudicating complaints to determine appropriate disciplinary and non-disciplinary actions to address violations (see Chapter 7, pages 48 through 54, for more information).
22. Develop and provide training to Board members regarding key Board functions, including but not limited to complaint handling, the State's open meeting law, and authorized lobbying/advocacy activities (see Chapter 7, pages 48 through 54, for more information).
23. Continue to develop and implement its IT system, including developing and implementing management reports for overseeing its licensing and complaint-handling processes (see Chapter 7, pages 48 through 54, for more information).
24. Conduct research to identify standard processes or recommended practices for developing substantive policy statements, including but not limited to contacting and requesting information from other State agencies and health regulatory boards about their substantive policy statement processes (see Chapter 7, pages 48 through 54, for more information).
25. Develop and implement policies and procedures for creating and using substantive policy statements and other methods for communicating important information about its activities and practices to external parties, including but not limited to clarifying and/or communicating changes to its practices (see Chapter 7, pages 48 through 54, for more information).
26. Discontinue using emails to licensees to communicate information that instead should be communicated through substantive policy statements (see Chapter 7, pages 48 through 54, for more information).
27. Review prior communications issued through less formal methods and determine whether those communications should have been issued as a substantive policy statement and, if so, issue a substantive policy statement on the matter (see Chapter 7, pages 48 through 54, for more information).
28. Revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including (see Chapter 8, pages 55 through 59, for more information):
    a. Requiring Board members and employees to complete a conflict-of-interest disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change.
    b. Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

c. Developing and implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.

d. Establishing a process to review and remediate disclosed conflicts.

e. Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

Appendix A. Grounds for disciplinary action

As discussed in the Introduction (see pages 3 through 7), the Board is statutorily authorized to take various disciplinary and non-disciplinary actions if the Board determines a violation of its statutes or rules has occurred. Statute defines 28 specific actions that qualify as grounds for disciplinary action if taken by a Board licensee.[108] One of these 28 statutorily defined actions is "unprofessional or dishonorable conduct" and the Board's rules outline 37 actions that constitute unprofessional or dishonorable conduct that qualify as grounds for disciplinary action.[109] These 37 actions in the Board's rules include 24 actions that are similar in nature to the actions listed in statute, and 13 additional actions that are grounds for discipline, such as failure to disclose a financial interest when referring services, failing to maintain patient records for the required retention period or to provide access to the records after practice closure, and improper use of ionizing radiation. Below, we provide all 26 statutory grounds and all 37 rulemaking grounds for disciplinary action.

Statutory Grounds for Disciplinary Action	Rulemaking Grounds for Disciplinary Action
1. Employment of fraud or deception in securing a license. 2. Practicing chiropractic under a false or assumed name. 3. Impersonating another practitioner. 4. Habitual use of alcohol, narcotics or stimulants to the extent of incapacitating the licensee for the performance of professional duties. 5. Unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession. 6. Conviction of a misdemeanor involving moral turpitude or of a felony. 7. Gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient. 8. Representing that a manifestly incurable condition can be permanently cured, or that a curable condition can be cured within a stated time, if this is not true. 9. Offering, undertaking or agreeing to cure or treat a condition by a secret means, method, device or instrumentality. 10. Refusing to divulge to the board on demand the means, method, device or instrumentality used in the treatment of a condition. 11. Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.	1. Failing to disclose, in writing, to a patient or a third-party payor that the licensee has a financial interest in a diagnostic or treatment facility, test, good, or service when referring a patient for a prescribed diagnostic test, treatment, good, or service and that the diagnostic test, treatment, good or service is available on a competitive basis from another provider. This subsection does not apply to a referral by one licensee to another within a group of licensees who practice together. This subsection applies regardless of whether the referred service is provided at the licensee's place of practice or at another location. 2. Knowingly making a false or misleading statement to a patient or a third-party payor. 3. Knowingly making a false or misleading statement, providing false or misleading information, or omitting material information in any oral or written communication, including attachments, to the Board, Board staff, or a Board representative or on any form required by the Board. 4. Knowingly filing with the Board an application or other document that contains false or misleading information. 5. Failing to create an adequate patient record that includes the patient's health history, clinical impression, examination findings, diagnostic results, x-ray films if taken, x ray reports, treatment plan, notes for each patient visit, and a billing record. The notes for each

[108] A.R.S. §32-924(A).

[109] According to A.R.S. §32-924(A)(5), grounds for disciplinary action includes "unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession." AAC R4-7-902 identifies 37 specific actions that constitute unprofessional or dishonorable conduct by chiropractic licensees.

Statutory Grounds for Disciplinary Action	Rulemaking Grounds for Disciplinary Action
12. Acting or assuming to act as a member of the board if this is not true. 13. Advertising in a false, deceptive or misleading manner. 14. Having had a license refused, revoked or suspended by any other state or country, unless it can be shown that the action was not taken for reasons that relate to the ability to safely and skillfully practice chiropractic or to any act of unprofessional conduct. 15. Any conduct or practice contrary to recognized standards in chiropractic or any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public or any conduct, practice or condition that impairs the ability of the licensee to safely and skillfully practice chiropractic. 16. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter or any board order. 17. Failing to sign the physician's name, wherever required, in any capacity as "chiropractic doctor", "chiropractic physician" or "doctor of chiropractic" or failing to use and affix the initials "D.C." after the physician's name. 18. Failing to place or cause to be placed the word or words "chiropractic", "chiropractor", "chiropractic doctor" or "chiropractic physician" in any sign or advertising media. 19. Using physical medicine modalities and therapeutic procedures without passing an examination in that subject and without being certified in that specialty by the board. 20. Using acupuncture without passing an examination in that subject and without being certified in that specialty by the board. 21. Engaging in sexual intercourse or oral sexual contact with a patient in the course of treatment. 22. Billing or otherwise charging a patient or third-party payor for services, appliances, tests, equipment, an x-ray examination or other procedures not actually provided. 23. Intentionally misrepresenting to or omitting a material fact from the patient or third-party payor concerning charges, services, appliances, tests, equipment, an x-ray examination or other procedures offered or provided. 24. Advertising chiropractic services, appliances, tests, equipment, x-ray examinations or other procedures for a specified price without also specifying the services, procedures or items included in the advertised price. 25. Advertising chiropractic services, appliances, tests, equipment, x-ray examinations or other procedures as	patient visit shall include the patient's name, the date of service, the chiropractic physician's findings, all services rendered, and the name or initials of the chiropractic physician who provided services to the patient. 6. Failing to maintain the information required by subsection (5) for a patient, for at least six years after the last treatment date, or for a minor, six years after the minor's 18th birthday, or failing to provide written notice to the Board about how to access the patient records of a chiropractic practice that is closed by providing, at a minimum, the physical address, telephone number and full name of a person who can be contacted regarding where the records are maintained, for at least six years after each patient's last treatment date or 18th birthday. 7. Failing to: a. Release a copy of all requested patient records under subsection (5), including the original or diagnostic quality radiographic copy x-rays, to another licensed physician, the patient, or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so. This subsection does not require the release of a patient's billing record to another licensed physician. b. Release a copy of any specified portion or all of a patient's billing record to the patient or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so. c. In the case of a patient or a patient's authorized agent who has verbally requested the patient record: i. Provide the patient record, or ii. Inform the patient or patient's authorized agent that the record must be provided if a written request is made under subsection (7)(a) or (b). d. Return original x-rays to a licensed physician within 10 business days of a written request to do so. e. Provide free of charge, copies of patient records to another licensed physician, the patient, or the authorized agent of the patient in violation of A.R.S. Title 12, Chapter 13, Article 7.1. 8. Representing that the licensee is certified by this Board in a specialty area in which the licensee is not certified or has academic or professional credentials that the licensee does not have. 9. Failing to provide to a patient upon request documentation of being certified by the Board in a specialty area or the licensee's academic certification, degree, or professional credentials. 10. Practicing, or billing for services under any name other than the name by which the chiropractic physician is licensed by the Board, including corporate, business, or

Statutory Grounds for Disciplinary Action	Rulemaking Grounds for Disciplinary Action
free without also disclosing what services or items are included in the advertised service or item. 26. Billing or charging a patient or third-party payor a higher price than the advertised price in effect at the time the services, appliances, tests, equipment, x-ray examinations or other procedures were provided. 27. Advertising a specialty or procedure that requires a separate examination or certificate of specialty, unless the licensee has satisfied the applicable requirements of this chapter. 28. Solicitation by the licensee or by the licensee's compensated agent of any person who is not previously known by the licensee or the licensee's agent, and who at the time of the solicitation is vulnerable to undue influence, including any person known to have experienced any of the following within the last fifteen days: a. Involvement in a motor vehicle accident. b. Involvement in a work-related accident. c. Injury by, or as the result of actions of, another person.	other licensed health care providers' names, without first notifying the Board in writing. 11. Suggesting or having sexual contact, as defined in A.R.S. §13-1401, in the course of patient treatment or within three months of the last chiropractic examination, treatment, or consultation with an individual with whom a consensual sexual relationship did not exist prior to a chiropractic/patient relationship being established. 12. Intentionally viewing a completely or partially disrobed patient in the course of an examination or treatment if the viewing is not related to the patient's complaint, diagnoses, or treatment under current practice standards. 13. Improper billing. Improper billing means: a. Knowingly charging a fee for services not rendered; b. Knowingly charging a fee for services not documented in the patient record as being provided; c. Charging a fee by fraud or misrepresentation, or willfully and intentionally filing a fraudulent claim with a third-party payor; d. Misrepresenting the service provided for the purpose of obtaining payment; and e. Charging a fee for a service provided by an unlicensed person who is not a chiropractic assistant under A.R.S.§ 32-900 or for services provided by an unsupervised chiropractic assistant; and f. Repeatedly billing for services not rendered or not documented as rendered or repeatedly engaging in acts prohibited under subsections (13)(c) through (e). 14. Failing to timely comply with a Board subpoena pursuant to A.R.S. §32-929 that authorizes Board personnel to have access to any document, report, or record maintained by the chiropractic physician relating to the chiropractic physician's practice or professional activities. 15. Failing to notify the Board of hiring a chiropractic assistant or to register a chiropractic assistant under R4-7 1102 or failing to supervise a chiropractic assistant, under A.R.S. §32-900 that is supervised or employed by the chiropractic physician. 16. Allowing or directing a person who is not a chiropractic assistant and who is not licensed to practice a health care profession to provide patient services, other than clerical duties. 17. Intentionally misrepresenting the effectiveness of a treatment, diagnostic test, or device. 18. Administering, prescribing, or dispensing prescription only medicine, or prescription-only drugs, or a

