



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

**2008 Sunset Review:
Colorado State Board of
Chiropractic Examiners**

October 15, 2008





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2008

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado State Board of Chiropractic Examiners (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), 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 supporting materials to the office of legislative legal services no later than October 15 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 Article 33 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2008 Sunset Review: Colorado State Board of Chiropractic Examiners

Summary

What Is Regulated?

The practice of chiropractic, which is defined as:

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.

Why Is It Regulated?

The profession is regulated to protect the health, welfare and safety of the citizens of Colorado against the unauthorized, unqualified, and improper practice of chiropractic.

Who Is Regulated?

There are currently 2,640 licensed chiropractors in Colorado.

How Is It Regulated?

The Colorado State Board of Chiropractic Examiners (Board) is housed in the Department of Regulatory Agencies, Division of Registrations. The Board's main functions consist of the licensure of qualified chiropractic applicants, and the oversight and discipline of current licensees. Applicants for licensure must graduate from a high school or its educational equivalent and from an approved chiropractic school or college, which teaches a course of not less than 4,000 resident classroom hours in a period of four academic years. Individuals who complete the educational requirement are eligible to sit for an examination prepared and administered by the National Board of Chiropractic Examiners (NBCE). Chiropractors licensed in Colorado must complete at least 15 hours of continuing education annually. The Board is authorized to take disciplinary actions against licensees.

What Does It Cost?

During fiscal year 06-07, the Board's expenditures were \$310,840.95 and there were 1.3 full-time equivalent employees dedicated to the Board.

What Disciplinary Activity Is There?

For the period fiscal year 02-03 through fiscal year 06-07, the Board issued 133 disciplinary actions including revocations, suspensions, probation and letters of admonition.

Where Do I Get the Full Report?

The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the Board and the regulation of chiropractors for 11 years, until 2020.

Chiropractors deliver health care services directly to patients. In particular, chiropractors perform adjustments to the patient's spine. Improperly performed, this modality can cause significant harm to a patient, including stroke. As well, consumers are unlikely to possess the knowledge necessary to make informed choices when selecting a chiropractor. Market conditions such as these are sufficiently persuasive to allow for regulation of the profession. The Board, made up of members of the licensed profession and a public member, works well to protect the public interest and should be continued.

Include in section 12-33-117, C.R.S., grounds for disciplinary actions, that a failure to respond to a Board-generated complaint letter is grounds for discipline.

Currently, there is no requirement or obligation for licensees to respond to a complaint, and a failure to respond compromises the disciplinary process by preventing the Board from obtaining all facts pertinent to the complaint. Without that requested information, matters that might otherwise be dismissed may have to be sent to the investigations unit for their acquisition. While there may be circumstances that prohibit timely response by the licensee, the Board should have the authority to discipline a licensee if the facts show that the licensee simply disregarded the complaint and the Board's communication.

Major Contacts Made During This Review

Boulder Back Pain Clinic
Capstone America, LLC
Colorado Chiropractic Association
Colorado State Board of Chiropractic Examiners
Peakview Chiropractic & Wellness Center
Robert C. Nelson, DC
Schuster Chiropractic Center

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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;
- 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;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Colorado State Board of Chiropractic Examiners (Board) relating to Article 33 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2009, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of chiropractors should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations (Division). During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board members and staff, reviewed Board and agency records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed health care providers, reviewed Colorado statutes and Board rules, and reviewed the laws of other states. For the purposes of this report, Article 33 of Title 12, C.R.S., which contains the statutory laws governing the practice of chiropractic, will be referred to as the Chiropractic Practice Act.

Profile of the Profession

Chiropractors, also known as doctors of chiropractic or, in some states, chiropractic physicians, diagnose and treat patients with health problems of the musculoskeletal system and treat the effects of those problems on the nervous system and on general health. Many chiropractic treatments deal specifically with the spine and the manipulation of the spine. Chiropractic medicine is based on the principle that spinal joint misalignments interfere with the nervous system and can result in lower resistance to disease and many different conditions of diminished health.

The chiropractic approach to health care stresses the patient's overall health. Chiropractors provide natural, drugless, nonsurgical health treatments, relying on the body's inherent recuperative abilities. This approach also recognizes that many factors affect health, including exercise, diet, rest, environment, and heredity. Chiropractors may recommend changes in lifestyle that affect those factors. In some situations, chiropractors refer patients to, or consult with, other health practitioners. Doctors of chiropractic treat patients by using manual adjustments to parts of the body, especially the spine. A chiropractic adjustment is a specific manipulation of the spinal vertebrae or other areas that have abnormal movement patterns or are not functioning properly. These abnormal patterns are often referred to as subluxations.

Like many other health care practitioners, chiropractors generally follow a standard routine to get information needed to diagnose and treat patients. They take the patient's medical history; conduct physical, neurological, and orthopedic examinations; and may order laboratory tests. Radiographs (X-rays) and other diagnostic images are important tools because of the chiropractor's emphasis on the spine and its proper function. Chiropractors also analyze the patient's posture and spine using a specialized technique, and for patients whose health problems can be traced to the musculoskeletal system, chiropractors often manually adjust the spinal column.

Some chiropractors use other alternative medicines in their practices, including therapies using water, light, massage, ultrasound, acupuncture, and heat. They also may apply supports such as straps, tapes, and braces to manually adjust the spine. Chiropractors often counsel patients about health concepts such as nutrition, exercise, changes in lifestyle, and stress management, but do not prescribe drugs or perform surgery.

