

SUNSET EVALUATION UPDATE
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
Honolulu, Hawaii

Report No. 87-21
December, 1987

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific 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 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 These programs are repealed unless they are specifically reestablished by the Legislature.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 updates our sunset evaluation of the practice of chiropractic under Chapter 442, Hawaii Revised Statutes, which was conducted in 1984. 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 It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

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. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

December 1987

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Sunset Evaluation Update

CHIROPRACTIC

This report evaluates the regulation of the practice of chiropractic under Chapter 442, Hawaii Revised Statutes, to determine whether the health, safety, and welfare of the public is best served by reenactment, modification, or repeal of the statute. An evaluation of the regulation of chiropractic was previously conducted by this office and our findings and recommendations were reported in January 1984 in the *Sunset Evaluation Report, Chiropractic, Chapter 442, Hawaii Revised Statutes*. This update summarizes the information presented in the 1984 evaluation, reports on development since then, and presents our current findings and recommendations.

Background on Chiropractic and Its Regulation

Chiropractic is a branch of the healing arts that originated from a theory developed in the late 1800s that illness and disease were caused principally by subluxations, or dislocations or misalignments, of the vertebrae. The theory held that these subluxations interfere with normal nerve transmissions and that spinal manipulation and adjustment could restore the normal functioning of the nervous system and thereby cure the disease and illness. Today, the chiropractic profession believes that disease processes are influenced by a multiplicity of factors but continues to emphasize that disturbances of the nervous system are an important contributing factor to disease.

Modern chiropractic concentrates on spinal biomechanics, musculoskeletal, and neurological relationships. While chiropractors do treat other ailments, the overwhelming portion of their practice is devoted to the treatment of neuromusculoskeletal conditions. According to a professional survey in 1986, over 87 percent of chiropractic treatment was for neuromusculoskeletal conditions.¹

Chiropractors use the standard procedures and instruments of physical and clinical diagnosis in addition to other diagnostic methods such as postural and spinal analysis. Physical examinations normally include neurologic and orthopedic testing. Clinical diagnostic methods may include X rays and laboratory tests. Treatment methods include spinal adjustments, manipulation of soft tissue and extremities, and adjunctive physiotherapeutic procedures to alleviate neurologic and muscular disturbances. Treatment may also include dietary advice and nutritional supplementation as well as counseling in such areas as rehabilitative exercises, posture, and lifestyle habits.²

Currently, there are an estimated 30,000 chiropractors in active practice in the United States.³ Most chiropractors are in private practice with about three-fourths providing services as sole practitioners. In Hawaii, there are 309 licensed chiropractors of which 155 have Hawaii addresses.⁴

There are two professional associations. The American Chiropractic Association is the larger with a membership of over 20,000.⁵ The other is the International Chiropractic Association. In Hawaii, chiropractors may join the Hawaii State Chiropractic Association which is not affiliated with either of the national associations.

Licensing is required for chiropractors in all 50 states and the District of Columbia. The scope of chiropractic practice permitted by law varies from one state to another.

Regulation in Hawaii. Chiropractors have been regulated in Hawaii since 1919. Act 22 that year amended the statutes on the practice of medicine to provide for the granting of licenses to practice chiropractic. The Board of Health was authorized to issue licenses to applicants who were graduates of a school of chiropractic and were already licensed in another state. The act authorized chiropractors to provide any service in the treatment of human disease except for administering drugs or medicine and performing surgery.

In 1925, Act 99 created the Territorial Board of Chiropractic Examiners and established standards for licensing. The board was authorized to examine and evaluate applicants and to recommend to the Board of Health whether licenses should be issued.

Today, the Board of Chiropractic Examiners, made up of three chiropractors and two public members, regulates chiropractic in Hawaii. To qualify for chiropractic licensure, applicants who matriculated in any chiropractic college subsequent to October 15, 1984, must: (1) graduate from a chiropractic college having accreditation status with a chiropractic accrediting agency recognized by the U.S. Department of Education; (2) pass all parts including the physiotherapy portion of the National Board of Chiropractic Examiners (NBCE) examination; and (3) pass the state board's written and oral-demonstration examinations.