Statutory Grounds for Disciplinary Action	Rulemaking Grounds for Disciplinary Action
	prescription-only device as defined in A.R.S. §32-1901 and pursuant to A.R.S. §32-925(B). This subsection does not apply to those substances identified under R4-7-101(13). 19. Performing surgery or practicing obstetrics in violation of A.R.S. §32-925(B). 20. Performing or providing colonic irrigation. 21. Penetration of the rectum by a rectal probe or device for the administration of ultrasound, diathermy, or other modalities. 22. Use of ionizing radiation in violation of A.R.S. §32 2811. 23. Promoting or using diagnostic testing or treatment for research or experimental purposes: a. Without obtaining informed consent from the patient, in writing, before the diagnostic test or treatment. Informed consent includes disclosure to the patient of the research protocols, contracts the licensee has with researchers, if applicable, and information on the institutional review committee used to establish patient protection. b. Without conforming to generally accepted research or experimental criteria, including following protocols, maintaining detailed records, periodic analysis of results, and periodic review by a peer review committee; or c. for the financial benefit of the licensee. 24. Having professional connection with, lending one's name to, or billing on behalf of an illegal practitioner of chiropractic or an illegal practitioner of any healing art. 25. Holding oneself out to be a current or past Board member, Board staff member or a Board chiropractic consultant if this is not true. 26. Claiming professional superiority in the practice of chiropractic under A.R.S. §32-925. 27. Engaging in disruptive or abusive behavior in a clinical setting. 28. Providing substandard care due to an intentional or negligent act or failure to act regardless of whether actual injury to the patient is established. 29. Intentionally disposing of confidential patient information or records without first redacting all personal identifying patient information or by any means other than shredding or incinerating the information or record. 30. Intentionally disclosing a privileged communication or document, or confidential patient information except as otherwise required or allowed by law. 31. Having been diagnosed by a physician whom the Board determines is qualified to render the diagnosis as habitually using or having habitually used alcohol, narcotics, or stimulants to the extent of incapacitating the licensee for the performance of professional duties. 32. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude.

Statutory Grounds for Disciplinary Action	Rulemaking Grounds for Disciplinary Action
	Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission. 33. Having an action taken against a professional license in another jurisdiction, any limitation or restriction of the license, probation, suspension, revocation, surrender of the license as a disciplinary measure or denial of a license application or license renewal for a reason related to unprofessional conduct. 34. Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between providers and institutions or entering into a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law from dividing fees received for professional services among themselves as they determine necessary. 35. Failing to report in writing to the Board any information based upon personal knowledge that a chiropractic physician may be grossly incompetent, guilty of unprofessional or dishonorable conduct, or mentally or physically unable to provide chiropractic services safely. Any person who reports or provides information to the Board in good faith is not subjected to civil damages as a result of reporting or providing the information. If the informant requests that the informant's name not be disclosed, the Board shall not disclose the informant's name unless disclosure is essential to the disciplinary proceedings conducted under A.R.S. §32-924 or required under A.R.S. §41-1010. 36. Violating any federal or state statute or rule or regulation applicable to the practice of chiropractic. 37. Any act or omission identified in A.R.S. §32-924(A).

Source: Auditor review of A.R.S. §32-924(A) and AAC R4-7-902.

Appendix B. Complaints

In order to meet the objectives of this special audit (see Introduction, page 3), we selected a judgmental sample of 70 complaints from the 215 complaints investigated by the Board between July 1, 2021, and March 31, 2024—representing 33 percent of the total complaints active during this time frame.[110] In conducting this review, we examined subpoenas and other requests for information on record with the Board related to the 70 selected complaints, how long it took the Board to resolve the complaint, whether the original allegation was substantiated through review of Board meetings, and whether Board members or Board investigators expanded the scope of the complaint through investigative inquiries. Table 1 below summarizes information on closed complaints, as of April 30, 2024, including the allegations and final actions taken, days to resolve the complaint, whether the original allegation was substantiated, and whether the scope was expanded without evidence.[111] Table 2 (see page 87) summarizes complaints that were open as of April 30, 2024, including the allegations for each complaint, how long each complaint had been open, and whether the scope was expanded without evidence by Board members and/or investigators.

TABLE 1. OF A SAMPLE OF 70 COMPLAINTS WE REVIEWED, THE BOARD TOOK BETWEEN 21 TO 1,706 DAYS TO CLOSE 62 COMPLAINTS, OF WHICH IT SUBSTANTIATED ORIGINAL ALLEGATIONS FOR 34 AND EXPANDED THE INVESTIGATIVE SCOPE WITHOUT EVIDENCE FOR 54

JULY 1, 2021 THROUGH APRIL 30, 2024

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Complaint #1 **Original allegation**: The complainant alleged that a neck adjustment by the licensee caused severe pain, leading to a right-sided vertebral arterial dissection and requiring hospitalization, with ongoing medical issues including muscular atrophy. Despite repeated requests, the complainant had not received their medical records from the licensee as of August 2017 and remained unable to work due to the injury. **Board's allegation determination:** The Board voted to dismiss the complaint due to inability to locate the licensee to notice him for the formal hearing. **Final action:** The Board ordered revocation of the license when the licensee failed to appear for the scheduled formal	1,706	✗	✓

[110] Complaints in the sample include allegations that span the spectrum of permissible complaint topics and represent complaints of varying severity, or priority, levels. Decisions made during the Board's April 24, 2024, meeting were considered in the analysis of selected complaints.

[111] As described in Chapter 1, see pages 9 through 10, scope expansion without evidence often took the form of the Board asking for documentation of annually required continuing education at the opening of the complaint without having evidence of the licensee being non-compliant with this requirement, or requesting complete patient records when only a segment of these was necessary to address the allegation.