In addition to general chiropractic practice, some chiropractors specialize in sports injuries, neurology, orthopedics, pediatrics, nutrition, internal disorders, or diagnostic imaging.

In 2007, 16 chiropractic programs in the United States were accredited by the Council on Chiropractic Education. Applicants must have at least 90 semester hours of undergraduate study leading toward a bachelor's degree, including courses in English, the social sciences or humanities, organic and inorganic chemistry, biology, physics, and psychology. Many applicants have a bachelor's degree. Several chiropractic colleges offer prechiropractic study, as well as a bachelor's degree program.

Generally, chiropractic educational programs require a minimum of 4,200 hours of combined classroom, laboratory, and clinical experience. During the first two years, many chiropractic programs emphasize classroom and laboratory work in sciences such as anatomy, physiology, public health, microbiology, pathology, and biochemistry. The last two years often focus on courses in manipulation and spinal adjustment, and provide clinical experience in physical and laboratory diagnosis, neurology, orthopedics, geriatrics, physiotherapy, and nutrition. Chiropractic programs and institutions grant the degree of Doctor of Chiropractic.

There are currently 2,640 chiropractors licensed in Colorado. Table 2 on page 21 of this sunset review depicts licensee numbers for the period fiscal year 02-03 through fiscal year 06-07.

History of Regulation

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, completing 1,000 hours of classes) and be of good moral character.²

In 1933, a new chiropractic statute was enacted which created a five-member Chiropractic Board (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 or she graduated and pass the Board's examination or have a license from a state with similar requirements.³

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.

² House Bill 15-178

³ House Bill 33-189

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.⁴ The legislature also increased the number of hours of chiropractic training required for licensure to a minimum of 3,600.⁵

The most significant statutory change was enacted in 1959 when Senate Bill 59-119 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 also 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 of instruction. The statute also listed the subject areas required and the percentage of time to be spent in each of the areas 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 59-119 also provided that one of the five Board members may be from the public at large rather than be a licensed chiropractor.

The qualifications for licensure were amended again in 1967. An applicant 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.⁶

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.⁷

In 1983, the requirement for the Board to license qualified chiropractors from other states was expanded to include the District of Columbia, the commonwealth of Puerto Rico and the provinces of Canada.⁸

⁴ House Bill 43-199

⁵ House Bill 43-200

⁶ House Bill 67-1456

⁷ Senate Bill 79-182

⁸ House Bill 83- 1138

In response to a sunset review, the legislature passed several amendments concerning the regulation of chiropractic in 1985. The definition of “chiropractic” was expanded to include venipuncture—the withdrawal of blood for analysis—and acupuncture, and to prohibit colonic irrigation therapy. Additionally, the makeup of the Board was changed, requiring one member to be appointed from the public at large. Membership was limited to two consecutive terms, and the legislature authorized the Governor to remove any Board member for misconduct, incompetence, or negligence of duty. The requirements for the Board examination were also changed. A score of 75 percent or above on each examination section would no longer be required. Instead a passing grade on each section would be required for licensing.⁹

In 1991, the Board was required to adopt rules and regulations to establish minimum standards of education and training for unlicensed persons operating x-ray machines.¹⁰

Following a sunset review, in 1995 the legislature passed another set of amendments. Chiropractors were required to visibly display their license, and multiple chiropractors practicing in the same office were required to conspicuously display, at or near the door, the name of each practicing chiropractor. The legislature added a new section allowing temporary licenses for chiropractors invited by the United States Olympic Committee to provide services for athletes or team personnel. The legislature also required chiropractors to purchase professional liability insurance.¹¹

In 1998, the requirements for the Board examination were changed again. The requirement to receive a passing grade on each section of the examination was changed to a requirement to receive an overall passing grade on the examination. Also, an amendment was passed allowing the Board to adopt the practical examination developed and administered by the National Board of Chiropractor Examiners.¹²

The legislature passed a bill in 2006 requiring that liability insurance purchased by chiropractors cover all acts within the scope of practice, to include acupuncture and electrotherapy only if performed by an authorized chiropractor.¹³

⁹ House Bill 85-1030

¹⁰ House Bill 91-1073

¹¹ Senate Bill 95-010

¹² House Bill 98-1369

¹³ House Bill 06-1243

Legal Framework

With the stated goal of protecting the health, welfare, and safety of the citizens of Colorado, the Colorado General Assembly has established a state regulatory authority to control and prevent the unauthorized, unqualified, and improper practice of chiropractic.¹⁴ It is unlawful in Colorado for any person to practice chiropractic, or to assume, use, or advertise any title or description which reasonably might mislead the public into believing that an individual is a doctor of chiropractic, unless such person has been duly licensed as a chiropractor under Colorado laws.¹⁵

Chiropractic is defined as:

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.¹⁶

To effectuate the oversight and regulation of the chiropractic profession, the Colorado General Assembly created the Colorado State Board of Chiropractic Examiners (Board). The Board consists of five members, four of whom must have practiced chiropractic medicine in Colorado for five years prior to their appointment to the Board, and one public member. Board members serve varied terms of one to five years. Board members may be removed from the Board by the Governor for misconduct, incompetence, or neglect of duty and no member can serve more than two consecutive terms.¹⁷

The Board meets at such times as the Board deems necessary. However, the Board must meet at least annually.¹⁸

¹⁴ § 12-33-101(1), C.R.S.

¹⁵ § 12-33-101(2), C.R.S.

¹⁶ § 12-33-102(1), C.R.S.

¹⁷ § 12-33-103(1), C.R.S.

