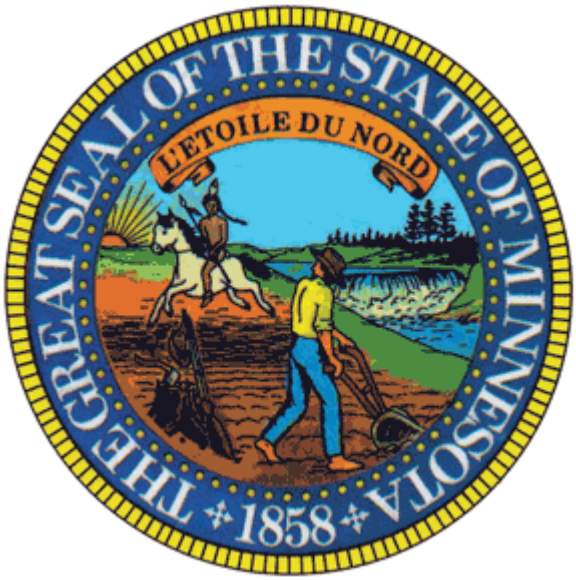
Board of Chiropractic Examiners
Self-Evaluation Report
Year: 2011



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Pursuant to the provisions of M.S. § 3.197, the Board hereby states that the cost of preparing this report is $13,172.03.

This document is available in alternative formats for individuals with disabilities.

Executive Summary

The Minnesota Board of Chiropractic Examiners, (hereinafter "Board,") respectfully submits its "Agency Report To The Commission" as required by the Minnesota Sunset Act, codified as M.S. § 3D.01 et seq. This Board is a quasi-judicial, single-program agency whose sole purpose is the regulation of doctors of chiropractic in the State of Minnesota. The primary mission of the Board is to protect the public by enforcing the standards of safe practice and ethical conduct, investigating and resolving complaints against licensed doctors of chiropractic, and providing information to Minnesota consumers. No other agency or entity in this state maintains this, or any portion of this responsibility.

The Board is a fully empowered State agency which has the authority to issue licenses, enforce Statutes and Administrative Rules related to the practice act, promulgate Administrative Rules, and issue disciplinary or other enforcement actions. This Board is also required by federal law to report such actions to federal databases.

The Board was established in 1919, pursuant to M.S. §148.01 et seq. Licensing is conducted primarily via M.S. § 148.06, while complaint resolution, and enforcement activities are conducted pursuant to M.S. § 214.10, 214.103, and 144.292. Registration of Professional Firms is conducted pursuant to M.S. § 319B. Finally, the Board promulgates rules, in Minn. Rules Chapter 2500.[1]

The Board is composed of 7 members (five professional members and two public members) appointed by the Governor for staggered four year terms. The appointment of professionals for the purpose of regulation assures that the regulation is carried out by persons who have expertise in this specific profession, while the appointment of public members assures that the Board remains diligently focused on the protection of the public. This structure lends significant credibility to the regulatory model…credibility which has been consistently relied upon and reinforced/reasserted by the Judiciary.

The Board receives NO money from the general fund. All of its operations are funded by the license fees of those regulated. The Board has continued to maintain its functions in the face of dwindling resources and increasing costs. The Board has accomplished this in large part through participation with the Administrative Services Unit, (a state and nationally recognized novel approach to an increased efficiencies model), as well as innovative use of current technology. [2]

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[1] This paragraph submitted in satisfaction of the Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) III.6 and 7.

[2] This Executive Summary submitted in satisfaction of the Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) I

Introduction

While this report is specific to the Minnesota Board of Chiropractic Examiners, the deeply integrated / cooperative relationship of the Health-Related Licensing Boards (Hereinafter "HLB's") will necessarily be regularly referenced herein. As will be described later, this board acts in a collaborative manner with the Health Related Licensing Boards, largely through a centralized Administrative Services Unit, which provides administrative services common to all of the HLB's. The Health-Related Licensing Boards serviced by this unit are:

- Minnesota Board of Barber Examiners*
- Minnesota Board of Behavioral Health and Therapy
- Minnesota Board of Chiropractic Examiners
- Minnesota Board of Cosmetologist Examiners*
- Minnesota Board of Dentistry
- Minnesota Board of Dietetics and Nutrition Practice
- Emergency Medical Services Regulatory Board*
- Minnesota Board of Marriage and Family Therapy
- Minnesota Board of Medical Practice
- Minnesota Board of Nursing
- Minnesota Board of Examiners for Nursing Home Administrators
- Minnesota Board of Optometry
- Minnesota Board of Pharmacy
- Minnesota State Board of Physical Therapy
- Minnesota Board of Podiatric Medicine
- Minnesota Board of Psychology
- State of Minnesota Board of Social Work
- Minnesota Board of Veterinary Medicine

*The Board of Barbers Examiners, the Board of Cosmetology, and the Emergency Medical Services Regulatory Board are not Health Related Licensing Boards. However, they are co-located in the same building, and have been participating with the HLB's through the Administrative Services Unit. Therefore, they are included in this list.

The elements required of this report are found in the "Criteria For Review." [**SEE** M.S. § 3D.10] Although every effort is made to follow the sequence established by the legislation, it is believed that reversing the orders of paragraphs (1) and (2) will provide a more sequentially cohesive report thereby facilitating review by the Committee. The author hereby requests latitude for this mild indiscretion.

Section I. Key Functions, Powers, Duties, Mission

Minnesota Statutes § 3D.10 (2) requires an "identification of the mission , goals, and objectives intended for the agency or advisory committee and of the problem or need that the agency or advisory committee was intended to address and the extent to which the mission, goals and objectives have been achieved and the problem or need has been addressed"

The State began regulating doctors of chiropractic in 1919 when the Legislature established the Chiropractic Practice Act and established the Board as an independent agency. There have been subsequent modifications to the Practice Act including those in 1927, 1975, 1983, 2008, 2009. [**SEE** M.S. §148.01 to 148.108] The Board's core functions are:

- **Licensing:** To accomplish this function the Board evaluates pre-professional and professional education, examines candidates for entry level competency, and examines candidates for their knowledge specific to Minnesota jurisprudence related to the Chiropractic Practice Act
- **Complaint Resolution:** The Board receives, investigates, and resolves complaints via closure, corrective action or disciplinary action where warranted to protect the public interest
- **Promote Continued Competency:** The Board registers continuing education sponsors, assesses Continuing Education programs for quality and compliance, and monitors licensee compliance with annual requirements.

In addition to licensing doctors of chiropractic, the Board registers additional subspecialties which are subordinate to the chiropractic licenses. These include:

- Professional Firms;
- Chiropractic Acupuncturists;
- Animal Chiropractors;
- Independent Examiners;
- Chiropractic Preceptors; and
- Continuing Education Sponsors

Statutory Provisions/Board Structure

In general, the HLB's operate pursuant to the enabling act established by M.S. § 214 et seq. The Board of Chiropractic Examiners operates specifically under the authority of M.S. § 148.01-148.108. Under the provision of M.S. § 148.03 the Board consists of seven members appointed by the Governor to staggered four year terms. Five of these members are "professional" members; *i.e*. they are licensed doctors of chiropractic in current active practice. Additionally, there are two public members whose

purpose is to specifically represent the public interest (although all Board members are required to serve in protection of the public), and who are specifically prohibited from licensure in other health care professions, in order to avoid any conflict of interest. Currently the following members serve the Board: [In alphabetical order]

Matthew J. Anderson, DC
Administrative Officer, Executive Committee, Complaint Panel
Located in Bloomington, MN
Appointed 05/21/2007
Reappointed 02/14/2011
Term Ends 01/05/2015

Robert P. Daschner, DC
Professional Member, NBCE Delegate, FCLB Alternate Delegate, Complaint Panel
Located in Waseca, MN
Appointed 04/22/2008
Term Ends 01/02/2012

Howard A. Fidler, DC
Professional Member, Rules Committee, Complaint Panel
Located in St Louis Park, MN
Appointed 04/28/2004
Reappointed 04/28/2008
Term Ends 01/02/2012

Teresa L. Marshall, DC
Professional Member, Rules Committee
Located in Mankato, MN
Appointed 01/11/2002
Reappointed 03/31/2006
2nd Reappointment 01/19/2010
Term Ends 01/06/2014

Ralph Stouffer, Ed.D.
Vice President, Executive Committee, Rules Committee, Complaint Panel
Located in Roseville, MN
Appointed 03/31/2006
Reappointed 05/21/2007
2nd Reappointment 02/16/2011
Term Ends 01/08/2015

Kay Strobel
Public Member, Health Professionals Service Program, Complaint Panel
Located in Red Wing, MN
Appointed 10/04/2010
Term Ends 01/07/2013

Richard R. Tollefson, DC
President, FCLB Delegate, NBCE Alternate Delegate, Executive Committee, Complaint Panel
Located in Coon Rapids, MN
Appointed 05/10/2005
Reappointed 02/24/2009
Term Ends 01/07/2013

The Board members generally provide the expertise necessary to establish and execute the policies of the board. This is particularly evidenced in complaint resolution matters, where such expertise is necessary to properly evaluate the conduct of a licensee, to determine if they have acted within proper parameters or within the scope of the practice act, and what appropriate action should be taken. Currently, Board members are compensated at the rate of $55 per day. [**SEE** M.S. § 214.09, Sub. 3] With such a minimal payment for what is often many hours of work, the services provided by the Board members can only be seen as a volunteer service. This is especially true with regard to the

professional members who may well give up a full day of practice (and commensurate patient fee's) in order to provide these services to the Board.

These Board members, who work in the Minnesota community outside of State government in addition to their role on these boards, put in extra hours to offer public and professional expertise to Minnesota state government. In collaboration with Board staff, these individuals are entrusted with the protection of public health and safety through licensing of health-related professionals, and through administration of complaints regarding the same. This is also one of many ways that the public has an opportunity to provide input and oversight to the Board.

Board Staff

The Agency employs five persons (4.8 FTE's) all of whom work in Minneapolis, MN. The Board has typically worked with 5.0 FTE's, but has recently reduced staffing to 4.8 FTE's, and reduced one position (previously an office supervisory position) to an administrative support/accounting level for the purpose of budgetary considerations.[3]

While the Board members are appointed by the Governor for specific terms, the executive director of the Board is appointed by, and serves at the pleasure of the Board. Pursuant to statutes, the executive director of the Board is the chief administrative officer for the board but is not a member of the board. In sum, the executive directormaintains the records of the board, accounts for all fees received and expenditures made, supervises and directs employees servicing the board, performs other services as directed by the board, and essentially implements the policies established by the Board.[4] The executive director is also the chief liaison with other State agencies, the Governor's office, the Attorney General's office, the Legislature, and the public.

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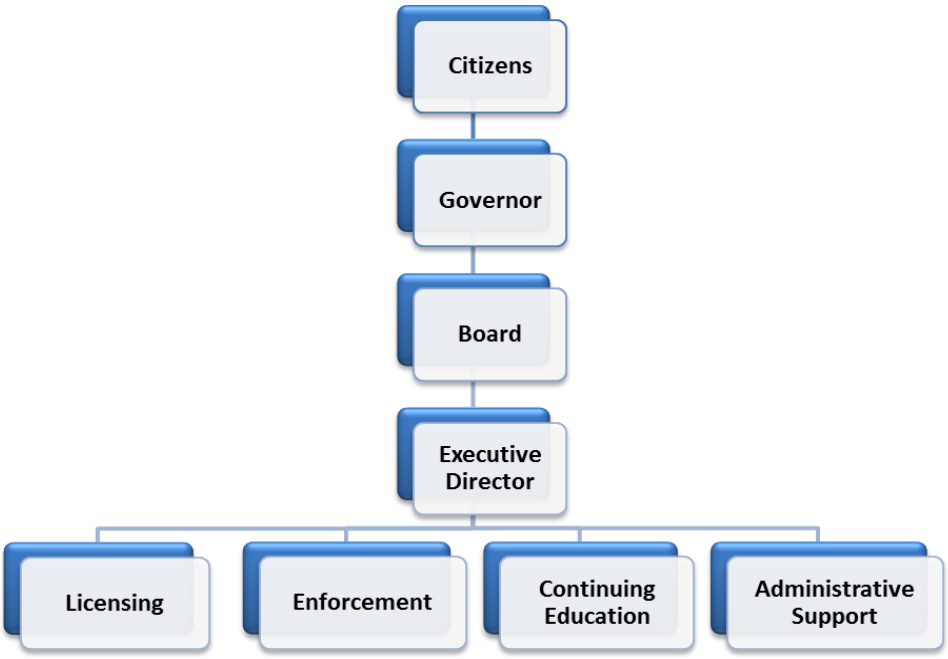
[3] This paragraph submitted in satisfaction of the Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) III-3

[4] See M.S. §214.04, Subd. 3.

The Board has 4 additional staff persons which, under the direction of the executive directorcarry out the essential activities of the Board. The following organizational chart illustrates the staff and their related activities:



Details related to the above graphic include:

- Licensing and registration, including initial and renewals of all licenses and registrations. This results in approximately 5000 licensing/registration transactions per calendar year;
- Complaint resolution and rules promulgation. This position has daily interactions with the Attorney General's office, administers the complaint resolution process, drafts legal documents, and administers the Administrative Rules promulgation process;
- Reception, mail distribution and continuing education monitoring. In addition to routing all communications (walk-in, mail, and phone), this position registers continuing education sponsors, accounts for all continuing education program approvals, and monitors well in excess of 60,000 hours of continuing education every year;
- Administrative support and accounting. This position is a direct assistant to the executive director, and is responsible for accounting, paying of bills, monitoring finances, auditing of financial reports, monitoring supplies, and assisting the executive director in the preparation of analysis and reports such as this one;

It is a tribute to their dedication and skill, that such a small staff is able to carry out such complex and numerous regulatory functions. Indeed, the staff is also well cross trained, having taken on the complete functions of other staff during unanticipated absences such as illness or military leave.

Mission

The mission of the Board is "to protect the public through effective licensure and enforcement of the Statutes and Rules governing the practice of chiropractic, to ensure a standard of competent and ethical practice in the profession." This is done to protect the public's health, safety, and economic welfare by ensuring that chiropractic professionals are qualified and competent, and adhere to established professional and legal standards. The Board achieves this mission by:

- Ensuring that educational standards for prospective licensees and continuing education for licensees are maintained.
- Licensing qualified individuals so that Minnesotans seeking to use their services will be able to identify those working in the field with skills necessary to provide services in compliance with Minnesota Statutes and Rules.
- Implementing disciplinary and compliance actions when licensees do not perform in compliance with standards.
- Educating the public on health-related professions, practitioners, and standards.

The Board seeks to accomplish its regulatory function through service. To this end, the Board:

- Strives to respond to all inquiries within 24 hours
- Provides extraordinary public service through fully staffing phones during regular business hours. These persons are well trained with respect to their jobs, and at all times attempt to assist the public or licensees with an attitude of public service.
- Maintains an active and robust website, with regular updates containing information that affects the public or the profession
- Sends out Email "blasts" to the profession when contemporary issues arise, or to remind licensees of their status during the renewal periods.

While this section provides information on "…the extent to which the mission, goals, and objectives have been achieved and the problem has been addressed," the Commission will hopefully appreciate that this is further elaborated upon, particularly in Section II, III, V, and VII. The Board has met and surpassed its mission, goals and objectives, while constantly striving to establish new goals and objectives for improved efficiencies in the face of evolving demands.

Section II. Operations – Efficiency and Effectiveness

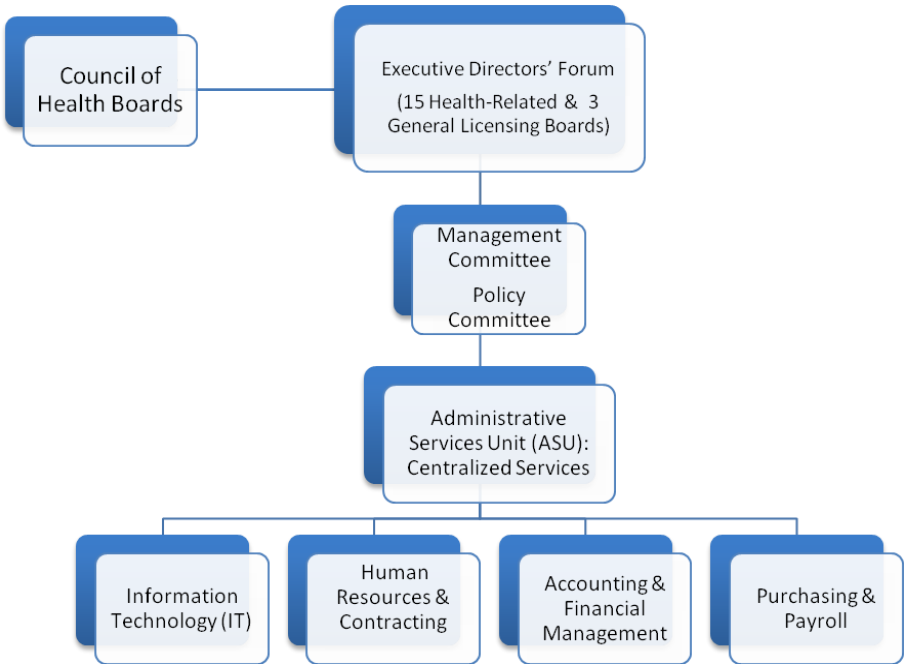
Minnesota Statutes § 3D.10 (1) requires a description of "the efficiency and effectiveness with which the agency or the advisory committee operates." For the purposes of addressing the issue of "efficiency" the Board will take this to include its collaborative efforts for the purposes of achieving this goal.