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
hearing. The Board later accepted the licensee's request for rehearing, but the licensee did not follow-through on established terms for doing so. Two and a half years later, the Board dismissed the complaint when the licensee again failed to appear because they had been unable to consistently reach the licensee for over 5 years, and the licensee's license had lapsed and was no longer active. The individual would need to address this complaint to be eligible for license reactivation.			
Complaint #2 **Original allegation**: The complainant alleged that the licensee failed to provide complete medical records despite repeated requests from both the complainant and her attorney. The licensee was unresponsive, missed multiple court dates, was held in contempt, and ultimately provided incomplete records. The complainant also suspected the licensee of billing for unperformed services. As of November 2018, the licensee had not responded to follow-up from the complainant. **Board's allegation determination:** The Board voted to dismiss the complaint due to inability to locate the licensee to notice him for the formal hearing. **Final action:** The Board ordered revocation of the license when the licensee failed to appear for the scheduled formal hearing. The Board later accepted the licensee's request for rehearing, but the licensee did not follow-through on established terms for doing so. Two and a half years later, the Board dismissed the complaint when the licensee again failed to appear because they had been unable to consistently reach the licensee for over 5 years, and the licensee's license had lapsed and was no longer active. The licensee would need to address this complaint to be eligible for license reactivation.	1,687	✗	✓
Complaint #3 **Original allegation**: No official original complaint form filed. Licensee was arrested on counts of voyeurism, surreptitious photographing, videotaping, filming, or digital recording or viewing, as noted in a police department press release. **Final allegation:** The Board substantiated the original allegation. **Final action:** The Board issued an interim order of suspension within 2 months of opening the complaint, and resolved the complaint with a consent agreement for voluntary surrender of the licensee's license.	1,545	✓	✗
Complaint #4 **Original allegation**: The licensee self-reported a misdemeanor DUI. It was the licensee's first offense; licensee plead guilty.	1,127	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Board's allegation determination: The Board substantiated the original allegation. **Final action**: The complaint remained open for nearly 3 years, and it was resolved only when the Board accepted the doctor's voluntary surrender of their license in relation to a different complaint (Complaint #25)). The misdemeanor DUI was included in the grounds for the order of voluntary surrender.			
Complaint #5 **Original allegation:** A complainant alleged that the licensee made sexual advances while drunk and reached inside the complainant's pants without consent during an event unrelated to the licensee's chiropractic practice. **Board's allegation determination:** The Board substantiated the original allegation, in addition to adding and substantiating allegations of (1) failure to comply with the subpoena in a timely manner and (2) failure to comply with a Board order. **Final action:** The licensee's failure to comply with the terms of a prior probationary order revisited in this complaint resulted in the Board ultimately revoking the practitioner's license. No formal discipline directly related to the sexual abuse and drunkenness allegation was issued.	966	✓	✓
Complaint #6 **Original allegation:** The first complainant alleged that the licensee made inappropriate sexual comments and suggested engaging in sexual acts, as well as restraining the complainant for sexual purposes, in front of witnesses during a staff meeting. The second complainant, another doctor at the practice, reported investigating the incident, corroborating witness accounts, and subsequently terminating the licensee at a later date. **Board's allegation determination:** The Board was not required to make a determination because the licensee voluntarily surrendered their license prior to the matter coming before the Board. **Final action:** The licensee submitted a signed consent agreement for voluntary surrender of their license ahead of their scheduled appearance before the Board.	1,014	✗	✓
Complaint #7 **Original allegation:** The complainant alleged that the licensee appeared agitated and unfocused, causing the patient pain during a manipulation and repeating the action after the patient expressed discomfort. The complainant was later taken to the ER, where they were diagnosed and admitted for treatment of a vertebral artery dissection. **Board's allegation determination:** The Board found that the doctor failed to properly review patient history, or to	1,458	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
perform and adequately document their own thorough patient evaluation in the absence of access to patient history within the corporation's records system, and also noted that the licensee's license had lapsed and was under administrative suspension, along with a failure to comply with continuing education requirements. **Final action:** The licensee was placed on 1 year of probation to enforce the completion of 12 continuing education hours in recordkeeping and risk management and patient care. The Board also issued an order of censure.			
Complaint #8 **Original allegation:** The complainant reported an alleged sexual assault by the licensee during an adjustment, involving inappropriate physical contact in the licensee's office years prior. **Board's allegation determination:** The Board substantiated the original allegation based on the plea agreement entered into by the licensee with an Arizona Superior Court in a criminal case. **Final action:** Resolved in conjunction with Complaints #15, #18, and #20. The Board ordered a summary suspension of the license in June 2023 and revoked the license in July 2023. The Board denied the licensee's request for rehearing in December 2023. The Board made redundant requests for continuing education documentation across the 4 similar cases concerning this licensee.	1,364	✓	✓
Complaint #9 **Original allegation:** The complainant, represented by a law firm, alleged that the licensee failed to release medical records and an itemized statement for the complainant, despite multiple attempts via phone, email, and certified mail. The licensee's practice is no longer operational, and the entity previously handling records has also been unresponsive. **Board's allegation determination:** The Board substantiated the original allegation, in addition to noting the licensee's failure to update their address as required under A.R.S. §32-923(A). **Final action:** The licensee entered into a consent agreement for voluntary surrender of their license, as they had ceased practicing.	300	✓	✓
Complaint #10 **Original allegation:** The complainant alleged that the doctor performed Eye Movement Desensitization and Reprocessing (EMDR) therapy and massage on her before sexually assaulting her. **Board's allegation determination:** The Board substantiated the original allegation.	869	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Final action: The Board issued a disciplinary consent agreement placing the licensee on 12 months of probation, discontinuing EMDR therapy, requiring a psychosexual evaluation, and mandating 12 hours of continuing education in case management and documentation.			
Complaint #11 **Original allegation:** A licensee was accused of touching the complainant's body inappropriately and also touching the patient's arm with the licensee's genitals during treatment. **Board's allegation determination:** The Board found the licensee violated a Board order by refusing to undergo a psychosexual evaluation. **Final action:** This complaint was resolved in combination with Complaint #40 by a separate Board-opened complaint for refusal to comply with a Board order. The Board revoked the chiropractor's license after the licensee refused to comply with the order for a psychosexual evaluation.	1,401	✗	✓
Complaint #12 **Original allegation:** The Board opened a complaint against the licensee for being noncompliant with a Board order related another investigation. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** Along with Complaint #24, the Board voted to approve a consent agreement for a stayed revocation that the licensee failed to sign. The Board forwarded the licensee to the Office of Administrative Hearings for a formal hearing.	1,400	✓	✗
Complaint #13 **Original allegation:** The complainant alleged that the licensee caused neck pain during a prior adjustment and, upon returning for correction, the licensee shouted at him unprofessionally and refused to provide a refund. **Board's allegation determination:** In open meeting, the Board concluded that the sole concern was recordkeeping. **Final action:** The Board issued a non-disciplinary advisory letter that included items not discussed in the meeting, including resolved concerns surrounding continuing education documentation, an erroneous notation of failure to release records that was never alleged, and reference to a non-disciplinary order for continuing education that the Board did not order.	384	✗	✓
Complaint #14 **Original allegation:** The Board received notice that the licensee, a delegate for another doctor relating to medical marijuana, was named in a Naturopathic Physicians Medical Board (NPMB) complaint regarding record-keeping issues. The licensee could not produce records for the NPMB due to	630	✗	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
a claimed computer crash. As the licensee is not under the NPMB's jurisdiction, the complaint was forwarded to the Chiropractic Board and the Arizona Pharmacy Board, leading to a Board complaint for failure to release records, improper billing, and unprofessional conduct. **Board's allegation determination:** The Board found that the licensee failed complete all required continuing education by the renewal deadline. **Final action:** The Board imposed 6 hours of continuing education in ethics and business practices. The penalty was issued before the complaint was forwarded to the Arizona Department of Health Services Marijuana Division.			
Complaint #15 **Original allegation:** The complainant, who was a high school student at the time of the alleged incident, alleged that the licensee had touched too close to the complainant's genitals when the complainant sought treatment for a foot issue. **Board's allegation determination:** The Board substantiated the original allegation based on the plea agreement entered into by the licensee with an Arizona Superior Court in a criminal case. **Final action:** Resolved in conjunction with Complaint #8, Complaint #18, and Complaint #20. The Board ordered a summary suspension of the license in June 2023, and revoked the license in July 2023. The Board denied the licensee's request for rehearing in December 2023. The Board made redundant requests for continuing education documentation across the 4 similar cases concerning this licensee.	997	✓	✓
Complaint #16 **Original allegation:** The licensee was accused of failing to provide information to the Board. **Final allegation:** This complaint was resolved with Complaint #10 where the Board concluded that the doctor had inappropriately employed EMDR therapy, and determined that the sexual misconduct allegation was of a magnitude to warrant a psychosexual evaluation. This complaint was not specifically addressed. **Final action:** The Board issued a disciplinary consent agreement placing the licensee on 12 months of probation, discontinuing EMDR therapy, requiring a psychosexual evaluation, and mandating 12 hours of continuing education in case management and documentation.	540	✗	✓
Complaint #17 **Original allegation:** The complainant alleged that the licensee's website advertised physical therapy services, but there is no licensed physical therapist on staff.	441	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Board's allegation determination: The Board substantiated the original allegation, in addition to noting that the licensee was practicing on a suspended license and failed to renew their yearly license. **Final action:** The Board issued a non-disciplinary advisory letter.			
Complaint #18 **Original allegation:** The complainant alleged the licensee sexually abused them by touching the complainant's breast and the licensee inserting their fingers into the patient's vagina. **Board's allegation determination:** The Board substantiated the original allegation based on the plea agreement entered into by the licensee with an Arizona Superior Court in a criminal case. **Final action:** Resolved in conjunction with Complaint #8, Complaint #15, and Complaint #20. The Board ordered a summary suspension of the license in June 2023, and revoked the license in July 2023. The Board denied the licensee's request for rehearing in December 2023. The Board made redundant requests for continuing education documentation across the 4 similar cases concerning this licensee.	919	✓	✓
Complaint #19 **Original allegation:** The complainant alleged that, after purchasing a block of appointments, the licensee relocated and agreed to issue a refund but has not yet completed the refund. **Board's allegation determination:** The Board substantiated the original allegation, in addition to noting that the licensee was practicing while their license was suspended, had not completed all annually required continuing education, and failed to disclose the present investigation on the license renewal application. **Final action:** The Board placed the licensee on probation for 2 years, required the licensee to have a fitness to practice evaluation within 90 days of the Board-issued consent agreement, 12 hours of continuing education for license renewal within 90 days, and 12 additional hours of continuing education related to recordkeeping, patient evaluation, and case management within 180 days.	616	✓	✓
Complaint #20 **Original allegation:** The complainant alleged that the licensee removed the complainant's clothes inappropriately and rubbed the complainant's pubic area. **Board's allegation determination:** The Board substantiated the original allegation based on the plea agreement entered	962	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
into by the licensee with an Arizona Superior Court in a criminal case. **Final action:** Resolved in conjunction with Complaint #8, Complaint #15, and Complaint #18. The Board ordered a summary suspension of the license in June 2023, and revoked the license in July 2023. The Board denied the licensee's request for rehearing in December 2023. The Board made redundant requests for continuing education documentation across the 4 similar cases concerning this licensee.			
Complaint #21 **Original allegation:** The complainant alleged that that if the Board considers the licensee's use of an Arthrostim device outside of specific adjustments to be categorized as Physical Medicine Modalities and Therapeutic Procedures (PMMTP) or an acupuncture procedure, then the licensee may be in violation. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a non-disciplinary order for 6 hours of continuing education in ethics, business practices (marketing/advertising), and jurisprudence, with the added requirement of getting Board pre-approval of the courses. Additionally, the Board issued a non-disciplinary advisory letter and a cease and desist order to desist advertising the non-chiropractic practice.	427	✓	✓
Complaint #22 **Original allegation:** The complainant alleged that the licensee engaged in patient abandonment, verbal abuse, and made false statements, citing a letter from the licensee terminating care due to the patient's weight and "non-compliance". **Board's allegation determination:** The Board substantiated the original allegation, in addition to noting the licensee's failure to complete continuing education, failure to maintain adequate records, violation of a Board order, and making false statements. **Final action:** The Board issued a consent agreement that involved the licensee going on probation for 24 months, being subject to 8 quarterly recordkeeping audits by the Board, employing a Board-approved auditor/practice monitor, and completing 30 hours of continuing education (15 hours within 90 days; the rest within 1 year).	673	✓	✓
Complaint #23 **Original allegation:** The complainant alleged that the licensee failed to release medical and billing documents, communicated through texts and voicemails that could be interpreted as threatening, and discussed ways to maximize	372	✗	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
insurance coverage, which made the complainant uncomfortable. **Board's allegation determination:** No determination made. **Final action:** The complaint was dismissed due to the complainant's desire to remain anonymous.			
Complaint #24 **Original allegation:** The complainant, an insurance company representative, alleged that the licensee committed insurance billing fraud through misrepresentation of patient records, and continued practicing while on a suspended license. **Board's allegation determination:** The Board substantiated the original allegations of misrepresentation to the insurance company representative and practicing on a suspended license. **Final action:** Along with Complaint #12, the Board voted to approve a consent agreement for a stayed revocation that the licensee failed to sign. The Board forwarded the licensee to the Office of Administrative Hearings for a formal hearing.	1,006	✓	✓
Complaint #25 **Original allegation:** The doctor was accused of initiating an inappropriate discussion regarding the patient's sex life during a chiropractic session. **Board's allegation determination:** The Board concluded that the conversation referenced in the allegation was inappropriate and the doctor would benefit from education surrounding professional boundaries. **Final action:** The Board issued a non-disciplinary order for 3 hours of continuing education in patient boundaries and ethics.	337	✓	✓
Complaint #26 **Original allegation:** The complainant accused the licensee of making sexually inappropriate comments about their tattoos and failing to make a referral to another practitioner when the licensee was unable to provide pain relief. **Board's allegation determination:** The Board found that the licensee would benefit from additional education regarding "current developments". **Final action:** The Board issued a consent agreement for 3 hours of non-disciplinary continuing education in boundaries and ethics.	259	✓	✓
Complaint #27 **Original allegation:** The complainant alleged that the licensee was asked to resign from his position as a high school coach because the licensee made inappropriate comments to a female minor on the team and was observed	599	✗	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
inappropriately touching two minors while "warming them up." **Board's allegation determination:** The Board found allegations to be of significant enough concern to warrant a psychosexual evaluation, after which the licensee was required to comply with the evaluator-recommended treatment plan for therapy. Because the final action was taken via consent agenda, the final reasoning is unavailable. **Final action:** The licensee was issued a non-disciplinary advisory letter.			
Complaint #28 **Original allegation:** The complainant made several allegations against the licensee: (1) showing inappropriate texts on the licensee's phone to a patient, (2) engaging in inappropriate conversations during treatment, (3) substance use during treatment, (4) treating a patient at the licensee's residence while under the influence, (5) engaging in intimate relationships with multiple patients, including one resulting in a pregnancy and subsequent abortion at the licensee's request, and (6) repeating inappropriate behavior with multiple patients. **Board's allegation determination:** The Board was not required to make a determination. **Final Action:** Staff administratively closed the case because the complainant wished to remain anonymous and there was no way to move forward without the ability to request evidence.	4	✗	✓
Complaint #29 **Original allegation:** The complainant alleged that the licensee failed to update his address in a timely manner and was involved in a small claims suit for a "barter of services gone bad," including presenting a false bill for services that were never performed. **Board's allegation determination:** It was not necessary for the Board to make a final determination. **Final action:** The Board learned that the licensee was deceased and dismissed the complaint.	285	✗	✓
Complaint #30 **Original allegation:** The complainant alleged that the licensee provided 30 treatments without any improvement in the patient's condition, resulting in a "massive bill" for what they considered excessive treatment. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a non-disciplinary advisory letter for improper billing and improper or unnecessary	158	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
treatment, as well as a non-disciplinary order for 12 hours of continuing education in orthopedic evaluation.			
Complaint #31 **Original allegation:** The complainant alleged that, following a car accident, the licensee improperly billed her for services not rendered, which negatively affected the settlement she received from the accident. **Board's allegation determination:** The Board could not substantiate that the complainant was billed for services not rendered due to lack of evidence and the fact that the complainant saw multiple providers within the practice. substantiated The Board added that the doctor was inappropriately advertising "physical therapy" services on their website without a licensed physical therapist on staff. **Final action:** The Board required the licensee to refund the complainant and to remove the term "Physical Therapy" from their website, after which they issued a non-disciplinary advisory letter for misleading advertising and improper billing.	637	✗	✓
Complaint #32 **Original allegation:** The Board voted to open a complaint after an audit revealed that the licensee used the same hours of continuing education from the licensee's probation requirements (related to 3 other complaints not included in our sample) for license renewal, which may violate probation terms. Additionally, the licensee had not yet paid a $1,000 fine from the Board Order for Probation, though the deadline was still pending as of the date of the Board's vote. **Board's allegation determination:** The Board found the licensee's competency to be in question based on the licensee having taken the same continuing education class twice in a two month period and not recognize them as being identical courses, and the licensee's difficulty in following Board direction. **Final action:** The Board placed the licensee on probation for 2 years, required the licensee to have a fitness to practice evaluation, attend 10 psychotherapy sessions, undergo an annual primary care evaluation and a neurocognitive re-evaluation, and follow resulting recommendations from any of these. The order also required the licensee to report the status of the licensee's compliance every 3 months during the probationary period.	225	✓	✗
Complaint #33 **Original allegation:** The complainant alleged dissatisfaction with the treatment provided by the licensee, claiming the doctor attempted to sell additional services to complainant and their spouse, discussed a medical lien with a mutual friend, and improperly placed a medical lien. **Board's allegation determination:** The Board was unable to substantiate treatment or billing allegations due to poor	448	✗	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
records, and substantiated an added allegation for inadequate recordkeeping. **Final action:** The Board issued a non-disciplinary order for continuing education, ordering that the licensee take 17 hours of continuing education in recordkeeping.			
Complaint #34 **Original allegation:** The complainant alleged that the licensee has a nonspecific alcohol problem, courts romantic partners through the licensee's practice, and engaged in unprofessional business practices, including: (1) pocketing a check for patient care and writing off the balance in the business records, (2) offering a naturopath rent-free office space in exchange for half of patient payments, of which the licensee gave the complainant 50 percent, and (3) providing office space to an outside clinic rent-free in exchange for guaranteed monthly patient referrals, without a written contract, proof of malpractice insurance, or a displayed copy of the licensee's license. **Board's allegation determination:** The Board found no basis to proceed. **Final action:** The Board dismissed the complaint.	664	✗	✓
Complaint #35 **Original allegation:** The complainant alleged the licensee had begun a sexual relationship with the complainant within 3 months of treating the complainant. **Board's allegation determination:** The Board found no basis to proceed. **Final action:** The Board dismissed the complaint.	657	✗	✓
Complaint #36 **Original allegation:** The complainant alleged that the licensee kissed a patient in the treatment room, initiated a sexual relationship within 3 months of providing care, engaged in repeated sexual relationships with patients, disclosed confidential patient information, consumed alcohol to an extent that impaired decision-making, and allowed a naturopathic doctor to treat patients at the licensee's facility with a 50/50 fee-splitting arrangement. **Board's allegation determination:** The Board found no basis to proceed. **Final action:** The Board dismissed the complaint.	631	✗	✓
Complaint #37 **Original allegation:** The Board opened an investigation into the licensee after reviewing another licensee's personnel file in an unrelated complaint (Complaint #11), which revealed complaints and information alleging inappropriate touching and comments toward female patients. The licensee had	448	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
discharged the other doctor due to these complaints but failed to report them to the Board. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a non-disciplinary advisory letter for "Failure to Report Another Doctor" and "Danger to the Health, Safety, and Welfare of the Public" for not providing the Board with information that a practitioner may be guilty of unprofessional conduct.			
Complaint #38 **Original allegation:** The complainant alleged that, during treatment, the licensee strongly recommended a prescription drug and performed an adjustment that left the complainant unable to breathe, necessitating a corrective adjustment by another chiropractor within an hour. **Board's allegation determination:** The Board found the licensee's records concerning the treatment in question to be inadequate. **Final action:** The Board issued a non-disciplinary advisory letter for "failing to create an adequate patient record for not documenting a significant recommendation in the patient notes."	573	✗	✓
Complaint #39 **Original allegation:** The complainant alleged that they purchased a prepaid block of services but were unable to use them due to the licensee's unavailability and unresponsiveness in scheduling appointments or providing a refund. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The licensee entered into a consent agreement for voluntary surrender of the licensee's license.	185	✓	✓
Complaint #40 **Original allegation:** The complainant alleged the licensee intentionally touched the patient's wrist with the licensee's genitals. **Board's allegation determination:** The Board found the licensee violated the Board's order for a psychosexual evaluation. **Final action:** The Board resolved this complaint with the similar complaint against the same licensee, Complaint #11, revoking the practitioner's license for refusing to undergo the psychosexual evaluation.	556	✗	✓
Complaint #41 **Original allegation:** The complainant alleged that the licensee charged for services without informing the patient that their insurance was not accepted, potentially affecting	561	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
the patient's treatment choice. Additionally, the complainant cited a failure to provide a promised reimbursement and an incorrect diagnosis. **Board's allegation determination:** The Board found the licensee's answers regarding diagnosis to be satisfactory, but that the records did not reflect the reasoning, and that the licensee billed for services incorrectly. **Final action:** The penalties included 21 hours of continuing education in ethics and professionalism and documentation and recordkeeping, and re-taking the Arizona Chiropractic Jurisprudence Licensing Examination.			
Complaint #42 **Original allegation:** The complainant alleged that the licensee engaged in misleading advertising, provided improper and unnecessary treatment, and issued an incorrect diagnosis. Specifically, the complainant sought treatment for hip and sciatic nerve issues, but the licensee focused on a slight curvature in the lumbar spine, which the complainant claimed was irrelevant and against the complainant's protests, resulting in increased pain. Additionally, the complainant noted inaccuracies in the licensee's Facebook advertisements regarding services offered. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a non-disciplinary order for 14 hours of continuing education within 180 days in recordkeeping and documentation, clinical decision making, and diagnostic x-rays.	275	✓	✓
Complaint #43 **Original allegation:** The complainant's attorney alleged that the licensee spoke belligerently and abusively to the attorney and their paralegal. Additionally, the attorney claimed that the complainant reported the licensee billed for treatments unrelated to the client's ailments and charged for services even when the client was out of the country. **Board's allegation determination:** The Board found no basis to proceed. **Final action:** The Board dismissed the complaint.	405	✗	✓
Complaint #44 **Original allegation:** The complainant alleged improper billing practices on behalf of their spouse, the patient, who signed the financial agreement without reading it due to vision issues. Upon reviewing the charges, the complainant expressed concerns over pre-filled insurance deductions before claims submission, a 3.5 percent credit card fee, and non-refundable charges, and requested a refund.	400	✗	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Board's allegation determination: The Board found no basis to proceed. **Final action:** The Board dismissed the complaint.			
Complaint #45 **Original allegation:** The Board opened a complaint against the licensee for violating a Board order after denying the licensee's request for an extension to complete probation requirements in another state. The alleged violations include failing to complete a fitness-to-practice evaluation and twelve hours of continuing education in approved topics within the 90-day time frame specified in the consent agreement. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a consent agreement for voluntary surrender of the licensee's license.	61	✓	✗
Complaint #46 **Original allegation:** The Board opened a complaint against the licensee alleging the licensee made false statements during a formal interview related to Ccomplaint #10 and Complaint #16. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a consent agreement for voluntary surrender of the licensee's license.	91	✓	✓
Complaint #47 **Original allegation:** The Board opened a complaint against the licensee after the licensee disclosed disciplinary action in another state and a consent agreement from a prior year with the licensee's license renewal for the current year. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued an interim order for a psychiatric evaluation. Resolution of this complaint is tied to Complaint #59, in which the Board revoked the licensee's license for failure to comply with this order.	438	✓	✗
Complaint #48 **Original allegation:** The Board received a referral from the State of Arizona Board of Osteopathic Examiners in Medicine and Surgery alleging that the licensee failed to properly supervise, engaged in improper billing practices, and posed a danger to health and safety. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a non-disciplinary order for the licensee to update their website and register any chiropractic assistants within 90 days.	84	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Complaint #49 **Original allegation:** The complainant alleged that they purchased a prepaid block of services but was unable to use them due to the licensee's unavailability, and the licensee failed to issue a refund. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The licensee entered into a consent agreement for voluntary surrender of their license. Resolved with 2 other complaints, including Complaint #39 and Complaint #45.	21	✓	✓
Complaint #50 **Original allegation:** The complainant alleged sexual misconduct, exploitation, and abandonment. The complainant accused the licensee of manipulating the complainant into a sexual relationship, including inappropriate touching during treatment and engaging in sexual intercourse in the treatment room over an extended period. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board issued a consent agreement and order for stayed revocation, requiring 5 years of probation, restrictions on location of practice, requirements for Board-approved female chaperones, 74 hours of continuing education, and retaking the Jurisprudence Examination.	379	✓	✓
Complaint #51 **Original allegation:** The doctor was accused of improperly viewing and touching a partially-robed patient during treatment. **Board's allegation determination:** The Board determined the interaction from the complaint to be the result of poorly communicated treatment, and also added an allegation misleading advertising found on the doctor's website and Facebook page. **Final action:** The Board issued a non-disciplinary order requiring the doctor to complete 6 hours of continuing education in "Special populations in chiropractic — the female patient," retake the jurisprudence examination, and remove the term "physiotherapy" from the website and Facebook page.	377	✓	✓
Complaint #52 **Original allegation:** The complainant, representing a patient, alleged that the licensee failed to release medical records and provided ample documentation of contact attempts.	205	✓	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Board's allegation determination: The Board substantiated the original allegation, in addition to noting that the licensee made false statements. **Final action:** The Board issued a non-disciplinary advisory letter concerning failure to release records, and a non-disciplinary order to retake the Jurisprudence Exam and to take 15 hours of continuing education in medical ethics and professionalism.			
Complaint #53 **Original allegation:** The complainant alleged that the doctor performed an adjustment to the patient's rectum without warning, which the complainant interpreted as sexual misconduct. **Board's allegation determination:** The Board determined the complaint to be the result of poorly-informed procedure, and added that the licensee's records were insufficient. **Final action:** The Board issued a non-disciplinary order for 9 hours of continuing education in recordkeeping and documentation, and issued a non-disciplinary advisory letter relating to patient communication	303	✗	✓
Complaint #54 **Original allegation:** The complainant alleged the licensee was massaging the complainant's left shoulder and grabbed the complainant's breast. The complainant went back for another visit and reported the licensee repeated this behavior. The complainant filed a police report and submitted it with their complaint. **Board's allegation determination:** The Board determined that the information from the investigation was not of sufficient seriousness to warrant disciplinary action, and also noted that the licensee was working at an unregistered chiropractic clinic. **Final action:** The Board issued a non-disciplinary order for 24 hours of continuing education concerning professional boundaries.	279	✗	✓
Complaint #55 **Original allegation:** The licensee was accused of inappropriate sexual contact and making sexually suggestive comments. **Board's allegation determination:** The Board dismissed the allegation of sexual misconduct, determined the licensee's recordkeeping to be insufficient, and noted possible improper billing practices. **Final action:** The Board issued 17 hours of continuing education in recordkeeping and motioned to open a separate complaint into the identified possible fee-splitting.	226	✗	✓

