

SUNSET REVIEW

OF

THE BOARD OF CHIROPRACTIC EXAMINERS

SUBMITTED BY
THE COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY & RESEARCH
JUNE 1994

June 30, 1994

The Honorable Vickie Agler, Chair
Joint Sunrise/Sunset Review Committee
State Capitol Building
Denver, CO 80203

Dear Representative Agler:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Chiropractic Board. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is a need for the regulation provided under the Chiropractic Law pursuant to C.R.S. 12-33-101 et. seq. as amended. The report also discusses the effectiveness of the Chiropractic Board and the staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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EXECUTIVE SUMMARY

The Department of Regulatory Agencies has concluded its sunset review of the Board of Chiropractic Examiners and recommends continuation of the Board and the regulation and licensing of chiropractors. Chiropractors use invasive procedures and complicated diagnostic and therapeutic techniques that may expose patients to significant risk if performed incompetently. Patients are not likely to be able to differentiate between competent and less than competent practitioners so their ability to make reasonable choices in chiropractic care is reduced in the unregulated marketplace.

We found that the board and staff pursue their mandate of protecting the public with diligence and with due respect for all parties.

One important recommendation in this sunset report is to increase the size of the board to seven members. The current five member board has remained unchanged for a number of years even though the number of licensees increases consistently. It is reasonable to conclude that a larger board, through delegation of certain functions, and through additional points of view, would increase the quality of consumer protection. To that same end, this report recommends that the composition of this board be four professional members and three consumer members.

This sunset report recommends a number of technical changes to the statute, in particular changes to the disciplinary scope are made to increase the effectiveness of the board and to bring its powers up to date. Most noteworthy among these recommendations is the recommendation to make a strict statutory prohibition against sexual contact between chiropractors and patients' grounds for disciplinary action. Although the Chiropractic Board has been diligent in its efforts to address sexual misconduct, the board could benefit from specific provisions prohibiting sexual contact between chiropractors and patients.

BACKGROUND

SUNSET PROCESS

The licensing functions of the Board of Chiropractic Examiners performed in accordance with article 33 of title 12, C.R.S shall terminate on July 1, 1995 unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies to conduct an analysis and evaluation of the licensing of chiropractors in the state of Colorado pursuant to 24-34-104.

The purpose of this review is to determine whether the Colorado State Board of Chiropractic Examiners should be continued for the protection of the public and to evaluate the performance of the board. The specific evaluation criteria established by statute are appended (see Appendix A). During this review, the Board of Chiropractic Examiners must demonstrate that there is still a need for the licensure of chiropractors and the regulation is the least restrictive regulation consistent with the public interest. The Department's findings and recommendations are submitted to the Sunrise and Sunset Review Committee of the General Assembly.

The Sunset Review process included an analysis of the statute, interviews with State licensing authorities, staff, and industry representatives. The Department makes every effort to elicit information and comment from all interested parties.

HISTORY OF CHIROPRACTIC REGULATION IN COLORADO

Chiropractors (Doctors of Chiropractic or D.C.s) were first licensed in 1915 by the Colorado State Board of Medical Examiners. The practice of chiropractic was defined as "the treatment of disease or morbid conditions of human beings by palpation, nerve tracing and adjustment of vertebrae by hand." Practicing surgery and obstetrics, prescribing drugs and administering anesthetics were prohibited. A licensure applicant who was not practicing chiropractic before April 12, 1915 had to be a graduate of a chiropractic school (attending at least two years and nine months and 1,000 hours of classes) and be of good moral character. (House Bill 178, 1915)

In 1933, a new chiropractic statute (House Bill 189, 1933) was enacted which created a five-member chiropractic board to regulate the profession. Qualifications for licensure were revised to require that an applicant be, at least, 21 years of age, be a high school graduate, have, at least, 2,800 hours of instruction from the chiropractic school from which he graduated and pass the board's examination or have a license from another state with equal qualifications.

The scope and definition of chiropractic were amended and chiropractic was defined as the science of locating and removing interference with nerve transmission. Prohibited practices were expanded to include compounding and administering drugs. Also, chiropractors were required to obtain a certificate from the board to practice electrotherapeutics. Two hundred hours of course work in electrotherapy qualified a licensee for such certification.

A continuing education requirement was first added in 1943. Every chiropractor was required to attend, at least, three days annually of scientific clinics, forums or other chiropractic educational study in order to renew a license. (House Bill 199, 1943) The legislature also increased the number of hours of chiropractic training required for licensure to a minimum of 3,600 (House Bill 200, 1943).

The most significant statutory change was enacted in 1959 when Senate Bill 119 repealed and reenacted the chiropractic statute. The scope of chiropractic practice was greatly broadened, but the prohibited practices were not changed.

The qualifications for licensure were amended in 1959. The chiropractic school from which an applicant graduated had to be a four-year program with a minimum of 4,000 hours which was four times the number of hours required in 1915. The statute also listed the subject areas and percentage of time to be spent in each of the areas required for a school's program to be acceptable. Applicants had to pass the board's examination with a score of 75 percent or better and the continuing education requirement was changed to 15 hours per year.