Minnesota Health-Related Licensing Boards:

A Nationally Recognized Model for Occupational Governance

Administrative Services Unit

The Administrative Services Unit (ASU) (M.S. 214.07) is funded by all of the HLB's and consists of 7.12 FTE staff members who perform shared administrative and business services for all of the boards. ASU provides shared service to the Boards in the areas of finance, budgeting, accounting, purchasing, reporting, banking, human resources, professional and technical contracts, information technology, policy development and payroll. ASU also facilitates the Boards' cooperative policy and planning efforts. ASU's annual budget is determined by the Executive Directors' Forum, and the oversight of ASU is assigned on a rotating basis to one of the health-related boards; the current ASU oversight Board is the Minnesota Board of Examiners for Nursing Home Administrators. ASU is managed through the Executive Directors' Forum's Management Committee. The following graph, illustrates the cooperative relationships described herein.



Management Committee

The Management Committee makes recommendations to the Executive Directors' Forum on issues relating to the internal management of the boards' cooperative activities. The responsibilities of the committee include the following:

- Management of the Administrative Services Unit budget and review of ASU performance
- Through the Administrative Services Unit, administers shared conference rooms and shared equipment, such as copiers
- Coordinating the boards' information technology collaborative efforts
- Developing recommended policies and procedures for all boards, and reviewing best practices
- Oversight of the Administrative Services Unit

Policy Committee

The functions of the policy committee have been to make recommendations to the Executive Directors' Forum on issues relating to public policy. The responsibilities of the committee have included the following:

- Reviewing legislative proposals
- Making recommendations on legislative initiatives affecting all the boards
- Undertaking efforts to make investigative data more readily available to share among health boards

Information Technology Workgroup

Under the auspices of the Executive Directors' Forum, an Information Technology Work group has been in operation for several years. This group is responsible for coordination of HLB technological projects and implementation of technological improvements. The Health Related Licensing Boards have developed cooperative IT capabilities. This collaborative structure will now become part of the states IT enterprise through the Office of Enterprise Technology. The graphic below provides an overview of the personnel, award winning outcomes, and standards established by the Board's IT professionals.

Certified and Diversified IT Administrators	Award Winning Security Model	Advanced Hardware Standards
• Collaborative financial resources to achieve a combination of developers, data base experts, and security credentialed staff members, including two Certified Information Systems Security Professionals (CISSIP) IT Administrator	• HLBs received National Association of State Chief Information Officers (NASCIO) award for its Continuity of Operations Plan (COOP) • HLBs received national awards for work performed in IT security and emergency preparedness • Minnesota Board of Medical Practice received the Minnesota Government Recognition Award • Enforced strict passphrase policy across HLB since 2006 which exceeds industry standards	• Advanced technology infrastructure that integrates storage area network (SAN) devices to centralized secure data storage • Segmented internal network traffic and utilization of an active industry-leading firewall • Advanced technology typically utilized in larger agencies including: server virtualization and clustering, automated computer patching/updating, and vulnerability scanning • VMware clusters enable HLBs to manage server hardware with no downtime

Minnesota Health-Related Licensing Boards Online Services Online Services

The Board supports electronic technology to meet the efficient licensing processes for Minnesota licensees. Currently the board is capable of electronic renewal of licensees and registrations, as well as the services listed in the table below. The Chiropractic Board was the second agency in the State of Minnesota to launch an online license renewal program (circa 1999-2000). This program would allow doctors of chiropractic to renew their licenses and registrations online. The Board currently experiences a utilization rate that hovers around 90%. Nearly all of the HLB's now have this capacity and more, placing them many years in advance of the current effort by the Office of Enterprise Technology. The net result of this effort is a substantially increased ease of access for the professionals, with a commensurate dramatic reduction in the need to hire additional staff. The board response time to customer inquiries is typically immediate during normal business hours, but generally within 1-2 hours. The Board uses advanced technology to provide interactive usable websites for public access. The table below highlights some of the services found in the HLB's public websites. (The Chiropractic Board's website can be found at www.mn-chiroboard.state.mn.us)[5]

Public	Licensees	Applicants
• Public orders and compliance history • Board disciplinary and adverse action reports • License verification • Data requests • Automated license verification for large employers or third party payers • "Locate a Doctor" • Automated licensure data with other state agencies	• Downloadable forms and applications • Online license and registration renewal • Continued competency (CE) tracking • Address changes • Secure credit card transactions • License verifications for other jurisdictions • Notification of license renewal • E-newsletters • E-mail updates regarding practice standard updates	• Applications for license renewal • Submission of documents • Online access to the Board's Jurisprudence examination • Application status

[5] This paragraph submitted in satisfaction of the Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) III-2

While each Board maintains its autonomy in terms of regulating each profession for which it has its own expertise, the administrative requirements of the Boards are managed through shared activity via the Administrative Services Unit. In addition to sharing such services as previously addressed, the Boards also share certain facilities as they are co-located in the same building. Accordingly the building has several conference rooms which the Health Licensing Boards share and schedule according to a centralized online scheduler. In addition to this, some of the Boards have conference rooms located in their own offices as a result of higher volume use. On occasion one Board may utilize the conference room of another Board when such need arises. The Boards have always been very cooperative in allowing the sharing of such facilities.

Minnesota Health-Related Licensing Boards:

Cooperative Activities for the Biennium ending June 30, 2010

Although independent state agencies, the HLB's cooperate on a number of activities for the purpose of maximizing efficiencies. Examples of such cooperation would be:

Administrative Services Unit

As has been described, this is a centralized unit for the purposes of carrying on the common administrative functions of the Board.

Council of Health Boards

The health-related licensing boards may establish a Council of Health Boards consisting of representatives of the health-related licensing boards and the Emergency Medical Services Regulatory Board. When reviewing legislation or legislative proposals relating to the regulation of health occupations, the council shall include the commissioner of health or a designee. [**SEE** M.S. §214.025] (See additional discussion, pg. 56)

During the biennium, legislative requests were made to the Council to review proposed legislation of several emerging professions, and the Council sent the Legislature reports regarding the following:

- Body Artists
- Laboratory Technicians
- Massage Therapists
- Genetic Counselors
- Review of Criminal Sexual Conduct as consideration in denial or revocation of professional license
- Review of Minnesota Chapter 214 for process improvement

Health Professionals Services Program (HPSP)

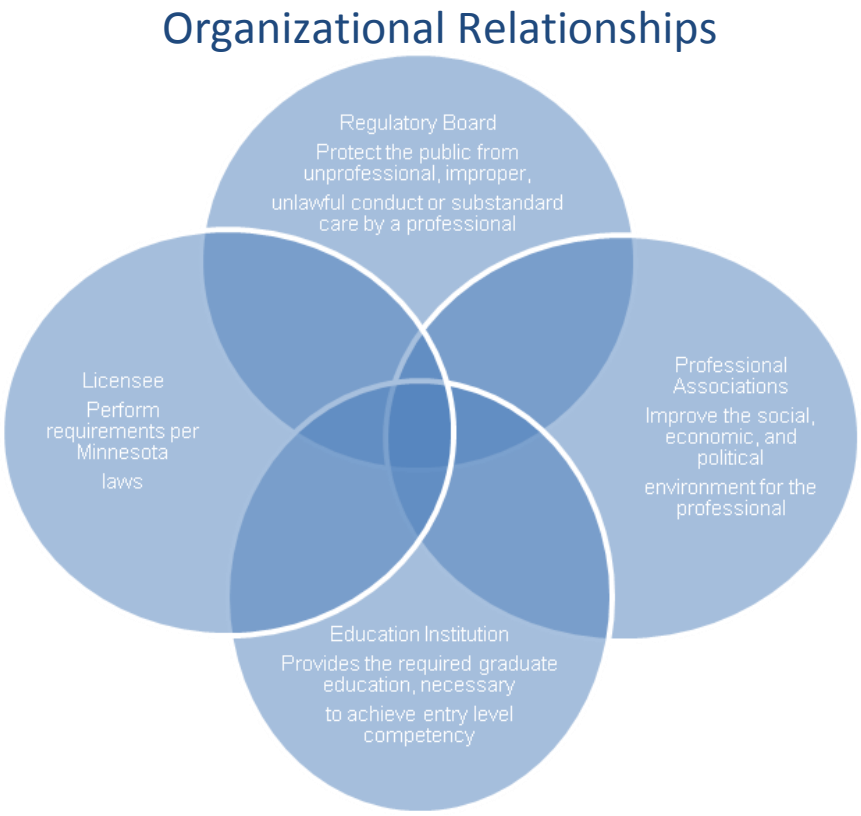
> *Each health-related licensing board, including the Emergency Medical Services Regulatory Board under chapter 144E, shall either conduct a health professionals service program under sections 214.31 to 214.37 or contract for a diversion program under section 214.28.* [**SEE ALSO** M.S. § 214.29. 2011]

At present, all Health Licensing Boards, the Emergency Medical Services Regulatory Board, and additional professions regulated by the Department of Health, participate in the HPSP.

Voluntary Health Care Provider Program

Effective July 1, 2002 Minnesota Statutes, section 214.40 required the Administrative Services Unit to create procedures to allow volunteer dentists, dental hygienists, physicians, physician assistants, and nurses to apply for medical professional liability insurance while volunteering at community charitable organizations.

As previously stated, this board acts in a collaborative manner with the Health Related Licensing Boards. However, as illustrated in the following graphic, there are other professional organizations with which the Board must interact to most effectively conduct its regulatory functions.



As one can see from the preceding graphic, there is a triune of professional organizations which will impact the professional's life. In that same manner, while not compelled by these organizations, the Board must be mindful of them as they can, and have, had impacts on the regulatory experience, if by no other manner than by legislative interaction. Accordingly, it seems fitting to outline the mission and limitations of each organization.

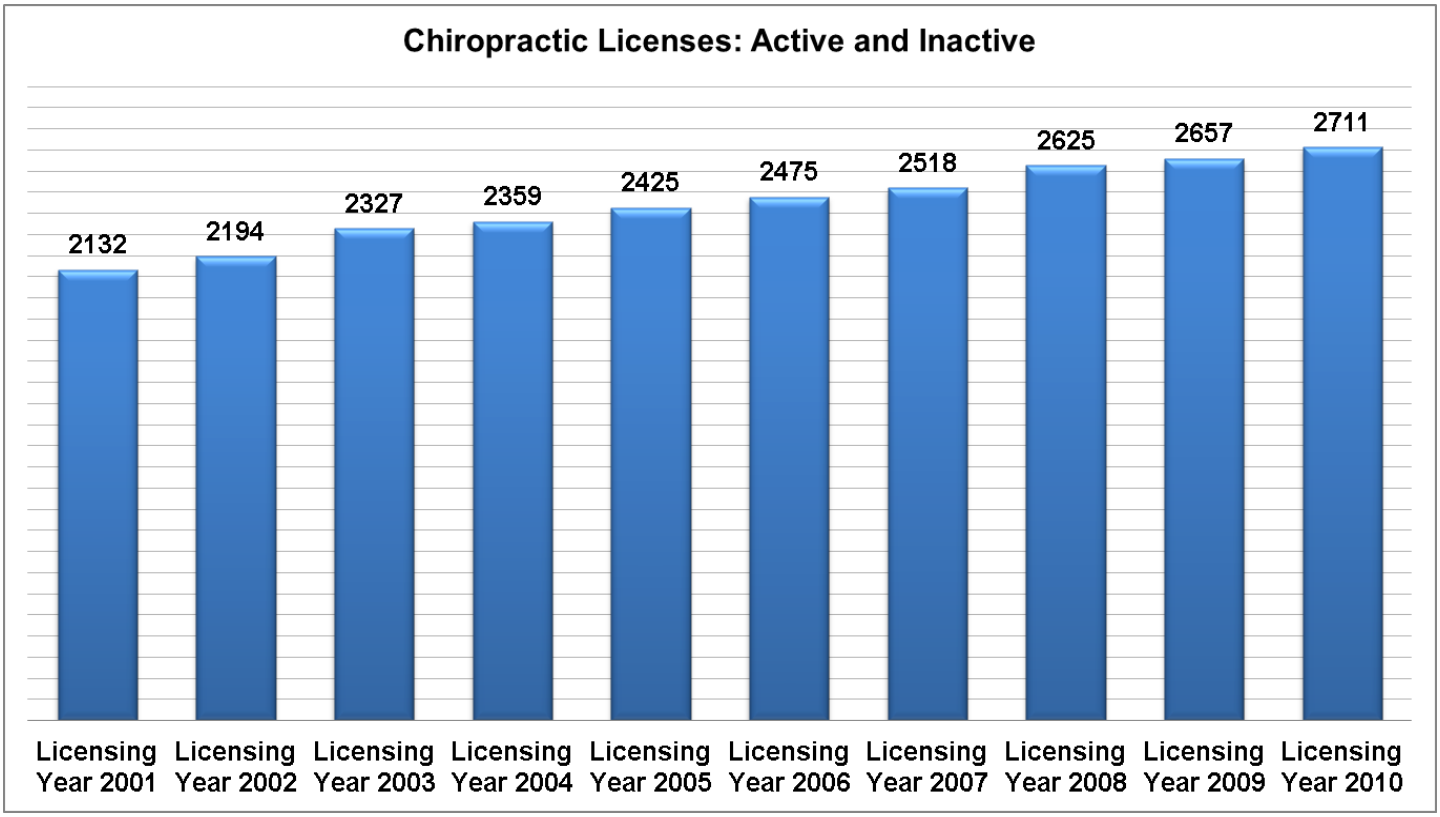
- **Educational Institutions:** The educational institutions provide the essential education necessary for the applicant to achieve entry level competency. Once a student graduates, the educational institutions typically have no further jurisdictional authority over the graduate. Any further interaction with the graduate is purely voluntary (such as receiving continuing education, or participating with alumni organizations.)
- **Professional Associations:** Professional associations exist to improve the social, economic, and political environment for the relative professions. They too, rely on voluntary participation for their existence, and have no regulatory authority over the licensee.
- **Regulatory Boards:** The Board is the only state agency with jurisdiction to provide licenses, or impose disciplinary action over the license.