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
Complaint #56 **Original allegation:** The licensee's business posted an advertisement for a massage therapist, stating that a massage license was not required. **Board's allegation determination:** The Board found no basis to proceed. **Final action:** The Board dismissed the complaint.	212	✗	✓
Complaint #57 **Original allegation:** The complainant alleged that, just before the licensee's scheduled appearance for another complaint, the licensee's spouse posted confidential patient information on Facebook, and the licensee responded with, "thank you for finally putting the truth out there." **Board's allegation determination:** The Board found the licensee did not release records in a timely manner. **Final action:** The Board issued a non-disciplinary advisory letter for not releasing records in a timely manner.	208	✗	✓
Complaint #58 **Original allegation:** The complainant alleged sexual abuse during a chiropractic session and ethical concerns about the licensee's practice. **Board's allegation determination:** The Board dismissed the allegation of sexual misconduct for being a continuation of a pattern of harassment, but noted incomplete recordkeeping for the complainant's visit, as well as concerns surrounding the doctor's use of the chiropractic practice as a means of meeting their then-partner's child. **Final action:** The Board issued a non-disciplinary order for 41 hours of continuing education: 24 hours in professional boundaries and 17 hours in recordkeeping.	145	✗	✓
Complaint #59 **Original allegation:** The Board opened the complaint in response to the licensee stating refusal to comply with the Board's interim order for a psychiatric evaluation to assess fitness to practice. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board revoked the licensee's license.	184	✓	✗
Complaint #60 **Original allegation:** The complainant alleged that the individual falsely claims to be a Doctor of Chiropractic, a physical therapist, and a doctor, citing online reviews and social media profiles where the individual claims academic credentials educational institutions, which were allegedly false. The complainant also noted a criminal history and stated that the individual conducts training out of their	141	✗	✗

