

SUNSET EVALUATION REPORT
CHIROPRACTIC
Chapter 442, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of chiropractic under Chapter 442, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate chiropractic to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Board of Chiropractic Examiners, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

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TABLE OF CONTENTS

| <i>Chapter</i> | | <i>Page</i> |
|----------------|---|-------------|
| 1 | INTRODUCTION | 1 |
| | Objective of the Evaluation | 1 |
| | Scope of the Evaluation | 1 |
| | Organization of the Report | 1 |
| | Framework for Evaluation | 2 |
| 2 | BACKGROUND | 7 |
| | Occupational Characteristics | 7 |
| | Regulation of Chiropractors in the United States .. | 8 |
| | Statutory History | 9 |
| | Nature of Regulation in Hawaii | 11 |
| 3 | EVALUATION OF THE REGULATION OF CHIROPRACTIC | 15 |
| | Summary of Findings | 15 |
| | The Need for Regulation | 15 |
| | Regulatory Operations | 17 |
| | Rules of the Board | 23 |
| | Recommendations | 25 |
| | Appendix: Responses of Affected Agencies | 27 |

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 442, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the licensing of chiropractors and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendation.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.

5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of restricting the profession or vocation to protect the public from the potential harm.
6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits," Sec. 14.

encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to the employer, but the mechanic's workmanship ultimately affects the consumer who brings a car in for repairs or who rents a car from the employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected to adequately protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

Background

Chapter 442, Hawaii Revised Statutes, regulates the practice of chiropractic. No one may claim to be a chiropractor or engage in the practice of chiropractic without being licensed by the State. This chapter provides background information on the occupation and its regulation.

Occupational Characteristics

Chiropractic originated from a theory developed by Daniel David Palmer in 1895.¹ Palmer's theory was that illness is caused by subluxations or dislocations or misalignments of the vertebrae. The theory held that these subluxations interfere with normal nerve transmission and are the principal cause of disease and illness. He theorized that spinal manipulation and adjustment could correct subluxations and cure the disease and illness.

Modern chiropractic has modified Palmer's theories somewhat by accepting some basic scientific findings regarding the existence of bacteria and viruses as contributing factors in illness. Chiropractic still emphasizes, however, that a person's health is determined largely by the nervous system and that many illnesses are caused by biomechanical disturbances that interfere with the nervous system and lower the body's defenses and resistance to bacteria and virus. Treatment is primarily by manual manipulation of various parts of the body, particularly the spinal column.

Today, the chiropractic profession is divided philosophically into two groups. One group, the "straight" practitioners, continue to adhere strictly to the theories of Palmer. They confine their practice to spinal manipulation and chiropractic adjustments to correct subluxations which they still consider to be the cause of a majority of diseases and ailments. The other group, the "mixer" practitioners, believe there are other causes of illness and that they should diagnose and treat

1. Robert Thomson, *The Grosset Encyclopedia of Natural Medicine*, New York, Grosset and Dunlap, 1980, p. 47.

other ailments in addition to spinal disorders. Their practice includes various diagnostic and treatment methods to complement spinal analysis and adjustment.

Most chiropractic practitioners today are “mixers” of varying degrees. Although the basic theory of chiropractic has changed little over the years, certain diagnostic and treatment methods are widely accepted and used today. X-ray and laboratory tests are used routinely as methods of diagnosis. Treatment methods often include nutritional counseling and one or more of several types of therapies including electric, heat, water, traction or ultrasound therapy.²

Nationally, about 23,000 persons practice chiropractic.³ Most chiropractors are in private practice with about three-fourths providing services as sole practitioners. Some work for chiropractic clinics or as salaried assistants of other chiropractors. A small number teach or conduct research at chiropractic colleges. In Hawaii, there are 280 licensed chiropractors of which 131 have Hawaii addresses.⁴

Regulation of Chiropractors in the United States

After the theory of chiropractic was developed in the late 1800s, it became a popular alternative to traditional medical care. Medical efforts were focused on infectious disease while chiropractic emphasized physical medicine and rehabilitation. In 1913, the initial law licensing chiropractors was passed and by 1931, chiropractic was given legal recognition in 39 states.⁵ Today, licensing is required in all 50 states and the District of Columbia but the scope of chiropractic practice permitted by law varies considerably from one state to another.

Applicants for chiropractic licenses must be graduates of chiropractic colleges. All chiropractic colleges require two years of undergraduate study as a prerequisite to entering their four-year program. Most chiropractic colleges emphasize classroom

2. John Langone, *Chiropractors, A Consumers Guide*, Reading, Mass., Addison-Wesley, 1982.

3. U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook*, 1982-83 edition, Washington, D.C., U.S. Government Printing Office, p. 147.