The qualifications for the electrotherapy certificate were also revised by requiring 120 hours of courses and passing a board examination rather than 200 hours of course work.

Senate Bill 119 also stated that one of the five chiropractic board members may be from the public-at-large rather than be a licensed chiropractor.

The qualifications for licensure were amended again in 1967. Applicants had to pass the state's basic sciences examination and parts I and II of the National Board of Chiropractic Examiners' examination as well as the board's examination. (House Bill 1456, 1967)

Several other amendments were passed in 1979 after the 1978 sunset review of the board. The definition of chiropractic adjustment that had been enacted in 1959 was amended to establish that only a licensed chiropractor could perform a chiropractic adjustment. The statute no longer set the percentage of time chiropractic school curricula must allocate to the subjects listed in the statute. Applicants for licensure by examination were required to pass each section of the examination with a score of 75 percent or better rather than achieve an average score of, at least, 75 percent. The electrotherapy examination was discontinued and the board's discretion to refuse to license qualified, out-of-state candidates was removed. (Senate Bill 182, 1979)

THE CHIROPRACTIC INDUSTRY

Some consider the practice of chiropractic to be spinal manipulation that is often given after all other options have failed. However, the practice of chiropractic may involve a variety of X-ray techniques, performance of breast examinations, ultrasound, or administration of a variety of other tests.

As the history of chiropractic regulation in Colorado points out, the profession of chiropractic has been one that has evolved constantly. Today's literature shows that the field continues to grow and evolve.

Chiropractic schools are attempting to create curricula that recognize two levels of chiropractic practice. Although this is still in the planning stages, it is probably fair to assume that chiropractic training in the future will consist of two levels. One will be a technical level in which the chiropractor practices only spinal manipulation. Today, some chiropractors limit their practice to that level for what may be considered philosophical reasons since most of them have received training beyond chiropractic techniques of adjustment.

The second level of chiropractic training that may be expected might be called advanced chiropractic in which the practitioner is trained to employ more extensive diagnosis and treatment. Literature exists now that argues that chiropractors are primary health care providers and presently function in that capacity in some areas. However, the notion that a chiropractor, advanced or not, can serve in this capacity is contentious and may become the focus of much debate in the future.

SUMMARY OF STATUTE

The chiropractic practice act is a standard Colorado regulatory statute. The State Board of Chiropractic Examiners is a five member board appointed by the Governor. The board is made up of four chiropractors and one member of the general public.

The board's duty to enforce the practice act is supported by a fairly standard range of disciplinary powers. The Board is empowered to examine candidates and issue licenses, deny, suspend or revoke licenses, approve or not approve chiropractic schools and colleges, conduct hearings and issue subpoenas, and cause the prosecution of persons violating the article.

In order to obtain a license to practice chiropractic in Colorado, an applicant must provide proof of graduation from a chiropractic school or college and completion of a course of at least four thousand resident classroom hours in a period of four years. The statute establishes minimum areas of course work which must be included in the training: anatomy which includes embryology and histology; physiology and psychology; biochemistry, inorganic and organic chemistry; pathology, bacteriology, and toxicology; public health, hygiene, sanitation, first aid; diagnosis (including physical, clinical, laboratory, and other diagnostic procedures), pediatrics, dermatology, syphilology, psychiatry, x-ray; obstetrics and gynecology; and, principles and practice of chiropractic adjustive techniques. In addition to meeting the educational requirements, an applicant must pass a state practical examination and a written jurisprudence exam.

Chiropractors are required by the practice act to obtain 15 hours of continuing education each year in order to renew the chiropractic license. Since the license is renewed every two years, many chiropractors simply present proof of completion of at least 30 hours of continuing education since the last renewal.

The chiropractic scope of practice is set forth in statute by definition of the terms "chiropractic" and "chiropractic adjustment." Acupuncture is also defined and applies to chiropractors who also practice acupuncture. "Acupuncture," according to the Chiropractic Act, means the puncture of the skin with fine needles for diagnostic and therapeutic purposes.

"Chiropractic," according to the statute, means that branch of the healing arts which is based on the premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the adjustment or manipulation, by hand, of the articulations and adjacent tissue of the human body, particularly the spinal column, and the usage as indicated of procedures which facilitate and make the adjustment or manipulation more effective, and the use of sanitary, hygienic, nutritional, and physical remedial measures necessary to such practice. "Chiropractic" includes the use of venipuncture for diagnostic purposes. "Chiropractic" does not include colonic irrigation therapy. "Chiropractic" includes treatment by acupuncture when performed by an appropriately trained chiropractor as determined by the Colorado State Board of Chiropractic Examiners. Nothing in this section shall apply to persons using acupuncture not licensed by the board.

"Chiropractic adjustment" means the application, by hand, by a trained chiropractor who has fulfilled the educational and licensing requirements of this article, of adjustive force to correct subluxations, fixations, structural distortions, abnormal tensions, and disrelated structures, or to remove interference with the transmission of nerve force. The application of the dynamic adjustive thrust is designed and intended to produce and usually elicits audible and perceptible release of tensions and movements of tissues or anatomical parts for the purpose of removing or correcting interference to nerve transmission and expression.