Allegation(s) and action(s)	Days to Resolve Complaint	Original Allegation Substantiated?	Scope Expanded Without Evidence?
residence and offers "PT and chiropractic work" from an office. **Board's allegation determination:** The individual was not a licensee, and was thus beyond the Board's authority to regulate. The Board determined that there was not evidence to warrant referring the individual to law enforcement for practicing without a license. **Final action:** The Board closed the case.			
Complaint #61 **Original allegation:** The complainant, referred to the licensee's clinic by a law firm following a car accident, alleged that after a few treatment sessions, the licensee began asking them to undress and provided treatment while they were wearing only underwear. The complainant stated that the licensee's touching became increasingly intimate and aggressive over time, leading the complainant to discontinue appointments. **Board's allegation determination:** The Board did not have to make a determination as the licensee volunteered to surrender their license. **Final action:** The licensee entered into a consent agreement for voluntary surrender of the licensee's license.	88	✗	✓
Complaint #62 **Original allegation:** The complaint alleges that the individual is practicing without a license and claims to have the ability to cure diseases. **Board's allegation determination:** The Board substantiated the original allegation. **Final action:** The Board determined that the individual was practicing chiropractic without a license, issued a cease and desist order, and referred the individual to law enforcement.	70	✓	✗

Source: Auditor-generated, based on auditor analysis of the Board's Complaint Log and case documentation—including notices, orders, meeting minutes, and investigative reports.

TABLE 2. 8 OPEN COMPLAINTS OF A SAMPLE OF 70 COMPLAINTS WE REVIEWED HAD BEEN OPEN FOR BETWEEN 7 TO 1,065 DAYS, AND THE BOARD EXPANDED THE INVESTIGATIVE SCOPE FOR 6

JULY 1, 2021, THROUGH APRIL 30, 2024

Allegation(s)	Days Open, as of May 1, 2024	Scope Expanded?
Complaint #63 **Original allegation:** The complainant, who worked at an ambulatory surgery center, alleged extortion, reporting that the licensee left a voicemail demanding a billing reduction, claiming the licensee was the referrer and stating it was only fair. The claimant noted that the patient had been referred by a surgeon, with no indication of the licensee's involvement as a care provider. The licensee allegedly threatened to cease referrals to the center	1,065	✓

Allegation(s)	Days Open, as of May 1, 2024	Scope Expanded?
and the surgeon, including blocking future personal injury referrals, if the reduction was not granted. **Expanded allegation:** The Board requested documentation of continuing education completion for annual license renewal, which was irrelevant to this complaint.		
Complaint #64 **Original allegation:** The complainant, representing the patient, alleged that the licensee failed to release the patient's records. **Expanded allegation:** The Board requested documentation of continuing education completion for annual license renewal, which was irrelevant to this complaint.	989	✓
Complaint #65 **Original allegation:** The Board opened a complaint in response to an anonymous email alleging that the licensee engaged in "fee-splitting" by establishing contracts to split 50 percent of final payments in exchange for referrals. **Expanded allegation:** The Board requested documentation of continuing education completion for annual license renewal, which was irrelevant to this complaint.	727	✓
Complaint #66 **Original allegation:** The licensee self-reported engaging in fee splitting. **Expanded allegation:** The Board requested documentation of continuing education completion for annual license renewal, which was irrelevant to this complaint.	664	✓
Complaint #67 **Original allegation:** The complainant alleged that the licensee committed mail fraud and fraudulently changed the licensee's address without the complainant's knowledge, purportedly in retaliation after a Board vote to open a complaint regarding fee-splitting. The act was allegedly motivated by information from a business partner suggesting that the complainant had self-reported, implicating the licensee. **Expanded allegation:** The Board requested documentation of continuing education completion for annual license renewal, which was irrelevant to this complaint.	675	✓
Complaint #68 **Original allegation:** The Board opened a complaint after the licensee self-reported a misdemeanor DUI charge during license renewal, as required by statute. **Expanded allegation:** The Board requested documentation of continuing education completion for annual license renewal, which was irrelevant to this complaint.	485	✓
Complaint #69 **Original allegation:** During the investigation of a complaint against another licensee, the Board discovered that the respondent's (i.e., the individual who was the subject of the complaint) clinic was operating without proper registration. The other licensee being investigated stated they worked for the respondent, who is not registered with the Board as a Doctor of Chiropractic,	189	✗

Allegation(s)	Days Open, as of May 1, 2024	Scope Expanded?
and the business entity was listed as "inactive." The Board opened a complaint against the respondent. **Expanded allegation:** None		
Complaint #70 **Original allegation:** The Board opened a complaint against the licensee for failure to provide information to the Board and improper billing related to fee-splitting practices that arose during adjudication of another complaint against the same licensee. **Expanded allegation:** None	7	✗

Source: Auditor-generated, based on auditor analysis of the Board's Complaint Log and case documentation—including notices, orders, meeting minutes, and investigative reports.

Appendix C. Board's Executive Director sent an email notice encouraging licensees to contact legislators to oppose SB 1233 and Board Chair sent an email notice to licensees explaining the Board's jurisdiction to investigate fee-splitting

The Board's Executive Director and Chair sent 2 direct electronic communications to licensees, 1 concerning a pending bill in the Arizona Legislature in an effort to elicit licensee opposition to the bill, and 1 providing information to licensees about fee-splitting. The full text of both communications is included in the following pages of this Appendix, in their original format.

At the beginning of 2024, SB 1233 was introduced to modify statute governing the Board's complaint-handling jurisdiction, including proposed changes to the Board's regulation of patient referral fees. On February 5, 2024, the Board's Executive Director sent an email to the Board's licensees with a direct call to recipients along with the names and contact information of relevant Senate Health and Human Services Committee members (see Correspondence 1, pages 91 through 92 for further details of the email). In the email, the Board's Executive Director stated:

> The Board encourages licensees to read SB 1233 and to contact members of the Senate Health and Human Services Committee before the Tuesday hearing expressing their strong opposition to the bill.

This email came from the Board's Constant Contact email account, included the Executive Director's name and contact information at the top as the "Media Contact" and was sent to all 2,550 chiropractic licensees. In advance of the Executive Director sending this correspondence, the Board voted to oppose SB 1233 and authorized the Executive Director to lobby on behalf of the Board. Although the Board discussed the possibility of sending a communication to licenses, it did not vote to authorize this specific communication.

On May 1, 2024, a second email containing a letter from the Board's Chair was also sent to licensees from the Board's Constant Contact email account. The Board Chair signed the letter on behalf of the Board, following the Board voting in open session on March 29, 2024 authorizing the Chair and the Executive Director to draft and send a letter clarifying the SB 1233's implications for patient safety and explaining its position on Board jurisdiction related to the practice of "fee-splitting" (see Correspondence 2, page 93 for details of the email).

Unlike the first email, this communication did not call on licensees to take action, but instead—according to the Board Chair, was designed to provide information to licensees about statute and rule changes.

Correspondence 1: February 2024 Board notice to licensees encouraging opposition to SB 1233

For Immediate Release

Media Contact:
Alissa Vander Veen
Executive Director
602.864.5088
generalinfo@chiroboard.az.gov

Arizona Board of Chiropractors Votes to Oppose Senate Bill 1233

SB 1233 renders the Chiropractic Board powerless to keep the public safe and to protect licensees from unethical practices by striking all its regulatory and self-governance powers.

PHOENIX, AZ, FEBRUARY 5, 2024 - On February 2, 2024, the Arizona Board of Chiropractic Examiners held an emergency Board Meeting to discuss Senate Bill 1233, which was drafted with no input or comments from the Board, the primary stakeholder in this proposed legislation.

After review and discussion, **the Board voted unanimously to oppose this bill**. The Board discussed the bill's anticipated impact on the chiropractic profession and the public. ***The Board was concerned about the numerous patient protection violations this bill removes from statute and the long-term effects upon the profession***. The Board also outlined how the bill makes changes directed explicitly at the chiropractic profession that do not exist in Arizona Statutes for other healthcare professions.

The changes proposed in this legislation are highly inconsistent with similar statutory and rule language in allied healthcare professions both within our state and throughout the United States. Additionally, these revisions are inconsistent with recognized authoritative model practice acts, such as the Model Practice Act for Chiropractic Regulation as promulgated by the Federation of Chiropractic Licensing Boards, whose service area includes all 50 States of the United States, all Canadian provinces, and multiple other foreign countries. **This bill ultimately strikes the Board's statutory purpose and mission to protect the public's health, safety, and welfare.** Without these provisions in the statute, the public is left without an advocate and voice.