4. State of Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, October 1983.

5. American Chiropractic Association, *Chiropractic State of the Art*, Arlington, Va., American Chiropractic Association, 1983, p. 14.

and laboratory work during the first two years in subjects such as anatomy, physiology, and biochemistry. The remaining two years focus on clinical work. Emphasis is placed on courses in manipulation and spinal adjustment. Graduates of chiropractic colleges earn the degree of Doctor of Chiropractic (D.C.).

The principal accrediting agency is the Council on Chiropractic Education (CCE) which is recognized by the U.S. Department of Education as the accrediting agency for chiropractic colleges. Of the approximately 20 chiropractic colleges in the United States, 15 are CCE members. Nine of the 15 are fully accredited by the CCE, four are candidates for accreditation, and the remaining two have not yet attained candidate status. Most of the state boards recognize only graduates from chiropractic colleges having accreditation status with the CCE.⁶

Many students take the National Board of Chiropractic Examiners' (NBCE) examination before they graduate from chiropractic college. Forty-nine state licensing boards will accept an NBCE exam certificate as partial or complete fulfillment of state board examination requirements.

There are two professional associations. The American Chiropractic Association is the larger with a membership of over 19,000.⁷ The other is the International Chiropractic Association. In Hawaii, the Hawaii Chiropractic Association and the Hawaii Chiropractic Health League merged during 1983 and formed the Hawaii State Chiropractic Association.

Statutory History

Chiropractors have been regulated by the State since 1919. Act 22 that year amended the statutes on the practice of medicine to provide for the granting of licenses to practice chiropractic to those individuals who were graduates of a school of chiropractic and were already licensed in another state. The licenses were to be issued by the Department of Health until such time as "there is a board of chiropractic examiners appointed from among the chiropractors of the Territory of

6. Federation of Chiropractic Licensing Boards, *Official Directory of Chiropractic Examining Boards with Licensure & Practice Statistics*, Glendale, Calif., Federation of Chiropractic Licensing Boards, 1982-83, p. 56.

7. American Chiropractic Association, *Chiropractic State of the Art*, p. 16.

Hawaii...⁸ Act 22 authorized chiropractors to provide any service in the treatment of human disease with the exception of administering drugs or medicine and performing surgery.

To obtain a license, an applicant had to provide the territorial treasurer with a certified copy of a diploma from a legally chartered school or college of chiropractic and the Board of Health with a certified copy of a certificate to practice chiropractic from a state board of chiropractic examiners.

Act 99, SLH 1925, created the Territorial Board of Chiropractic Examiners. The board was empowered to examine applicants and recommend the issuance of licenses by the Board of Health to practice chiropractic. Applicants had to pass written examinations administered by the board in subjects enumerated in the act. A general average of 75 percent with not more than two parts below 60 percent had to be attained for successful completion of the examinations. Experienced chiropractors were to be given a credit of 1 percent on the general average of their exam score for each year of actual chiropractic practice. Other requirements which had to be met were: good moral character; graduation from high school or its equivalent; and graduation from an incorporated chiropractic school or college with not less than 2,000 class hours of which 400 hours had to be practical chiropractic experience. Candidates must also successfully complete certain specified subjects.

Act 99 defined chiropractic broadly and authorized chiropractors to use any method or means in the care of the human body except the following: administration of drugs or medicine; performance of surgery; or the practice of osteopathy, dentistry, optometry, lomilomi or massage. The act regulated the use of the title of chiropractor or D.C. and the practice of chiropractic by prohibiting the use of such title or the offering of such services by any person not licensed by the board. Sanctions against such violations included fines or imprisonment or both. The board was granted the authority to revoke licenses to practice chiropractic for reasons such as fraud or moral turpitude. The act also prohibited the use by a chiropractor of titles such as "M.D."

Since 1925, the statute has been amended several times. Amendments in 1927 and 1939 dealt with increased education requirements. Act 229, SLH 1955, phased

8. Section 1, Act 22, SLH 1919.

in still more rigorous educational requirements. The act increased the total number of required chiropractic college class hours to a minimum of 4,200 hours, which remains the current requirement. It also required those applicants for licensing who apply after March 1, 1958 to have completed an additional two years of undergraduate liberal arts or science study at a university or college.

Act 48, SLH 1969, placed sole responsibility for licensing and regulation with the Board of Chiropractic Examiners. Up to then, the board reviewed the qualifications of applicants but the actual license was issued by the Department of Health. The act relieved the Department of Health of all regulatory responsibilities.

In 1971, Act 130 amended the examination requirements by allowing the board to waive its examination and accept a certificate issued by the NBCE. The law authorized the board to grant licenses to applicants who met other licensing requirements and passed the national examination.