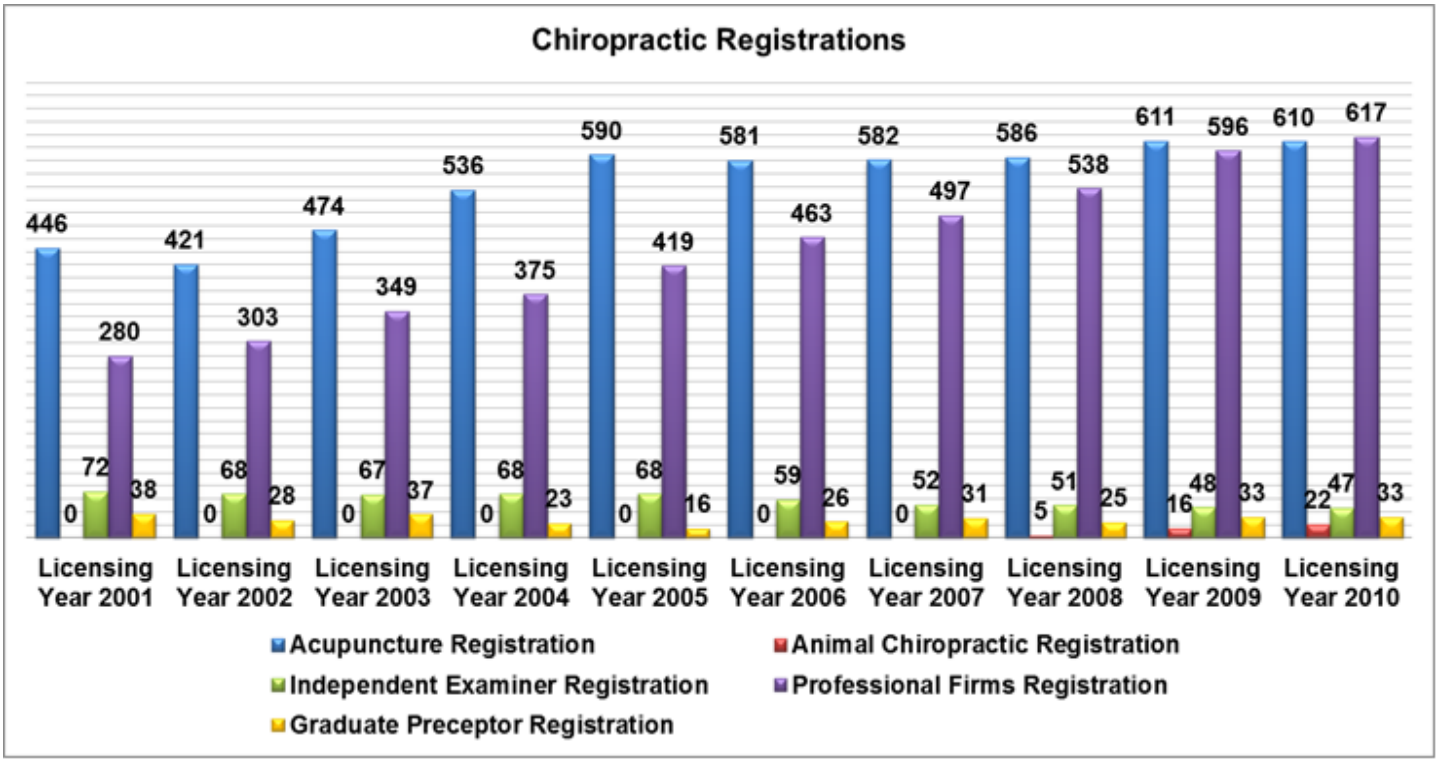
Number of Credentials Issued (All Boards)

- As of June 30, 2010, a total of 252,724 persons were licensed or registered by the Health-Related Licensing Boards.
- A total of 260,158 credentials were issued or renewed during the biennium ending June 30, 2010.

Licensing and Registration

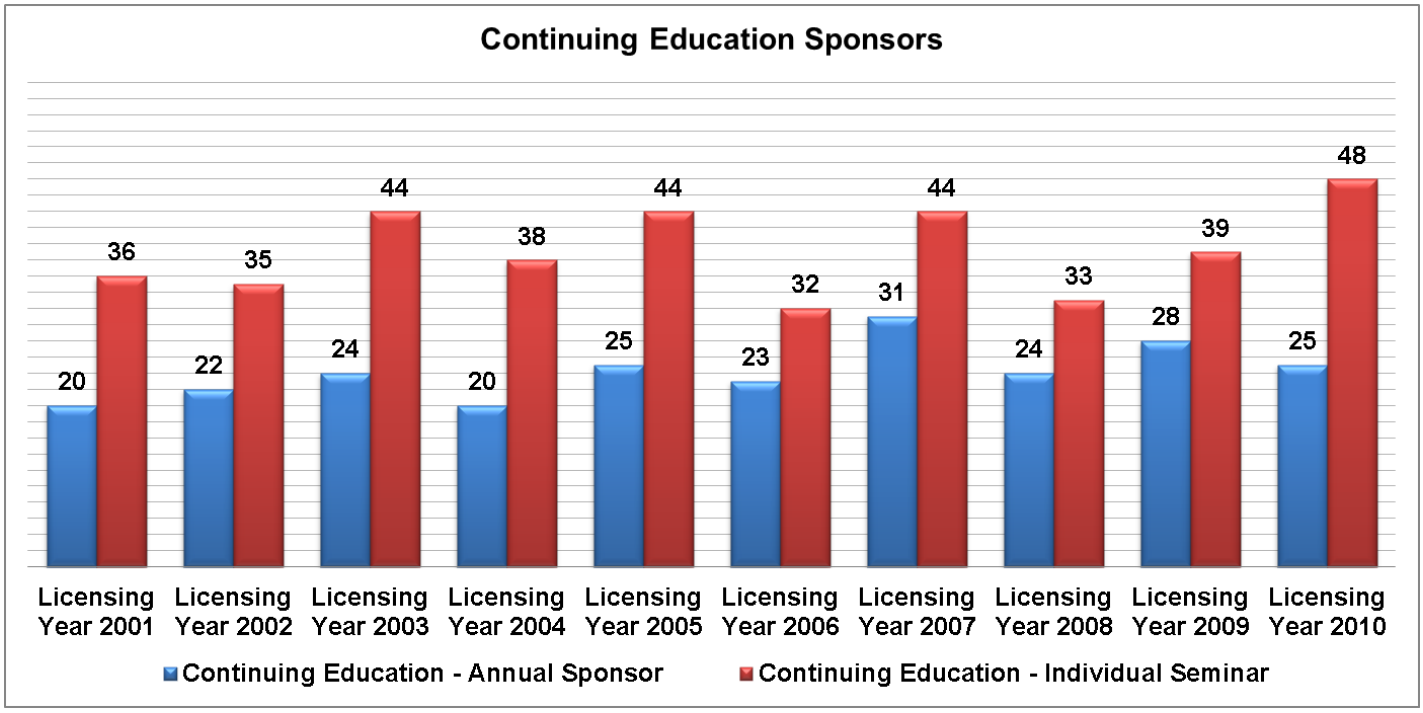
The Chiropractic Board licensed just over 2700 Doctors of Chiropractic and registered an additional 1329 registrations in calendar year 2010. In the 10 year period spanning 2001 to 2010 the number of licenses has risen from 2132 in 2001 to 2,711 in calendar year 2010 representing a 27% increase in the number of licenses. Additionally, the number of registrations overall has risen in that same period from 836 to 1329 representing a 59% increase in the number of registrations.


Chiropractic Licenses: Active and Inactive
2132
2194
2327
2359
2425
2475
2518
2625
2657
2711
Licensing Year 2001
Licensing Year 2002
Licensing Year 2003
Licensing Year 2004
Licensing Year 2005
Licensing Year 2006
Licensing Year 2007
Licensing Year 2008
Licensing Year 2009
Licensing Year 2010


Chiropractic Registrations
446 0 72 280 38
421 0 68 303 28
474 0 67 349 37
536 0 68 375 23
590 0 68 419 16
581 0 59 463 26
582 0 52 497 31
586 5 51 538 25
611 16 48 596 33
610 22 47 617 33
Licensing Year 2001
Licensing Year 2002
Licensing Year 2003
Licensing Year 2004
Licensing Year 2005
Licensing Year 2006
Licensing Year 2007
Licensing Year 2008
Licensing Year 2009
Licensing Year 2010
Acupuncture Registration
Animal Chiropractic Registration
Independent Examiner Registration
Professional Firms Registration
Graduate Preceptor Registration

The Board was given new authority to register animal chiropractors pursuant to legislation passed in 2008. Animal chiropractors may, after receiving their chiropractic license take significant additional training and apply for an animal chiropractic registration. With this registration they are authorized to provide chiropractic health care services to animals in concurrence with a doctor of veterinary medicine. In 2008, there were five registered animal chiropractors; there are now 26. It is anticipated this practice will garner significant interest in the coming years. The preceding chart illustrates that chiropractic acupuncture is also gaining additional significant interest. Additional training and successful passage of a National Board of Chiropractic Examiners Acupuncture exam is required to obtain this registration.

The graph below illustrates the numbers of sponsors of continuing education for doctors of chiropractic during the past decade.



Continuing education (CE) sponsorships occur in two major configurations:

- Annual Sponsors: These sponsors typically represent chiropractic colleges, state associations, or other larger entities that provide a greater number of CE programs. An annual sponsorship costs the sponsor $500, whereas an individual program sponsorship costs $100 to review and approve. Therefore, those organizations providing five or more programs per year are better served purchasing an annual sponsorship. However, these sponsors also take on the added responsibility of reviewing and approving their own programs, within the guidelines provided by the Board.
- Individual Sponsors: These sponsors pay a $100 fee for the review and approval of individual programs. Those persons/organizations providing four or fewer programs are typically better served receiving approval in this manner.

This table illustrates a flatter, more stable growth. Sponsorship numbers do not change much over the years. However, there may be a change on the horizon, as the Federation of Chiropractic Licensing Boards has developed a nationalized review program, which would allow a centralized review of CE programs. Such review would allow doctors to take a single program and receive credit in all states in which s/he is licensed, and which accept this program. The overall impact is expected to be minimal over the next few years, but with slow, steady growth by the end of the decade.

Section III. Authority for Additional Activities Not Specified in Statute

Minnesota Statutes § 3D.10(3) requires "an identification of any activities of the agency in addition to those granted by statute and of the authority for those activities and the extent to which those activities are needed"

Executive Directors' Forum

The Executive Directors' (ED) Forum consists of the Executive Directors of each independent board. The Forum meets at least once a month to discuss issues and concerns affecting all boards, and is governed by a standard set of Bylaws. The Forum was created with a goal of working together on matters of common concern, thus increasing the efficiency and effectiveness of each individual board. The Forum establishes committees to develop recommendations for consideration by the Forum. These committees include the Policy Committee and the Management Committee. To assure fiscal efficiency, boards review general objectives and promote cooperation among the boards through the Executive Directors' Forum. The Forum reviews general objectives, reviews policy, promotes inter-board cooperation, assures fiscal efficiency, and eliminates duplication of similar effort. The Executive Directors of each independent board meet monthly to collaborate and to address issues of shared concern, including policy development, legislation and technological improvements.

Some of the tasks accomplished through the action of the Executive Directors' Forum include:

- Virtualization of servers, resulting in substantial savings and greater storage capacity. On behalf of the Executive Directors' Forum, a submission was made to the National Association of State Chief Information Officers (NASCIO) for Disaster Recovery Planning. This project, which virtualized the Health Licensing Boards' servers arising from its development and application of its Continuation of Operations Plan (COOP), was recognized with a NASCIO award.
- Further technological advances include addition of a Shared Storage Area Network, tripling storage capacity of the Boards, and advances toward using technology at Board meetings to reduce reliance on paper documents.
- Participation in cooperative efforts with the Department of Health to share information regarding licensee / registrant investigations (in full compliance with Data Practices Act requirements), to establish ad hoc Just Culture / Health meetings which coordinate Department of Health investigations and HLB investigations. This includes an exchange of information under M.S. § 214.10, Subd. 8 (c). With the help of the Attorney General's Office, this has included development of a data

sharing memo that permits joint investigations to be conducted among Health Licensing Boards, and provides for sharing of investigative data.

- Reviewing requirements and limitations pertaining to criminal background checks of applicants, and received updates on proposed legislation from law enforcement entities.
- Standardization of online complaint forms throughout Health Licensing Boards. Review was undertaken, with cooperation and guidance from Attorney General's Office, of methods to provide standard information to complainants at the time of opening a complaint file, as well as standardization of appeal information in closing letters under the auspices of a temporarily convened Chapter 214 Work Group.
- Response to surveys regarding IT capacity, security and functionality.
- Enactment and approval of the Boards' first AWAIR plan, in compliance with federal and state requirements.
- Policy committee regularly met to provide coordinated response for Boards regarding legislative initiatives.
- A joint workforce planning report was completed, to prepare for ensuring qualified, competent workforce.
- The ED Forum worked collaboratively in providing information to MN Responds! to ensure that credentials of licensed health professionals are quickly available in case of a major emergency, as well as arranging for regular transfers of data between Department of Health and health licensing databases.
- Electronic governmental services were increased and improved, and include expanded information available online and greater interactivity, as well as heavy use by licensees of online renewal services.
- Cooperative improvement by hiring a CCSO (Computer Chief Security Officer) for the purposes of developing an HLB-wide security platform, utilizing data encryption and other security methods to ensure the highest possible security for the maintenance of confidential data.

Individual board staff and Executive Directors participated in numerous organizations regarding health and safety, including:

- Federation of Chiropractic Licensing Boards (an association of all chiropractic licensing boards in this country as well as some other countries)
- National Board of Chiropractic Examiners (the preeminent testing organization which examines all or nearly all candidates for Chiropractic licensure across the country).
- Minnesota Alliance for Patient Safety
- National Board of Medical Examiners Committee on Irregular Behavior and Score Validity for the United States Medical Licensing Examination.
- National Association of Boards (NAB) Executive Committee
- State Executive Forum and State Governance Committees of the National Association of Boards
- Future Workforce Analysis Cabinet in Washington, D.C.
- Association of Chiropractic Board Administrators (This author is its former President)
- National Council of State Boards of Nursing Commitment to Ongoing Excellence (CORE) project
- Minnesota Center for Nursing
- Minnesota Alliance for Patient Safety
- Home Care Advisory Group
- Department of Human Services' Dental Access Advisory Committee
- Department of Human Services task force on licensing standards
- State Information Security Council
- HPSP Program Committee
- Drive to Excellence Licensing Steering Committee
- Drive To Excellence Procurement
- Drive to Excellence Sourcing Communication
- Drive To Excellence MAPS Project
- Continuation of Operations Planning (COOP)

Section IV. Authority related to Fees, Inspections, Enforcement

Minnesota Statutes § 3D.10(4) requires "an assessment of authority of the agency relating to fees, inspections, enforcement and penalties;"

Listed below are all the fees which the Board is authorized to impose along with the Statutory and/or Rules authority for those fees. Previously the Board established its own fees via the rules promulgation process. Currently all fees must be approved by the Legislature. In reviewing its operations for this report, the Board of Chiropractic is cognizant that its fee structure exists in various places throughout Statutes and Rules. It is the Board's intention to seek authority through the Legislature to simply move all fees into M.S. § 148.08.The fees listed below are a combination of typical licensure / registration fees (initial and renewal), as well as penalty fees for various failures on the part of the licensees.

In the meantime these fees are, and have been, necessary to conduct the operations of the Board. Significantly, license fees ***have not been raised by this Board since 1993.*** This Board has made every attempt to engage in the most stringent and efficient approaches to creative administration for the purposes of forestalling the need to raise fees. For example, in 1999 this Board launched an online license renewal system. At that time the demand on the agency was so great as a result of the work required to individually process paper payments, combined with the increased number of licenses and renewals being managed at the time, the Board was compelled to consider the hiring of additional staff. With the launch of the online licensing system, adding to the staff complement was forestalled for many years. (In fact, no such staff has been hired to date, and currently no such hiring is under consideration.)

Another illustration of the Board's efficient use of resources occurred during a financially challenging period for the Board. During this same period, a new Health-Related Licensing Board was authorized by the Legislature and start-up operations were undertaken in the same building that houses the Board of Chiropractic and the other Health Related Licensing Boards. Accordingly, the Executive Director of the Board of Chiropractic and one of his staff took the lead in helping the Board get established, dedicating some of their time to assist in the startup of the new agency. This reduced some of the financial demand on the Chiropractic Board through salary shift.[6] Although this Board has successfully focused on budgetary efficiency, it cannot be ignored that this agency continues to manage

[6] The Board of Behavioral Health and Therapy (BBHT.) At its inception, a Board was appointed, but there was no administrative infra-structure. This author had the administrative expertise necessary to start up the agency. Such an offer was made and accepted by the BBHT, lasting for a period of about 6 months.