¹⁸ § 12-33-105, C.R.S.

The duties and responsibilities of the Board are as follows:¹⁹

- Adopt, promulgate, and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry out the provisions of the Chiropractic Practice Act; except that the Board shall not adopt the code of ethics of any professional group or association by rule or regulation;
- Examine, license, and renew licenses of duly qualified chiropractic applicants;
- Approve or refuse to approve chiropractic schools and colleges;
- Conduct hearings upon complaints concerning the disciplining of chiropractors;
- Cause the prosecution of and seek injunctions against all persons violating the Chiropractic Practice Act; and
- Identify and proscribe, by rule, chiropractic practices which are untrue, deceptive, or misleading.

Consequently, the Board is responsible for the licensure of individuals who meet the mandatory requirements for state licensure. A minimum educational requirement for original licensure includes graduation from a high school or its educational equivalent and graduation from an approved chiropractic school or college, which teaches a course of not less than 4,000 resident classroom hours in a period of four academic years. All applicants for licensure who matriculate from a chiropractic school or college must present evidence of having graduated from a chiropractic school or college having status with the Commission on Accreditation of the Council on Chiropractic Education, or its successor, or from a chiropractic school or college which meets equivalent standards. The schedule of minimum educational requirements to enable any person to practice chiropractic in the state of Colorado must include the following specific subject matter:²⁰

- Group 1. Anatomy, including embryology and histology
- Group 2. Physiology and psychology
- Group 3. Biochemistry, inorganic and organic chemistry
- Group 4. Pathology, bacteriology, and toxicology
- Group 5. Public health, hygiene, sanitation, and first aid
- Group 6. Diagnosis (to include, but not be limited to, physical, clinical, laboratory, and all other recognized diagnostic procedures), pediatrics, dermatology, syphilology, psychiatry, and X-ray
- Group 7. Obstetrics, gynecology
- Group 8. Principles and practice of chiropractic, adjustive techniques. Electives including dietetics, nutrition, posture, physiotherapy, electrotherapy, and surgical, optometric, and dental indications

¹⁹ § 12-33-107, C.R.S.

²⁰ § 12-33-111(1)(a), C.R.S.

Any chiropractic college or school meeting these requirements, and those set out in the rules adopted by the Board, is eligible for approval.²¹

Colorado allows for chiropractic licensure by endorsement. Upon application for a license to practice chiropractic in Colorado, accompanied by the required fee, the Board issues such license to any person who furnishes, upon such form and in such manner as the Board prescribes, evidence satisfactory to the Board that:²²

- The individual is licensed to practice chiropractic in another state, a territory of the United States, the District of Columbia, Puerto Rico, or a province of Canada;
- At the time of application, he or she possesses credentials and qualifications which are, in the judgment of the Board, equivalent to this state's requirements for licensure by examination;
- He or she has been engaged in the full-time practice of chiropractic, or has taught general clinical chiropractic subjects at an accredited school of chiropractic for at least three of the five years immediately preceding his or her making application to the Board;
- He or she has not been convicted of a crime, which crime would be grounds for the refusal, suspension, or revocation of a license to practice chiropractic in this state if committed in this state; and
- His or her license to practice chiropractic is not, at the time of application under this section, suspended or revoked in any jurisdiction, based on grounds which would be grounds for the refusal, suspension, or revocation of a license to practice chiropractic in this state.

Chiropractors licensed in Colorado must complete at least 15 hours of continuing education annually consisting of subjects basic to the field of healing arts as set forth in section 12-33-111, Colorado Revised Statutes (C.R.S.). If any Colorado-licensed chiropractor is unable to comply with the mandatory continuing education requirement due to dire emergency with good cause shown, the Board may waive the continuing education requirement.²³

²¹ § 12-33-111(1)(b), C.R.S.

²² § 12-33-113(1), C.R.S.

²³ § 12-33-116, C.R.S.

Professional liability insurance is required of all licensees in an amount not less than \$100,000 per claim, with an aggregate liability limit for all claims during the year of \$300,000.²⁴ This liability insurance covers acupuncture and electrotherapy if the licensee is authorized to perform those procedures.²⁵ However, the Board may, by rule, exempt or require lesser liability insurance for any class of licensee which:²⁶

- Practices chiropractic as an employee of the United States government;
- Renders limited or occasional chiropractic services;
- Performs less than full-time active chiropractic services because of administrative or other nonclinical duties of partial or complete retirement;
- Provides uncompensated chiropractic care to patients but does not otherwise provide compensated chiropractic care to patients; or
- Practices chiropractic in such a manner that renders the amounts provided in statute unreasonable or unattainable.

The Board is authorized to take disciplinary actions against licensees, and may issue a letter of admonition to a licensee, or revoke, suspend, deny, refuse to renew, or impose conditions on a licensee based on any of the following grounds:²⁷

- Using fraud, misrepresentation, or deceit in applying for, securing, renewing, or seeking reinstatement of a license or in taking an examination provided for in the Chiropractic Practice Act;
- An act or omission that constitutes negligent chiropractic practice or fails to meet generally accepted standards of chiropractic practice;
- Conviction of a felony or any crime that would constitute a violation of the Chiropractic Practice Act. A conviction includes the acceptance of a guilty plea or a plea of *nolo contendere* or the imposition of a deferred sentence;
- Habitual intemperance or excessive use of alcohol, a controlled substance or a habit-forming drug;
- Disobedience to a lawful rule or order of the Board;
- Persisting in maintaining an unsanitary office or practicing under unsanitary conditions after warning from the Board;
- False or misleading advertising;
- Failure to report malpractice judgments or settlements within sixty days;
- Violation or abuse of health insurance, or commission of a fraudulent insurance act;
- Treating a patient by colonic irrigation or allowing colonic irrigation to be performed at the licensee's premises;
- Practicing with a suspended or expired license;

²⁴ § 12-33-116.5(1)(a), C.R.S.