Findings and Recommendations in the 1984 Sunset Evaluation Report

Our sunset evaluation of the regulation of chiropractic in 1984 concluded as follows:

- "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. We found that the incompetent practice of chiropractic could cause considerable and significant harm to the health, safety, and welfare of consumers. Chiropractors are primary health care providers who, like members of other healing arts, make independent diagnostic decisions on patient treatment and referrals to other health care professionals.

The overwhelming majority of chiropractic treatments is for neuromusculoskeletal ailments associated with the spine, i.e., biomechanical dysfunctions resulting in lower back pain, chronic neck and back problems, etc. It is

in the treatment of these 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. Practitioners must be able to recognize contraindications to spinal therapy and have the proper training and skills in manipulative therapy to avoid patient injuries such as sprains or fractures. The incompetent use of chiropractic adjustment technique may result in irreversible spinal damage, ruptured spinal disc, paraplegia, stroke, or even death.

There have been several documented cases in other states of stroke death from cervical spine adjustments and numerous other cases where complications from spinal adjustment resulted in permanent disabilities.⁶ We recommended that Chapter 442 be reenacted to continue the regulation of chiropractic.

The state examination. The board required that all applicants take and pass both the NBCE examination and a state examination administered by the board. The state examination included written tests and oral-demonstration tests. We found that there had been numerous complaints about the content of the state written tests as well as complaints regarding questions that were ambiguous or had multiple answers.

We recommended that the written tests be eliminated because of these problems and because the subjects covered in the examination were already included on the NBCE examination.

There were also problems with the oral-demonstration test, in particular, the chiropractic techniques portion of the oral-demonstration test. The board was without written criteria for evaluating performance, for identifying minimum

competency, or for scoring. No calibration sessions had been held for examiners. The examiners did not use standardized questions, and in some instances the applicants were graded by a single examiner. We questioned the validity and fairness of the testing procedures and recommended that the board take action to correct these problems.

Physiotherapy. We found the examination to be inadequate in that there was no requirement for testing competency in physiotherapy. Although the scope of practice for chiropractic included the use of physiotherapy, the board did not require either national or state physiotherapy testing. We recommended that the board require applicants to take the physiotherapy portion of the NBCE examination and to add physiotherapy testing to the board's oral-demonstration test.

Examination credit for chiropractic experience. The statute required the board to give applicants a percentage credit to be added to the chiropractic examination scores for each year of actual chiropractic experience. In 1983, the statute was amended to reduce the credit from 1 percent to 0.5 percent a year up to a maximum of 20 years.

We found that, in practice, the board had negated the credit authorized by statute by adopting a rule requiring applicants to file substantiating documentation for the experience credit at the time of applying for the examination. Although the examination application instructions failed to state the consequences of not filing proof of practice with the application, the board-imposed technicality was used as the basis for denying numerous requests for such credit. We recommended that the rule be revised to allow applicants to submit requests for credit after receiving the results of their examination.

Accreditation. The statutes required applicants to be graduates of chiropractic colleges recognized and approved by the board which met minimum

education requirements related to class hours and specified subjects. The board, however, had not developed written criteria for determining which colleges it would recognize and approve. There was only an outdated listing of approved colleges in the board's rules.

The board had gone back and forth on the question of accreditation for several years. Since formal action had not been taken, the status of board-approved chiropractic colleges was muddled.

The Council on Chiropractic Education (CCE) was and continues to be the agency recognized by the U.S. Department of Education for accrediting chiropractic colleges. In practice, the board limited 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.

We felt that there was some question whether the board could legally deny candidates from any college since the board had failed to take formal action to amend the rules and adopt standards for approval of colleges. We recommended that the statute be amended to require applicants to be graduates of colleges having accreditation status with the CCE.

Rules of the board. We found that the rules of the board needed to be overhauled. Some rules were inappropriate, restrictive, and not enforced. Others were out of date or inconsistent with the statute. Finally, there were serious omissions in the rules on such matters as grounds for disciplinary actions.

Comments and responses to the report. The board responded to our report saying that it was in agreement with all our recommendations and had taken the following corrective measures:

- "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.
- "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."

The Department of Commerce and Consumer Affairs (DCCA) responded that it was in agreement with our recommendations.

Subsequent Developments

Various amendments were made to Chapter 455 between 1984 and 1987 which changed the regulatory scheme for chiropractic. The more significant statutory changes are discussed below.