During the meeting, the Board raised severe concerns about the proposed changes to the Board's statutes and rules that would remove many patient safety provisions, **regulations, board orders, and consent agreements.** Limiting the Board to only issuing Non-Disciplinary Advisory Letters or license Revocation, this bill would leave the Board with no option to rehabilitate practitioners. There would be no in-between. There would be no ability to require a licensee to take continuing education to help reform and correct their behaviors. It also eliminates the Board's improper billing and advertising rules, designed to ensure clear and accurate billing and marketing from its licensees. **It would also allow unlicensed chiropractors to practice without first being issued a license in this State.** With these changes, the bill prioritizes healthcare providers' self-interests over patients' safety and well-being and facilitates abuse by harmful practitioners who would suffer no consequences for ignoring Board subpoenas or orders.

The proposed legislation removes regulation of Chiropractic Assistant qualifications. This

opens the door to unethical exploitation and, absent the profession's ability to regulate itself, threatens patient access to chiropractic care due to the denial of insurance coverage for services rendered by non-regulated CAs employed in chiropractic clinics. **It removes regulation of business entities, enabling business entities owned by non-chiropractors to hire non-licensed DCs to provide chiropractic services within our state without regulation by the Board.**

The Board has fully recognized the need for legislative and rule changes regarding its current statutes and regulations. The Board had just begun taking the initial steps to review its existing rules and laws in preparation for starting the rule-making process at its January 19, 2024, Board Meeting. The Board will seek input from the public and its licensees as part of this process.

The Board encourages licensees to read SB 1233 and to contact the members of the Senate Health and Human Services Committee before the Tuesday hearing expressing their strong opposition to the bill. The Board reminds you to be thoughtful and courteous in your communications with elected officials.

Senate Health and Services Committee Members:

- Chairman- Sen. Thomas "T.J." Shope-TShope@azleg.gov
- **Vice Chair- Sen. Janae Shamp-JShamp@azleg.gov-Bill Sponsor**
- Sen. Sonny Borrelli-SBorrelli@azleg.gov
- Sen. Eva Burch-EBurch@azleg.gov
- Sen. Sally Ann Gonzales-Sgonzales@azleg.gov
- Sen. Theresa Hatathlie-THatathlie@azleg.gov
- Sen. Justine Wadsack-JWadsack@azleg.gov

SB 1233 will be heard by the Senate Health and Human Services Committee on Tuesday, February 6, 2024, at 1:30 p.m.

Arizona Board of Chiropractic Examiners | 1740 W. Adams Street, Suite 2430 | 602.864.5088 | generalinfo@chiroboard.az.gov | chiroboard.az.gov

Connect with us

Source: Email communication from the Board to licensees obtained from the Board's email server (unedited). All formatting and emphasis are as originally sent.

Correspondence 2: May 2024 email from Board Chairman to licensees claiming the illegality of SB 1233

To: All Arizona Chiropractic Licensees
From: Arizona Board of Chiropractic Examiners
Ref: Senate Bill 1233/1405

Senate Bill 1405 (originally SB 1233) was introduced in the Arizona State Legislature earlier in the current legislative session. This bill proposes many amendments and additions to the Statutes and Rules governing how the Arizona Chiropractic Board of Examiners performs its duties.

From the outset, the Arizona Board of Chiropractic Examiners has opposed this legislation. While the Board has identified many issues with the language of SB 1233/1405, one of our primary concerns is centered around the subject of "fee splitting". **Fee splitting amongst unethical healthcare providers, including chiropractors, is illegal in all 50 states and is also prohibited by federal law. In Arizona, improper fee splitting can be a felony offense**.

If passed in its current form, Senate Bill 1233/1405 would open the door to what is currently illegal fee splitting by chiropractors in Arizona. It is our board's adamant opinion that this would represent a significant threat to the safety of the public.

It is the duty and responsibility of the Arizona Board of Chiropractic Examiners to investigate, and act appropriately upon, rule and statutory violations concerning fee splitting, up to and including license revocation and reporting these violations for criminal prosecution.

I have included for your review three links for additional information. The first is a list of specific examples of the language in the bill that we believe to be inappropriate and dangerous, not only to the public but to the chiropractic profession as well. The second is the most recent version of **SB 1233/1405**. The third is the Model Practice Act for Chiropractic Regulation, a reference guide to chiropractic regulatory language published by the Federation of Chiropractic Licensing Boards, whose service area includes all US states, all Canadian provinces, and several foreign countries. The Arizona Chiropractic Practice Act is patterned after this widely recognized document.

We encourage all Arizona chiropractic licensees to review these materials and become
informed on this matter as it is being considered in our state legislature.

Sincerely,

Wayne Bennett, DC, DABCO
Chairman
Arizona Board of Chiropractic Examiners

Source: Email communication from Board Chair to licensees obtained from the Board's email server (unedited).

Appendix D. Transcripts of call to the public violations

Instance 1:

In the first instance on September 13, 2023, the Board Chair concluded the call to the public without recognizing members of the public that were present and waiting to speak. Near the end of the Board meeting, the Chair described the call to the public, and without giving a break in speech pattern, introduced 2 doctors who were present in person and virtually, and asked "would either of you care to make a comment with regard to anything?" The 2 doctors did not speak, and the Chair said, "oh, I see some other people that I didn't mention, my apologies to those whose names did not get mentioned. With that, uh there'd be no… the Board– the time is 12:44 and (gavel sound)." There was then an interjection, presumably by the Executive Director: "those are all of the attendees…[*unintelligible].*" Then this exchange took place:

Chair Bennett:	This meeting is adjourned, but I was—
From the Public:	Excuse me, excuse me
Chair Bennett:	—but I didn't hear what you said and I wasn't keeping track of the time.—
From the Public:	Hello, excuse me, I would like to speak as the public.
Chair Bennett:	This meeting has already been adjourned! The opportunity to speak was presented and, um, and you did not, and ample time was given.
From the Public:	I was waiting for other people to speak, I did not want to be rude, but I do need to speak to the Board.
Chair Bennett:	I appreciate that but this meeting is adjourned, I'm so sorry.
From the Public:	That can't be possible, if I'm of the public, you can't just cut me off like this.
Chair Bennett:	I didn't cut you off, this meeting is adjourned.
Ms. Vander Veen:	If she would like to she can contact Board staff and Board staff can provide the comment to the Board.
Chair Bennett:	By all means--
From the Public:	And I appreciate that--
Chair Bennett:	Reach out to Board staff and we will have—
Public Speaker:	I appreciate that, but I would like the Board to hear what I have to say, directly.
Chair Bennett:	It's too late ma'am, I'm sorry.

Instance #2:

In the second instance, the same public speaker who was denied an opportunity to speak at the September 13, 2023, meeting also attempted to speak at the January 17, 2024, meeting. However, the speaker was interrupted by the Board's Executive Director and prevented from finishing her statement by the Board chair. Below is a transcript of the exchange between the speaker and Board chair (emphasis added by auditor):

- Public Speaker: "Good afternoon, Board Members and Staff, this is Kim LaFrance, I have spoken on calls as the public for the same issue many times regarding complaints against Doctor Danielle Lajeunesse's patient sexual mis–"
- Vander Veen**: (Interrupting)** "Okay, that's con-, but that's, confidential information—"
- Public Speaker: **(Interrupting, Speaking over Vander Veen)** "Dr. Lajeunesse—"
- Vander Veen**: (Interrupting, Speaking over Public Speaker)** "com- com- – complaints are confidential and can't be discussed on a public forum until they're on the agenda."
- Public Speaker: "And why is it you didn't tell me this the last three times I've spoke?"
- Dr. Bennett: By way of patience. Um, at this point, and we did hear your comments each of the three times you spoke previously and we are unable to move forward with regard to our actions due to civil information and civil cases that you are aware of and are involved with, and so at this point, we are not able to even put on record information that pertains to civil matters. If you have anything else to speak about, please feel free to do so, otherwise, please refrain from inappropriately talking about confidential civil matters.
- Public Speaker: Okay, I didn't think I was being inappropriate but the complaints have been put on stay as you said because of other civil actions, which yes I am involved in a lawsuit. These complaints have nothing to do with the lawsuits.
- Dr. Bennett: They, they do. And so thank you for your comments. And with that we will move on. Does anyone else have, uh, wish to be recognized, and have a comment to the public, or voice, call from the public, sorry."

Instance #3:

In the third instance, which involved the same member of the public involved in the first 2 instances, the individual appeared at the March 6, 2024, meeting. During the call to the public, the individual addressed the Board and, upon coming to a natural pause at the end of a statement, this exchange followed:

Public Speaker: …when will the Board be addressing these complaints regarding sexual misconduct, and will the Board rule on this fairly? *[Pause]*

Chair Bennett: Thank you for your comment—

Public Speaker: —I'm not finished—

Chair Bennett: —we, we—

Public Speaker: —excuse me, excuse me—

Chair Bennett: —You are finished. We are, we will be—

Public Speaker: Dr. Bennett, Dr. Bennett, I'm not finished, I'm not finished, I have one more sentence, I'm sorry, I'm sorry, I have one more.

Dr. Bennett: Finish your sentence please.

Public Speaker: Yes, thank you. When is an emergency agenda warranted, and I need to notate that this is a very serious situation.

Dr. Bennett: Thank you for your comment, we have addressed this matter with you multiple times and we will, in accordance with the powers permitted to us during the call to the public rules and regulations, be referring this matter to staff. I ensure the entire public listening to this that the Board has, in fact, been dealing with this issue on a priority basis for quite some time. The delays we're experiencing have nothing to do with this Board's actions, but rather delays brought forward to the Board by participants in the charge who have a vested interest in slowing the process down. That said, are there any other members of the public who would like to raise their hand and make a comment in the call to the public opportunity?

Although the speaker was ultimately permitted to finish her statement, the Board chair interrupted the speaker and may have limited her comment.

Appendix E. Scope and methodology

On behalf of the Arizona Auditor General, Sjoberg Evashenk Consulting, Inc. has completed a special audit of the Board pursuant to a February 12, 2024, resolution of the Joint Legislative Audit Committee.

We used various methods to meet the report's objectives. These methods included reviewing State statutes, rules, and applicable session laws; reviewing the Board's website; reviewing Board-provided documents, including policies and procedures, budget documents, complaint records, email records, conflict of interest documentation, records relating to board organization and staffing, and Board meeting records; and interviewing Board members and management. In addition, we used the following specific methods to meet the audit objectives:

- To determine whether the Board subpoenas included information related to complaint investigations and whether the Board requests only info relevant to its investigations, we:
    - Selected a judgmental sample of 70 of the 215 complaints with active investigations during the period between July 1, 2021, and March 31, 2024, and ensured that our sample included cases that varied based on the nature and severity of the complaint.
    - Examined all subpoenas and other requests for information on record with the Board related to the 70 selected complaints, and determined the extent to which the Board's requests for information were limited to the scope of the investigations as defined by the allegations included in the complaint received by the Board.
- To evaluate the Board's application of its statutes and rules and whether the Board has consistently applied its statutes and rules over time and to all licensees, we examined the same sample of 70 complaints and:
    - Reviewed complaints with similar allegations from our judgmental sample of 70 complaints to assess whether the Board consistently applied its complaint handling statutes and rules to similar complaints, including whether it took consistent enforcement actions for similar substantiated allegations.
    - Examined Board records dating back to 2012 relating to all complaints the Board received involving allegations that licensees paid or received payment for the referral of patients from one licensee to another and evaluated the Board's decisions to investigate such activity.
- To evaluate the Board's handling of allegations involving criminal wrongdoing, we examined all 70 complaints included in our sample, determined if any involved allegations of evidence of criminal wrongdoing, and reviewed the Board's complaint files to determine whether the Board reported allegations of criminal wrongdoing to relevant criminal justice agencies, as required by statute.
- To evaluate the Board's handling of its complaint backlog, we examined the Board's complaint logs and identified the number of open complaints the Board had as of June 30, 2021, and compared that to the number of open complaints the Board had as of April 30, 2024, including calculating how long each complaint had been open at the time of our review. We reviewed the Board's complaint

log as of April 30, 2024 for all complaints that were under investigation between July 1, 2021, and March 31, 2024, and calculated the amount of time each case was open from complaint submittal to case closure, reviewed selected complaint files from our sample of 70 complaints to identify causes of complaint handling delays, and compiled Board-provided information on allegation types and licensee status for open complaints.