²⁵ § 12-33-116.5(1)(b), C.R.S.

²⁶ § 12-33-116.5(2), C.R.S.

²⁷ § 12-33-117(1), C.R.S.

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- Willfully deceiving or attempting to deceive the Board or its agents with reference to any matter under investigation by the Board;
 - Practicing under an assumed name;
 - Advertising unethically;
 - Violating the Chiropractic Practice Act or Board rule, or aiding any person in such;
 - Knowingly practicing in the employment of or in association with any person who is practicing in an unlawful or unprofessional manner;
 - Offering, giving, or receiving commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may compensate an independent advisory or marketing agent for advertising or marketing services, which services may include the referral of patients identified through such services, and a licensee may give an incidental gift to a patient in appreciation for a referral;
 - Conducting any enterprise other than the regular practice of chiropractic whereby the holder's license is used as a means of attracting patients or attaining prestige or patronage in the conduct of such enterprise;
 - Permitting the practice of chiropractic, the holding out of such practice, or the maintenance of an office for such by an unlicensed person in association with himself or herself;
 - Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X-ray, or treatment which is contrary to recognized standards of the practice of chiropractic as interpreted by the Board;
 - Falsifying or making incorrect essential entries or failing to make essential entries on patient records;
 - Failing to report to the Board the surrender of a license to, or adverse action taken against a license by a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for discipline pursuant to the Chiropractic Practice Act;
 - Engaging in a sexual act with a patient during the course of such patient's care or within six months immediately following the termination of the chiropractor's professional relationship with the patient;
 - Abandoning a patient by any means, including, but not limited to, failing to provide a referral to another chiropractor or other appropriate health care practitioner when such referral was necessary to meet generally accepted standards of chiropractic care;

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- Failing to provide adequate or proper supervision when employing unlicensed persons in a chiropractic practice;
 - Having a physical or mental disability that makes the chiropractor unable to render chiropractic services with reasonable skill and safety; and
 - Performing a procedure in the course of patient care that is beyond the chiropractor's training or competence or the scope of authorized chiropractic services.

The Board may impose a fine not to exceed \$10,000 in lieu of a suspension of a license. All such fines collected are credited to the state General Fund.²⁸

Disciplinary action taken against a licensee's ability to practice in another state or country is considered *prima facie* evidence of a violation of the Chiropractic Practice Act and constitutes grounds for discipline if the acts giving rise to such disciplinary action would be a violation in Colorado.²⁹

When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the Board and, in the opinion of the Board, the complaint should be dismissed, but the Board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.³⁰

Relating to a licensee's disciplinary matters, the term "unethical advertising" includes, but is not limited to, advertising, through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise, which:³¹

- Contains false or misleading statements;
- Holds out or promises cures or guarantees results; and
- Contains claims which cannot be substantiated by standard laboratory or diagnostic procedures.

If any person holding a license to practice chiropractic in Colorado is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice chiropractic, his or her license shall automatically be suspended by the Board, and such suspension shall continue until the licensee is found to be competent to practice chiropractic.³²

²⁸ § 12-33-117(1.5), C.R.S.

²⁹ § 12-33-117(2), C.R.S.

³⁰ § 12-33-117(2.5), C.R.S.

³¹ § 12-33-117(3)(a), C.R.S.

³² § 12-33-117(5), C.R.S.

If the Board has reasonable grounds to believe that a licensee is unable to practice with reasonable skill and safety, it may require such licensee to take a mental or physical examination given by a physician or other qualified provider designated by the Board. If the licensee refuses to undergo such examination, or to release all requested medical records necessary to determine his or her ability to practice safely, the Board may suspend such licensee's license until the results of such examination are known, and the Board has made a determination of the licensee's fitness to practice.³³ The results of the mental or physical examination ordered by the Board may not be used as evidence in any proceeding other than one held before the Board and may not be a public record nor made available to the public.³⁴

Licensees are entitled to use the title "Doctor" or "Dr." when accompanied by the word "Chiropractor" or the letters "D.C.," and to use the title of "Doctor of Chiropractic." Such license does not confer upon the licensee the right to practice surgery or obstetrics or to prescribe, compound, or administer drugs, or to administer anesthetics.³⁵

A proceeding for the discipline of a licensee may be commenced when the Board has reasonable grounds to believe that a licensee has committed an act that may violate the Board's prescribed grounds for discipline.³⁶ Disciplinary proceedings and hearings are conducted pursuant to the provisions of the Administrative Procedure Act.³⁷ The Board may employ administrative law judges, on a full-time or part-time basis, to conduct disciplinary hearings, or hearings on any matter within the Board's jurisdiction.³⁸

If a licensee has committed an act which violates the statutory grounds for discipline, the Board may withhold, revoke, or suspend an existing license, issue a letter of admonition, or grant probation on terms and conditions set by the Board, or otherwise discipline a licensee as provided for in the article. A revoked or suspended license may thereafter be reissued by the Board. The Board may dismiss or terminate probation prior to the completion of any probationary period.

Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from such participation.³⁹

³³ § 12-33-117.5(1), C.R.S.