In 1983, Act 242 amended the examination requirements in several respects. The act empowered the board to administer a practical demonstration examination as well as a written examination, something the board had actually been doing for some time. It also required applicants to attain a score of 75 percent for all subjects and sections rather than a general average of 75 percent for the examination. In addition, the act reduced the amount of examination credit from 1 percent to 0.5 percent for each year of chiropractic experience up to a maximum of 20 years.

Nature of Regulation in Hawaii

The board. The practice of chiropractic in Hawaii is regulated by a five-member board placed for administrative purposes in the Department of Commerce and Consumer Affairs (DCCA). The department provides staff support to the board. Board membership consists of three chiropractors and two public members. The three chiropractors must be licensed under Chapter 442. Board members serve without pay but are entitled to travel expenses.

The powers and duties granted by statute to the board include the authority to: conduct examinations; grant, suspend, revoke or refuse to renew licenses; keep records of its proceedings; conduct hearings; adopt, amend, and repeal rules and

regulations; and do "all things necessary or incidental to the exercise of the powers and duties herein granted or imposed."⁹

Scope of regulation. The definition of chiropractic currently in effect in Section 442-1 is the same as that contained in the enabling legislation creating the board of chiropractic examiners in 1925. The practice of chiropractic is defined in the statute as "the science of palpating and adjusting the articulations of the human spinal column by hand only," but the law adds that it shall not exclude "the use of any method or means, any agent, either tangible or intangible for the treatment of disease in the human subject." Restricted from the practice of chiropractic are the following: administration of drugs or medicine; performance of surgery; or the practice of osteopathy, dentistry, optometry, lomilomi or massage.

Licensing requirements. To qualify for a license, a person must meet the following requirements: complete two years (defined as 60 credit hours by rule) of liberal arts or science study at a university or college for those applicants who entered chiropractic college after October 31, 1955; graduate from board approved incorporated chiropractic schools or colleges which meet specified statutory requirements; and pass examinations administered by the board in subjects enumerated in the statute.

The board may waive its examination requirements for applicants who have passed the NBCE examination. In actual practice, the board requires all applicants to pass a practical examination given by the board which consists of written portions in chiropractic philosophy, orthopedics, roentgenology, and science of the spine, as well as oral-demonstration portions in X-ray technique/evaluation and chiropractic techniques. In addition, all applicants must pass the NBCE examination either on the mainland or in Hawaii. The board may grant a credit of 0.5 percent on the applicant's general average exam grade for each year of chiropractic experience up to a maximum of 20 years.

Accreditation. The statute specifies certain minimum education requirements which must be met by chiropractic colleges for obtaining board approval. The chiropractic college program must consist of at least 4,200 class hours of which 600 hours must be practical chiropractic experience. The period of study must be four school terms of at least nine months each. The college must offer and the applicant

9. Section 442-5, HRS.

must pass the following subjects: anatomy and histology, physiology, bacteriology, hygiene and sanitation, pathology, chiropractic diagnosis or analysis, chiropractic orthopedy, gynecology and obstetrics, symptomatology, chemistry and elementary toxicology, chiropractic analysis and the principles and practice of chiropractic and technique.

The board has continued to assume the responsibility of accrediting chiropractic colleges even though the CCE has been approved by the U.S. Department of Education as the national accrediting agency for these colleges. The board has yet to adopt rules on minimum standards or the criteria for approval of these chiropractic colleges.

X-ray machines. The board has adopted rules that establish certain requirements for chiropractors using X-ray machines. X-ray machines are to be used only for diagnostic and analytical purposes. Also, their use must be in conformance with the Department of Health's radiation protection regulations.

Penalties. The board has the power to revoke, suspend or refuse to renew licenses to practice chiropractic on any of a number of specified grounds including: false, fraudulent or deceptive advertising; being habitually intemperate; habitually using any habit-forming drug; or procuring a license through fraudulent misrepresentation or deceit.

In cases involving disciplinary action, DCCA acting on the board's behalf is required to give the person proper notice and a fair hearing in conformity with the State's Administrative Procedure Act. In its proceedings, the department has the power to administer oaths, compel the attendance of witnesses, require the production of documentary evidence, and examine witnesses.

Violators are subject to penalties of being fined not more than \$200 and/or imprisoned not more than 90 days if they do the following: (1) buy, sell or fraudulently obtain a license to practice chiropractic; (2) use the title "chiropractor" or "D.C." without obtaining a license in any manner to suggest that they are in the practice of chiropractic; or (3) practice or attempt to practice chiropractic without complying with Chapter 442. In addition, licensed chiropractors are subject to the same sanctions if they use the title "doctor" or "Dr." without also using the term "chiropractor" or "D.C." or if they use any terms, words or letters such as "M.D.," "doctor of medicine," "surgeon," "physician," "osteopath" or "D.O."