SUNSET ANALYSIS

The mission of the Colorado State Board of Chiropractic Examiners is to protect the public against unauthorized, unqualified, and improper practice of chiropractic. This is accomplished primarily by licensing (including administration of the state examination), reviewing complaints, and taking disciplinary action.

One of the challenges faced by the board recently was a backlog of complaints requiring investigation and possibly disciplinary action. The Chiropractic Board set an objective to reduce its backlog of cases and has been successful in reducing the number of backlogged cases about 50%, or from 11 to 5. DORA staff assigned to support the board review each new complaint. If the complaint is determined to be a priority, if it involves sexual misconduct for instance, the complaint is forwarded to DORA's Compliant and Investigation unit immediately for investigation. Otherwise, the board reviews the complaint at its next meeting. Many of these complaints may also require investigation but the allegation is of a less serious or less urgent nature.

The following data provide a snapshot of recent board activity in the areas of examinations and licensing.

CHIROPRACTIC BOARD ADMINISTRATIVE DATA			
<u>Examinations</u>		<u>New Licenses</u>	
FY 91-91	78	FY 91-92	163
FY 92-93	96	FY 92-93	195
<u>License Renewal</u>		<u>Active</u>	
1992	1647	FY 91-92	1647
		FY 92-93	1687
<u>FTE</u>		<u>FY 93-94 Budget</u>	
1.8		\$254,601	

Complaints and disciplinary actions. Disciplinary action against licensees by the Chiropractic Board since FY 88-89 are shown below. It appears that the numbers of complaints filed against licensees and the numbers of disciplinary actions taken by the board are fairly consistent with other occupational regulatory boards in Colorado. Many of the actions labeled "other" are stipulated agreements concerning allegations of sexual misconduct or other violations of the practice act in which the licensee agrees to supervised practice or other conditions limiting his or her scope of practice.

<i>Fiscal Year</i>	<i>Number of Licensees</i>	<i>Complaints</i>	<i>Board Actions</i>
88-89	1200	120	68 54 Dismissed - 0 Probation - 5 LOA - 1 Suspension - 0 Revocation - 8 Other
89-90	1300	102	102 78 Dismissed - 0 Probation - 20 LOA - 1 Suspension - 1 Revocation - 2 Other
90-91	1450	99	121 94 Dismissed - 1 Probation - 13 LOA - 1 Suspension - 0 Revocation - 12 Other
91-92	1450	93	106 63 Dismissed - 10 Probation - 13 LOA - 6 Suspension - 2 Revocation - 12 Other
92-93	1600	91	99 66 Dismissed - 7 Probation - 9 LOA - 3 Suspension - 0 Revocation - 14 Other

Two issues emerge among the challenges faced by the board in carrying out its statutory mandate. One, allegations of sexual misconduct by licensees against patients has increased. The board has been creative and assertive in dealing with this problem, in the absence of clear statutory language establishing sexual misconduct as primary grounds for discipline.

Second, several years ago the board was confronted with allegations that overutilization (providing treatment when none is necessary or prolonging required treatment) was a problem in the chiropractic industry and that the board was not responsive to complaints in that area.

For the most part, these complaints most often originated in the insurance industry. Consumers, or chiropractic patients were involved because they sometimes found that insurance companies would not pay chiropractic claims if the insurer believed that overutilization had occurred.

According to a study conducted by the Department of Regulatory Agencies, many of the chiropractic problems with the insurance industry began in 1985 when the Colorado Personal Injury Protection law was changed to increase the threshold from \$500 to \$2,500. Under those provisions, an accident victim for whom the act provided first part benefits could not recover for several damages unless his medical and rehabilitation services had a reasonable value of more than \$2,500. It was the contention of some members of the insurance industry that chiropractors provided services that were not medically necessary in order to enable the patient to meet the \$2,500 threshold.

The Governor, in his 1992 State of the State address, directed the board to conduct a study of the issue of overutilization in the chiropractic field. The Executive Director of the Department of Regulatory Agencies conducted a study of the problem and made several determinations.

1. The statutory provisions concerning overutilization were not used to their full potential.
2. No written, objective criteria existed to measure overutilization.
3. The scope of the overutilization problem was subject to some interpretation inasmuch as it involves a medical judgment. During roughly the same time period, chiropractors filed over 100 complaints with the Division of Insurance on behalf of patients whose claims were not paid.
4. There was a lack of communication between the two factions (chiropractors and the insurance industry).
5. Insurance companies were filing civil complaints rather than complaining to the Board of Chiropractic Examiners.
6. Some overutilization complaints were actually telemarketing complaints.

It is important to note that this study of overutilization was conducted independently of the Chiropractic Board under the direction of the Executive Director of the Department of Regulatory Agencies. The DORA study attempted to secure documentation of overutilization from the members of the insurance industry who made allegations against the chiropractic industry. No such documentation was provided. Further, representatives of the insurance industry were skeptical of even filing complaints with the Board of Chiropractic Examiners because of the representative's belief that the Board would not act on those complaints.

A contributing factor to this perception of the insurance industry may have been that the overutilization provision of the Chiropractic Act was relatively new. When interviewed for the DORA study, some insurance representatives stated that they were not aware that the Chiropractic Act contained provisions prohibiting overutilization and establishing penalties for such acts.