Following the submission of our sunset report, hearings were held during the 1984 legislative session to determine whether Chapter 442 should be reenacted, modified, or repealed. The board and the Hawaii State Chiropractic Association testified in support of continued licensing.

The board testified that it agreed with the "conclusion of the Auditor's report in that there is a continued need to regulate the profession and has taken steps to correct the irregularities outlined in the report."⁷ While the board endorsed all of the recommendations made in our sunset evaluation report, several persons disagreed with our recommendation concerning accreditation standards for chiropractic colleges.

The testimony against the recommendation that colleges must have CCE accreditation status came, for the most part, from graduates and students from one college that had been informally approved by the board but was without CCE status. The president of this college testified, furthermore, that the college did not intend to apply for CCE status. Instead, the college would maintain its relationship with another chiropractic accreditation association which was not recognized by the U.S. Department of Education. The college opposed the CCE accreditation requirement since it would preclude future graduates of the college from applying for licensure in Hawaii.⁸

The Legislature enacted Act 240, SLH 1984, which extended the repeal date from December 1984 to December 1988 and established accreditation standards for chiropractic colleges.

The act established the requirement that applicants must be graduates of a chiropractic college accredited (or recognized as a candidate for accreditation) by any chiropractic accrediting agency recognized by the U.S. Department of Education. Students who matriculated in any chiropractic college prior to October 15, 1984, were grandfathered and exempted from the provision.

The Committee on Conference noted in its report that:

"The bill provides that an applicant must provide evidence of having attended and graduated from a chiropractic college accredited by any chiropractic accrediting agency recognized by the U.S. Department of Education.

"Your Committee, upon further consideration, has amended the bill by amending the effective date to read: 'October 15, 1984'. Your Committee finds that, in order to be fair to applicants who are currently awaiting their acceptance letters and who may have spent much time and money in doing so, should be exempt from the aforementioned proposed accreditation standard. This will thereby, serve to exempt students who formally begin their chiropractic studies prior to October 15, 1984."⁹

Act 240 also deleted certain obsolete educational requirements requiring applicants to be graduates of a board-approved college having a program which consisted of a minimum number of class hours in specified subjects.

In addition, during the 1984 legislative session, Act 243 amended the statute in the following respects:

- . required all applicants for licensure to pass the physiotherapy portion of the NBCE examination and a practical demonstration examination administered by the board;
- . required the board to adopt rules for granting approval for the use of physiotherapy modalities for persons holding licenses as of June 4, 1984, and authorized the board to establish examination requirements for such approval;
- . authorized the board to promulgate continuing education requirements by rule;
- . required professional members of the board to have been in practice in Hawaii for at least five years immediately prior to their date of appointment;
- . authorized limitation, restriction, and probation of a license as additional options for taking disciplinary action; and
- . authorized the board in cases involving disciplinary action to require a course of study prior to reinstatement of a license.

In 1986, the statute was amended to further clarify the grounds for disciplinary action and penalties as follows:

- . added to the grounds for disciplinary action a provision concerning the submission of false information to DCCA;

- . clarified that a revoked license could not be restored by deleting references to revocation and revoked license in the restoration of license provision;
- . provided for administrative fines of not more than \$1000; and
- . increased the maximum fine for criminal penalties to \$1000.

Also in 1986, Act 100 amended the examination requirements to clarify the requirement that an applicant must pass all parts of the NBCE examination in order to qualify for the state's examination. It deleted the provision allowing the board to waive the written portion of the state examination and accept a certificate issued by the NBCE. The act also amended the language to allow, instead of require, the state examination to include both practical demonstration and written examinations.

The act authorized the board to contract for examination services with a professional testing agency. In addition, the examination grading system and work experience credit were changed from a percentage basis to a point system.

In 1984, Act 243 had established physiotherapy licensing requirements for future applicants as well as chiropractic practitioners who were licensed on June 4, 1984. The requirements for applicants and licensees were comingled in a new subsection which had resulted in confusion in administering the law. Act 68, SLH 1987, clarified the physiotherapy requirements by separating the provisions for licensed chiropractors (who must be approved by the board in order to use physiotherapy modalities) from those pertaining to licensing applicants (who must pass the physiotherapy portion of the NBCE examination and a board examination).