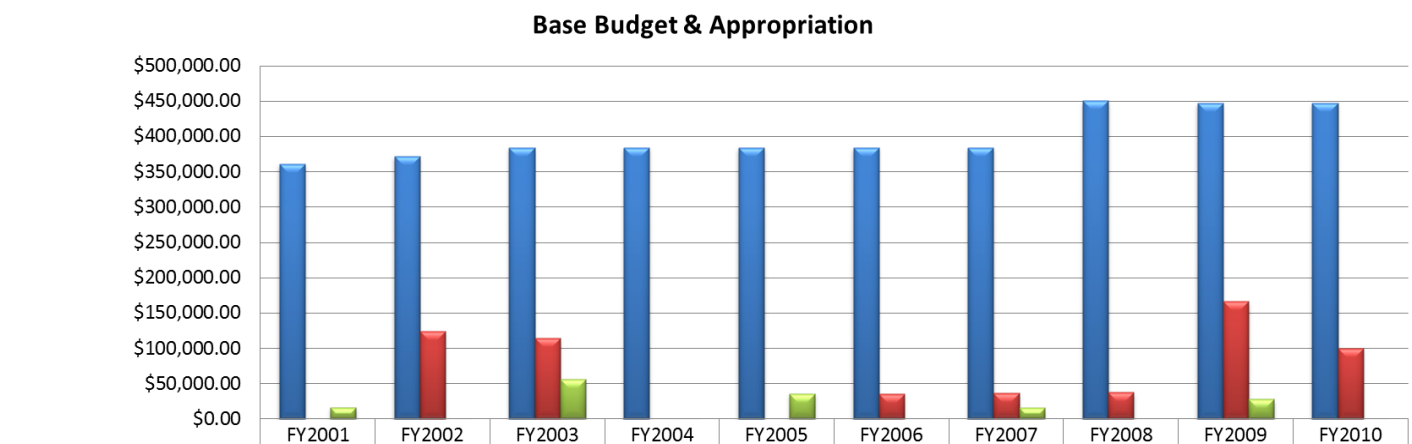
its operations in an atmosphere of continually rising costs, such as salaries, rent, supplies and other basic administrative needs. Couple this with the several legislative reassignments of the Board's reserve balances for uses other than chiropractic regulation, and the Board continues to operate in a challenging fiscal environment.

TITLE OF FEE	AMOUNT	AUTHORITIES
ACTIVE LICENSE RENEWAL / ACTIVE FEE	$200.00	M.S. § 148.07; Minn.R. 2500.1100 subpart 2
ACUPU CREDIT CARD CLEARING	$1.50	M.S. § 16A.626
ACUPUNCTURE FEE	$100.00	Minn.R. 2500.3000, Subp. 2
ACUPUNCTURE INACTIVE RENEWAL	$25.00	M.S. § 148.108, Subd. 2; Minn.R. 2500.3300
ACUPUNCTURE REINSTATEMENT	$100.00	M.S. § 148.108, Subd. 3; Minn.R. 2500.3300
ACUPUNCTURE RENEWAL	$50.00	Minn.R. 2500.3000, Subd. 2
APPLICANT / TRANSFER	$250.00	M.S. § 148.06; M.S. § 148.05; Minn.R. 2500.1000
BOARD ORDERS	$10.00	Minn.R. 2500.1150(C)
CE PENALTY	$900.00	Minn.R. 2500.1800; Minn.R. 2500.1100
COPIES	$7.50*	Minn.R. 2500.1150(F)
DC ACTIVE CREDIT CARD CLEARING	$1.50	M.S. § 16A.626
DC INACTIVE CREDIT CARD CLEARING	$1.50	M.S. § 16A.626
DISCIPLINARY FEE	$100.00*	M.S. § 148.10, Subd. 3(3)
DUPLICATE LICENSE / WALL CERTIFICATE FEE	$10.00	Minn.R. 2500.1150(E)
FIRM CREDIT CARD CLEARING	$1.50	M.S. § 16A.626
FOREIGN FIRM CREDIT CARD CLEARING	$1.50	M.S. § 16A.626
IE FEE	$150.00	Minn.R. 2500.1150(G)
IE RENEWAL	$100.00	Minn.R. 2500.1150(H)
INACTIVE LICENSE RENEWAL / INACTIVE FEE	$150.00	Minn.R. 2500.2030
INACTIVE REINSTATE	$100.00	Minn.R. 2500.2040
INDEP CREDIT CARD CLEARING	$1.50	M.S. § 16A.626
LATE FEE	$150.00*	M.S. § 148.07; Minn.R. 2500.1100 subpart 3
LAWBOOKS	$10.00	
LETTER OF STANDING / LICENCE VERIFICATION	$10.00	2500.1150(D)
LISTS – COMPLETE	$100.00	Minn.R. 2500.1150(J)
LISTS – PARTIAL	$10.00	Minn.R. 2500.1150(J)
MAILING LABELS – COMPLETE	$150.00	Minn.R. 2500.1150(K)
MAILING LABELS – PARTIAL	$15.00	Minn.R. 2500.1150(K)
MISCELLANEOUS	$0.00	Minn.R. 2500.1150(E)
OET SURCHARGE ACTIVE	$20.00	M.S. § 16E.22
OET SURCHARGE APPLICANT	$25.00	M.S. § 16E.22
OET SURCHARGE INACTIVE	$15.00	M.S. § 16E.22
OET SURCHARGE MISC	$0.00	M.S. § 16E.22
PRECEPTORSHIP FEE	$100.00	Minn.R. 2500.2515, subpart 3
PRIOR LATE FEE	$300.00*	M.S. § 148.07; Minn.R. 2500.1100 subpart 3
PRIOR RENEWAL	$200.00	M.S. § 148.07; Minn.R. 2500.1900
REGRADE FEE	$30.00	Minn.R. 2500.0750; Minn.R. 2500.1150(B)
SEMINAR FEE	$100.00	Minn.R. 2500.1410(A)
SPONSORSHIP FEE	$500.00	Minn.R. 2500.1410(A)
VOL RETIRED REINSTATE	$100.00	Minn.R. 2500.2110

*These amounts are variable as an operation of law, and are contingent on prevailing circumstances. For example, the late fee and prior late fee are assessed as $150.00 per month or portion thereof, and copy charges may be assessed on a per page basis.

Budgetary Information

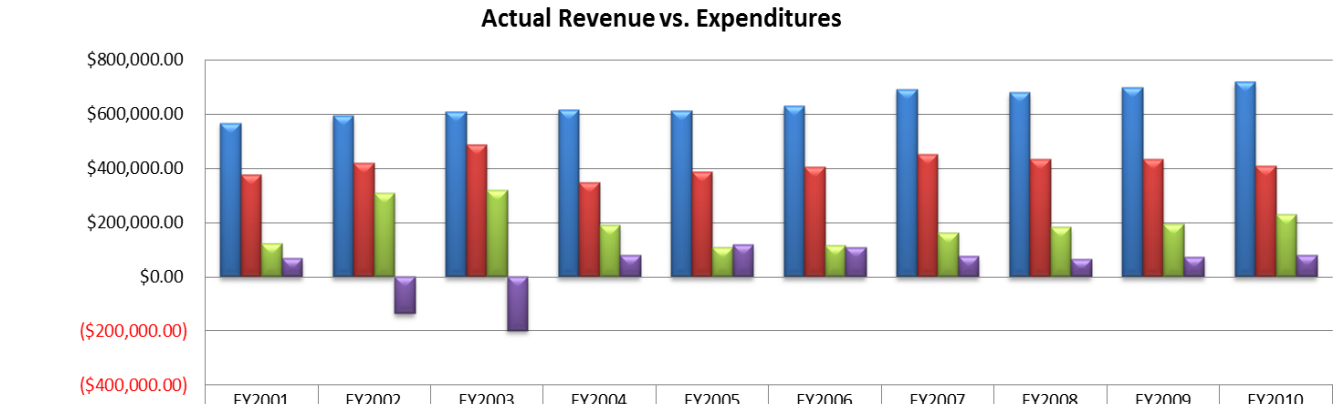
The table below illustrates the annual base budget appropriation for the fiscal period 2001 through 2011. The reader will observe that the period from FY 2001 through and including FY 2007 remained relatively flat in terms of the appropriation provided by the Legislature.



	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010
Base Budget	$361,000.00	$372,000.00	$384,000.00	$384,000.00	$384,000.00	$384,000.00	$384,000.00	$450,000.00	$447,000.00	$447,000.00
Additional Appropriations	$0.00	$124,000.00	$113,620.71	$0.00	$0.00	$35,000.00	$36,000.00	$37,355.72	$165,931.51	$100,000.00
Rollover from Previous FY	$16,035.85	$0.00	$56,073.92	$0.00	$35,325.80	$0.00	$15,669.01	$0.00	$27,916.89	$0.00

The Commission may note that each odd numbered year shows an appropriated amount that includes a “rolled-over” amount from the first year in the biennium, representing those funds in the first year of the biennium which were not spent. The Commission will also note a reference to “additional appropriations.” These most commonly resulted from two primary influences: 1) unusually high legal costs occurring as a result of contested case proceedings; or 2) upgrading of technological infrastructure, such as purchase of new computer hardware, or software upgrades to maintain current functionality. (An example of this was when the state converted the online payment system vendors from EZGov to US Bank. This conversion required the re-writing of computer scripts to become compatible with the US Banking system.)

The next table illustrates the annual receipts, the annual direct expenditures, and annual indirect costs of this Board for the 10 year period 2001-2010.[7] Consistent with the above "appropriations" graphic, there were years where expenditures appear higher than normal due to periodic purchase of computers (as mentioned above, and on about a 5 year schedule) and in some cases are the result of substantial legal costs. While this will be discussed in more detail later, cases which proceed to contested case hearings can, and have, resulted in costs of $100,000 - $200,000. Since it is impossible to predict when such an event will occur, the Board attempts to create an operating reserve for just such contingencies. In the last 10 years the Board has experienced two shortfalls, resulting largely from substantial legal costs. This chart does not reflect the additional impact resulting from Legislative sweeps, which will be described shortly.

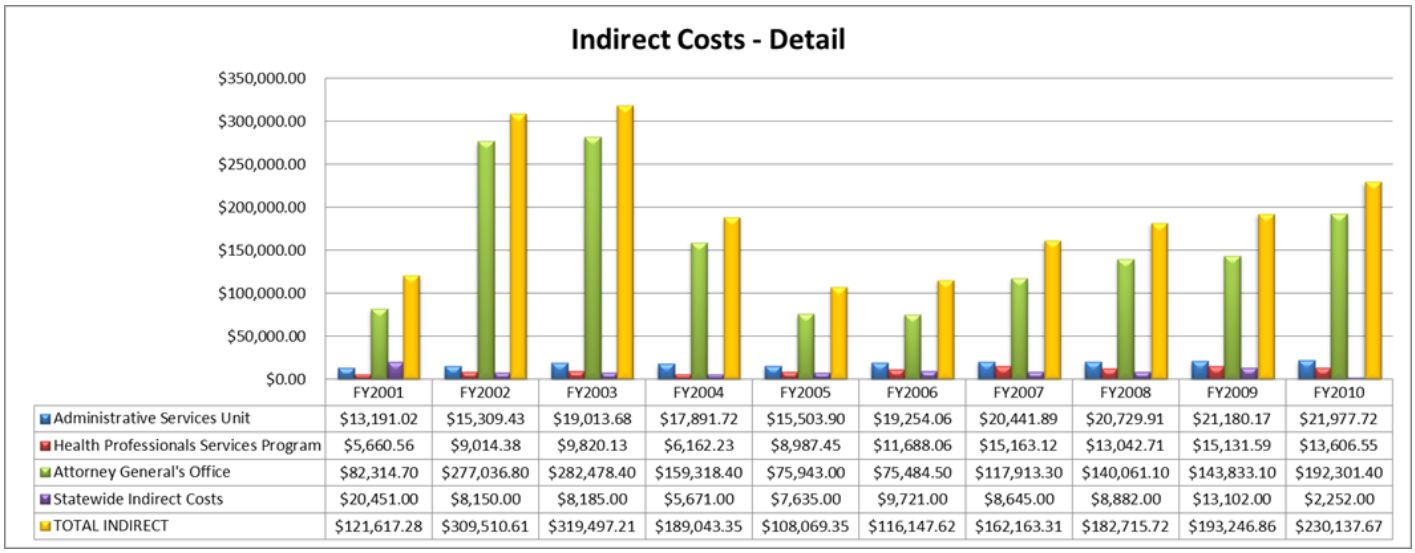


	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010
Actual Revenue	$566,005.11	$593,547.74	$609,180.69	$616,066.64	$613,686.86	$628,784.20	$689,992.04	$678,458.43	$699,661.43	$717,985.19
Actual Direct Costs	$376,879.06	$420,768.68	$488,730.47	$348,674.20	$387,345.63	$403,330.99	$452,705.55	$431,596.39	$434,168.74	$409,748.13
Actual Indirect Costs	$121,617.28	$309,510.61	$319,497.21	$189,043.35	$108,069.35	$116,147.62	$162,163.31	$182,715.72	$193,246.86	$230,137.67
SURPLUS (SHORTFALL)	$67,508.77	($136,731.55	($199,046.99	$78,349.09	$118,271.88	$109,305.59	$75,123.18	$64,146.32	$72,245.83	$78,099.39

[7] This information submitted in satisfaction of the Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) III-4

Expenditures for Agency Services

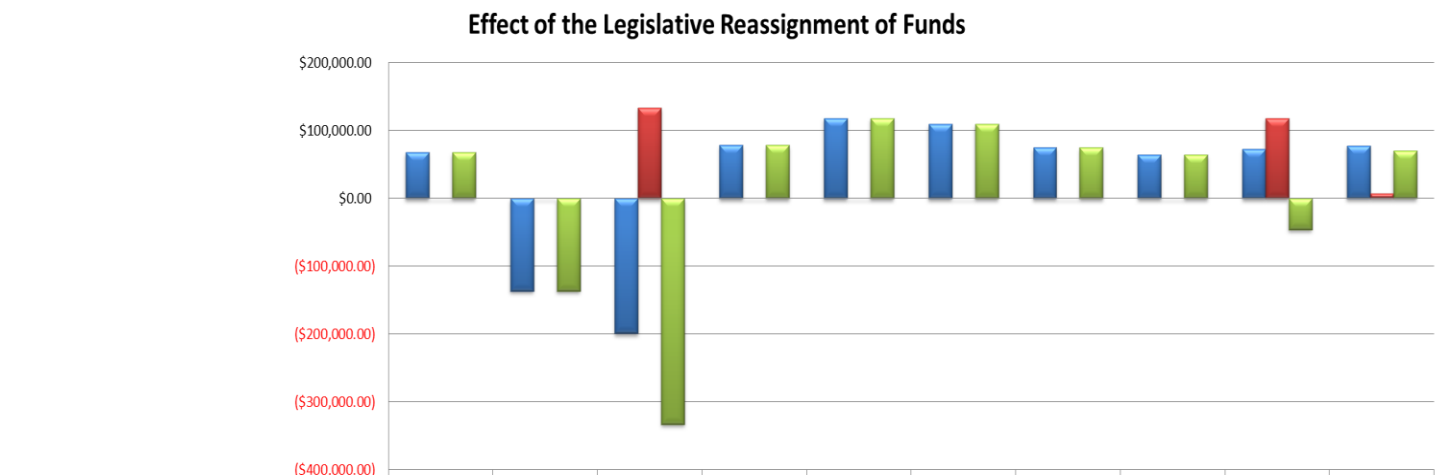
The preceding table shows a line for actual "indirect costs" or those costs paid to other state agencies for providing services to the Board. The table following will detail these expenditures.



	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010
Administrative Services Unit	$13,191.02	$15,309.43	$19,013.68	$17,891.72	$15,503.90	$19,254.06	$20,441.89	$20,729.91	$21,180.17	$21,977.72
Health Professionals Services Program	$5,660.56	$9,014.38	$9,820.13	$6,162.23	$8,987.45	$11,688.06	$15,163.12	$13,042.71	$15,131.59	$13,606.55
Attorney General's Office	$82,314.70	$277,036.80	$282,478.40	$159,318.40	$75,943.00	$75,484.50	$117,913.30	$140,061.10	$143,833.10	$192,301.40
Statewide Indirect Costs	$20,451.00	$8,150.00	$8,185.00	$5,671.00	$7,635.00	$9,721.00	$8,645.00	$8,882.00	$13,102.00	$2,252.00
TOTAL INDIRECT	$121,617.28	$309,510.61	$319,497.21	$189,043.35	$108,069.35	$116,147.62	$162,163.31	$182,715.72	$193,246.86	$230,137.67

The highest cost area illustrated on this chart relates to the Attorney General's office (which is the greatest contributor to the "Total Indirect costs.") This is especially notable in Fiscal Years 2002-2003. The Attorney General's costs are somewhat self-explanatory. Such expenditures result from previously referenced extraordinary legal costs, generally related to contested case proceedings (to be described later in Section VII.) These costs cannot be fully anticipated with any degree of accuracy, as the Board cannot know in advance when a case requiring extensive legal resources will suddenly arise. As also previously stated, this is the very reason for maintaining a reserve fund.

From the preceding graphics, the Commission may conclude that the Board has experienced two shortfalls in the last ten years. However, the Board has actually experienced three such shortfalls. A review of the following table is instructive. In fact, the first shortfall was not impacted by a sweep, the second shortfall was severely exacerbated by a sweep, and the third shortfall, was fully caused by a sweep.