³⁴ § 12-33-117.5(5), C.R.S.

³⁵ § 12-33-118, C.R.S.

³⁶ § 12-33-119(2), C.R.S.

³⁷ § 12-33-119(4), C.R.S.

³⁸ § 12-33-119(1), C.R.S.

³⁹ § 12-33-119.1(2), C.R.S.

If the Board believes, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the Board may issue an order to cease and desist such activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and a demand that all unlawful acts or unlicensed practices immediately cease.⁴⁰

Board Rules

In addition to statutory directives, the Board has enacted rules utilized to direct and control the Board's regulation of this profession. These rules are codified and can be found in Volume 3 of the Colorado Code of Regulations, Part 1, Section 707.⁴¹ Board rules affect the following areas, among others:

Electrotherapy

Colorado law defines "electrotherapy" as:

the application of any radiant or current energies of high or low frequency, alternating or direct, except surgical cauterization, electrocoagulation, the use of radium in any form, and X-ray therapy.

According to Board rule, the implementation of electrotherapy as referenced in section 12-33-102 (3), C.R.S., may include, but is not limited to:⁴²

- Diagnostic, functional or psychometric patient assessment/evaluation, designed to facilitate the evaluation, administration and modification of patient care and/or case management.
- Patient and/or social, educational or consultation considerations designed to educate the audience as to the nature, incidence and effects of conditions falling within the scope of the Chiropractic Practice Act.

Electrotherapy certification is required by the Board prior to any licensee practicing electrotherapy. To receive certification, the chiropractic applicant must present evidence of the following:⁴³

- Successful completion of a course of not less than 120 classroom hours in the subject taught by a school having status with the Council on Chiropractic Education or an approved provider; or
- Successful completion of a Board-approved nationally recognized examination.

⁴⁰ § 12-33-119.2(1)(a), C.R.S.

⁴¹ 3 CCR 707-1

⁴² Board Rule 6(A)(1).

⁴³ Board Rule 10(B).

Scope of Practice

The Board rules set forth those activities that go beyond the scope of practice for Colorado chiropractors, including:⁴⁴

- Treatment of cancer. This does not preclude screening and diagnostic procedures for the prevention and early detection of cancer or the chiropractic treatment of other concomitant conditions that the patient may have. In addition, a qualified chiropractor may collaboratively treat cancer in conjunction with, but not replacing, drugs, surgery, or chemotherapy.
- Obstetrics.
- Surgery.
- Administration of anesthetics, with the exception of topical or over-the-counter anesthetics.
- Prescription of drugs other than homeopathic and botanical medicines, vitamins, minerals, phytonutrients, antioxidants, enzymes, glandular extracts, non-prescription drugs, durable and non-durable medical goods and devices.
- Hypnosis unless used as a procedure to make the adjustment or manipulation more effective and unless the practitioner presents evidence to the Board of having obtained education in hypnosis from an accredited college.

The Board mandates that a licensee must have the knowledge, skill, ability, and documented competency to perform acts within the chiropractic scope of practice. Procedures with specific clinical, didactic requirements and qualifications include, but are not limited to:⁴⁵

- Paraspinal Surface Electromyography
- Surface Electromyography excluding paraspinal, Nerve Conduction Velocity (NCV) and Needle Electromyography
- Electrocardiography
- Manipulation Under Anesthesia

⁴⁴ Board Rule 7(A).

⁴⁵ Board Rule 7(B).

The Board has set forth criteria that are used to determine whether a procedure is unproven. The criteria include:⁴⁶

- Whether the procedure is taught as part of the regular curriculum of at least one college of chiropractic approved by the Council on Chiropractic Education.
- Whether the procedure is based upon anatomical, physiological and/or structural relationships which can be verified through standard diagnostic procedures.
- Whether the procedure has been supported by a body of evidence using standard scientific research methodology and whether the procedure has had periodic review by the Board based on current research.

When an unproven procedure is provided, the chiropractor must obtain the written informed consent of the patient or the patient's legal representative.⁴⁷ This informed consent includes that the patient be notified in writing that the procedure has been designated "unproven" by the Board, and that its effectiveness has not been demonstrated.⁴⁸

Acupuncture

Licensees who choose to practice acupuncture as an adjunct to their regular practice of chiropractic, and who do not already hold a valid current acupuncture registration issued by the director of the Colorado Division of Registrations, must be certified by the Board. Certification in acupuncture by the Board may be obtained by complying with the following:⁴⁹

- Completing a minimum of a combined total of 100 hours of theoretical study and supervised clinical instruction obtained from a school of chiropractic approved by the Council on Chiropractic Education or the equivalent hours of study and clinical supervision obtained from an instructor approved by the Board; and
- Completing a minimum of 25 different cases; or
- Successful completion of a Board-approved and nationally recognized examination that satisfies the two preceding requirements.

⁴⁶ Board Rule 15(B).

⁴⁷ Board Rule 15(A).

⁴⁸ Board Rule 15(C).

⁴⁹ Board Rule 17(A).

Operation of X-Ray Equipment

Section 12-33-202(1)(a), C.R.S., requires that the Board adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed individuals who operate machine sources of ionizing radiation (x-rays), and administer such radiation to patients. In order to qualify to operate an x-ray machine or to administer such radiation to patients, unlicensed chiropractic personnel must successfully complete a Board approved course that satisfies the following requirements.⁵⁰

- Basic radiological guidelines - 5 hours.
- Operator and patient safety - 5 hours.
- Practical and clinical experience in radiographic production, beam imaging formation, density, contrast, filtration, collimation, processing techniques, chart selection, positioning, examinations, high speed film selection, film marking, film storage, and darkroom procedures - 14 hours.