Current Findings and Recommendations

Based on our latest sunset evaluation, we find the following:

1. There remains a significant potential for public harm with the practice of chiropractic. State regulation should be continued to provide protection against this harm.
2. The board has initiated several statutory and rule changes to correct the problem areas addressed in our previous sunset report, and it has taken action for making further improvements in the regulation of chiropractic.
3. The board has obtained statutory approval for imposing continuing education requirements as a condition for relicensure. These requirements are unwarranted.

The Need for Regulation

In our previous evaluation, we found that licensing of chiropractors was necessary to protect the public from the considerable and significant potential harm that would result if individuals without training or incompetent practitioners were allowed to practice chiropractic in Hawaii. Our current evaluation continues to confirm that finding.

The chiropractic law authorizes the use of any diagnostic and treatment method except for administering drugs or medicine or performing surgery. As primary health care providers, chiropractors must be capable to make competent, independent diagnostic decisions on patient treatment and referrals to other health care professionals. Incompetence in any area of chiropractic could result in significant public harm.

The overwhelming majority of chiropractic treatment still involves spinal manual therapy. Chiropractors use spinal manual therapy to correct biomechanical disorders to provide relief from neuromusculoskeletal symptoms. Chiropractors treat biomechanical dysfunctions of the spine by spinal adjustments with the purpose of relieving musculoskeletal symptoms such as back or neck pain and attendant neurologic disturbances causing referred pain to peripheral areas such as the arms and legs.

Individuals practicing chiropractic must be able to recognize contraindications to spinal therapy and must be competent in adjustment techniques to avoid complications and injury. Although we found no indication of serious injuries resulting from spinal adjustments in Hawaii, licensure should be continued because of the potential dangers of incompetent chiropractic services.

Currently, all 50 states and the District of Columbia require licensure to practice chiropractic. Sunset evaluations of chiropractic licensing laws in several states have all concluded that less restrictive forms of regulation would not provide an adequate level of public protection.

Regulatory Operations

Examinations. Our previous review disclosed three areas where the examination process was inadequate. First, although the chiropractic scope of practice authorized the use of physiotherapy, the board had not established any requirement for testing physiotherapy competency. Secondly, the board's written theory tests were of questionable content validity and duplicated coverage of subjects that were included on the NBCE examination. Finally, we found several procedural problems related to the chiropractic techniques portion of the board's

oral-demonstration test including the lack of standardized test questions, written grading criteria, and score calibration training.

We recommended that the board revise its examination process by requiring applicants to complete the NBCE physiotherapy examination as well as a board examination on physiotherapy treatment, eliminating the board's four written theory tests, and improving the oral-demonstration test by correcting the various procedural problems.

The board has taken action on all three recommendations. The board has established physiotherapy testing requirements and eliminated its written theory tests. The board has also corrected the basic deficiencies with the oral-demonstration tests and has initiated additional improvements to the examination process.

The current examination requirements for chiropractic consists of the NBCE examination including a physiotherapy portion and a state examination administered by the board. The state examination includes a written test on the laws and rules; two written practical tests in X-ray positions/roentgenology interpretations and physiotherapy; and two oral-demonstration tests in adjusting/palpation techniques and neurological/orthopedic procedures.

The board has developed a written grading criteria for the oral-demonstration tests. All examiners must attend calibration sessions on how to use the grading criteria for evaluating performance and making grading decisions.

The board has developed a large number of standardized questions for the oral-demonstration tests. The questions have been written on index cards. The applicants randomly select index cards for the different oral-demonstration tests and demonstrate and/or explain the approximate techniques or procedures.

The neurological/orthopedic tests are graded by two graders working independently. The board increased the number of independent graders from two to three for the adjusting/palpation test beginning with the April 1987 examinations. The most extreme of the three scores is dropped and not used for scoring the applicant's performance. This system was developed by the DCCA's examination branch because the scoring of the adjusting/palpation test can be somewhat subjective even with calibration training.

In addition, the board has taken formal action to make additional changes to the examination process. A contract has been executed by the State with a chiropractic college roentgenology professor to prepare and grade the roentgenology interpretation test for the board.