Chapter 3

EVALUATION OF THE REGULATION OF CHIROPRACTIC

This chapter contains our evaluation of the regulation of chiropractic under Chapter 442, Hawaii Revised Statutes, including our assessment of the need for regulation and the effectiveness of existing regulatory operations.

Summary of Findings

1. Even with regulation, a significant potential for public harm exists with the practice of chiropractic; without regulation the public would be exposed to an even greater threat of harm.

2. Improvements are needed in the board's examination to ensure valid, reliable, and objective testing of the competency of chiropractic applicants.

3. Through a narrow technicality in its rules, the board has negated the statutory requirement that applicants be given a percentage credit on their examination score for each year of chiropractic experience.

4. Although the law requires applicants to be graduates of chiropractic colleges approved and recognized by the board, it has no written standards or procedures for approving chiropractic colleges, and it is not clear which colleges are approved and which are not.

5. The board's rules are in need of revision. The rule on advertising is unduly restrictive, the rule listing approved chiropractic colleges is out-of-date, and the rule for the applications timetable is inconsistent with the statute. In addition, the board has yet to adopt rules to deal with disciplinary matters.

The Need for Regulation

Chiropractors are primary health care providers who are authorized to employ independent judgment in the diagnosis, prevention, and treatment of illness or injury. As primary care practitioners, chiropractors must have the necessary

diagnostic skills to make decisions about patient care and chiropractic treatment. Licensing of chiropractors is necessary to protect the public from the significant potential harm that would exist if individuals without training or incompetent practitioners were allowed to practice chiropractic in Hawaii.

Although chiropractors still retain some of the original theories espoused by Palmer, the chiropractic profession has evolved over the years, largely as the result of advances in the level and content of educational training. The use of diagnostic and treatment methods to complement spinal analysis and adjustment has expanded. Chiropractors now conduct laboratory and clinical tests as well as use X-rays and other non-surgical methods of diagnosis.

The overwhelming majority of chiropractic treatment is for neuro-musculoskeletal ailments associated with the spine, i.e., biomechanical dysfunctions resulting in lower back pain, chronic back problems, etc. Treatment involves adjustment of spinal vertebrae; manipulation of the musculoskeletal system, including the extremities such as knees, feet, and elbows; and physiotherapy (i.e., physical therapy) techniques which include the use of various types of equipment and machinery. Many chiropractors also supplement the various forms of mechanical treatment with vitamin and nutritional therapy.

Incompetence in any area of chiropractic practice may result in significant physical, emotional or financial harm. Individuals practicing chiropractic must have the necessary training and skill in manipulative therapy to avoid patient injuries such as sprains or fractures. They must also know when there are contraindications to spinal therapy.

It is in the treatment of spinal disorders, referred to as chiropractic adjustments, where there is the greatest risk and where the most serious damage can be done to patients. A chiropractic adjustment, commonly called a "dynamic thrust," is a sudden quick maneuver performed on a patient who has no control over the action. The incompetent use of this adjustment technique may result in irreversible spinal damage, ruptured spinal disc, paraplegia, stroke or even death.

There have been several documented cases of stroke death from cervical spine adjustments and numerous other cases where complications from spinal adjustment

resulted in permanent disabilities.¹ In Hawaii, however, we found no indication of serious injuries resulting from spinal adjustments in our review of complaint files since 1979.

Even with licensing, chiropractic adjustments represent a risk. Without licensing, this risk factor would increase considerably. In addition, licensure is warranted because otherwise, consumers would have difficulty determining the competency of individuals claiming specific skills in chiropractic. The general public is not in a position to assess the competency of chiropractors; instead, it relies on the State to provide the assurance that practitioners have the minimum standards of competency to practice chiropractic.

Licensure of chiropractors is currently required in all 50 states and the District of Columbia.² Sunset evaluations of chiropractic licensing laws in several states during the past few years have all concluded that less restrictive forms of regulation would not provide an adequate level of public protection.

Regulatory Operations

Examinations. The board is required by statute to conduct examinations of applicants in certain subjects, including such subjects as anatomy, bacteriology, physiology, pathology, gynecology, chiropractic diagnosis and practice, etc. The statute allows the board to accept successful completion of the National Board of Chiropractic Examiners' (NBCE) examination in lieu of a state board examination. The NBCE exam is usually completed by chiropractic students prior to graduation from chiropractic college. The national examination covers the subjects which the Hawaii law requires to be tested. Applicants who have not taken the NBCE exam may take it in Hawaii. The board purchases and administers the NBCE exam for these applicants. The NBCE grades the examination and provides the board with the results.