	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010
SURPLUS (SHORTFALL) from chart above	$67,508.77	($136,731.55)	($199,046.99)	$78,349.09	$118,271.88	$109,305.59	$75,123.18	$64,146.32	$72,245.83	$78,099.39
Legislative Reassignment of Funds (not including OET)	$0.00	$0.00	$134,158.31	$0.00	$0.00	$0.00	$0.00	$0.00	$118,522.05	$7,684.54
SURPLUS (SHORTFALL) with Legislative Reassignment of Funds	$67,508.77	($136,731.55)	($333,205.30)	$78,349.09	$118,271.88	$109,305.59	$75,123.18	$64,146.32	($46,276.22)	$70,414.85

Although not observable from the data here, there has been a significant increase in the utilization of expenditures related to enforcement particularly over the last 10 years, as compared with the previous 10 years. This derives from several intersecting factors

- There is a substantial increase in the competition for the health care dollar. This includes a significant increase in the denial of benefits or reduction of payments for those services provided by doctors of chiropractic. This necessarily results in a decrease in income for the doctors' practices while at the same time the cost of running such practices continues to increase. The net result is that doctors may, at times, make poor choices which may be based more on financial need than on proper clinical judgment;
- At times the denial of benefits and subsequent review results in third party payers requesting a reimbursement for previously paid funds, while at the same time filing complaints;
- Additionally, filing complaints with the regulatory Board results in third party payors being able to delay payment to the provider until the case is resolved with the Board. While many of these cases are dismissed for lack of evidence, nevertheless, there is a cost in conducting a review / investigation.

- There has appeared a newer benefit in malpractice insurance. This benefit is typically a $25,000 defense indemnification for doctors of chiropractic who are the subject of complaints with their licensing board;
- The public is becoming more savvy about what is, or may not be, appropriate practitioner care or conduct, likely due to increased access to information through technology, or increased reporting. Additionally, there is increased awareness of the availability of the Boards as the proper resource for managing such complaints.

Section V. Regulation and Public Protection

Minnesota Statutes § 3D.10(5) requires a discussion of "whether less restrictive or alternative methods of performing any function that the agency performs could adequately protect or provide service to the public;"

Regulatory Authority

This Board licenses doctors of chiropractic, as do all states in the U.S.; this is the appropriate level of regulation for chiropractors. Doctors of chiropractic work directly with vulnerable populations, and incompetent or unethical practitioners pose a significant risk of harm to the patients for whom service is provided as well as the general public. The Board registers chiropractic firms pursuant to Minnesota Statutes section 319B. Registration is the least restrictive of regulatory authority.

Fiduciary Obligation

Minnesota Statutes section 214.06 requires the Board to collect fees sufficient to pay anticipated expenditures. Fees collected are deposited to the health occupations licensing account in the state government special revenue fund and appropriated by the Legislature. An alternative, less burdensome, and more predictable method of funding its operations would be for the Board to be granted fiscal authority for its receipts. Under this funding method, fees would be established by the Legislature, oversight provided by Minnesota Management and Budget, and regular audits would be conducted by the Office of the Legislative Auditor. This would provide external and internal audit control mechanisms and assurance of compliance with Minnesota law and accounting practices. It would have the additional benefit of efficiently funding the Board and deleting a layer of bureaucracy.

Legal Services

Minnesota Statutes section 214.04. subd. 1 requires legal and investigative services to be provided by the Attorney General's Office (AGO). The Boards of Dentistry, Medical Practice, Nursing and Chiropractic have implemented a system in which Board staff draft legal documents of notice instead of the AGO. The AGO reviews the documents for accuracy and compliance with law. This practice has resulted in a significant decrease in the time from receipt of complaint to a review before the Board with no change in the cost to the Board. A logical extension of this practice to all the Health-Related Licensing Boards would be to retain or employ legal counsel and investigative staff rather than using the AGO; thus, eliminating a layer of involvement. Legal and investigative services would be shared among the Health-Related Licensing Boards on a fee for use basis. Based on the experience with drafting of notices, complaint resolution time would be reduced, and public safety enhanced.

Section VI. Agency Structure and Program Administration

Minnesota Statutes § 3D.10(6) requires a description of "the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies, the extent to which the agency coordinates with those agencies, and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;"

The Board of Chiropractic Examiners is a single program board; i.e. the only function this Board carries out is the regulation of Doctors of Chiropractic. The Board does this through three primary mechanisms:

- Licensure
- Enforcement of the Laws
- Maintenance of current competency via continuing education

The agency coordinates with other state agencies to the extent feasible and possible and will continue to do so. No other State agencies are authorized to perform the licensing of doctors of chiropractic. Nor are they authorized to conduct investigations or take remedial / disciplinary actions with regard to doctors of chiropractic. Accordingly, this is the sole agency that serves to protect the public interests with respect to the treatment rendered by doctors of chiropractic. It is possible that in some very severe cases, members of the public may file civil lawsuits to recover damages from improper care. In other cases County Attorneys may consider prosecutorial actions against health professionals who engage in criminal conduct. However, actual experience demonstrates that this is extremely rare. Even if such prosecution ensued, under current law the action would fail to modify the license status, authorities, or conditions of practice, thus potentially allowing the errant behavior to continue unabated.

So the evidence clearly suggests that the HLB's have consolidated to a very great degree, and proactively continue to do so where feasible, and where evidence indicates that doing so will improve efficiencies, while maintaining necessary autonomy. While the notion of engaging certain types of consolidation may be very seductive, the evidence studied indicates that there is no regulatory structure which clearly rises to the surface as "the best." In fact:

> *"Previous studies and reports by researchers and state commissions have reached no general consensus on what type of governance structure is the most likely to ensure effective public protection in the most efficient manner. Some experts have concluded that structure may matter less than funding, staffing, or leadership."*[8]

Finally, there is sufficient empirical evidence that indicates public access and service is dramatically reduced in those Boards which are more consolidated. This derives largely from the fact that the focus of such agencies is on reducing costs rather than on providing more service. Admittedly, the costs are reduced. However, attempts to gain information by the public or licensees of such Boards are severely compromised. This results in members of the public being unable to acquire timely licensing or disciplinary information when preparing to go to a new health care provider. Such Boards also experience a reduction in the deliberative expertise available to them in carrying out their regulatory functions.

Therefore, the Board contends that there are clear lines of demarcation in the Board's jurisdiction, and that there is ***no*** overlap or duplication with other agencies. As a result, there appears to be no opportunity for further consolidation which would maintain any semblance of current public service.

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[8] Health Licensing Boards and Governance Structure. Prepared for the Minnesota Health Licensing Boards. November 18, 2003. Anna Bonelli, Research Analyst. p 20.

Section VII. Complaint Resolution Process

Minnesota Statutes § 3D.10(7) requires a description of "the promptness and effectiveness with which the agency addresses complaints concerning entities or other persons affected by the agency, including an assessment of the agency's administrative hearings process;"

Receipt and resolution of complaints by members of the public constitutes one of the major activities of the Board whose primary mission is to protect the public from improper, inadequate, unethical or substandard care. The essential mechanism for accomplishing this task is the complaint resolution process. Typically, this process starts with the receipt of a complaint by a concerned person or entity.

The license is a property right that, once granted, can only be removed or modified under certain conditions, subject to constitutional protection. Accordingly, the doctor is given due process rights and the Board is only capable of removing or modifying the authority to practice when the conditions warrant, and when the protections afforded the doctor have been properly applied. So, in the event that a patient files a civil suit against a doctor of chiropractic it is possible that patient may receive a monetary recovery for their injuries. On the other hand, should the doctor be convicted of criminal conduct it is possible, but extremely rare, that the Courts may impose an injunction against that doctor's practice. Rather, the courts defer that process to the regulatory Boards which are imbued with the expertise to determine whether or not the doctor should continue to practice, and if so what, if any, conditions should be imposed to assure the safety of the public.

For example, if a doctor engages in sexual misconduct with a single patient and that conduct was "consensual,"[9] it is possible that the doctor will be allowed to remain in practice provided certain protections are put in place to minimize the likelihood of this behavior occurring again. In such a case, the Board may require a number of remedial actions, among them: the doctor may be required to take specific remedial training in such subjects as ethics and boundaries; be required to have a third party in the room at all times when seeing patients of the opposite gender or of a gender which was the subject of the sexual misconduct; be required to be examined in their knowledge of professional ethics and

[9] In this context, the term "consensual" should not be construed to mean that doctors may engage in sexual misconduct with a patient merely because the patient consented to it. In fact, the Boards hold the position, supported by substantial case law, that patients are not in a position to give consent for sexual conduct with a doctor because of the power differential that exists between the doctor and patient, thereby leading to the inappropriate conduct. However, a singular situation of this nature may be viewed differently from a situation in which the doctor has engaged in sexual conduct with multiple patients over a period of time.

boundaries and successfully demonstrate their knowledge of the subject matter; be required to take resident programs dealing with the ethics and boundaries breach that led to the sexual misconduct in the first place; and be strictly prohibited from engaging in any kind of personal or social relationship with past or previous patients, etc.

A complaint is typically initiated following a complainant's contact with Board staff, or after visiting the Board's website . A potential complainant receives information regarding the complaint process through either of these methods. The Board's staff person provides substantial information about the complaint process including referral of the complainant to the Board's website for complaint forms as well as additional information. Any potential complainant who goes directly to the Board's website will find access to complaint forms online as well as significant narrative information regarding the complaint process. (See, *e.g.* http://www.mn-chiroboard.state.mn.us/Forms/Complaint%20form-Patient%20-%20Web%20Download.pdf or http://www.mn-chiroboard.state.mn.us/Forms/Complaint%20form-non%20Patient%20-%20Web%20Download.pdf)

Complaints can be, and are, received from many different sources including patients, other doctors such as associate doctors, staff persons of doctors, insurance companies, relatives or friends of patients, other health care professionals who have a reporting authority (*e.g*. psychologist or social worker), attorneys, courts, malpractice agencies or others.

Once a complaint is received it is evaluated for jurisdiction *i.e.* the complaint must be against a Minnesota licensed doctor of chiropractic, and the allegation, if proven, must be a violation of the Chiropractic Practice Act.[10] If the complaint is jurisdictional, a letter is typically sent to the doctor requesting a response to the allegations and usually requesting records[11] as part of that response.[12]

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[10] It is important to note that the Board is not determining at this point whether or not the allegations are true… merely that *IF* they are true than that behavior or conduct would constitute a violation of the Practice Act.

[11] In any event in which information is requested from a licensee, a "Tennessen" warning is provided to the licensee. The Tennessen warning is roughly the administrative equivalent of the Miranda warning in potential criminal cases, in which the licensee is provided information regarding their right to counsel, information on how the data provided will be utilized, who will have access to the data, and any consequences for the failure to provide such data. This Tennessen warning is provided any time there is a request for information, such as a response or records, and is also provided at the meetings described herein.

[12] An exception to this step in the process occurs when the complaint alleges any possibility of sexual misconduct. In this case, the complaint is immediately forwarded to the Attorney General's office for the purposes of investigation, after which a full report of that investigation is provided to the Board for their consideration.

Once the response is received from the Doctor, all materials are forwarded to the Board complaint panel.

Each panel is composed of two board members, the Executive Director, an Assistant Attorney General, and another staff person. From this point the panel reviews all materials submitted and determines the most appropriate course of action for resolving the complaint. This may result in dismissal of the complaint for lack of significant evidence to pursue it, or because it alleges something that would not rise to the level of disciplinary or corrective action. However it is also possible at this point that the complaint panel will request a meeting with the Doctor…which happens with some regularity.

Depending on the egregiousness of the complaint as well as the evidence supporting the complaint thus far, these meetings may be held under the auspices of either an "Educational Meeting," or an "Administrative Conference." An educational meeting is generally designed for lower level, less egregious complaints, in which resolution best occurs with simple remediation. The Administrative Conference is a more formal meeting in which the allegations are more serious, and there is at least an increased likelihood of formal disciplinary action arising from this procedure. At this point, the possibility of dismissal still exists in this case.

However, there is also the possibility of an agreement being reached by and between the panel and the licensee for resolution which would be public. Public actions come in two forms. The first is an agreement for corrective action, usually for complaints that are less egregious, and which can typically be managed (most commonly) by remedial education or administrative modification. [**SEE** M.S. §214.103 Subd. 6] Corrective action agreements are not considered disciplinary in nature, but they are public nonetheless.

By contrast, the second form of action is disciplinary. Such actions are for those more egregious violations, which have more likely resulted in substantial harm. The intent is not punitive, but remedial. Most commonly, disciplinary actions are reached via a "consent order," commonly known as a "Stipulation and Order." Most orders result from an agreement by and between the licensee and the Board. These are disciplinary in nature and as such, must be reported to the national and federal databases. Such actions impose specific conditions on a licensee, or may result in the suspension or revocation of a license. These orders are public information.

In the event the panel believes that disciplinary action is necessary in a particular case and the licensee refuses to enter into an agreement for such a resolution, the matter is referred to the Office of Administrative Hearings for a formal hearing before an Administrative Law Judge. In such a case, a full

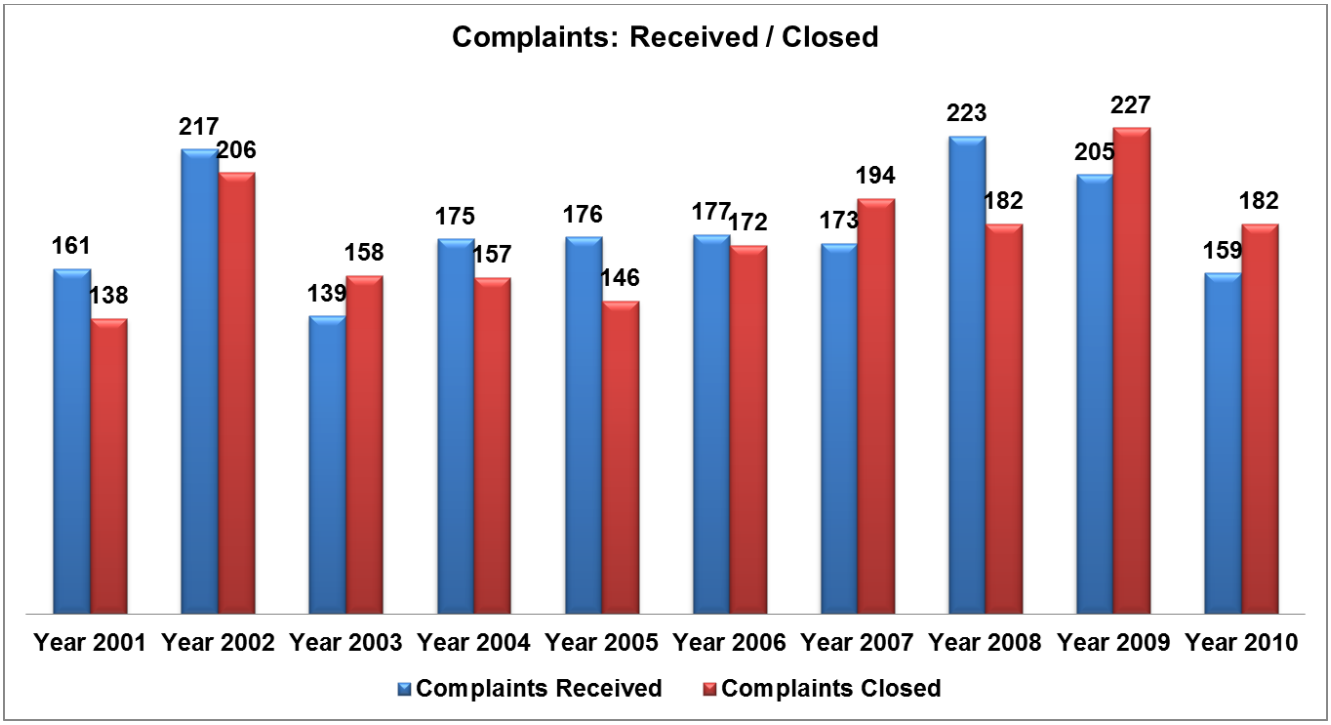
hearing is conducted including the examinations of witnesses and evidence for both sides. Following the hearing the Judge assesses all of the submissions, testimony, and other evidence and produces and submits a report to the Board. The report generally states whether or not disciplinary action is warranted, given the quality of the evidence in this case. The Board is then authorized to act in a manner deemed appropriate to resolve the case. The parties are then notified either by letter, by a public document (Order for Disciplinary Action or Corrective Action Agreement) or both.