The board has prepared proposed legislation to be introduced during the 1988 legislative session to require applicants to pass the NBCE written clinical competency examination. After this requirement is implemented, the state examination will consist of only the roentgenology interpretation test, the written laws and rules test, and an oral-demonstration test in adjusting/palpation. The board's only active involvement with the examination process will be the conduct of the adjusting/palpation test.

Physiotherapy examination requirements for licensed chiropractors. During the legislative hearings in 1984, the Senate Committee on Consumer Protection and Commerce was concerned about chiropractic licensees who were authorized to use physiotherapy modalities without any requirements for demonstrating competency. The committee amended the bill which became Act 243 to require the board to adopt rules for granting physiotherapy approval to all persons licensed as of the effective date of enactment.

The board established the requirement that licensees as of June 4, 1984, had to complete a course of physiotherapy study from an accredited chiropractic college and pass a special written physiotherapy examination. The examination was purchased from the NBCE and administered by the State. Chiropractors could obtain a waiver from the physiotherapy examination if they had passed the physiotherapy portion of the NBCE or had a current chiropractic license from a state having physiotherapy license requirements comparable to those of the NBCE. We believe this satisfies the requirement to test competency in physiotherapy.

Examination credit for chiropractic experience. In our prior evaluation, we found that the board had adopted a rule which was used to circumvent a statutory requirement that applicants be granted an examination score credit of 0.5 percent for each year of chiropractic experience up to a maximum of 20 years. The rule, which was adopted in 1973, required the filing of the experience request documentation with the examination application. This rule was used as the basis for denying any credit that was requested subsequent to the application process.

The board has followed our recommendations by deleting the rule specifying the timetable for filing for the experience credit and by developing a form that notifies applicants that they have 90 days from the date of the examination to request that the experience credit be added to their failing score.

Accreditation. In our prior sunset evaluation, we found that the board's rules contained an outdated list of approved chiropractic colleges and that the board was without written criteria or standards for making approval or accreditation decisions. We were concerned whether the board could legally deny candidates from any college.

We concluded that the statute should be amended to specify that future applicants must be graduates of colleges having accreditation status with the CCE which was recognized by the U.S. Department of Education as the agency for accrediting chiropractic colleges.

In 1984, Act 240 established the requirement that applicants who began their studies subsequent to October 15, 1984, must be graduates from a chiropractic college having accreditation status with any chiropractic accrediting agency recognized by the U.S. Department of Education. The CCE continues to be the only accrediting agency that is recognized by the U.S. Department of Education.

Continuing education. In 1984, the board requested that Chapter 442 be amended to establish a continuing education requirement, and this was done.

At the hearings on H.B. No. 2418, DCCA testified that it "discourages the establishment of a mandatory continuing education program unless it has been clearly shown that the consumer is being hurt due to incompetence on the part of the licensee and that all other avenues to improve the competence has been explored." The DCCA testified that it was not convinced of the need for mandatory continuing education requirements. The department suggested that the chiropractors should, instead, consider a voluntary continuing education program if they desired to upgrade their profession.

We agree with the assessment made by DCCA in 1984 regarding mandatory continuing education. We believe that such a requirement is unnecessary and misguided.

Numerous studies have shown that there is no demonstrated relationship between continuing education requirements and maintaining competency. Not only is there no evidence of any correlation between continuing education and

competency or quality of care but various studies have shown that continuing education increases the cost of services.

Reviews of continuing education programs by regulatory agencies in other states have been generally negative. For example, in evaluating its continuing education program, the Colorado Department of Regulatory Agencies reported that although continuing education was enacted "in good faith, with high expectations for success . . . it has become instead a classic form of unnecessary government regulation, and we have been urging very vigorously its repeal."¹⁰

We have found numerous problems at DCCA in administering continuing education programs for other regulated occupations. These programs result in a great deal of paperwork from program sponsors and licensees that DCCA and the board must review to ensure compliance with continuing education requirements. Invariably, errors are made in reviewing compliance. For example, there are always questions on whether certain business and management courses on how to manage one's professional practice may legitimately be considered for continuing education.

A review of the board files disclosed that the chiropractic continuing education program is already experiencing problems similar to those found for other regulated occupations. The amount of administrative effort and resulting paperwork has been considerable. Since 1985, the board has received over 700 applications from sponsors requesting continuing education approval. In an effort to reduce the number of applications and to help cover the administrative cost, the board has proposed a rule to charge sponsors \$25 for each continuing education application.

