



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**



BOARD OF CHIROPRACTIC EXAMINERS

Performance Audit Report

July 2016

Justin P. Wilson, Comptroller



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July 22, 2016

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
Michael Sobowale, Administrative Director
Board of Chiropractic Examiners
665 Mainstream Dr.
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Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Board of Chiropractic Examiners. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Board of Chiropractic Examiners should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink that reads "Deborah V. Loveless".

Deborah V. Loveless, CPA
Director

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Board of Chiropractic Examiners
July 2016

AUDIT FINDINGS

The Office of Investigations did not consistently meet investigation time lines for complaints against licensees

The Office of Investigations failed to always adhere to timeliness benchmarks set for complaint investigations. The Office of Investigations prioritizes cases of immediate harm over those of financial harm—the bulk of chiropractic complaint investigations—which can create investigative delays. The office cited several other external factors that can affect the length of investigations—including staffing shortages, licensee legal defense, and licensee relocation to another state. The recent addition of an electronic alert system that notifies investigators and supervisors as a case nears the end of its allowable investigative time frame, and a full staff of investigators, positions the office to more effectively meet investigative deadlines (page 9).

The Board of Chiropractic Examiners does not provide addresses of all practitioners to inform citizens seeking information

The board has not fully complied with the Consumer Right to Know Act of 1998. The law requires the Board of Chiropractic Examiners to collect a practitioner's information and provide it to the Department of Health, which is responsible for disseminating this information to the public. We found that over one-third of active licensees did not have practice addresses on file with the board and over three-fourths of practitioners from the sample did not have updated and complete information listed in their public profiles. The law also requires licensees to inform the board of their practice address, and a completed practitioner profile is a mandatory part of licensure. If there are any changes to information, the practitioner must update the board within 30 days of the change. The board has the authority to refuse licensure to a practitioner who fails to provide required information and may assess a fine of up to \$50 for each day of noncompliance. During the review, we found no evidence that the board had sanctioned licensees whose profiles lacked required information (page 13).

The board has chosen to grant waivers and extensions rather than enforce compliance with continuing education requirements, yet recent changes may improve both the process and outcome

The board has not consistently enforced the continuing education requirements for licensees. Board rules require licensees to submit proof of compliance with continuing education requirements to the board's administrative office on an annual basis no later than January 15 of each year for the preceding calendar year. Due to administrative problems, the board decided in April 2015 to waive all continuing education compliance requirements for licensees during 2013. Problems continued into 2014 that prompted the board to issue extensions for submission deadlines. In response to the administrative problems related to continuing education, the board recently revised its rules to change the continuing education submission deadline to the license renewal date. Under the proposed change, each applicant would submit continuing education verification along with the licensure renewal application, based on each applicant's birth month and on a two-year continuing education cycle—effectively spreading the workload out over a 12-month period. Under the new rules, failure to meet continuing education requirements will result in a \$600 civil penalty and the requirement to complete deficient hours along with the standard annual requirement (page 15).

OBSERVATIONS

The audit report also discusses the following issues: the application and licensure process (page 12) and self-sufficiency of board operations (page 17).

Performance Audit Board of Chiropractic Examiners

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Performance Audit Board of Chiropractic Examiners

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Board of Chiropractic Examiners was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-238, the board is scheduled to terminate June 30, 2017. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the board and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether the board should be continued, restructured, or terminated.

ORGANIZATION AND STATUTORY RESPONSIBILITIES

Created by Section 63-4-102, *Tennessee Code Annotated*, the Board of Chiropractic Examiners consists of seven members: five practicing chiropractic physicians and two consumer members who are not affiliated with the chiropractic profession. The members of the board are appointed by the Governor to serve staggered, five-year terms and may hold successive appointments. In making appointments to the board, statute directs the Governor to strive to ensure that at least one person is 60 years of age and that at least one person is a racial minority. The board is authorized to annually elect officers from the serving members—including a president, vice president, secretary, and any additional positions deemed necessary. The board is required to hold at least one regular meeting each year and typically schedules four quarterly meetings. Four members must be present to constitute a quorum, and a majority of members is required to pass or reject any official business.

The Division of Health Licensure and Regulation of the Department of Health employs for the board the necessary administrative and clerical staff to carry out the board's duty to enforce chiropractic laws. Administrative staff to the board consist of an executive director, one board manager, and one licensing technician. As of March 2016, there were 1,141 licensed chiropractic physicians, 446 licensed chiropractic therapy assistants, and 110 licensed chiropractic X-ray technologists. See the following table for each profession's application and renewal fees.