- To evaluate Board members' and/or staffs' participation in lobbying and advocacy activities, we:
    - Reviewed and evaluated 2 out of 2 Board emails communicating with licensees relating to SB 1405 (formerly SB 1233) introduced in the 2024 legislative session and its authority to investigate alleged fee-splitting.
    - Assessed the Board's compliance with the State's conflict-of-interest laws and alignment with recommended practices, by reviewing statute, Board policy and meeting minutes, disclosure forms completed by Board members and staff in fiscal years 2023 and 2024, and recommended practices.[112]
- To evaluate the Board's compliance with the State's open meeting law, and whether it complied with requirements related to the call to the public, we reviewed the Board's meeting agendas, minutes, and available audio recordings for all 31 public meetings the Board held between July 1, 2021, and March 31, 2024, and assessed the Board's compliance with various provisions of the State's open meeting law. We also reviewed 21 executive session minutes for executive sessions held within the same time frame and listened to executive session audio recordings for 6 executive sessions we judgmentally selected to ensure a varied selection of topics.
- To evaluate the role of the Board's Executive Director, including how the executive director (1) ensures consistency in Board practices despite changes in board members and (2) communicates changes in Board practices to licensees and the public, we reviewed the Board's policies and procedures, training materials, information systems, other internal controls related to its complaint-handling practices, and substantive policy statements and methods the Board has employed to communicate to licensees and the public. We also reviewed the Government Accountability Office's *Standards for Internal Control in the Federal Government* (also known as the "Green Book").[113]

[112] Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2022). *Recommendation of the council on OECD guidelines for managing conflict of interest in the public service.* Paris, France. Retrieved 3/5/2024 from https:// legalinstruments.oecd.org/public/doc/130/130.en.pdf Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource.* Arlington, VA. Retrieved 3/5/2024 from https://www.ethics.org/wp-content/uploads/2021-ECI-WP-Conflicts-of-Interest-Defining Preventing-Identifying-Addressing.pdf; and Controller and Auditor General of New Zealand. (2020). *Managing conflicts of interest: A guide for the public sector.* Wellington, New Zealand. Retrieved 3/5/2024 from https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf

[113] United States Government Accountability Office. (2014). *Standards for internal control in the federal government*. Retrieved 11/15/24 from https://www.gao.gov/assets/gao-14-704g.pdf

We selected our audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We express our appreciation the Board's members and staff for their cooperation and assistance throughout the audit.

Agency response

Governor
Katie Hobbs

ARIZONA
BOARD OF CHIROPRACTIC EXAMINERS

Executive Director
Alissa M. Vander Veen

1740 West Adams Street, Suite 2430 • Phoenix, Arizona 85007 • Voice: (602) 864-5088 • GeneralInfo@ChiroBoard.az.gov
www.chiroboard.az.gov

December 17, 2024

Lindsey Perry, CPA, CFE,
Auditor General Arizona Auditor General's Office
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018-7271

Re: Arizona Board of Chiropractic Examiners- Special Audit

Dear Ms. Perry,

The Arizona Board of Chiropractic Examiners ("Board") has reviewed and responded to the Special Audit.

The Board and its staff commend the professionalism and thoroughness of the Auditor General's team and Sjoberg Evashenk Consulting, Inc. The Board has already begun addressing the findings and implementing the recommendations.

We look forward to presenting the positive changes made when meeting with the Joint Legislative Audit Committee of the Arizona Legislature.

Respectfully,

Alissa M. Vander Veen
Executive Director

Enclosure: Board's Response

Cc: Ms. Angela Powell, Board Chair

Chapter 1: Board regularly requested or subpoenaed information outside the scope of complaint allegations contrary to statute, potentially resulting in unwarranted disciplinary actions and lengthy complaint investigations

Recommendation 1: Cease its practice of subpoenaing and requesting information that is unrelated to complaint allegations when investigating complaints.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to working with the Arizona Attorney General to properly limit the scope of subpoenas during investigations, ensuring they remain focused on the specific issues related to the complaint in accordance with statutory guidelines.

Recommendation 2: Cease the practice of using investigations as a means to monitor compliance with continuing education requirements and to evaluate the quality of a licensee's record-keeping and develop administrative procedures for reviewing these matters outside of the complaint investigation process.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees to stop using investigations for continuing education compliance and record-keeping. With the Thentia database launched in July 2023, licensees now submit certificates during renewal, allowing compliance to be reviewed then, not during investigations. As of January 2024, the Board stopped requesting continuing education information in investigations and is committed to developing administrative processes for record-keeping compliance outside the investigation process.

Recommendation 3: Develop and implement policies and/or procedures that include guidance for Board staff to tailor information requests and subpoenas that are directly related to the complaint filed and within the scope of the investigation.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will collaborate with the Arizona Attorney General to develop policies and procedures that align with statutory requirements under A.R.S. § 32-929. These policies will provide clear guidance for Board staff to tailor information requests and subpoenas to ensure they are directly related to the complaint file, in compliance with the statute, and will limit the scope of subpoenas during the investigatory process.

Recommendation 4: Develop and implement a documented process for the Board's Executive Director and the Board's legal counsel to review subpoenas to help ensure that the information requested or required to be provided is directly related to the complaint filed and within the scope of the investigation.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement a policy and process to have a more thorough review of its investigative subpoenas by the Executive Director including review by the Assistant Attorney General when necessary. Thus, ensuring the information requested is related to the complaint and scope of the investigation.

Recommendation 5: Include information in its subpoenas informing licensees regarding their ability to petition the Board or the Courts to revoke, limit or modify the subpoena, consistent with the practice of the Superior Courts of Arizona.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees with this finding and has already updated the language in its subpoenas and letter templates. Additionally, the Board will submit the revised templates to the Arizona Attorney General for review to ensure they are compliant.

Chapter 2: Board did not consistently apply statutes and rules regarding licensees' continuing education and recordkeeping, but did consistently initiate investigations for complaints related to improper division of fees for patient referrals

Recommendation 6: The Board should conduct a formal review of its use of psychosexual evaluations to assess and document their relevance and appropriateness in evaluating a chiropractor's professional competence. If determined appropriate, it should develop and implement policies, procedures, and/or guidance for when to order a licensee to complete psychosexual evaluation, including outlining how the Board will use the evaluation results.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will collaborate with the Arizona Attorney General, the Arizona Department of Health Services, the National Association of Boards of Psychology, the American Psychological Association, Arizona Healthcare Licensing Boards, and other relevant agencies to develop a comprehensive policy, procedure, and formal guidelines for incorporating psychosexual evaluations into the investigation process. These resources will help ensure that best practices, ethical standards, and legal requirements are followed throughout the evaluation process.

Chapter 3: Board did not refer allegations of criminal wrongdoing to appropriate criminal justice agencies as required by statute for applicable complaints we reviewed, with 1 exception, increasing public safety risks and potentially delaying or hindering criminal investigations

Recommendation 7: Revise and implement its policy to require it to report all allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency within 48 hours.

Board response: The finding is agreed to and a different method of dealing with the finding will be implemented.

Response explanation: The Board will work to revise and implement its policy to report all allegations of criminal wrongdoing to the appropriate criminal justice agency within 48 hours. However, the Board emphasizes that there is no statutory requirement mandating such a timeline. While the Board is committed to timely reporting, it believes that requiring a fixed 48-hour window for all reports could undermine its discretion in evaluating each case thoroughly. The broad language of the statute gives the Board the discretion to assess each case individually and determine when an "allegation of evidence" is sufficiently substantiated before making a report. This flexibility allows the Board to avoid reporting frivolous complaints or prematurely involving authorities, which could waste resources or harm innocent professionals.

The Board must retain the flexibility to ensure that allegations are properly substantiated and that resources are used effectively, without prematurely involving authorities in cases that may not warrant it. The Board will continue to consult with the Attorney General in relevant cases and will update its policy to ensure timely, appropriate, and well-informed decisions on criminal referrals, consistent with best practices followed by other health care boards.

Recommendation 8: Revise and/or develop and implement polices or procedures that include requirements and guidance for Board staff to coordinate with criminal justice agencies when conducting complaint investigations that include allegations of criminal wrongdoing. At a minimum, the requirements and guidance should outline how Board staff should work with criminal justice agencies to share information and/or coordinate investigations with criminal justice agency personnel and when and how its staff should review the results of these agencies' investigations.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will work with the Arizona Attorney General to develop policies for coordinating with criminal justice agencies during investigations, ensuring compliance with A.R.S. 32-929(C). The Board will also engage stakeholders, including the local law enforcement, the Department of Insurance and Financial Institutions, other healthcare boards, and victim advocacy groups, to align practices with law enforcement standards and ensure fairness. This collaboration will align practices with law enforcement standards and ensure fairness and best practices in handling criminal allegations.

Recommendation 9: Provide training for Board members and staff on its policies and procedures related to reporting allegations of criminal wrongdoing to criminal justice agencies.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will train members and staff on policies for reporting criminal wrongdoing under A.R.S. 32-929(C). This training will be enhanced through collaboration with the Arizona Attorney General, law enforcement, other healthcare boards, and relevant stakeholders to ensure consistency, transparency, and best practices.

Chapter 4: Board has made progress in resolving complaints dating back to fiscal year 2018 but continued to not resolve complaints within 180 days, which may affect patient safety and cause undue burden for licensees under investigation for lengthy periods of time

Recommendation 10: Resolve complaints within 180 days.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board strives to resolve complaints within 180 days but faces challenges due to limited resources, staff, and external support. While a backlog of complaints exists, considerable progress has been made in addressing it. To improve efficiency, the Board has hired two full-time investigators and collaborated with the Arizona Legislature to implement a rolling monthly license renewal system, which has reduced strain on resources and allowed for more focus on investigations. Despite these efforts, the increasing complexity of complaints has contributed to longer resolution times. Note that there is no statutory requirement mandating the resolution of complaints within 180 days. Current statutory timeframes, such as those outlined in A.R.S. § 32-929, focus on specific actions like issuing notices or determining whether

probable cause exists, but do not require completion of the entire investigation within a fixed period. In response to these challenges, the Board is focused on continuous process improvements, including streamlining case management, enhancing coordination between departments, and implementing better tracking systems to monitor investigation progress. The Board will continue to utilize the Arizona Management System to drive improvements in this process. The Board remains committed to improving its processes and will continue to explore additional measures to enhance efficiency while ensuring thorough, fair, and timely investigations.