The amount of correspondence on continuing education between the board and chiropractors residing out-of-state has been extensive. Of the 309 Hawaii licensed

chiropractors, 155 reside on the mainland or in foreign countries. There have been all types of questions on specific courses and the board's approval procedures. Chiropractors must submit documentation on their continuing education when they apply to renew their licenses. Some of the documentation are for courses that were not approved by the board, and in some cases the board has been requested to consider these exceptions, and it has provided retroactive approval. In these cases, the board must return the course documentation with instructions on how to proceed in obtaining approval.

In view of the lack of any demonstrated value to continuing education programs, the problems in administering these programs, and their costs, we believe that the requirement is unjustified and should be removed from the statute.

Recommendations

We recommend that:

Chapter 442, Hawaii Revised Statutes, be reenacted. In reenacting the statute, we recommend that the following amendments be made:

- . applicants be required to pass the National Board of Chiropractic Examiners' written clinical competency examination; and*
- . the requirement for continuing education be removed.*

NOTES

1. Matthew J. Brennan, Ph.D., *Demographic and Professional Characteristics of ACA Membership 1986 Annual Survey*, American Chiropractic Association, Arlington, Va., December 1986, p. 4.
2. American Chiropractic Association, *Chiropractic State of the Art, 1987-1988*, Arlington, Va., 1987, pp. 4-20.
3. American Chiropractic Association, *Chiropractic State of the Art, 1987-1988*, p. 25.
4. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, June 16, 1987.
5. American Chiropractic Association, *Chiropractic State of the Art, 1987-1988*, p. 28.
6. Scott Halderman, *Modern Developments in the Principles and Practice of Chiropractic*, Appleton-Century-Crofts, New York, 1980, pp. 360-363.
7. Testimony on House Bill No. 1821, submitted by Dr. John Rathjen, Chairman, Board of Chiropractic Examiners, to the Honorable Mitsuo Shito, Chairman, House Committee on Consumer Protection and Commerce, February 23, 1984.
8. Testimony on House Bill No. 2025, submitted by Thomas A. Gelardi, D.C., President, Sherman College of Straight Chiropractic, to the House Committee on Consumer Protection and Commerce, February 23, 1984.
9. Senate Conference Committee Report No. 34 on House Bill No. 1821, H.D. 1, S.D. 1, Twelfth Legislature, 1984, State of Hawaii.
10. Letter from Bruce M. Douglas, State of Colorado, Department of Regulatory Agencies, Division of Registrations, to Owen H. Yamasaki, Office of the Legislative Auditor, State of Hawaii, July 1, 1986.

APPENDICES

APPENDIX A

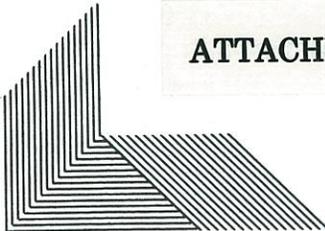
COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Update was transmitted on October 19, 1987, 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 response from the board is included as Attachment 2. Since the report had no recommendations for the department, it did not respond to the report.

The board responded that it agreed with our recommendation for applicants to pass the National Board of Chiropractic Examiners' written clinical competency examination. The board is proposing this in an administration bill to the 1988 legislative session.

The board does not agree with the recommendation to discontinue requirements for continuing education although it acknowledges the increase in costs and paperwork resulting from the requirement. The board believes that continuing education is necessary as a method to update licensees on improvements in the chiropractic profession and to help them to "receive more knowledge, be more competent, and provide quality care to their patients." It is recommending that the department charge each sponsor \$25 for each continuing education application.

We continue to hold to the finding that there is no evidence that continuing education contributes to maintaining competency. Moreover, the State's purpose in regulating chiropractic is to ensure a minimum level of competency to protect the public. It is not to update licensed chiropractors on improvements in the profession and to help them receive more knowledge. These matters are best left as matters of choice with the individuals in the profession.