Patient Records

Board rules require that licensees maintain written records of patient visits. Documentation of the patient's health history, presenting complaint(s), progression of care, diagnosis, prognosis and treatment plan must be reflected in the recordkeeping and written reports in the patient file. Records are required to be contemporaneous and legible, utilize standard medical terminology or abbreviations, contain adequate identification of the patient and the provider of service and indicate the date the service was performed. All professional services rendered during each patient encounter must be documented. Any addition or correction to the patient file after the final form must be signed and dated by the person making the addition or correction.⁵¹

Continuing Education

Licensees are required to complete continuing education courses as a condition of licensure. Every Colorado licensed chiropractor in active practice is required to attend annually not less than 15 hours of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of the healing arts as set forth in section 12-33-111, C.R.S. Each licensed Colorado chiropractor is required to maintain Health Provider Level Cardiopulmonary Resuscitation (CPR) as is necessary to keep current and maintain valid certification, as provided by the American Heart Association or other organizations deemed equivalent by the Board. All current licensees must maintain proof of such certification. The hours necessary to maintain this CPR certification may be used towards the continuing education hours required.⁵²

⁵⁰ Board Rule 19(B).

⁵¹ Board Rule 22.

⁵² Board Rule 8.

Program Description and Administration

All states and the District of Columbia, regulate the practice of chiropractic, and grant licenses to chiropractors who meet the educational and examination requirements established by the individual jurisdiction. In Colorado, the Colorado State Board of Chiropractic Examiners (Board) is responsible for regulating the profession of chiropractic medicine. The general mission of the Board is to protect the public against the unauthorized, unqualified, and improper practice of chiropractic. The Board's main functions consist of the licensure of qualified chiropractic applicants, and the oversight and discipline of current licensees.

The Board consists of four chiropractic members and one public member. The statute requires that the Board meet at least annually, although currently, the Board meets every other month, or six times per year. The Board's general responsibilities in protecting the public include:

- Examining and licensing qualified chiropractors;
- Conducting investigations to ensure that practitioners comply with generally accepted standards of practice or conduct; and
- Restricting or revoking licenses when generally accepted standards of practice or conduct, or when specific statutes or rules, are violated.

Chiropractors who wish to expand their chiropractic practice to include electrotherapy or acupuncture must provide the Board with proof of additional education in those areas. Chiropractic licensees who also provide acupuncture services must be certified by the Board, unless they are also registered to perform acupuncture by the Office of Acupuncture Licensure. The Board also sets standards for unlicensed personnel under the supervision of chiropractors who operate x-ray machines or otherwise administer radiation for diagnostic purposes.

Agency Fiscal Information

As reflected in Table 1, total expenditures for this program have fluctuated somewhat over the past five years. In fiscal year 03-04, the expenditures were at their highest level, totaling over \$550,000, while fiscal year 05-06 expenditures were substantially lower, at almost \$266,000.

A program director (General Professional V) is assigned to the Board, and is responsible for the day-to-day administration of the program, which includes complaint processing and monitoring, budget, personnel matters, all aspects of licensure, and Board meeting preparation. The Division of Registrations (Division) provides administrative support for the Board through the Division's general programs, including the Expedited Settlement Program (ESP), and the licensure and license renewal units. In addition, there is an Administrative Assistant III associated with the Board, who is responsible for clerical and processing functions, as well as monitoring certain aspects of the program. Additionally, there is also a section director employed by the Division who provides oversight of the program director.

**Table 1
Program Expenditures and Full-Time Equivalent (FTE) Employees**

Fiscal Year	Total Program Expenditures	FTE
02-03	\$410,045.02	1.3
03-04	\$552,999.42	1.3
04-05	\$340,190.12	1.2
05-06	\$265,798.45	0.95
06-07	\$310,840.95	1.3

Licensing

Initial licensure ensures that chiropractic applicants possess the statutorily mandated knowledge, education, skills, and abilities to practice chiropractic in Colorado. Licensure by endorsement allows individuals licensed in other states to obtain license privileges in Colorado by demonstrating that they have met education, experience, and examination requirements that are the same or substantially equivalent to Colorado's licensure standards. Licenses are valid for a two-year period, after which, a license must be renewed by the Board to remain valid. Tables 2 and 3 report the licensing data and fees for the program.

**Table 2
Licensed Chiropractors**

Fiscal Year	Number of Licenses			
	Licensed by Exam	Licensed by Endorsement	Renewals and Reinstatements	Total Number of Licensees
02-03	102	51	359	2,539
03-04	109	35	1,907	2,436
04-05	105	45	553	2,603
05-06	99	54	2,104	2,471
06-07	107	41	503	2,640

Table 3
Fiscal Year 07-08 Fee Schedule

Licensing Fees	
Original License	\$150
Renewal - Active	\$180
Renewal - Inactive	\$170
Late Fee (for renewals after the expiration date)	\$15
Reinstatement	\$195
Reactivation	\$25
Temporary License - Olympic Training Center	\$50
Miscellaneous Fees	
Duplicate Computer License	\$5
Duplicate Wall Certificate	\$25

Chiropractic licensees must complete continuing education courses as a condition of licensure. Licensees are required to annually attend and complete at least 15 hours of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of healing arts. At least two hours of the continuing education course work must be in the areas of recordkeeping and documentation. With the exception of New Jersey, all states require a minimum amount of continuing education as a condition of licensure.