Today, it appears that the Chiropractic Board is diligent in addressing complaints of overutilization. A random sample of complaint logs, depicted in the chart on the following page, shows that from May 1992 to May 1994, the Board reviewed seven overutilization complaints. The final or current dispositions of these cases are:

- * 1 letter of admonition
- * 1 currently under investigation
- * 2 currently in the Attorney General's Office
- * 3 dismissed

It appears that these complaints represent a relatively small number of the total complaints and that the Board takes action on about one-half of the overutilization complaints that it reviews; a fairly high percentage. Issues and complaints surrounding chiropractic overutilization have existed for quite awhile and will probably continue. It is reasonable to conclude that the Board is dealing with overutilization complaints effectively and in the public interest.

RECOMMENDATIONS

RECOMMENDATION 1: CONTINUE THE REGULATION OF CHIROPRACTORS THROUGH THE STATE BOARD OF CHIROPRACTIC EXAMINERS.

The primary question answered by a sunset review is whether or not regulation should continue. In the instant case, the need for regulation of chiropractors has been documented in several previous sunset reviews and affirmed by the General Assembly through continuation of the regulatory program. For the sake of brevity, detailed arguments for the continuation of regulation will not be repeated in this analysis except to point out that chiropractors perform invasive procedures and patients are not likely to be able to distinguish between qualified and unqualified practitioners. In addition, all other states regulate chiropractors.

RECOMMENDATION 2: - PROVIDE THE BOARD MORE FLEXIBILITY IN APPROVING ELECTROTHERAPY CERTIFICATION BY ADDING "OR GIVEN BY AN APPROVED PROVIDER" TO SECTION 12-33-112, C.R.S.

The Chiropractic Act defines electrotherapy as the application of any radiant or current energies of high or low frequency, alternating or direct.

Some licensed chiropractors choose to obtain training in electrotherapy after completion of formal chiropractic education. Since there are no chiropractic colleges in Colorado, the statutory requirement that such training be obtained at a board approved school can be a burden on practitioners. Post-graduate training courses in this subject are given but may not be conducted at a chiropractic college.

RENEWAL OF CHIROPRACTIC LICENSES NEEDS STATUTORY UPDATE

RECOMMENDATION 3: - AMEND SECTION 114 OF THE CHIROPRACTIC PRACTICE ACT CONCERNING RENEWAL OF LICENSE

Section 114(1) of the practice act allows the Board to set validity dates for licenses as provided by section 24-34-102(7). However, the same section permits the payment of fees on or before October 1 of each year. In practice, the Board has set expiration dates for chiropractic licenses on July 31. Therefore, some confusion is created because of the lag between license renewal and the requirement to pay the fee.

One method of correcting this confusion would be to amend C.R.S. 12-33-114(1) by striking the existing language and replacing it with the following or similar language:

"Every person licensed to practice chiropractic within this state shall pay a renewal fee to be determined pursuant to section 24-34-105, C.R.S. and shall submit a renewal application upon a form prescribed by the board and shall receive therefore a renewal certificate, if qualified, authorizing him to continue his practice in this state. No fee received from licensees seeking renewal shall be refunded. The board shall establish renewal fees and schedules subject to the provisions of section 24-34-102(8), C.R.S. If any licensee fails to renew such license prior to its expiration the license shall automatically expire."

CONTINUING EDUCATION PROCESS IS NOT EFFECTIVE

RECOMMENDATION 4A: - REPEAL THE CHIROPRACTIC CONTINUING EDUCATION REQUIREMENT

There are several problems with the chiropractic continuous education requirements beyond the general ineffectiveness of state mandated continuing education. The shortcomings of state mandated continuing education have been thoroughly discussed by DORA in the past as well as addressed by numerous national organizations.

One of the most significant flaws in state mandated continuing education is that there is no requirement that a participant conduct any type of needs assessment before commencing training. In other words, participants may take course work not related to his area of practice. Instead, he may attend a particular course because it sounds interesting or because it is near his home, or in Hawaii, or because he needs to complete a certain number of hours before renewal deadline in which case he may take whatever course is convenient.

This sunset review strongly supports the position that pursuit of education by professionals is worthwhile and benefits consumers when the individual seeks that training for self improvement. However, requiring such pursuits by law contributes to a myth of competency that ultimately may deceive the public.

If the educational and stringent examination requirements of Colorado are not sufficient to establish the competency of a chiropractor, it is doubtful that thirty hours of continuing education every two years can significantly alter the practitioners ability to safely practice.

However, the Legislature has often differed with this view. In light of that fact, OPR has an alternative recommendation to the repeal of CE for the Committee's consideration.

ALTERNATIVE RECOMMENDATION 4B: - REVISE THE CONTINUING EDUCATION PROCESS

If the General Assembly decides to continue the continuing education requirement for chiropractors, this sunset review recommends that the legislature consider a different model that would decrease the expenditure of resources in administration of this requirement.

A review of a randomly selected Chiropractic Board agenda reveals two pages of applications for continuing education approval by twenty-six providers. Most of these providers apply for approval of numerous courses. For instance, one provider applied for approval of sixteen courses totaling 192 credit hours of course work.