ATTACHMENT 1

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

CLINTON T. TANIMURA
AUDITOR

October 19, 1987

C O P Y

John T. Rathjen, D.C., Chairperson
Board of Chiropractic Examiners
Department of Commerce and Consumer Affairs
1010 Richards Street
State of Hawaii
Honolulu, Hawaii 96813

Dear Dr. Rathjen:

Enclosed are six preliminary copies, numbered 4 through 9, of our *Sunset Evaluation Update, 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 Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of chiropractic. If you have any comments on our recommendations, we would appreciate receiving them by November 19, 1987. 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 and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. 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

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR

NOE NOE TOM
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

November 18, 1987

RECEIVED

Nov 19 3 29 PM '87

OFF. OF THE AUDITOR
STATE OF HAWAII

Honorable Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
465 S. King Street, Room 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 your recommendation to require applicants to pass the National Board of Chiropractic Examiners' written clinical competency examination. The Board has already proposed an administrative bill to the 1988 Legislative Session to include a provision to require an applicant to pass the National Board's written clinical competency examination in order to qualify for the Hawaii State practical examination.

However, the Board is not completely in agreement with your recommendation to discontinue the requirements for continuing education. We understand the concerns expressed by the Department of Commerce and Consumer Affairs regarding the increase of the cost of services and the additional paperwork from the programs sponsors. Our recommendation to the Department to charge the sponsor \$25 for each continuing education application was threefolds: (1) to reduce the number of extraneous applications; (2) to cover administrative costs; and (3) to impress in the minds of the sponsors to provide more meaningful continuing education programs.

The Board believes that the continuing education program is necessary in order to provide a method to update the individual licensee on matters which are constantly being improved in the chiropractic profession. Whereby the licensed chiropractor will receive more knowledge, be more competent, and provide quality care to their patients.

Honorable Clinton T. Tanimura
November 18, 1987
Page 2

The Board realizes that some professional boards who have continuing education have abused it by requiring applicants to attend 50 to 80 hours of continuing education each renewal period. We have required each licensee to attend only 10 hours of continuing education each year.

Finally, the 1987 biennial period will be the Board's first complete renewal period requiring the full 20 hours of continuing education for each licensee.

The Board feels that since continuing education was only instituted in 1985, it has not really given the Board an opportunity to make a complete and fair assessment of its value.

Therefore, the Board requests that you reconsider your recommendation to discontinue the continuing education requirements.

Again, we thank you for the opportunity to respond to your comments, observations and recommendations. We would also like to thank you and your staff for supporting the work of the Board and seeking its continuance.

Sincerely,

J. T. Rathjen, D.C.

J. T. RATHJEN, D.C.
Chairman, Board of Chiropractic
Examiners

APPENDIX B

DIGEST

A BILL FOR AN ACT RELATING TO CHIROPRACTIC

Extends board of chiropractic examiners to December 31, 1994, under the sunset law. Requires applicants to pass the National Board of Chiropractic Examiners' written clinical competency examination. Removes the requirement for continuing education for reregistration of licenses.

A BILL FOR AN ACT

RELATING TO CHIROPRACTIC.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§26H-4 Repeal dates. (a) The following chapters are
4 hereby repealed effective December 31, 1988:

- 5 (1) Chapter 465 (Board of Psychology)
6 (2) Chapter 468E (Board of Speech Pathology and Audiology)
7 (3) Chapter 468K (Travel Agencies)
8 (4) Chapter 373 (Commercial Employment Agencies)
9 [(5) Chapter 442 (Board of Chiropractic Examiners)
10 (6)] (5) Chapter 448 (Board of Dental Examiners)
11 [(7)] (6) Chapter 436E (Board of Acupuncture)

12 (b) The following chapters are hereby repealed effective
13 December 31, 1989:

- 14 (1) Chapter 444 (Contractors License Board)
15 (2) Chapter 448E (Board of Electricians and Plumbers)
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- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
 - (4) Chapter 466 (Board of Public Accountancy)
 - (5) Chapter 467 (Real Estate Commission)
 - (6) Chapter 439 (Board of Cosmetology)
 - (7) Chapter 454 (Mortgage Brokers and Solicitors)
 - (8) Chapter 454D (Mortgage and Collection Servicing Agents)
- (c) The following chapters are hereby repealed effective

December 31, 1990:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)

(d) The following chapters are hereby repealed effective

December 31, 1991:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home

Administrators)

(4) Chapter 460 (Board of Osteopathic Examiners)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 461J (Board of Physical Therapy)

(7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective
December 31, 1992:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission).