Another condition of chiropractic licensure is a requirement that all licensees maintain liability (malpractice) insurance in an amount not less than \$100,000 per claim, and an aggregate liability limit for all claims of \$300,000. However, the Board may exempt or establish lesser liability insurance requirements for certain classes of licensees. Examples of these classes include those practicing chiropractic as federal employees, and those who practice in a less than full-time capacity.

Examinations

Individuals who satisfactorily complete the educational requirement prescribed in section 12-33-111, C.R.S., are eligible to sit for an examination to determine if they are qualified to attain chiropractic licensure in Colorado. The examination is prepared and administered by the National Board of Chiropractic Examiners (NBCE).

In providing standardized written and performance assessments for the chiropractic profession, the NBCE develops, administers, analyzes, scores, and reports results from various examinations. The NBCE scores are among the criteria utilized by the Board to determine whether applicants satisfy state qualifications for licensure.

Complaints/Disciplinary Actions

An important function of professional licensing boards is the disposition of complaints against licensees. Table 4 depicts the number and type of complaints filed with the Board for the period fiscal year 02-03 through fiscal year 06-07.

The Chiropractic Practice Act establishes 31 grounds for discipline. Anyone, a patient, a doctor, an insurance company or a member of a chiropractor's staff can file a complaint alleging violation of the statutory grounds for discipline or the Board rules.

**Table 4
Complaint Information**

Nature of Complaints	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Practicing without a License	0	11	9	9	4
Standard of Practice	27	33	31	12	22
Billing/Insurance	22	8	18	10	9
Scope of Practice	1	3	3	0	0
Sexual Misconduct	10	10	4	3	5
Substance Abuse	1	0	0	0	0
Violation of Rule or Board Order	0	13	4	18	4
False/Misleading Advertising	17	12	5	9	5
Recordkeeping/Testing	7	9	19	22	4
Failure to Report Malpractice Judgments	0	4	2	0	1
Fraud/Misrepresentation in Obtaining License	4	2	0	0	0
Corporate Practice	0	1	1	0	1
Felony Conviction/Action by Other Board	0	0	2	1	0

**Table 5
Final Agency Actions**

Type of Action	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Revocation	2	1	2	5	4
Surrender of License	0	0	0	0	0
Suspension	0	2	1	2	0
Probation / Practice Limitation	4	10	33	16	10
Letter of Admonition	5	6	9	1	4
License Granted with Probation / Practice Limitations	0	0	0	0	0
License Denied	0	0	0	0	0
Injunction	0	0	0	0	0
Fine	0	0	0	0	0
Dismissed	52	71	42	35	31
Other	4	4	7	1	0
Total Disciplinary Actions	15	23	52	25	18

Analysis and Recommendations

Recommendation 1 – Continue the Colorado State Board of Chiropractic Examiners and the regulation of chiropractors for 11 years, until 2020.

Chiropractors deliver health care services directly to patients. In particular, chiropractors perform adjustments to the patient's spine. Improperly performed, this modality can cause significant harm to a patient including stroke. As well, consumers are unlikely to possess the knowledge necessary to make informed choices when selecting a chiropractor. Market conditions such as these are sufficiently persuasive to allow for regulation of the profession. Colorado's State Board of Chiropractic Examiners (Board), made up of members of the licensed profession and a public member works well to protect the public interest and should be continued.

Recommendation 2 – Increase minimum malpractice policy coverage to \$300,000/\$1,000,000.

Public protection is the primary purpose for the regulation of chiropractors in Colorado. As such, section 12-33-116.5(1)(a), Colorado Revised Statutes (C.R.S.), currently requires that licensees maintain professional liability insurance in an amount not less than \$100,000 per claim, and \$300,000 per year for all claims. However, the scope of the practice of chiropractic is expanding to include new techniques and technologies which also require the enhancement of public protection.

Most of the chiropractors interviewed for this report indicated that the minimum liability insurance requirements should more accurately reflect the economic realities of the profession. Licensees suggested that a patient who suffered a stroke as a result of a spinal or neck manipulation could well make a claim for at least the entire annual policy limit, consequently leaving no liability insurance proceeds available for any other claims made by patients in that year.

Recommendation 3 – Include in section 12-33-117, C.R.S., grounds for disciplinary actions, that a failure to respond to a Board-generated complaint letter is grounds for discipline.

The Board has indicated that many licensees fail to respond to the Board's inquiries relating to complaints generated by patients or other licensees. Currently, there is no requirement or obligation for licensees to respond to a complaint, and a failure to respond compromises the disciplinary process by preventing the Board from obtaining all facts pertinent to the complaint. Without that requested information, matters that might otherwise be dismissed may have to be sent to the investigations unit for acquisition.

When the Board receives a complaint against a licensee, the Board sends a copy of the complaint to the licensee. The licensee has 30 days to respond to the complaint in writing to the Board. Compliance with this timeframe is an important part of consumer protection because the patient's complaint must be resolved in a timely manner. On occasion, a licensee may fail to respond to the complaint thereby slowing the investigative process. While there may be circumstances that prohibit timely response by the licensee, the Board should have the authority to discipline a licensee if the facts show that the licensee simply disregarded the complaint and the Board's communication.

Other regulatory boards in Colorado have previously addressed this problem. For example, in 1995, the General Assembly added section 12-36-117(1)(gg), C.R.S., which included the failure to respond "in an honest, materially responsive, and timely manner to a complaint" as separate grounds for licensee discipline under the Medical Practice Act. Requiring a licensee's response to a complaint is paramount to the consumer protection aspect of the regulatory process, as the Board often cannot evaluate and act on patient complaints without that information.