This example is no anomaly, applications for renewal are increasing. The chiropractic program administrator reports that in 1984 the Board reviewed 70 applications for continuing education approval. In 1993 the Board reviewed 186 applications. The Board secretary spends approximately 15% of her time dealing with continuing education issues. All indications are that these increases will continue and grow.

This type of administrative burden exemplifies one of the shortcomings of state mandated continuing education. In the instant case, scarce resources are funneled into review and approval of course work, some of which is to be presented all across the United States. It is not unusual to find applications for approval submitted by entities in Los Angeles, Florida, or New York. The costs for approval of these programs are not met by the licensing fees of chiropractors licensed to practice in Colorado although no Colorado chiropractors may, in fact, attend the program.

Under the scenario presented by this recommendation, the Chiropractic Board would not be required to approve continuing education programs. Instead, the licensee would be required to submit proof of completion of continuing education that met general guidelines established by the Chiropractic Board, perhaps requiring that the training be taken in subjects set forth in section 12-33-111, for example. The Board should be required to conduct random audits of continuing education submissions to determine compliance. If the Board finds that an applicant for renewal has not met continuing education requirements or has submitted false proof of compliance, then such actions should constitute grounds for denial of the licensee's renewal.

In order to implement this continuing education scheme, the General Assembly should amend the Chiropractic Act by repealing section 12-33-116, C.R.S. and replacing it with the following:

"Continuing education. (1) Each chiropractor licensed in Colorado shall provide proof satisfactory to the board with each renewal application, of attendance of thirty hours of continuing education in training related to the practice of chiropractic. The board may establish by rule and regulation requirements for such training.

(2) The board may conduct a random compliance audit of renewal applicants. If the board determines that the applicant has not met the continuing education requirements of this article or the rules and regulations of the board, the application for renewal will be subject to denial."

UPDATE CONTINUING EDUCATION RENEWAL REQUIREMENTS

RECOMMENDATION 6: - AMEND THE STATUTE TO PERMIT PRACTITIONERS TO ACQUIRE CONTINUING EDUCATION PER RENEWAL PERIOD.

If the General Assembly decides to retain mandatory continuing education, the reporting requirement needs to be updated. Section 12-33-114 (1) requires that licensees show a certificate of continuing education attendance of fifteen hours annually. Obviously, this is predicated upon annual license renewal. In fact, the Board renews licenses every two years. This discretion is permitted by the chiropractic practice act.

The statute should provide that 30 hours of continuing education is needed per renewal period.

UPDATE DISCIPLINARY SCOPE

Some board members expressed concern that the practice act sometimes is not broad enough to permit effective discipline of some offenders. Vague language such as unprofessional, or incompetent may contribute to this problem. This section of sunset report makes recommendations to improve several areas of the board's disciplinary powers.

RECOMMENDATION 7: - OBTAINING A LICENSE BY FRAUD

12-33-117(1)(a) speaks to using fraud or deceit in applying for a license or taking an examination. While the intent of the language seems straightforward, it could be difficult to enforce because it is so broad. This language can be clarified and simplified by using language found in other practice acts that has proven to be effective. One solution to this problem would be to amend the Chiropractic Act with the following language:

"Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking the examination provided for in this article."

RECOMMENDATION 8: - UPDATE GROUNDS FOR DISCIPLINE

Section 12-33-117(1)(b) establishes that unprofessional, incompetent, or negligent conduct constitutes grounds for discipline. The intent of this provision is clear but it could be subject to interpretation. Most regulatory boards in DORA have updated this language to a standard that is more clear and that can be applied to the wide variety of disciplinary cases faced by the board.

Amend Section 12-33-117(1)(b):

"Any act or omission constituting negligent chiropractic practice or an act that fails to meet generally accepted standards of chiropractic practice."

RECOMMENDATION 9: - UPDATE FELONY CONVICTION PROVISION

This section addresses the board's authority to discipline a licensee when he has committed a felony. The section does not speak to deferred sentence situations. Such a situation would involve a defendant that pleads guilty to a felony offense in return for which he successfully completes some amount of public service ordered by the court. Upon successful completion of the term, the defendant is released from the jurisdiction of the court and the entire criminal offense is forever wiped off his record.

The board should have the ability to discipline chiropractors who are accepting deferred sentences for felonies (as in sexual assault cases). The board could use the plea in the deferred sentence during the period of service as proof of a criminal act which merits consideration of discipline. This would end the incentive for a chiropractor to accept a deferred sentence in order to avoid action on his license, as well as hold the chiropractor accountable for his behavior.

Section 12-33-117(c) should be amended to read:

"Conviction of a felony or conviction of any crime that would constitute a violation of the Chiropractic Practice Act. For purposes of this subsection, a conviction shall include a plea of guilty, a plea of nolo contendere or a deferred sentence prior to final sentencing or dismissal with prejudice."

RECOMMENDATION 10: - REQUIRE LICENSEES TO REPORT ADVERSE ADMINISTRATIVE ACTIONS

A licensee should be required to report to the Board disciplinary actions taken by other states or jurisdictions. Failure to reports such actions should be grounds for discipline. Section 12-33-117 should be amended by adding the following ground for discipline:

"Failing to report to the board any surrender of a license to, or any adverse action taken against a license by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency or any court for acts of conduct that would constitute grounds for discipline under the provisions of this article."