(f) The following chapters are hereby repealed effective
December 31, 1993:

(1) Chapter 441 (Cemetery and Funeral Trusts)

(2) Chapter 443B (Collection Agencies)

(3) Chapter 452 (Board of Massage)

(4) Chapter 455 (Board of Examiners in Naturopathy)

(5) Chapter 459 (Board of Examiners in Optometry)

(g) The following chapter is hereby repealed effective

December 31, 1994:

(1) Chapter 442 (Board of Chiropractic Examiners).

[(g)] (h) The following chapters are hereby repealed
effective December 31, 1997:

- 1 (1) Chapter 463 (Board of Private Detectives and Guards)
2 (2) Chapter 471 (Board of Veterinary Examiners)."

3 SECTION 2. Section 442-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§442-5 Board's powers. The board of chiropractic
6 examiners may adopt a seal, which shall be affixed to all
7 official acts of the board; adopt from time to time such rules
8 as the board may deem proper and necessary for the performance
9 of its work; examine applicants and issue licenses and order the
10 limitation, restriction, revocation, suspension, or placement
11 under probation of licenses to practice chiropractic; and summon
12 witnesses and take testimony as to matters pertaining to its
13 duties[; promulgate by rule continuing educational requirements
14 for reregistration of licenses designed to promote the
15 continuing professional competence of licensees and protection
16 of the public]. Each member may administer oaths and take
17 affidavits, and do any and all things necessary or incidental to
18 the exercise of the powers and duties herein granted or imposed."

19 SECTION 3. Section 442-6, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:

21 "(c) The applicant shall be required to pass parts I and
22 II of the National Board of Chiropractic Examiners' written
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1 examination and the written clinical competency examination in
2 order to qualify for the state chiropractic examination. The
3 state examinations shall be designed to ascertain the fitness
4 and qualifications of the applicant to practice chiropractic.
5 The board may contract with professional testing services to
6 prepare, administer, and grade the state examinations. The
7 state examination may include both practical demonstration and a
8 written examination. A license shall be granted to any
9 applicant who attains a numerical score of seventy-five or
10 higher in all subjects and sections of the state examination.
11 Any applicant failing to make the required grade may be
12 reexamined at the next regular examination upon payment of a
13 reexamination fee. Any person seeking licensure under this
14 chapter, including approval to use physiotherapy modalities,
15 shall demonstrate to the satisfaction of the board that the
16 person has received training in the use of physiotherapy
17 modalities at an accredited institution and passed the
18 physiotherapy portion of the National Board of Chiropractic
19 Examiners' examination. The board may require an applicant to
20 complete a practical demonstration examination which shall
21 include an examination of the applicant's performance in using
22 physiotherapy treatment techniques and equipment."
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2 SECTION 4. Section 442-11, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§442-11 Biennial registration; fees; failure to
5 register. Every person holding a license to practice
6 chiropractic in the State shall reregister with the secretary of
7 the board of chiropractic examiners on or before December 31 of
8 each odd-numbered year and shall pay a reregistration fee. [If
9 the board has established continuing education requirements for
10 reregistration, no person holding a license shall be
11 reregistered unless proof of compliance with the requirements is
12 submitted to the secretary.] The secretary of the board, on or
13 before November 30 of each odd-numbered year, shall mail to the
14 last known address of all licensed chiropractors a notice
15 thereof.

16 The failure, neglect, or refusal of any person holding a
17 license to practice chiropractic to reregister or to pay the
18 reregistration fee, after thirty days of delinquency,
19 constitutes a forfeiture of the license; provided that the
20 license shall be restored upon written application therefor
21 [together with proof of compliance with the continuing education
22 requirements, if any,] and a payment of all delinquent fees and
23 a penalty fee, if the application and payments are made within a
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1 period of one year from the date of the inception of the
2 delinquency. In the event, however, the delinquency is
3 permitted to continue over a period of one year, in addition to
4 the foregoing requirements, the person shall submit to and
5 successfully pass a reexamination, written or oral, conducted by
6 the board at its regular meetings."

7 SECTION 5. Statutory material to be repealed is
8 bracketed. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval.

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11 INTRODUCED BY: _____
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