Thus, section 12-33-117, C.R.S. should be amended to include as grounds for discipline failure to respond to a Board-generated complaint letter.

Recommendation 4 – Update the definition of "chiropractic."

Section 12-33-102(1), C.R.S., defines "chiropractic" and needs to be updated to keep pace with the changing nature of the profession and to remove outdated provisions.

Modern chiropractic includes the use of certain instruments that adjust subluxations of the spine. This should be specified in the definition of chiropractic to more accurately reflect the use of technology by chiropractors.

Second, the current definition includes an unusual provision that eliminates colonic irrigation therapy from the definition of "chiropractic." The language was added a number of years ago in response to a problem with a single practitioner. It is very unusual for practice acts to prohibit specific activities in this manner.

To effectuate this recommendation, section 12-33-117(l), C.R.S., should be amended as follows:

(1) "Chiropractic" 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 or instrument, 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) for the promotion, maintenance, and restoration of health, the prevention of disease and the treatment of human ailments (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.

Recommendation 5 – Remove obsolete language regarding the appointment of Board members.

The Chiropractic Practice Act contains an unusual provision requiring the Governor to appoint members to the Board as follows: one for a five-year term, one for a four-year term, one for a three-year term, one for a two-year term and one for a one-year term. Research conducted for this sunset review found no reason for this staggering.

Appointments to licensing boards typically are for a set period of time. As an example, appointments to the Board of Examiners of Nursing Home Administrators are for four years.

The staggered appointment schedule should be repealed and members should be appointed to the Board for four-year terms.

Recommendation 6 – Update definition of "acupuncture."

Chiropractors who are approved by the Board are allowed to practice acupuncture. Section 12-33-102(1.5), C.R.S., defines acupuncture as:

the puncture of the skin with fine needles for diagnosis and therapeutic purposes.

In Colorado, acupuncturists are licensed under a separate statute and that statute contains a more comprehensive definition of the practice.

The Chiropractic Practice Act should be amended to define acupuncture as:

a system of health care based upon traditional Oriental medical concepts that employs Oriental methods of diagnosis, treatment and adjunctive therapies for the promotion, maintenance and restoration of health and the prevention of disease.

Recommendation 7 – Update the Board’s fining authority and reduce the maximum amount of fine that the Board may impose.

Section 12-33-117(1.5), C.R.S., currently states that “in lieu of a suspension of a license, the Board may impose a fine not to exceed \$10,000.” There are several instances in which the suspension of a license may not be appropriate, but for which the Board should have the ability to fine. The violations could include administrative violations such as the misuse of a title, practicing on a lapsed license, or failing to comply with continuing education requirements. These violations may not justify the suspension of a license, but are instances in which the Board should have the authority to issue fines.

Because it is unlikely that the Board would suspend a chiropractor’s license for an offense such as failing to comply with continuing education requirements, the statute effectively limits the Board’s options for these types of violations. Therefore, the statute should be amended to remove the condition of in “lieu of a suspension of a license.”

Secondly, the current Chiropractic Practice Act provides the Board with a \$10,000 fining limit, which is high when compared to other boards within the Division of Registrations (Division). For example, the Board of Accountancy may issue fines ranging from \$1,000 for first violations to a minimum of \$1,000 to \$2,000 for subsequent violations. Similarly, the Board of Pharmacy’s fines range from \$500 to \$5,000 per violation. Thus, the Board’s \$10,000 fine ceiling seems excessive. As a result, the General Assembly should amend the Board’s fining limits to be more consistent with the other boards within the Division.

Additionally, the Board should develop guidelines for use of this fining authority. The fining schedule should reflect fines in lesser amounts for first violations with increasing amounts for each subsequent violation.

Enabling the Board to fine licensees in appropriate instances and by setting the fining amounts ranging from \$1,000 to \$5,000 per violation would serve as a deterrent for violating the Chiropractic Practice Act and associated rules, while providing a reasonable range of fining authority.

Administrative Recommendation 1 – The Board should actively pursue implementation of continuing competency requirements in conjunction with the Department of Regulatory Agencies’ implementation plan.

Section 12-33-116, C.R.S., requires chiropractors to attend at least 15 hours of continuing education each year.

The Department of Regulatory Agencies (DORA) is currently undertaking a collaborative effort with professional associations to create a regulatory culture of continuing competency for regulated professions. Continuing education has long been the regulatory standard because of its ease of implementation by administrative staff and acceptance by licensees and trade/occupational associations. Mandatory continuing education, however, has many shortcomings, and efforts are underway across the country to develop and implement new models of assuring that practitioners continue to be competent when their licenses are renewed.

DORA’s model for continuing competence is one that establishes a goal that a licensee assess his or her current knowledge and skills, execute a learning plan based on the assessment and demonstration of knowledge and skills necessary to ensure a minimal ability to safely practice the profession. While continuing education is expected to play a role in the continuing competency model, the education received will be targeted and retention measured.

In general, a continuing professional competency program is envisioned as including at a minimum, the following elements:

- (I) Assessment of the knowledge and skills of a licensee seeking to renew a license;
- (II) Development, execution of a learning plan based on the assessment;
- and
- (III) Periodic demonstration of the knowledge and skills necessary to ensure a minimal ability to safely practice chiropractic.

It is the conclusion of this sunset review that the Board should actively participate in DORA’s efforts to implement continuing competency provisions in licensing boards.