RECOMMENDATION 11: - MAKE DISCIPLINARY ACTIONS IN OTHER STATES GROUNDS FOR ACTION IN COLORADO

The Chiropractic Act does not make administrative actions in other states grounds for discipline in Colorado. Such a provision is important because it enables the Board to take action against a chiropractor whose license may have been suspended or revoked elsewhere.

Section 12-33-177 should be amended by adding the following language:

"Any disciplinary action against a licensee to practice in another state or country, which action shall be deemed to be prima facie evidence of violation of this article if the grounds for the disciplinary action would constitute a violation of this article."

RECOMMENDATION 12: - SECTION 12-33-117(1)(e), C.R.S. OF THE CHIROPRACTIC ACT ESTABLISHES "HABITUAL INTEMPERANCE IS THE USE OF ALCOHOLIC LIQUORS."

This language is outdated and has traditionally been found to be hard to prove. Clearly, it does not take into account use of drugs by a licensee.

More effective and clear language exists in other practice acts. The Chiropractic Act should be amended by repealing 12-33-117(1)(e), C.R.S. and adding language similar to the following:

"is addicted to or dependent on alcohol or habit-forming drugs or is a habitual user of controlled substances, as defined in section 12-22-303(7) or other drugs having similar effects."

RECOMMENDATION 14: - MAKE GROUNDS FOR DISCIPLINE ONE INCLUSIVE LIST

As the practice act is written, section 117(1) & (2) divides violations into two subsections. Subsection (1) contains 12 actions that, if committed, may result in refusal, suspension, or revocation of a license. Subsection (2) lists an additional 17 acts and defines them as unprofessional conduct. This is a confusing construction and the board reports that the construction of the statute sometimes leads to legal interpretations that can make it difficult to discipline chiropractors.

The statute would be more clear if section 117(1) were amended to provide that the board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a license, or to issue a letter of admonition for violation of any of the grounds contained in subsection 117.

Section 117 (2), "For the purpose . . . to constitute unprofessional conduct" should be repealed and the rest of the subsections renumbered appropriately.

RECOMMENDATION 15: - UPDATE 12-33-117(2)(i) WHICH PROHIBITS LICENSEES FROM PAYING FOR REFERRALS

The intent of 12-33-117(2)(i) is sound and standard in regulatory statutes. It is intended to protect the patient's right to choose providers. However, the Board believes that the existing language is too broad and awkward.

One solution to this problem would be to amend this section with the following language that has proven successful in the regulation of physical therapists regarding grounds for discipline.

"Offered, given, or received commissions, rebates, or other forms of remuneration for the referral of clients. Notwithstanding this provision, a licensee may pay an independent advisory or marketing agent compensation for advertising or marketing services needed on his behalf by such agent, including clients identified through such service on a per client basis."

RECOMMENDATION 16: - SEXUAL MISCONDUCT SHOULD BE GROUNDS FOR DISCIPLINARY ACTION

Sexual misconduct by health care providers and others in positions of trust is a significant problem that state occupational regulation can combat effectively. The board's record in aggressively dealing with this issue is improving over the last 1-2 years. Notably lacking among the statutory tools provided to the board is language establishing that sexual misconduct is a violation of the practice act. An easy solution to this problem is the addition of appropriate language.

Some may argue that similar language in other practice acts is flawed because, under one interpretation, the licensee who treats a spouse or significant other, presuming a sexual relationship exists, is committing sexual misconduct. The Department of Regulatory Agencies believes that this interpretation is unduly narrow. Although similar language exists in most practice acts, no board has administered discipline under such a scenario. Nor, for that matter, have there been complaints filed by spouses on the grounds of sexual misconduct.

The Department recommends adding language similar to the following.

"Engaging in a sexual act with a patient during the course of patient care or engaging in a sexual act with a former patient during the six month period following the last incident of patient care. "Sexual act" as used in this paragraph (p), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401 C.R.S."

RECOMMENDATION 17: - FAILURE TO REFER SHOULD BE GROUNDS FOR DISCIPLINE

During the course of treatment, it may be necessary for a chiropractor to refer a patient to another chiropractor or to another health care provider. Failure to make a referral may be detrimental to the patient's health.

One solution to this problem is to amend the Chiropractic Act by adding language similar to that found in the physical therapy practice act making it grounds for discipline if a chiropractor has:

"Abandoned patient by any means including but not limited to failure to provide a referral to another chiropractor or to another appropriate health care practitioner when the referral was necessary to meet generally accepted standards of chiropractic care."

RECOMMENDATION 18: - ADD CEASE AND DESIST AUTHORITY

The board needs this authority to protect the public from unlicensed practitioners. While the Board can seek injunctive relief, this can be a long process. The public remains at risk while the legal proceedings are carried out.

This is especially true in cases of unlicensed practice. In cases such as these, the Board is virtually powerless without cease and desist authority. Of course, some violators may ignore the Board's order but it is reasonable to expect that most will comply, negating the need for further legal actions.