The Board receives complaints in numerous broad categories. The most common complaints are in the areas of advertising, exercising influence on patients for financial gain, some form of physical or mental impairment (including chemical dependency), and record-keeping. Common examples of advertising complaints include the failure of doctors of chiropractic to properly state their credentials in either written or verbal forms of advertising. Complaints of exercising influence on patients for financial gain have increased over the last five to eight years as the health care dollar tightens. The Board has noticed a disturbing trend in this particular area on a national and statewide basis. The Board seeks to reduce the numbers of complaints in these areas, and to provide some education to doctors in certain "high risk" subject areas which are observed on a statewide and national basis. Accordingly the Board offers a free continuing education seminar, entitled "Issues in Practice" to which licensees are regularly, directly invited.

A number of complaints pertain to practitioners who are experiencing various forms of impairment, whether physical or mental, which may impede their ability to deliver services with reasonable skill and safety. The Board determines whether these practitioners are able to practice with reasonable skill and safety and, if so, under what conditions. As will be explained later in this document, the Board engages the services of the Health Professionals Services Program (HPSP) for assistance in making such evaluations. Should an evaluation indicate that a practitioner is safe to practice if properly monitored, then the HPSP provides the monitoring service as well. To date, the HPSP has opened 130 cases on behalf of the Board of Chiropractic, and currently maintains an active case load of 8 cases.

The Board also manages complaints that allege sexual misconduct. While lower in number than other categories, these types of complaints typically constitute the most devastating, and emotionally painful complaints of the patients, patients' families, doctors, and doctors' families. Such complaints are always conducted in an atmosphere that is highly emotionally charged, and which are so painful they have at times resulted even in death by the suicide of the doctor or the patient involved.

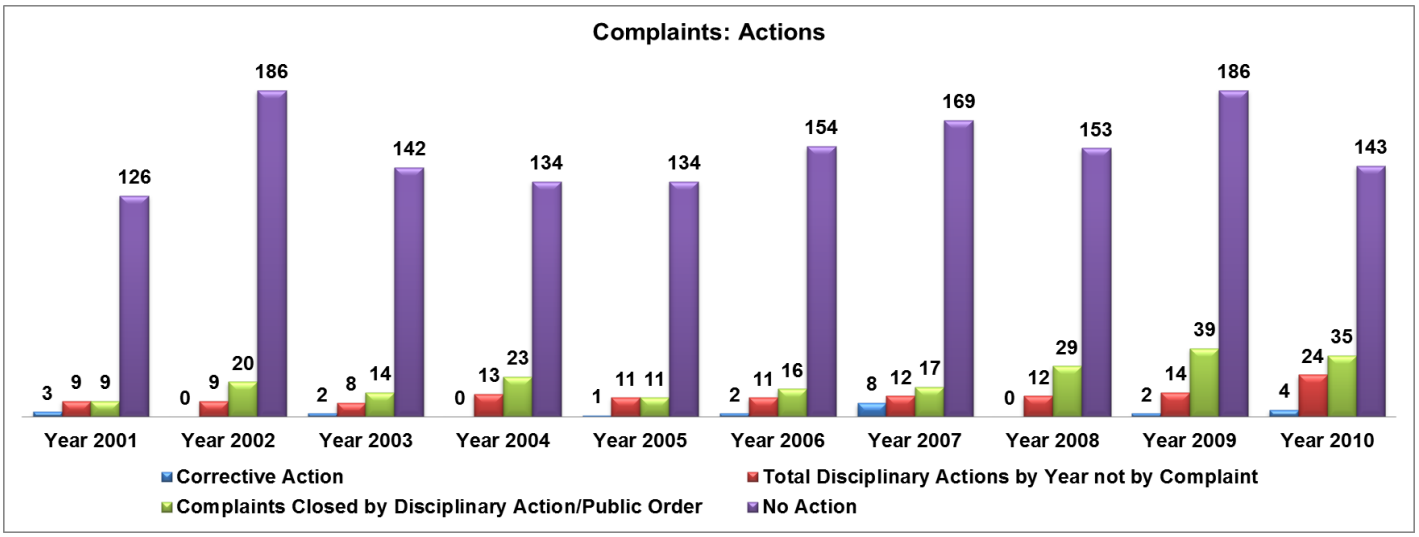
Below is a series of charts which outline complaint resolution activity over five biennial periods. The chart immediately following illustrates the number of complaints received as compared with the number of complaints closed in the same period. The number of complaints received over the biennia remains relatively stable. While there is a substantial increase in the percentage of licensees over the 10 year period (reflected in a previous table,) there does not appear to be a commensurate increase in the number of complaints received in that same period. In some years the number of complaints closed exceeds the number of complaints received. This anomaly reflects that some of the complaints closed in that biennium were complaints opened in a previous biennium.



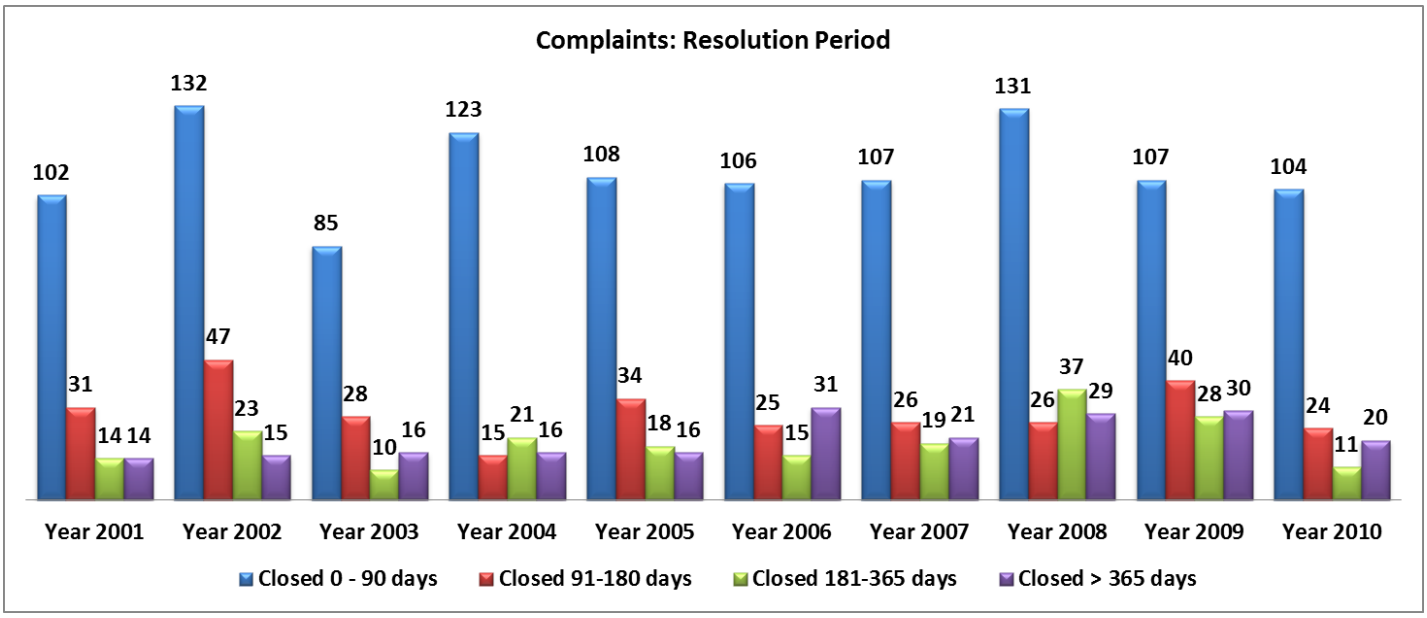
The next chart provides a graphic illustration of the resolution activity of the Board over the same period of time. Throughout all Boards the number of complaints received far surpasses the number of complaints resulting in public action. There are numerous reasons for this. For a complaint to be considered, it must be jurisdictional as previously described. Common complaints may not be violations, for example, fee disputes, treatment did not result in desired outcome, or patient dissatisfaction with the practitioner's style or perceived attitude.

When a complaint is investigated and evidence gathered, the evidence has to be sufficient to convince an Administrative Law Judge that there was indeed a violation, which should rise to the level of public action. In this manner, the Constitutional rights of the doctor are maintained, even though the outcome may appear that the Board is favoring the doctors. The Commission should be assured that the Board's interest in public protection remains steadfast.

The chart below indicates the number of closures with no action, and those with action taken. The red column (Total Disciplinary actions by Year Not by Complaint) reflects that some of the closed cases were the result of more than one complaint. Therefore, the green, purple and blue columns (Complaints Closed by Disciplinary Action/Public order, No Action, and Corrective Action columns respectively) equal the total number of closed complaints in the previous graphic.



The next graphic, illustrates the period of time for the closure of complaints. Clearly, the lion's share of complaints are closed within the first 90 days following receipt, with the next largest group closed between 3-6 months. A statistical analysis indicates that nearly 70% of the cases closed over the 10 year period are closed within the first 90 days following receipt. The next group representing 18% is closed between 3-6 months. Thus, 87% of cases are closed within 6 months. In the opinion of this author, this represents an excellent closure rate. However, one may inquire as to those that take closer to, or even more than, a year to close. A fundamental understanding of the case load and inherent procedural impediments may be instructive.



There are a certain percentage of cases which, by their very nature, are very complex and take longer to resolve. In some cases, acquiring and reviewing patient files[13] can take months, particularly when the doctor attempts to hinder the investigation. For example, several years ago the Board had an Administrative Conference with a licensee at which the licensee agreed to provide a number of different documents after the conference. When the Board made the request for the documents promised by the licensee, the licensee's attorney filed a motion in district court to quash the Board's subpoena.[14] The case languished for nearly a year and a half before the motions were heard. (In the end, the Board

[13] Patient files are nearly always a critical part of conducting any investigation. However, they can, at times, become an impediment to the investigative timeline as well.

[14] The Board has subpoena authority pursuant to M.S. 214.10, Subd. 3. When records or other evidence is requested, the subject is provided with a subpoena which, very often, extends a protection for that person in providing such information.

prevailed, but the Commission can see how this might affect the expedient resolution of the case.) In other circumstances, attorneys may carry the case for a certain period of time, and as the case approaches trial or some other form of resolution, the attorney terminates. This causes a delay as the licensee seeks new counsel, who is granted additional time to prepare the case. Such experiences have delayed cases for 6-8 months or longer.

There are also many cases that require professional investigation. The Attorney General's Office (AGO) maintains the investigative unit which conducts Board investigations. Once a case is referred to the AGO for investigation, the Board awaits the completion of the investigation and the preparation of the investigative report with exhibits before it can proceed further. AGO staffing reductions can slow the Boards investigation. (It should be pointed out here, that this investigative division provides services for all 18 of the Boards.) Additionally, some cases are the result of multiple complaints. Each complaint has to be given its proper attention, but the net effect is an increase in the amount of time to resolution. (The preceding graphic illustrates a higher number of cases closed after 1+ years during the calendar years 2006-2009. These were years in which very complex cases were closed which were the result of multiple complaints.) So in summary, those few cases that continue for lengthy periods of time do so as a result of substantially extenuating circumstances.

The sunset review statute requires that the agency provide "an assessment of the agency's administrative hearings process." This process is established by the Administrative Procedures act. [**SEE** M.S. § 14.48-14.70] The administrative process is designed to assure that State agencies afford proper due process (Constitutional) protections to licensees subject to potential disciplinary action. This process has withstood the test of time, and been filtered through experience over many years. Certainly, any time a case is required to move through contested case proceedings (as opposed to concluding via consent agreement,) the process will be lengthier and more costly for both sides. The process gives both sides an opportunity to fully air their positions, including providing evidence and arguments through a neutral finder of fact, the Administrative Law Judge (ALJ). Interestingly, the ALJ is not the final arbiter of whether or not disciplinary action is imposed. The end result of the trial is a report to the Board that ends with a recommendation as to whether or not disciplinary action is warranted.[15] This recommendation will then go to the Board for final resolution.

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[15] Rarely, if ever, does the ALJ make the recommendation as to WHAT discipline should be meted out…rather, simply whether or not disciplinary action is, or is not warranted. The determination as to the appropriate discipline in any given case is vested solely in the Board.

At this point the neutral Board reviews the recommendations of the ALJ, and the entire record including all evidence submitted on behalf of both sides. (This includes documents that may well be in the many thousands of pages.) The neutral Board is completely separated from the complaint panel, and no communication is allowed between the Panel and the rest of the neutral Board. A new attorney is assigned to the neutral Board, known as the "advising attorney," and even staff are separated on this matter. During this process, the neutral Board has been completely isolated from this case…only the complaint panel originally managing the case has been involved in the proceedings. When the case is tried and the report is completed, the neutral Board has its first opportunity to study the case. When the case gets to the neutral Board for consideration, both the panel and the licensee are then allowed to argue their position to the neutral Board (addressing only what is in the official record.) The licensee and the panel are excused from deliberations, and the neutral Board deliberates (usually at length) and makes its final decision on the case. Once that decision is established in a written order, it is served on both sides. This is the first that both sides become aware of the actual outcome. This may or may not be the end of the proceeding.

During the process, the neutral Board has three options with regard to the ALJ's report: It can accept findings and recommendations completely; it can modify the findings or recommendations; or it can reject the findings or recommendations entirely. It must be remembered here that the Board brings something to the table that the trial judge cannot…that is the personal expertise of the Board members, which is why you have an appointed Board. Certainly, the Board cannot substitute it's expertise for the Judge's trial experience without providing significant rationale for doing so. However, provided the Board does a reasonable job of explaining its rationale for diverting from the ALJ's findings, they are likely to prevail. Numerous Appellate and Supreme Court decisions over the years have acknowledged and accepted these circumstances.

Thus far, it seems a lengthy experience, but one that protects the integrity of the process. However, should the licensee disagree with the outcome, they still have other options. The case can, as in any other legal proceeding, be appealed to the State Appellate Court, and ultimately to the State and Federal Supreme courts. This Board has been through such proceedings in the past. Again, while lengthy and expensive, the Board acknowledges that this is the most equitable system to assure the rights of the individual. While the licensee may disagree with the ultimate outcomes, this set of procedures allows the individual proceeding to be held up to the very highest standard of scrutiny…again for the purpose of protecting the individual's rights.

One last thing should be mentioned here. The Board receives its fees SOLELY from the profession it regulates…no money comes from the general fund for Board operations. Accordingly, the entire disciplinary process is funded by the profession through license fees. The Board complaint panels are very mindful of the cost and length of these proceedings, and act judiciously in determining which cases are taken to judicial resolution, and considers the egregiousness of the allegations, and the extent of potential or real harm to the public. The Board has been tremendously successful in resolving cases through targeted negotiations over the years. To this end, the Board sent its executive director to a certification class in negotiations, resulting in his membership on the State Supreme Court Neutral's roster. The net effect has been to reduce reliance on the more lengthy process, in favor of negotiated settlements that addressed public protection, while correcting the problem(s).

Section VIII. s, Policy, Legislation Enactment / Development and Stakeholder Participation

Minnesota Statutes § 3D.10(8) requires "an assessment of the agency's rulemaking process and the extent to which the agency has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules that benefit the public;"

Over the years the Board has engaged in a considerable amount of Rulemaking activity in order to provide guidance and understanding to its licensees. Rulemaking authority was provided to the Board in the 1983 73rd Legislative Session. [**SEE** M.S. §148.05 and 148.08, Subd. 3] Rules pertaining to the practice of chiropractic are established in Minnesota Rules Chapter 2500. The most recent rule promulgated by the Board related to the utilization of Pre-pay Plans. These are plans utilized by Doctors of Chiropractic to establish a plan of treatment which may require an advance payment of a certain amount of money (often several thousand dollars.) Cases arose in which patients attempted to terminate the plan earlier than originally contracted for, but did not receive equitable reimbursement for the unused amounts paid in advance. The incidence was occurring with such frequency that the Board established guidelines for chiropractors and patients to utilize in establishing such arrangements. This particular rule process invoked the more complete rules promulgation proceeding established by the Administrative Procedures Act...specifically an administrative hearing.

The process of developing rules can often be lengthy and resource consuming. It begins when the Board determines there is a problem to be solved, and that failure to resolve this problem may result in some form of patient harm. (While it is intuitive to view patient harm as something that results in physical or clinical harm, one cannot dismiss the notion that harm may also be financial or otherwise administrative.) When this matter comes to the attention of the Board, the Board makes a determination as to whether or not the Statutes sufficiently address the problem. If not, the Board may elect to initiate rules promulgation for the purposes of resolving the issues.