The board also gives its own state examination. The examination includes written tests and oral-demonstration tests. The written tests consist of questions in

1. Scott Haldeman, *Modern Developments in the Principles and Practice of Chiropractic*, New York, Appleton-Dentury-Crofts, 1980, p. 360-363.

2. Foundation for the Advancement of Chiropractic Tenet and Science, *Chiropractic Health Care, Volume I, A national study of cost of education, service utilization, number of practicing doctors of chiropractic, and other key policy issues*, Washington, D.C., Foundation for the Advancement of Chiropractic Tenets and Science, 1980, p. 10.

four areas: X-ray, chiropractic philosophy, orthopedic, and science of the spine. The oral demonstration tests consist of X-ray evaluations and techniques and chiropractic techniques. The board has required all applicants to take and pass both the NBCE exam and the board's examinations.

1. *The written examination.* There have been numerous complaints about the content of the written tests. Complaints have been made about philosophically biased questions taken from outdated textbooks, questions taken from books that are not used in chiropractic colleges, and questions that have multiple answers or are ambiguous.

In one instance in 1980, the board initially approved the results of the examination in which 23 of the 26 candidates failed. Because of complaints and the advice of the Department of the Attorney General that the board's actions had not conformed with the law, the board decided to nullify all of the written tests and to readjust the grades on the oral-demonstration tests. As a result, 19 of the 26 candidates passed the examination.

In another instance, the board decided that an applicant had no valid basis for complaining about a portion of the examination. However, the board changed its position after the complainant's attorney urged the board to adopt the recommended order of the hearings officer who found that there could be more than one correct answer to certain questions. The board then decided to give credit to the applicant and rescore that portion of the test for all applicants.

In still another instance, an applicant pointed to numerous grading inconsistencies and procedural errors and requested a hearing on the matter. The board adjusted grades on several questions and granted the applicant a license.

We believe that the board's written tests add little to ensure the competency of chiropractors in Hawaii. In fact, the written tests are really unnecessary as those aspects of the tests that are valid for ensuring competency are already covered by the NBCE exam. We believe that the board should eliminate the written tests and accept the NBCE exam instead.

2. *Oral-demonstration test.* There are three parts to the oral-demonstration test. In one portion, applicants are asked to evaluate two X-rays and identify the problem areas. In the second portion, applicants are asked to demonstrate how they

would position patients for X-rays and what they would look for. In the third portion, applicants are asked questions about chiropractic techniques, including X-rays again, and they are asked to demonstrate adjustment techniques.

There are several problems with the chiropractic techniques portion of the oral-demonstration test. The board has no written criteria for evaluating performance, for identifying minimum competency or for scoring. No calibration sessions have been held for examiners. Our observation of the procedures used leads us to question the validity and the fairness of this portion of the oral-demonstration test.

Generally, applicants are graded by a single examiner who may be either a chiropractic member of the board or a volunteer chiropractor. Examination questions are not written down or standardized. The questions asked and the techniques demonstrated depend on who the examiner is. There have been accusations that the bias of examiners has been a factor in past examinations. There is no documentation of applicant performance, such as tapes. Consequently, when complaints surface, there is no documentary evidence as to what actually occurred.

We observed that candidates were asked to demonstrate only one or two chiropractic adjustment techniques. In view of the danger posed by inept practice, candidates should be required to demonstrate several adjustment techniques with emphasis on the more complex and potentially dangerous techniques such as cervical spine adjustments.

All candidates should be asked standardized questions and asked to demonstrate chiropractic techniques of uniform difficulty. Examiners should have written criteria upon which to base their grading decisions. Each portion of the examination should be graded by at least two graders working independently. Examiners should be given calibration sessions where they receive instruction in how to grade and what to look for in grading.

3. *Physiotherapy.* Testing is inadequate in another respect. Candidates are not required to take any tests in physiotherapy. A written physiotherapy examination is offered as an elective part of the NBCE exam, but it is not required currently by the state board. Neither is this subject covered in the state board's written or oral-demonstration examinations. The board should ensure that

candidates are knowledgeable and trained in the use of physiotherapy and associated equipment. This can be accomplished by requiring all applicants to take the elective physiotherapy portion of the NBCE examination and adding the testing of physiotherapy and the use of standard physiotherapy equipment to the board's oral-demonstration test.

Examination credit for chiropractic experience. When the board was established in 1925, the law required the board to give to applicants a 1 percent credit on the general average score attained on the chiropractic examination for each year of actual chiropractic experience. For example, if an applicant had 20 years of experience and an examination score of 65 percent, the total score for that applicant would be 85 percent. The intent was to make some allowance for experienced chiropractors who may be competent in performing procedures but who may have forgotten the textbook answers for certain diagnostic and treatment procedures. In 1983, the statute was amended to reduce the 1 percent credit to 0.5 percent a year up to a maximum of 20 years.