Cease and desist powers can also be used against licensed practitioners. For instance, in the previously mentioned example of a chiropractor maintaining an unsanitary office, the Board could benefit from being empowered to order the licensee to correct the situation. This would create a more timely resolution than securing disciplinary action.

The Department recommends that cease and desist authority be added to the Board powers in 12-33-107.

RECOMMENDATION 19: - REQUIRE CHIROPRACTORS TO REPORT VIOLATIONS

The statute does not assign the responsibility to licensed chiropractors of reporting violations of the act by peers to the board. Inasmuch as other practitioners may be the first (or sometimes only) person to know of harm to patients, they should be required to report such violations. As a point of comparison, physicians are required to make such reports. Reporting requirement language similar to that found in the medical practice act should be added to the chiropractic act:

"Chiropractors have the duty to report to the board any chiropractor known, or upon information and belief, to have violated any of the provisions of this article."

RECOMMENDATION 20: - INCREASE SIZE OF BOARD

Presently, the size of the Chiropractic Board is five members. This review finds that the size of the Board is too small to continue to function efficiently. The workload of the board in administering continuing education, as pointed out earlier in this report, is heavy and is expected to increase. Also, the board receives a reasonably large number of complaints. Recently, complaints of sexual misconduct have been increasing. Amendments to the statute that may result from this Sunset review will probably increase both the volume and the complexity of complaints by the public. The public will be better served by a larger Board that encourages a broader discussion and one that is able to divide its workload. This sunset review recommends that the size of the Chiropractic Board be increased to seven members with the addition of one professional member and one consumer member.

The Board is made up of four chiropractors and one member representing the general public. This configuration can make it difficult for the consumer member to assert his view, and an enormous burden on him because he must face four professional members possibly without support. The addition of another public member would help create more meaningful discussions with perhaps a more complete discussion of consumer points of view.

RECOMMENDATION 21: - CHIROPRACTIC BOARD NEEDS AUTHORITY TO ORDER MENTAL AND PHYSICAL EXAMINATIONS

Most boards in the Department of Regulatory Agencies that are charged with regulation of health care occupations have the authority or power to require licensees to submit to a mental or physical examination.

A licensee's right to privacy is paramount, of course. In the case of licensed health care providers, though, that right must be balanced against the public's expectation that it is reasonably protected against incompetent or dangerous practitioners. It is appropriate that the board be empowered to order such examinations in situations where the risk to the public is great.

The Chiropractic practice act should be amended by the addition of a new section:

"Mental and physical examination of licensees. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require such person to take a mental or physical examination by a physician designated by the board. If such licensee refuses to undergo such a mental or physical examination, or to release all medical records necessary to determine the licensee's ability to practice safely, unless due to circumstances beyond the licensee's control, the board may suspend such licensee's license until the results of any such examination are known, and the board has made a determination of the licensee's fitness to practice. The board shall proceed with any such order for examination and such determination in a timely manner.

(2) An order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the licensee shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a physician chosen by such licensee and pertaining to any condition which the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(4) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public."

RECOMMENDATION 23: - MAKE FAILURE TO PROVIDE ADEQUATE SUPERVISION GROUNDS FOR DISCIPLINE.

Chiropractors frequently supervise unlicensed persons. The actions of these individuals may constitute a violation of the practice act. In one instance, a licensee contended that a clerical employee was responsible for submitting fraudulent insurance billings. In order to combat this type of scenario, section 12-33-117 should be amended by the addition of the following provision as grounds for discipline

"Failure to provide adequate or proper supervision when utilizing unlicensed persons in a chiropractic practice."

MISCELLANEOUS STATUTORY RECOMMENDATIONS

The recommendations in this section were submitted by the Board and/or administrative staff. These statutory changes improve the statute or make the administrative functioning of the staff more efficient.

RECOMMENDATION 24: - REMOVE THE WORD "TRADE" FROM SECTION 12-33-107(h), C.R.S.

The phrase "chiropractic trade practice" is an outdated expression and serves no purpose in public protection or enforcement of the article.

RECOMMENDATION 25: - INCREASE THE TIME TO REPORT MALPRACTICE SETTLEMENT TO SIXTY DAYS IN SECTION 12-33-117(1)(j), C.R.S.

The present requirement of thirty days may not allow a fair amount of time for licensees to gather and submit documentation required by the Board.

RECOMMENDATION 26: - COMBINE 12-33-117(1)(k) AND 12-33-117(2)(o).

Both of these sections pertain to commission of a fraudulent insurance act. The statute would be easier to understand if these similar provisions were combined.

RECOMMENDATION 27: - EXPAND SCOPE OF PROHIBITION AGAINST CHIROPRACTORS TREATING PATIENTS BY COLONIC IRRIGATION.

Chiropractors are prohibited by 12-33-117(1)(e) from providing colonic irrigation. However, other unregulated persons can provide such treatment. In order that the intent of the practice act to exclude such practices from chiropractic be clear, the words "**or allowing such practices to be performed on the premises**" should be added to the statute.

RECOMMENDATION 28: - COMBINE ALL ADVERTISING AND TELEMARKETING PROVISIONS IN ONE GROUP.