The first step in the rulemaking process is the issuance of an authorizing resolution by the Board, which is a formal Board action taken at a public Board meeting. Once an authorizing resolution is drafted the next step is to start the public notification process. At the same time, the concept of the rule is sent to a subcommittee of the Board known as the Rules Committee. The Rules Committee will ultimately craft the language, as well as shepherd the rule through the rules promulgation process. Public notification also occurs via publication in the Minnesota State Register, in the form of a "Request for Comments". This Request for Comments is the first method for seeking public input to the process and typically provides a general description of the rule and asking for any and all persons who may be

interested to provide comments to the Committee for the purposes of consideration while drafting language. [**SEE** M.S. § 14.101] All required notices are also published on the Board's website.

The Board is mindful that rules may have collateral effects on other people and/or other professions or businesses. Accordingly, the Rules Committee may contact the Office of Administrative Hearings for the purposes of submitting an "Additional Notice Plan" for review and approval. This is a plan for making contact with other parties or organizations which the Board believes may be affected by the outcome of the rules promulgation. In this way, those persons or organizations that might not otherwise be aware of the rule are invited to participate in the process of the rules development. This step is taken to forestall the development of any onerous outcomes which may have not been otherwise considered during the development process. [**SEE** Minn.R. 1400.2060] During this same period a memo sent to the Governor's office outlining the general intent of the rule and advising the Governor's office as to whether the rule is expected to be controversial. This allows an opportunity for the Governor's office to also have input into the development of the rule.

As previously stated, the rule is submitted to the Rules Committee for the purpose of language development. The development of rules language typically starts with the framing of the concepts expressed by the Board, and the development of preliminary language for consideration. Over time and after multiple meetings this language is refined until the Rules Committee has crafted a product that is consistent with the Board's intentions. All meetings at which language development occurs are open to the public and those who have shown interest in the rule are directed to the Board's website for the scheduling of the Rules Committee. Once the Rules Committee has developed what it believes to be the intended product of the Board, the rule is then provided to the Board for its initial approval of the language. Provided the Board agrees with the outcome, the Board will develop a document entitled "Statement of Need and Reasonableness" (SONAR). [**SEE** M.S. § 14.131 and 14.23] The purpose of this document is to inform interested parties of the Board's statutory authority to write the rules, to provide the rationale for all of the elements of the rule, and to provide additional information to the reader. In this form, the document is once again submitted to the Governor's office for additional consideration. Following approval by the Governor's office, the rule is published again in the State Register with a Notice of Intent to Adopt (with or without a hearing).[16] [**SEE** M.S. § 14.22 and 14.14]

[16] Whether or not a hearing is utilized in this process, is contingent upon whether or not the rule is considered to be "controversial." If 25 or more people object to the rule and request a hearing, then it will be scheduled for a hearing in front of the Administrative Law Judge. This gives all persons an opportunity to voice their opinions in front of the ALJ and provides an additional layer of legal scrutiny to the development of the rule.

At the conclusion of this step, the entire rules package is then submitted to the Office of Administrative Hearings for review by an Administrative Law Judge. [**SEE** M.S. § 14.15] Provided the Administrative Law Judge approves the rule as to form and content, the rule is then ready for adoption. Once a rule is about to go into effect, the Board sends out an email to all members of the profession that have valid email addresses on file with the Board, notifying them of the rule and their obligation to comply with the rule. [17]

While lengthy and complex, this process assures that the Board follows the proposed statutory procedures for developing rules. It also allows for substantial transparency and involvement of stakeholders in the development of the rules process. The Board has multiple methods by which to communicate with the public and the profession such as Email, and a regularly updated website.

Parenthetically, the establishment, or raising/lowering of fees was formerly managed through the rules promulgation process. However, since 1999, modifications to fees are vested solely in the Legislature. [**SEE** M.S. §16A.1283. 2011] (Having said this, the Board of Chiropractic Examiners has not raised its fees since 1993.)

[17] For those doctors of chiropractic who do not have email addresses, or for whom the Board receives an email notice failure, separate cards are sent out directly notifying them of the adoption of the rule.

Section IX. Compliance with Federal and State Laws Related to Employment, Data Privacy, Purchasing

Minnesota Statutes § 3D.10(9) requires a description of "the extent to which the agency has complied with federal and state laws and applicable rules regarding equality of employment opportunity and the rights and privacy of individuals , and state law and applicable rules of any state agency regarding purchasing guidelines and programs for historically underutilized businesses;"

Employment

The Board fully complies with federal and state laws regarding equality of employment opportunity, and the rights and privacy of individuals.

The Executive Director is entrusted with responsibility for ensuring that federal and state equal employment opportunity laws are fully complied with. This is achieved with assistance of the Board's designated affirmative action officer, located in the Administrative Services Unit, which provides shared services to each Board.

The Board maintains and updates an affirmative action plan on a biannual basis. Criteria for affirmative action plans are established by state law, MS. 43A.19 and 43A.191, and MMB Administrative Procedure 19.1. The Executive Director prepares and implements the Plan, and signs the Plan's Statement of Commitment. The current Affirmative Action Plan is on the Board's website: http://www.mn-chiroboard.state.mn.us/administrative_considerations.htm.

Likewise, the Board fully complies with the Minnesota Human Rights Act and applicable federal equal opportunity laws. The Board works cooperatively with the Administrative Services Unit, which provides expertise on equal opportunity issues. This Board has received no complaints of violation of equal employment opportunity laws.

All new employees are informed of equal employment opportunity policies and laws upon orientation, and a copy of the Board's affirmative action plan is reviewed with them, including equal opportunity provisions and the Board's complaint process. This Affirmative Action Plan is provided to all new employees, and is posted on the employee bulletin board. Training on equal opportunity / affirmative action requirements is periodically provided to staff through in-person training sessions and online training. Equal opportunity / affirmative action matters are regularly reviewed at Executive Director meetings and Office Manager meetings.

The Board conducts its hiring processes in accordance with all applicable collective agreements, and state and federal law. This is accomplished through consultation with the Board's affirmative action designee. The Board uses the State's résumé-base, skill-matching process. Résumés are evaluated

against established minimum qualifications. Hiring processes are closely reviewed to insure compliance with equal employment opportunity. Interview questions are established based on knowledge, skills, and abilities required to perform the responsibilities of each position.

The Board's home webpage has an affirmative action / equal opportunity statement, lists the phone number for hearing/speech relay, and provides an e-mail address for comments on the web page. In addition, the Board responds to all applicable State surveys regarding equal opportunity / affirmative action, including an Annual ADA Survey.

Applicants and the general population are becoming increasingly diverse, including cultural and language diversity. The licensing boards continue to examine matters pertaining to possible barriers in licensure, as well as issues surrounding working with clients and patients from diverse populations. To that end, Minnesota Statutes prohibit the appointment of more than two Board members from the same school. [**SEE** M.S. 148.03, 2011] In addition practitioners are typically appointed from within and without the metro area. On more than one occasion the Governor's office has requested, and was provided with, a list of female doctors of chiropractic who are eligible for Board appointment in order to assure appointments that reflect gender equilibrium. With regard to cultural diversity, the Board has little ability to influence this issue with regard to Board appointments. The Governor's office is the appointing authority, and its processes change with each new tenant in the office. However, the Board itself does not gather information on ethnicity of licensee's for various reasons. Accordingly, this information is not available to the Governor's office from the Board's database. Therefore, if such considerations occur, it would have to be as a result of the Governor's interview process.

Data Privacy,

The Board makes great effort to maintain data privacy,, and to comply with all State laws regarding data practices. The staff is regularly trained through the office managers meeting, the executive directors' forum, and individual agency training, regarding the requirements of data privacy,. In addition, files which contain private or confidential data are locked up every night in secure filing cabinets. In those cases where files are in a private office, the office door is locked and have been re-keyed so that cleaning staff are not provided access. (Trash cans are set outside these offices nightly for emptying, in order to maintain security.) Documents that are being discarded are either shredded immediately on-site, or are placed into a secured/locked container accessed only by a contracted shredding company.

All computers are password protected with complex passwords, which are changed on a regular basis. In addition, the Boards have 2 in-house Certified Information Systems Security Professionals (CISSIP's) for the purpose of maintaining ongoing cyber-security. The servers are maintained in a secured room which has climate and fire control systems along with breach notification mechanisms which directly and immediately notify the CISSIP's via digital pagers. At least one CISSIP is "on duty" 24/7/365.

Certified profile reports are viewed and are due to the Minnesota Department of Management and Budget every year. When profiles are added or changed individual staff profiles are reviewed. Individual profiles are maintained and reviewed frequently to ensure compliance with statutes, rules, policies and procedures.

With regard to financial policies the Health Related Licensing Boards follow statutes, rules, policies and procedures related to financial operations. The Minnesota Department of Management and Budget and the Minnesota Department of Administration provide policies and procedures and training related to financial activities that staff are required to maintain. The Administrative Services Unit provides policies and procedures for the Health Related Licensing Boards staff to follow. This ensures compliance with proper financial practices. The Boards are regularly subject to audits by the Office of the Legislative Auditor, the results of which are posted online at http://www.auditor.leg.state.mn.us/fad/pdf/fad0505.pdf . Where there have been findings by the Legislative Auditor, they have typically been the result of new processes/procedures, have been relatively minor, and have typically been corrected before the close of the audit.

Purchasing and Contracting

The Board complies with all purchasing requirements, including the State's Targeted Group / Economically Disadvantaged small business program. Contractual guidance is provided by the Administrative Services Unit. The Administrative Services Unit also provides the services of a Buyer who has been trained in all State purchasing requirements, including Targeted Group / Economically Disadvantaged preferences in purchasing. The Board is also strongly supportive of Minncor purchasing.

The Board is aware of State contracting requirements regarding accessibility for IT services over $25,000; assistance in these matters is provided by Administrative Services Unit IT and contract staff. Training on these matters has been provided by the Department of Administration, Materials Management Division.

All departments and agencies making direct purchases in accordance with this authority must follow the policies and procedures and instructions contained in the Authority for Local Purchasing Manual and all applicable laws and rules, including but not limited to:

- Minnesota Statutes Chapters 13, 16A, 16B, and 16C,
- Minn. Stat. §§ 10A.07, 15.43, 43A.38, 609.43, and 609.456,
- Minnesota Rules Chapter 1230, and
- Uniform Commercial Code (UCC) as adopted by Minnesota (see Minnesota Statutes Chapter 336)

Section X. Potential Conflict of Interest

Minnesota Statutes § 3D.10(10) requires a description of "the extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employee's;"

The Board takes great pains to avoid potential conflicts of interest, both perceived and real. This applies to conflicts of interest related both to employees as well as to Board members in conducting their duties with licensees.

Conflicts of Interest Regarding Employees

The Executive Director of the Board is responsible for enforcing rules relating to potential conflicts of interest of its employees. The Executive Directors of all the Health-Related Licensing Boards agreed to have each incumbent employee review State Code of Conduct provisions and to be re-certified in the employee's understanding of the Code annually. All new Board employees are also informed of the Code at employment orientation, and are instructed to certify understanding of their responsibilities under the Code. The State Code of Conduct (MMB Operating Policy & Procedure 01003-01) outlines the standards and expectations regarding employee honesty, integrity, and ethical behavior. This includes instruction on issues such as conflicts of interest.

The Code of Ethics for State Employees [Executive Branch] with the State of Minnesota (Minnesota Statutes 43A.38) is reviewed at orientation with all new employees, and is also discussed regularly at Office Managers' meeting and Executive Directors' meetings.

Questions regarding conflict of interest are directed to Administrative Services Unit staff, which seeks additional guidance as required from Minnesota Management and Budget. Provisions regarding potential conflict of interest in regard to contracting are heavily regulated by Minnesota statutes. Provisions regarding institutional conflict of interest have been reviewed at meetings of Office Managers and of Executive Directors. Board staff has received training from the Department of Administration, Materials Management Division, regarding appropriate contracting procedures, including conflict of interest. Adherence to state contracting statutes and regulations minimize the risk of conflict of interest.

Another manner in which staff avoids conflicts of interest is through the separation of duties. The Board also seeks to avoid conflicts of interest with regard to the handling of financial transactions. For this purpose the Board utilizes the standard financial transaction procedures, which generally require that each financial transaction passes through at least three hands. While there are occasional

exceptions to this process, for example, employee illness, military deployment, or staff vacancy, these are rare exceptions.

Conflicts of Interest Regarding Board Members

There are significant procedures in place which address Board Member conflicts of interest. Laws regarding conflicts of interest can be found in

- M.S. §148.03
- M.S. §148.04
- M.S. §214.02
- M.S. §214.10, Subd. 8 (b)
- M.S. §214.103, Subd. 10

In addition to those practices discussed above, the Board of Chiropractic Examiners has established its own Internal Administrative Procedures document. This document has a complete section describing recusal when a real or perceived conflict of interest may result [**SEE** MBCE Internal Administrative Procedures, II.d, Rev. August, 2011 (see link on page 63)]. Finally, Board members receive initial training as Board members in numerous subjects, including conflict of interest. During the course of this training Board members are advised as to what may constitute a conflict of interest, and what actions should be taken should there be a real or perceived conflict of interest. Moreover, Board Members are advised that in any situation in which there may even be an indication of a conflict of interest, they are always encouraged to review the situation with the executive director, and/or the Assistant Attorney General for further advice on the subject. Finally, all Board members and the Board's Executive Directors are required to file an "Annual Statement of Economic Interest" with the Campaign Finance and Public Disclosure Board."

Section XI. Compliance with Chapter 13 - Data Practices and Requests for Information

Minnesota Statutes § 3D.10(11) requires a description of "the extent to which the agency complies with chapter 13, and follows records management practices that enable the agency to respond efficiently to requests for public information;"

The Board has made considerable efforts to comply with the requirements of M.S. §13 et seq., (Data Practices Act) when requests are made for information that is deemed to be public pursuant to the Act. This Act requires compliance with any request immediately if possible, but at least within 10 days of the receipt of the request (excluding Saturday's, Sunday's and holidays.) [**SEE** M.S. §13.04, Subd. 3] The Board of Chiropractic is consistently compliant with this obligation. The Minnesota Data Practices Act makes a large quantity of governmental information available to the public. The notable exceptions to this include:

- investigative data as part of an active or ongoing investigation;
- certain personnel information;
- application information prior to the issuance of a license; and
- social security numbers

Accordingly, such data is not made available to the public.

In addition, those persons who are the subject of information requested by the Board have the right to be notified as to how the information is to be used, who will have access to it, and potential penalties for failure to provide such data. This information is provided in the form of a "Tennessen" warning, (the administrative rough equivalent to the Miranda warning given by law enforcement officers during arrest actions). [**SEE** M.S. § 13.04, Subd. 2] Data contained on applications is considered confidential until such time as a license is issued. However, included with license application data are Social Security numbers. Social Security information remains permanently unavailable to the public, and the Board takes measures to protect that information from public exposure. For example, the Board's request for Social Security numbers as well as the description of the protective measures is included on a separate form from the licensure application. After the issuance of a license, the application data becomes public with the notable exception of the Social Security information. Therefore, when a request is made for the licensing file of a licensee, the Social Security form and any other forms which may contain the social security number are removed from the file or otherwise redacted before public review.

With regard to Open Meeting Laws, governmental agencies are generally required to publicly post notices of public meetings typically for a period of at least three days prior to the meeting. [**SEE** M.S. §13D.04] To satisfy this provision, the Board of Chiropractic Examiners utilizes two primary methods: 1) all meeting schedules are posted on the Board's website at http://www.mn-chiroboard.state.mn.us/; 2) the Board cooperates with the other Health Licensing Boards in a video display on the first floor of the building location where the meetings are conducted. The video display and the website give the times, dates, and locations of the meeting and specify whether the meeting is open or closed to the public.

As a general matter, meetings of governmental agencies including the Board of Chiropractic Examiners are open to the public. Again, notable exceptions here would include those meetings which address current investigatory matters or open complaints, meetings that deal with personnel matters, and those meetings in which advice of counsel is required.

With regard to the Records Retention policy, the previously established Records Retention policy is currently under review and revision by the Board. This is because over time new types of documents/records have become available to the Board, or are maintained by the Board. In addition, the increased utilization of digital or electronic information necessitates an updating of the records retention policy.