In practice, the board has negated the credit allowed by statute by adopting a rule which the board requires applicants to follow to the letter in order to get the credit. The rule, adopted in March 1973, states that in order to claim the credit, applicants must file a copy of the license under which they practiced and two sworn statements from chiropractors substantiating the years of experience. These must be filed *at the time the application for examination is filed.*³ Numerous requests for credit have been denied by the board on the grounds that certain documents were filed subsequent to the filing of the application. Most of these applicants would have been licensed had the credit been granted.

In September 1980, the board discussed how to handle credit for years of practice. The board noted that its rule says clearly that the request must be filed with the application for examination. This rule was used at that meeting as the basis for denying credit requests from five applicants. The board considered another request in December 1980. The board agreed with the claimant that two letters from chiropractors verifying experience had indeed been submitted with the application

3. Title 16, Department of Regulatory Agencies, Chapter 76, Rules Relating to Chiropractors, Chapter 442, Hawaii Revised Statutes, Section 16-76-16.

but had been misplaced. However, it noted that a copy of the applicant's license had not been enclosed and denied the applicant's request on the grounds that all of the required documents were not filed with the application.

The rule, as applied, has had the effect of restricting entry into the profession solely on the basis of a board-imposed technicality. It is also clear that applicants are not being informed adequately about the board's requirement as a large number of requests for credit have been denied because the applicants failed to submit all the required documents with the application. The only information applicants receive about the requirement is on the application form which states: "[T]o be eligible to claim credit of 1 percent on the general average for years of actual practice, attach: (1) Photocopy of license under which you have practiced, and (2) Two notarized statements from chiropractors verifying the years of practice under this license." The instructions fail to convey the severity of the penalty for not filing proof of practice with the application.

We believe that it would be more reasonable for the board to allow requests for credit after applicants find out how they did on the examinations. Experience credits are useful only for those candidates who failed the examination but would have a passing score if credit were given for their experience. We recommend that the board revise its rule to permit applicants to submit requests for credit along with the necessary supporting documentation after they get the results of their examination.

Accreditation. The statutes require applicants to be graduates of chiropractic colleges recognized and approved by the board. However, the board has no written criteria for determining which colleges it will recognize and approve. At this time, it is not clear what colleges are approved by the board. There is a listing of approved schools in the board's rules. However, the list was adopted in 1973 and is outdated. It does not include some colleges that the board now approves, and it includes some that no longer exist as listed.

The majority of states accept accreditation by the Council of Chiropractic Education (CCE) and require that applicants be graduates of CCE schools. The Federation of Chiropractic Licensing Boards (a national association of all state boards of chiropractic) has adopted the CCE standards and recommends that all

boards adopt a rule saying that applicants for licensure must be graduates of a chiropractic college having status with the CCE or from a college meeting equivalent standards.⁴

The board has gone back and forth on the question of accreditation. During the past few years, attempts have been made by some board members to require applicants to be graduates of CCE colleges. These efforts have been the source of some heated exchanges between members at board meetings.

At one time, a former chairman of the board accreditation committee granted preliminary approval to four chiropractic colleges and requested board ratification at two board meetings. The ratification motion was unsuccessful on both occasions. We were informed that two of the colleges were not even authorized to issue diplomas by the states in which they were located. None of the four colleges are currently members of the CCE.

The board no longer attempts to perform the accreditation function. However, the present status of board approved chiropractic colleges is muddled. In practice, the board currently limits approval to graduates of those colleges having accreditation status with the CCE with the exception of applicants from one college having no status with the CCE. However, there is some question whether the board can legally deny candidates from any college since formal action has not been taken to amend the rules on approved colleges.

In order to protect the public, we believe that all applicants should be graduates of CCE colleges. The CCE is the agency recognized by the U.S. Department of Education for accrediting chiropractic colleges. Of particular importance, the CCE has very strict standards on diagnosis. It requires all CCE colleges to teach physical, clinical, laboratory, and differential diagnosis. CCE considers it vital to have skills in diagnosis to augment chiropractic analysis so that practitioners can determine whether chiropractic care is appropriate or whether the patient should be referred to alternate health care. It says:

4. American Chiropractic Association, *Chiropractic State of the Art*, p. 22.

"...it is the moral, ethical, and legal responsibility of the doctor of chiropractic to possess adequate skills in the area of diagnosis in order to determine the appropriateness of the application of chiropractic or the need for cooperative health care, or referral, in the best interest of the patient."⁵

We believe that the statute should be amended to specify that future applicants must be graduates of colleges having accreditation status with the CCE.