The statute would be easier to comprehend if similar provisions were combined or at least placed sequentially. For instance, 12-33-117(2)(d) could be amended by adding, **or advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119(3), C.R.S.** (the language presently found in subsection (l)).

RECOMMENDATION 29: - PROVIDE THE BOARD FLEXIBILITY IN REQUIRING RE-EXAMINATION.

Section 12-33-117(4)(a) mandates that the Board require re-examination of a doctor found negligent or incompetent. This should be amended to read "**may be required**" so that the Board can apply such a requirement as the facts dictate.

RECOMMENDATION 30: - REPEAL SECTION 12-33-117(4)(b).

This section establishes that incompetent, negligent, or unprofessional conduct consists of two or more acts or omissions within a twenty year period which fail to meet generally accepted standards of chiropractic practice.

This sunset review has recommended making any act or omission that fails to meet generally accepted standards of care grounds for discipline.

RECOMMENDATION 31: - AMEND LETTER OF ADMONITION PROCESS

Section 12-33-119(9) presently provides that the Board, when issuing a Letter of Admonition advise the licensee that a formal disciplinary action may be requested within twenty days of receipt of the Letter of Admonition. This provides the licensee a hearing, if desired.

Staff of the Chiropractic Board have requested that the requirement be changed so that the licensee be required to request formal disciplinary action within thirty days of mailing of the Letter of Admonition.

This process will be more administratively efficient, particularly in tracking the time line. Letters of Admonition will continue to be sent certified so that receipt can be verified.

RECOMMENDATION 32: - REQUIRE CHIROPRACTORS TO DISPLAY LICENSES.

Chiropractors are not required to display their license to practice in Colorado. Such a requirement would provide some measure of information to patients in choosing a practitioner. Other health care providers, like optometrists are required to display their licenses.

The Chiropractic Act should be amended by adding a section requiring:

"Licenses to be displayed. Every practitioner of chiropractic within the meaning of this article shall post and keep conspicuously displayed his license in the office wherein he practices. If a chiropractor practices at several locations in the state, he shall display his license number and name in a manner that can be easily recognized by his patients. Any association of persons who engage in the practice of chiropractic under the name of the partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the entrance of its place of business the name of each person engaged or employed in said partnership or association in the practice of chiropractic."

RECOMMENDATION 33: - REQUIRE LICENSEES TO REPORT A CHANGE OF ADDRESS WITHIN THIRTY DAYS.

Chiropractors are not required by statute to report a change of address within a specific period of time. Although it is reasonable to assume that most practitioners do report such changes in a timely manner, a potential for abuse, and subsequent public harm, exists absent a clear requirement.

The Chiropractic Act should be amended by the creation of section 12-33-114.5 which requires:

"Change of address. A licensee who has changed addresses must notify the Board in writing within thirty days of the change. The address change will be reflected on the next license issued to the licensee."

OTHER ISSUES

CHANGE DEFINITION OF CHIROPRACTIC OR CHIROPRACTIC ADJUSTMENT

There is discussion in the chiropractic community that maintains that the definition of chiropractic or chiropractic adjustment needs to be amended. This sunset review does not endorse such a change because no problems involving the present definition have been discovered.

In terms of public protection, there does not appear to be significant concern over the definition of scope of practice of chiropractic. In fact, the present definition is quite broad. If the recommendation of this report to add cease and desist authority is adopted, it would seem that the Board is adequately empowered to deal with potential or alleged violations of the practice of chiropractic.

CHIROPRACTIC TREATMENT OF ANIMALS

There are some instances in which consumers wish to secure chiropractic care or treatment of animals. However, the diagnosis and treatment of animals are veterinary practices and are covered under the veterinary medicine practice act. Furthermore, it is not reasonable to expect that very many licensed chiropractors are trained in animal science. The Department refrains from posing a formal recommendation on this matter. In strict public protection terms, there is little evidence to support expansion of the chiropractic scope of practice to include animals.

If, on the other hand, the Sunrise/Sunset Committee decides that such an expansion is needed, it may be reasonable to consider amending the chiropractic practice act to allow the treatment of animals by chiropractors licensed in this state if that chiropractor is under the indirect supervision of a veterinarian licensed to practice in Colorado. This places the responsibility for the care of the animal with the veterinarian. The veterinarian can diagnose the animal and determine if chiropractic is indicated. Also, the veterinarian can assess if the chiropractor has additional training or qualifications in animal care.

APPENDIX A

SUNSET STATUTORY EVALUATION CRITERIA

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- IX. Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

READER RESPONSE FORM

TO: Colorado Department of Regulatory Agencies
Office of Policy and Research
1560 Broadway, Suite 1550
Denver, CO 80202

RE: Sunrise/Sunset Report on _____
(Report Title and Date)

FROM: _____
(Your Name and Address)

DATE: _____

I have read your report and found it:

Excellent _____ Good _____ Fair _____ Poor _____

Here are my suggestions for improving the report:

The report was thorough in its coverage of the subject:

Yes _____ No _____

Comments:

The report was fair in its treatment of the issues:

Yes _____ No _____

Comments:

Thank you for your response. We hope you found our report useful.
Revised January, 1994.