Section XII. Effect of Federal Intervention and Funding

Minnesota Statutes § 3D.10(12) requires a description of "the effect of federal intervention or loss of federal funds if the agency is abolished"

This Board is fully funded by the licensing fees of the practitioners it regulates. This Board does not receive, directly or indirectly, any funding from the State or Federal governments. Accordingly, this Board will experience no loss of Federal funds if abolished. The phrase "effect of federal intervention" is unclear but is assumed to mean whether abolition of the agency would have federal implications. This would certainly depend on what, if any, licensing / reporting capabilities would supplant the current system. For example, doctors of chiropractic who wish to provide services to military personnel for the Department of Defense, or to provide services for veterans through the Veterans Administration would be unable to do so unless properly licensed.

The State must comply with certain national and federal reporting obligations. The Board maintains a relationship with the Federation of Chiropractic Licensing Boards (FCLB) in reporting disciplinary actions to the Chiropractic Information Network-Board Action Database (a.k.a. CIN-BAD.) This is done for the purpose of providing information to other state chiropractic licensing agencies, as well as for receiving such information on licensees who are re-locating to Minnesota. This database is accessed by all state chiropractic licensing boards as part of the process for making licensing decisions. This database maintains information on all disciplinary actions taken across the country, as well as from other international jurisdictions.

In addition, the state has a reporting obligation to the National Practitioner Data Bank – Health Care Integrity and Protection Databank. (HIPDB) [**SEE**, Section 1921 TITLE IV, 42 U.S.C. 1396r-2] and [Section 5(b) of Public Law 100-93] The Medicare and Medicaid Patient and Program Protection Act of 1987 as amended.] It is unclear how the state would comport with these requirements if this agency were abolished. Even in the absence of the Board of Chiropractic, current obligations of the Board, (State and Federal,) would have to be fulfilled, and the Board would have to be replaced with some other entity. (The Commission is reminded that no funds to support the Board come from the General Fund. Therefore, financial gain seems to play no role for the State in sunset of the agency.)

Section XIII. Priority Based Budget

Minnesota Statutes § 3D.06(2) requires that the "…agency Commissioner shall report to the Commission: (2) a priority-based budget for the agency;"

The agency is asked to provide a "priority-based" budget, which the Commission defines (to paraphrase) as a description of those activities undertaken by the agency which are organized from the most to the least critical, while referencing the dollars spent carrying out these activities. The Commission also indicated that this was intended to identify where "mission-creep" may have occurred over time. At the same time, the Commission seeks to identify where dollars may have been re-allocated to support those activities which may have been the subject of the "mission-creep" for the purposes of determining whether the dollars can be more effectively/efficiently utilized.

As previously stated, the Board has three primary functions: licensing, enforcement, and promotion of competency. These three activities are clearly mandated by Statute, and the Board is compelled to carry them out. Over the years, the Board has been required to either reduce its appropriation, or maintain a flat appropriation. (See "Budgetary Information.") This has occurred in spite of continually rising costs, especially salaries, rent, and enforcement activities, as well as persistent Legislative sweeps of reserve operating funds. Accordingly it has been essentially impossible to allocate funds to any activity not directly related to the Board's mandated activities.

Were the question to be forced, these three activities would be prioritized as follows:

1. Licensing: absolutely required for any health care professional to provide services to Minnesota citizens;
2. Enforcement: the activity uniquely granted to the Board which may alter the authorities or conditions under which practice may occur as in #1 above;
3. Monitoring of continued professional competency of licensees;

If there were ANY activity which might be removed from this list, it may be number 3, monitoring continued competency. However, to do so places the citizens at risk of acquiring health care services from a provider whose competency is allowed to diminish over time. For this reason, this would be an indefensible move. Additionally, all or nearly all of the other states in the country require ongoing continuing education of their health care professionals for the purpose of maintaining competencies. So these three, narrowly defined, statutorily required activities are commensurate with each other.

As previously described, the agency has, in the past, been required to perform the above functions with a stagnant appropriation. This has not had the effect of re-prioritizing the agency's

regulatory goals, but merely re-prioritizing subordinate activities required to accomplish them. Therefore, rather than abort the function, the activities have merely been slowed down, typically to the detriment of the applicant, the licensee, or the public who depends upon them. In other words, applications may take more time to process, and enforcement actions are triaged in a different manner. This typically results in an increase in time required to process certain types of complaints.

For example, the board receives complaints in many different subject matters. When complaints are triaged, they are typically reviewed for those that cause actual patient harm (such as sexual misconduct, chemical dependency, or incompetency) versus those that cause more administrative or financial harm (such as fraud, misleading fee collection techniques, false advertising, etc.) While cases related to sexual misconduct or professional competency make up the smaller demographic of complaints, they will attract the most attention of the Board when it comes to triage. Resources will be quickly allocated to such a complaint, and investigations will go to the "top of the list" surpassing other types of complaints. The net effect is to move these other types of complaints further down the list, resulting in delayed resolution in favor of resolving the more egregious/physically harmful type of complaint.

The next most competitive complaint demographic is related to fraudulent billing…an experience being faced on a national scale. The rise in this demographic may have several contributors, chief among these the confluence of a shrinking health care dollar, and bad judgment by professionals just trying to survive in an increasingly hostile reimbursement environment. These types of cases are always very complex to investigate and resolve, requiring considerable skill and expertise to do so. In the last two calendar years, the Board has taken 14 actions related to such conduct. Some of these cases have represented millions of dollars in fraudulent /improper billing procedures. Nevertheless, reduction in resources impedes the procedural approach to expedient resolution.

Section XIV. Additional Services and Collaboration

The Board hereby elects to provide additional information for the Commission's consideration. While not a required element of the sunset legislation, still, it seems pertinent that the Commission be cognizant of the collateral activities of the Board which are directly or indirectly related to its mission.

In 1997, the Board adopted the National Board of Chiropractic Examiners Part IV Practical Exam as its final examination for licensing.[18] Previously the licensing exam was developed and administered by the Minnesota Board of Chiropractic Examiners. The net effect of this change was the elimination of a direct physical or personal connection between the State Board and those being examined for licensure. Wishing to re-establish that connection, as well as assisting newer licensees to avoid the pitfalls of practice, the Board prepared and presented a New Licensee Seminar. Although initially directed toward new licensees, this program eventually evolved into a "Professional Issues" seminar, available to the broader profession. This seminar is designed to advise licensees of current national trends, which may present legal or professional pitfalls for the practitioner. This program is prepared and presented on an annual basis, and has been successful in reducing complaints.

The Board is also involved at the national level of chiropractic regulation. The Board has a close association with the Federation of Chiropractic Licensing Boards (FCLB). It should be noted here that currently serving and immediately past serving Board Members have achieved national prominence in Chiropractic regulatory matters. Some of these Board members have and are currently serving as Board members of the Federation of Chiropractic Licensing Boards and some also serve functions with the National Board of Chiropractic Examiners (see below). As such, Minnesota is strongly represented in the Chiropractic regulatory field from a national standpoint.

The Federation of Chiropractic Licensing Boards (FCLB), is an organization that includes all of the licensing boards in the United States as well as some licensing boards outside of the United States including Canada, Australia, New Zealand, and other countries as well. This Federation allows for the gathering and disseminating of information and experiences on a national and international scale with regard to Chiropractic regulation. In 1996 the Minnesota Board of Chiropractic Examiners was honored as the Outstanding Chiropractic Licensing Board in the country. In 2005 the Executive Director of the MBCE was awarded the George Arvidson award as the outstanding chiropractic regulator in the nation.

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[18] This exam does not stand on its own. Prior to taking this exam, the applicant will have had to take the National Board's Part I (a 6 subject basic sciences exam); the National Board's Part II (a 6 subject clinical sciences exam); the National Board Part III (Written Clinical Competency Examination); the National Boards Physiotherapy Exam; and the State of Minnesota's Jurisprudence exam. Altogether, these exams, when coupled with the National Boards Part IV Practical exam, comprise no less than 8 full days of examination for licensure.

(Minnesota is the only Board in the country that has been honored with both of these awards.) It should be noted that the Executive Director is also a current Board member of the national Federation, occupying the only director's position by an administrator in the country. Moreover, three of the ten board member positions on the Federation Board are occupied by Minnesota licensees…composed of either previous Minnesota board members or its current Executive Director. As a result of this, Minnesota maintains a substantial voice in national and international chiropractic regulation.

The National Board of Chiropractic Examiners (NBCE) is a private testing organization that has developed the examinations utilized for chiropractic licensing throughout the country (and is now moving into international testing.) Our Board regularly sends members to Greeley Colorado for the purposes of subject matter analysis and question development. Additionally, a recent past Board member has been the chief examiner for the local exam administered at Northwestern Health Sciences University.

Miscellaneous

This section describes in more detail the cooperative activities of the boards, in which this Board participates.

The Board is involved in a number of issues related to general governmental enterprise. For example, the Board cooperated with the Health Licensing Boards in crafting Pan-flu epidemic procedures. The Board also cooperated with the Health Licensing Boards in developing and implementing the "Continuation of Operations Plan" required to maintain services in the face of a wide variety of possible disaster experiences.

The Board has also provided a great deal of technical assistance to the Legislature over the years as the Legislature considers issues related to health care regulation. Part of this process has included educational presentations to interested Legislators. In addition to this, the Board has provided continuing education to the Attorney General's Office to facilitate their understanding of unique issues related to the Chiropractic profession, in order to facilitate investigation and complaint resolution.

Although the independent health licensing boards, the Board of Barber and Cosmetologist Examiners, the Health Professionals Services Program, and the Department of Health are separate agencies, the boards and the department cooperate in administering health occupation licensing programs. The 17 boards are housed together in the same building and collaborate in many ways. The boards meet regularly with representatives of the Department of Health to discuss joint concerns. An

example of such cooperation is the participation by a representative of the Department of Health when reviewing proposals for regulation of new health occupations [**SEE** M.S. §214.025].

Health Licensing Boards

Each of the independent health licensing boards consists of members appointed by the Governor. The principal staff person for each board is the Executive Director; although by statute some of these positions are classified as Executive Secretary, this is solely a matter of terminology. Pursuant to Statute the Executive Director / Executive Secretary is designated as the Chief Administrative Officer of the Board [**SEE** M.S. §214.04, Subd. 3]. Each board is charged with the regulation of particular health professions specified by statute. Each board is governed by its own practice act. Certain statutory requirements apply to all boards, which are specified in Minnesota Statutes, Chapter 214. The Emergency Medical Services Regulatory Board, although not statutorily defined as a health licensing board, is housed with the boards and cooperates with them on administrative, policy, and financial matters. Similarly, the Board of Barber Examiners and Board of Cosmetologist Examiners, though not statutorily designated as health licensing boards, are housed with the boards and cooperates with them on administrative, policy and financial matters. The Health-related Licensing Boards which are co-located in the same building are funded by licensing fees, as opposed to the State's General Fund.

Attorney General

The Attorney General's Office provides legal and investigative services to the Boards. Specific requirements of the Attorney General in investigating complaints are provided in Minnesota Statutes, section 214.10.

Department of Health

The Department of Health administers one health occupation program which is defined as a health-related licensing board under Chapter 214. This is the Office of Unlicensed Complementary and Alternative Health Care Practice. The Alcohol and Drug Counselor Licensing Program is now located within the Board of Behavioral Health and Therapy, and the Office of Mental Health Practice was formerly housed within the Board of Social Work as administering agency. The Department of Health also has certain statutory responsibilities relating to the Boards. These are as follows:

- to provide mailing and office supply services, and at the request of the boards, may provide other facilities and services at a central location upon request of the boards [**SEE** M.S. §214.04]

- to coordinate the development of a credentials policy among the boards [**SEE** M.S. §214.13]
- to serve on the Council of Health Board when reviewing legislation or legislative proposals relating to the regulation of health occupations. For this purpose, the council shall include the Commissioner of Health or a designee. [**SEE** M.S. §214.025] Additional information regarding the Council of Health Boards is below.
- The Board also coordinates with the Department of Health HIV/HBV/HCV Program which includes Chiropractic, Dentistry, Medical Practice, Nursing and Podiatry.

Office of Mental Health Practice

As of July 1, 2005, the Office of Mental Health Practice was considered part of the Health-Related Licensing Boards. [**SEE** M.S. §148B.61] The Office was transferred from the Minnesota Department of Health and was co-located with the HLB's . (This department was Sunsetted effective June 30, 2009.)

Council of Health Boards

The Council consists of one Board member and the Executive Director from each of the HLB's. The Council meets periodically to discuss issues and concerns affecting all boards. The Council is required to statutorily review emerging issues relating to health occupation regulation, such as proposals to regulate new health occupations, upon referral from the Legislature [**SEE** M.S. § 214.001, Subd. 4]. The council was given formal direction when legislation, Minn. Stat. § 214.025 was enacted on July 1, 2001:

> *The health-related licensing boards may establish a Council of Health Boards consisting of representatives of the health-related licensing boards and the Emergency Medical Services Regulatory Board. When reviewing legislation or legislative proposals relating to the regulation of health occupations, the council shall include the commissioner of health or a designee.*

Since 2003, the Council has received requests from the Senate and House to perform occupational reviews, and to provide a report to the Legislature, regarding legislation regarding the following occupations:

- Massage Therapy (2002 and 2009)
- Optometry Prescribing Authority
- Speech Language Pathology
- Dental Assistants
- Denturists
- Naturopaths
- Athletic Trainers
- Laboratory Scientists
- Body Art
- Genetic Counseling

Section XV. Miscellaneous

The Commission has requested additional information, which is not specified in statute, but which is requested pursuant to Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011.

Much of the information requested pursuant to the above-referenced document is imbedded elsewhere within this report. However, the following represents some items which could not be gracefully addressed in other sections.

The Commission has requested a list of all Advisory Councils whose primary function is to advise the organization. This Board currently has no Advisory Councils which advise the Board.[19]

The Board has been operating under the governance of an Internal Procedures document. Although the history is a bit unclear as of this writing, this document has been in effect for approximately 22 years, subject to amendments by the Board (the most recent being August of 2011.) This document addresses such functions as meeting structures, per diem policies, recusal policies, Board member duties, committee structures and duties, etc. For the Commissions review, this document can be found online specifically at http://www.mn-chiroboard.state.mn.us/Forms-Original/adminpro%20rewrite%202011.pdf . [20]

The Committee has also suggested that other documents such as links to the Board's Legislative Audit be provided to the Commission. In satisfaction of this request, the Board offers the following link: http://www.mn-chiroboard.state.mn.us/administrative_considerations.htm

This page will provide access to:

- Board Administrative Procedures (August 2011)
- Board Biennial Reports (1998, 2000, 2002, 2004, 2006, 2008, and 2010)
- Board Affirmative Action Plans (2008-10, 2010-12)
- Legislative Audits (1998, 2005)

As the Commission will note, pursuant to the Board's intent to operate with complete transparency, the Board has maintained links to all of these administrative documents as they have become available.

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[19] This information submitted in satisfaction of Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) III-5

[20] This information submitted in satisfaction of Sunset Advisory Commission; Preliminary Report Requirements; Adopted 11/21/2011. Paragraph(s) III-8

Conclusion

The Commission is required to make recommendations "on the abolition, continuation, or re-organization of each affected State agency…" [**SEE** M.S. 3D.11(a)(1)] The Board believes that continuation of the agency is the most appropriate recommendation, given all of the information provided herein. In summary, the Board reaches this conclusion for the following reasons:

- This Board is the sole agency that conducts regulation of doctors of chiropractic, primarily through licensing and complaint resolution. There is no overlap with any other state agencies on any of these functions;
- The structure of this agency, i.e. the appointment of practicing doctors of chiropractic to implement its functions, lends significant expertise and, therefore, credibility to the regulation of the profession…credibility that has been consistently relied upon and reinforced/reasserted by the Judiciary;
- This Board carries out its functions in a deeply ingrained culture of public service;
- This Board carries out its function at no cost to the state… rather all Board operations are funded by the profession;
- This Board is part of a consortium of Health Related Licensing Boards, which credential (or renewed the credentials of) in excess of 260,000 health care providers who deliver services to the citizens of Minnesota every day;
- This Board is part of a consortium of Health Related Licensing Boards which has been nationally recognized and become a model for a creative/innovative approach to improved governmental efficiencies;
- This Board has continually engaged in efforts to maximize efficiencies and hold the line on costs. The Commission is reminded that in this author's nearly 19 years of service, ***the licensing fees have never been raised***;
- This Board serves as a resource to the Legislature and others on issues related to the occupations of health licensing;
- This Board serves as the sole reporting agent of the state to the national and federal databases;
- This Board, and therefore this State, is strongly represented on a national basis in chiropractic regulation, having received significant national honors for its position in the chiropractic regulatory community.

The Minnesota Board of Chiropractic Examiners extends its gratitude to the Commission for its review of this report. This report is hereby submitted.

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