Rules of the Board

The rules of the board need to be overhauled. Among the problems with the rules are the following: (1) rules that are restrictive and not enforced, (2) rules that are out-of-date, (3) rules that are inconsistent with the statute, and (4) serious omissions on such matters as grounds for disciplinary actions.

Rules not enforced. The board's rules on advertising contain various restrictions which have never been enforced or implemented. For example, the rules say that classified telephone listings in excess of one column inch are unethical; they say that licensees are entitled to list only their names, address, telephone number, and office hours. It is evident from the ads in the yellow pages that the restrictions are neither observed or enforced.

Other than fraudulent or deceptive advertising, it is doubtful that advertising should be restricted at all. In 1979, the State Ethics Commission reviewed various professional and vocational licensing boards. It noted then that the rules of the Board of Chiropractic Examiners contained strict dictates on advertising practices, including such details as allowable size and typesetting of ads. The Commission stated that it was questionable whether the restrictions would be upheld if challenged in the courts. The Ethics Commission further believed that there was a protectionist aspect in the advertising restrictions.⁶ At a board meeting in June 1979, board members promised to remove the advertising restrictions by the end of that year, but the board has yet to do so.

5. The Council on Chiropractic Education, *The Council on Chiropractic Education and the Accreditation Process for Chiropractic Colleges*, Des Moines, Iowa, The Council on Chiropractic Education, 1980, p. 12.

6. State Ethics Commission, *State Ethics Commission Report on the Professional and Vocational Licensing Boards in the Department of Regulatory Agencies*, n.d.

Out-of-date rules. The law requires applicants to be graduates of chiropractic colleges approved by the board. The rules provide little information about the criteria or the process the board uses in approving colleges. The pertinent rule says that the board will approve only those schools which continuously maintain a high quality standard of instruction and that the board's criteria will be flexible and realistically related to continuous improvement of chiropractic education.⁷ Exactly what are the criteria and how these are to be applied are not clarified. The rule goes on to list the approved colleges. However, as noted earlier, this list cannot be relied upon. It includes some colleges that no longer exist as named and it fails to include some colleges that have received board approval.

As discussed earlier, to ensure public protection we believe all applicants should be graduates of CCE accredited colleges. Should a statutory amendment be made to this effect, this out-of-date rule could simply be deleted.

Rules inconsistent with statutes. The timetable that the board uses for applications is inconsistent with that required by the statute. The board's rule says that applications for examination shall be made to the board 90 days prior to the examination date. The board has the discretion to waive this deadline but in no case is the filing time to be less than 30 days before the examination. The statutes prior to 1983, however, required applications to be filed 30 days prior to the examination date. In 1983, Act 55 changed the filing date from 30 days to 60 days on the recommendation of the board. Even with the change to 60 days, the board's rule is still inconsistent with the statute.

Omissions in the rules. The rules provide little guidance as to what constitutes professional misconduct or what the grounds are for discipline by the board. Under Chapter 442, the board has the authority to revoke or suspend licenses. In cases of violation, Section 92-17, HRS, also gives all boards the authority to order appropriate relief for complainants, including the refunding of money paid as fees for services, correcting work done in services provided or any other appropriate means to secure relief. However, the board has not yet adopted guidelines about the kinds of activities that might be considered professional misconduct and grounds for disciplinary action.

7. Title 16, Chapter 76, Section 16-76-8.

The board is aware of the need for action. At a May 1982 meeting, the board was advised by DCCA's Regulated Industries Complaint Office (RICO) of the need to set specific guidelines for professional misconduct for its use in disciplinary cases. They were told that these guidelines would also be useful to RICO investigators in their investigation of complaints.

Board members say that they are currently trying to determine the best course of action and that they are working with their professional association on this matter. Our conclusion is that too much time has already passed without any noticeable progress.

Recommendations

We recommend that:

1. *Chapter 442, Hawaii Revised Statutes, be reenacted to continue the regulation of chiropractors. In reenacting the statute, an amendment should be included to require applicants to be graduates of colleges accredited by the Council of Chiropractic Education.*

2. *The Board of Chiropractic Examiners change its examinations by doing the following:*

- eliminating the written portion of the state board examination and accepting the National Board of Chiropractic Examiners' examination in its stead;*
- improving the oral-demonstration test by testing several chiropractic adjustment techniques, by using standardized questions of uniform difficulty, and by ensuring fair and reliable grading of applicants through use of at least two independent examiners who have had training in calibrated grading procedures.*
- requiring applicants to take the elective physiotherapy examination of the National Board of Chiropractic Examiners and including items on physiotherapy treatment in its oral-demonstration test.*