Recommendation 11: Develop and implement time frames for the various steps in its complaint investigation and resolution process based on severity-ranking, including notice of complaint, initial action, and final resolution.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to developing and implementing timeframes for key steps in the investigation process. These timeframes will be tailored to the severity of the complaint, ensuring that more serious cases receive expedited attention while allowing sufficient time for thorough investigations in more complex cases. The Board will look to best practices and standards followed by other Arizona healthcare licensing boards, other state chiropractic licensing boards, and recommendations from Federal Chiropractic Licensing Boards (FCLB) which have developed severity-based timelines for their investigation processes.

Recommendation 12: Ensure high priority complaints are investigated and prioritized for Board review before low priority complaints by investigating and prioritizing Board review for high-priority complaints according to the developed time frame.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to prioritizing high-priority complaints for investigation, with timeframes tailored to the severity of each case. Serious complaints will be expedited, while complex cases will receive adequate time for thorough investigation. The Board will use data and reporting to ensure efficient resource allocation and timely completion. Additionally, the Board will incorporate best practices from other Arizona healthcare licensing boards, chiropractic boards, and the Federal Chiropractic Licensing Boards (FCLB) to implement effective, severity-based timelines for complaint prioritization.

Recommendation 13: Avoid delaying complaint adjudication when the parties of the complaint may be subject to civil litigation unless necessary, and ensure timely completion of all complaints based on their severity level regardless of whether related complaints may be adjudicated by other agencies or courts unless otherwise ordered to do so by an appropriate authority.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will ensure timely complaint resolution based on severity, avoiding delays unless necessary, or directed by an appropriate authority.

Chapter 5: Immediately discontinue efforts to persuade licensees to support/oppose legislation, including using public resources to advocate for its position.

Recommendation 14: Immediately discontinue efforts to persuade licensees to support/oppose legislation, including using public resources to advocate for its position.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees and has already implemented the immediate discontinuation of efforts to persuade licensees to support or oppose legislation, including the use of public resources for advocacy.

Recommendation 15: Develop and implement Board policies and procedures related to lobbying and advocacy activities, including:

Recommendation 15a: Specifying that any efforts to influence legislation should be conducted through the Board's designated public lobbyist and within the framework provided by statute.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees with the recommendation and will immediately cease efforts to persuade licensees on legislation, refraining from using public resources for advocacy. It is committed to complying with all relevant laws, including A.R.S. § 41-1232.01, and will focus on providing neutral, accurate information to licensees and the public. The Board will align its policies and procedures with those of other Arizona healthcare boards to ensure compliance with ethical standards and state law.

Recommendation 15b: Developing a protocol for communicating with licensees about legislative issues to ensure the Board is providing complete and accurate information.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will create a protocol for communicating with licensees on legislative issues, ensuring accurate, neutral information. A Legislative Committee made up of legal counsel and members of the Board will oversee all communications, ensuring compliance with legal standards and collaborating with other boards to share best practices. This will ensure transparent, objective updates on legislation for licensees.

Chapter 6: Board did not always comply with open meeting law, including the call to the public, and altered 7 meeting recordings, limiting the public's access to information on Board decisions and the public's ability to address Board during public meetings

Recommendation 16: Comply with all statutory open meeting law requirements including but not limited to ensuring meeting notices, agendas, executive sessions, minutes, and calls to the public are handled and documented as required by statute.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to complying with open meeting laws, ensuring fairness and transparency. In response, it has reviewed and updated its agendas, meeting notes, and scripts to align with statutory requirements and best practices and implemented policies for drafting agendas and meeting preparation.

Recommendation 17: Consult with the Open Meeting Law Enforcement Team within the Attorney General's Office to determine what type of manner restrictions it can place on speakers during the call to the public, including whether it can prohibit speakers from discussing information the Board is required to keep confidential.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board looks forward to collaborating with the Arizona Attorney General's Open Meeting Law Enforcement Team to enhance its processes and procedures related to the call to the public, specifically regarding the manner restrictions it can place on members of the public, and how it handles public comments that may contain confidential information.

Recommendation 18: Develop and implement a policy and revise its call to the public script to specify the time, place, and manner restrictions for calls to the public that are consistent with guidance it receives from the Open Meeting Law Enforcement Team within the Attorney General's Office.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will collaborate with the Arizona Attorney General's Open Meeting Law Enforcement Team to refine its policies and procedures, ensuring they align with the guidance provided regarding the call to the public, as well as its related policies, procedures, and scripts.

Recommendation 19: Post unaltered meeting recordings as required by statute and cease the practice of deleting information from recordings.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board redacted sensitive information, such as patient names, from meeting audio to protect privacy, not to alter the record or compromise transparency. The Board will consult with other state agencies and healthcare boards to learn how they balance transparency and confidentiality. It is open to further discussions with stakeholders, the Arizona Attorney General's Office, and the legislature to find an effective balance in a digital age.

Recommendation 20: Provide regular training, during onboarding and annually, for all Board members and staff on Arizona's open meeting law, including specific requirements for meeting notices, agendas, executive sessions, minutes, and the call to the public.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to ensuring all members and staff are trained on Arizona's open meeting law. It will continue developing a training program, including onboarding for new members and annual refresher courses. This training will cover key aspects like meeting notices, agendas, executive sessions, minutes, and the call to the public. The Board will formalize this process through a Board Member Training Policy and a clear schedule, ensuring compliance and transparency throughout members' tenure.

Chapter 7: Board's Executive Directors—past and present—have not established processes for ensuring consistency in some Board practices and communicating changes in Board practices to licensees and the public, resulting in several issues we identified during this audit and potential confusion among licensees and the public

Recommendation 21: For all complaints received moving forward, use the Disciplinary and Sanctioning Guidelines adopted in July 2024 when adjudicating complaints to determine appropriate disciplinary and non-disciplinary actions to address violations.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has adopted Disciplinary Sanctioning Guidelines to ensure consistent, fair, and transparent enforcement. These Guidelines will guide all complaint adjudications, helping determine appropriate actions for violations. They are publicly available on the Board's website and are referenced during meetings and in Investigative Reports to maintain consistency and compliance.

Recommendation 22: Develop and provide training to Board members regarding key Board functions, including but not limited to complaint handling, the State's Open Meetings Law, and authorized lobbying/advocacy activities.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop and provide training on complaint handling to ensure that members understand the appropriate procedures for managing and resolving complaints effectively. Training on authorized lobbying and advocacy activities will also be provided to ensure that Board members are aware of the legal parameters around such activities. The Board will formalize this training plan through a Board Member Training Policy and a training schedule. New members will receive this training during onboarding, and all members will participate in annual refresher courses to ensure ongoing compliance with legal and procedural requirements. This comprehensive training approach will ensure that Board members are well-equipped to carry out their duties in a transparent and legal manner.

Recommendation 23: Continue to develop and implement its IT system, including developing and implementing management reports for overseeing its licensing and complaint handling processes.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to continuing the development of its IT system to enhance licensing and complaint-handling processes. To support this, the Board has hired an external IT consultant to refine its systems. This includes creating management reports to improve oversight of case progress, performance, and resource allocation. The Board will collaborate with the consultant to ensure these systems are efficient, and aligned with best practices, improving operations and transparency.

Recommendation 24: Conduct research to identify standard processes or recommended practices for developing substantive policy statements, including but not limited to contacting and requesting information from other State agencies and health regulatory boards about their substantive policy statement processes.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board recognizes the importance of developing effective substantive policy statements and agrees with the recommendation to research best practices. To do this, the Board will reach out to state agencies, including the Arizona Department of Health Services and the Arizona Attorney General's Office, as well as other healthcare boards and organizations like the Federation of Associations of Regulatory Boards (FARB), and the Federation of State Medical Boards (FSMB) to gather information on their processes. Based on the findings, the Board will implement a process that aligns with best practices, ensuring all policy statements are well-researched, transparent, and legally compliant.

Recommendation 25: Develop and implement policies and procedures for creating and using substantive policy statements and other methods for communicating important information about its activities and practices to external parties, including but not limited to clarifying and/or communicating changes to its practices.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to developing policies and procedures for creating and using substantive policy statements, as well as communicating important information to external parties. Building on research from other agencies and organizations like NARSA, FARB, FCLB and FSMB, the Board will establish clear processes for drafting, reviewing, and issuing policy statements that clarify or communicate changes to practices. These procedures will ensure transparency, consistency, and compliance with legal requirements while keeping stakeholders informed.

Recommendation 26: Discontinue using emails to licensees to communicate information that instead should be communicated through substantive policy statements.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will discontinue using email as the sole method for communicating essential information to licensees. Instead, it will use substantive policy statements for critical updates and changes. Email will remain a supplementary communication channel, alongside policy statements, public notices, and website updates, ensuring comprehensive and transparent communication.

Recommendation 27: Review prior communications issued through less formal methods and determine whether those communications should have been issued as a substantive policy statement and, if so, issue a substantive policy statement on the matter.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: In response to this recommendation, the Board will review prior communications sent through less formal methods to assess whether they should have been issued as substantive policy statements. If deemed necessary, the Board will take the appropriate steps to issue formal policy statements on those matters, ensuring clarity, consistency, and alignment with best practices moving forward.

Chapter 8: Board did not comply with some State conflict-of-interest requirements and recommended practices, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

Recommendation 28: Revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:

Recommendation 28a: Requiring Board members and employees to complete a conflict-of-interest disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has ensured all members and staff complete updated conflict-of-interest disclosure forms. As of August 2024, all have submitted their Annual Conflict of Interest statements. To strengthen this process, the Board will develop a formal policy to better document disclosures, ensure timely updates, and address potential conflicts effectively.

Recommendation 28b: Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will establish a dedicated file to store all substantial interest disclosures, including disclosure forms and meeting minutes. This file will be made available for public inspection.

Recommendation 28c: Developing and implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement a process and procedure to monitor and record the completion of these forms by Board members and staff, including documenting the date each form is completed.

Recommendation 28d: Establishing a process to review and remediate disclosed conflicts.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will work with the Arizona Attorney General to create a policy for reviewing and remediating disclosed conflicts of interest, consulting with other healthcare boards for best practices. This policy will ensure transparency, fairness, and accountability, and will be clearly documented and followed by all members and staff.

Recommendation 28e: Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will include conflict-of-interest training in its Board Training Policy, providing periodic sessions for all members and staff. The training will cover conflict-of-interest requirements, processes, and how they apply to individual roles and responsibilities.