3. *The board allow applicants to request experience credit after they find out how they did on their examinations and revise its rule so that applicants will not arbitrarily be denied such credit.*

4. *The board amend its rules by:*

- . removing rules that restrict advertising and the out-of-date list of approved colleges;*
- . conforming the timetable for applications to the timetable specified by statute;*
- . adopting guidelines as to what constitutes professional misconduct and grounds for disciplinary actions.*

APPENDIX

RESPONSES OF AFFECTED AGENCIES

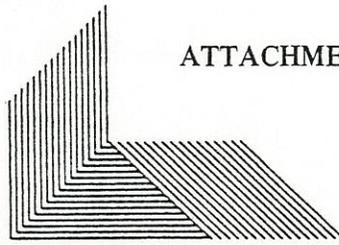
COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on November 14, 1983 to the Board of Chiropractic Examiners and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

The board responded that it is in agreement with all our recommendations and that it has already taken steps to correct some of the irregularities. The department also responded that it is in agreement with our recommendations.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

November 14, 1983

Mr. Francisco V. Mariano
Board of Chiropractic Examiners
Department of Commerce and Consumer Affairs
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Mariano:

Enclosed are 6 preliminary copies, numbered 4 through 9, of our *Sunset Evaluation Report, Chiropractic*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Dr. Mary G. F. Bitterman, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of chiropractors. If you have any comments on our recommendations, we would appreciate receiving them by December 14, 1983. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form any changes may possibly be made to it, access to this report should be restricted solely to those officials whom you might wish to call upon to assist you in your response. We request that you exercise controls over access to the report and ensure that the report will not be reproduced. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2



GEORGE R. ARIYOSHI
GOVERNOR

MARY G. F. BITTERMA
DIRECTOR

DICK H. OKAJI
LICENSING ADMINISTRATOR

BOARD OF CHIROPRACTIC EXAMINERS

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

December 14, 1983

RECEIVED

DEC 13 2 28 PM '83

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
465 S. King Street, Rm. 500
Honolulu, HI 96813

Dear Mr. Tanimura:

We have reviewed the preliminary draft of your Sunset Evaluation Report for Chiropractic. We thank you for the opportunity to review and respond to your sunset review of the chiropractic law and wish to commend your staff for the thoroughness of the report and the in-depth research that supported your conclusion.

The board is in agreement with all your recommendations and has taken steps to correct some of these irregularities.

Our comments are as follows:

1. We agree that the statutes be amended to require applicants to be graduates of colleges accredited by the Council of Chiropractic Education; subsequently, the board at its meeting on September 15, 1983 approved to include this provision within its rules. The board will submit legislation to amend this portion of the statutes.
2. On November 17, 1983, the board eliminated the clinical written portion of the state board examination. We are now in the process of improving the oral-demonstration portion of the test.
3. At its meeting on December 8, 1983, the board approved to revise the rules so that applicants will not be arbitrarily denied experience credit.

Mr. Clinton T. Tanimura
December 14, 1983
Page 2

4. The board is now in the process of revising its rules to remove restriction on advertising; to delete the out-of-date list of colleges; to conform to the timetable for applications; and to formulate guidelines for what would constitute professional misconduct and grounds for disciplinary actions.

Again, we thank you for the opportunity to respond to your comments, observations and recommendations and we do not anticipate any problems in following your suggestions. We would also like to thank you and your staff for supporting the work of the board and seeking its continuance.

Sincerely,

Francisco V. Mariano

Francisco Mariano
Chairman, Board of Chiropractic
Examiners

ATTACHMENT 3



GEORGE R. ARIYOSHI
GOVERNOR

MARY G. F. BITTERMAN
DIRECTOR
Commissioner of Securities

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

DONALD D.H. CHING
DEPUTY DIRECTOR

December 6, 1983

RECEIVED

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OFFICE OF THE AUDITOR
STATE OF HAWAII

Honorable Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
465 So. King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your sunset evaluation report on chiropractors.

The Department of Commerce and Consumer Affairs is in agreement with the Legislative Auditor's recommendations that the statute be amended to require applicants to be graduates of colleges accredited by the Council of Chiropractic Education; that the Board of Chiropractic Examiners eliminate the written portion of the State board examination and accept the National Board of Chiropractic Examiners Examination in its stead and improve the oral-demonstration portion of the test; that the board revise its rule so that applicants will not arbitrarily be denied experience credit; and that the board remove from its rules provisions on advertisement and list of approved colleges, conform the timetable for applications to the timetable specified by statute and adopt guidelines to clarify what constitutes professional misconduct and grounds for disciplinary action.

I have been advised that the board already has commenced taking corrective measures in some of these areas.

Sincerely yours,

Mary G. F. Bitterman
Director