Table 1
2016 Board of Chiropractic Examiners' Licensure Fees

License Type	Application Fee	Renewal Fee
Chiropractic Physician	\$350	\$250
Chiropractic Therapy Assistant	\$150	\$100
Chiropractic X-Ray Technologist	\$150	\$100

Source: Board of Chiropractic Examiners' Rules.

Section 63-4-103, *Tennessee Code Annotated*, grants the Board of Chiropractic Examiners the following powers and duties:

- Review applicants and issue licenses to practice chiropractic for all applicants who have successfully passed the examination given by the board or whose applications for license by reciprocity have been approved by the board;
- Conduct hearings to revoke or suspend any license or certificate—under the authority of any laws authorizing a licensee to practice chiropractic—for violations of any statutory provisions;
- Sponsor, conduct, or approve educational programs that are necessary to enforce and make effective statutes governing the practice of chiropractic; and
- Issue advisory private letter rulings to any affected licensee who makes a request and falls within the board's primary jurisdiction. Private letter rulings only affect the licensee making the inquiry and will not serve as a precedent in any future cases which may come before the board. It is within the board's discretion to resolve any private letter dispute by declaratory order, as specified in Section 4-5-223, *Tennessee Code Annotated*.

AUDIT SCOPE

We audited the board's activities for the period January 2013 through May 2016. Our scope included a review of internal controls and compliance with laws and regulations. Management of the Division of Health Related Boards in the Department of Health and the Board of Chiropractic Examiners is responsible for establishing and maintaining effective internal controls and for complying with applicable laws, regulations, and provisions of contracts and grant agreement.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient,

appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

See Appendix 1 for the audit objectives.

BACKGROUND OF THE CHIROPRACTIC PROFESSION

Historical Origins

According to the American Chiropractic Association, chiropractic care was first implemented by Daniel David Palmer, who performed the initial chiropractic adjustment in September 1895 after studying various manipulations that had been used for centuries without scientific rationale to explain the effects. After this first adjustment, Palmer continued to develop chiropractic care and in 1897 established what is now known as the Palmer College of Chiropractic. The first state laws licensing chiropractic care were passed in 1913 with Tennessee regulations starting in 1923.

The 1923 law created the Board of Chiropractic Examiners and granted the body the authority to interpret laws, rules, and regulations and to determine the appropriate standards of practice in an effort to ensure the highest degree of professional conduct. The board's mission is to protect the health, safety, and welfare of Tennesseans by requiring those who practice chiropractic care to be licensed and qualified. The rules and regulations of the profession have been amended several times and the latest amendments, introduced by the board in 2014, are in the process of approval.

Chiropractic Field

Chiropractic is a form of medicine based on the concept that the relationship between the body's structure (primarily that of the spine) and its function (as coordinated by the nervous system) affects health. There exist numerous philosophical and treatment approaches within the field, as evidenced by the various definitions of chiropractic. The National Institutes of Health identify that "...practitioners may use a variety of treatment approaches, such as performing adjustments (manipulations) to the spine or other parts of the body with the goal of correcting

alignment problems, alleviating pain, improving function, and supporting the body's natural ability to heal itself.”

The World Healthcare Organization defines chiropractic as “a health care profession concerned with the diagnosis, treatment and prevention of disorders of the neuromusculoskeletal system and the effects of these disorders on general health. There is an emphasis on manual techniques, including joint adjustment and/or manipulation with a particular focus on subluxations.”

While chiropractic comprises a wide diversity of ideas, a common thread is the fundamental belief that there is a relationship between the spine and overall health. There are different schools of thought within the field into which most chiropractors can be categorized (although there are variations within each school) as distinguished by their different philosophical underpinnings, diagnostic approaches, and usage of treatment therapies. Practitioners can generally be viewed on a spectrum from conservative chiropractors, who believe in continuing the early traditions of chiropractic, to liberal chiropractors, who are more interested in mixing elements of modern and alternative therapies into the practice of chiropractic.

Scope of Practice

Scope of practice laws governing the chiropractic profession vary from state to state and allow for a wide range of services to be performed depending on the state and its relevant regulations. Because each state determines its own scope of practice and what is approved or prohibited for a chiropractor to perform, there is a lack of uniformity that creates significant variation for the allowable scope and role of the chiropractor in the health care community. For example, in some states chiropractors can do manipulations on animals, perform physicals, take blood samples, serve as primary care physicians, and practice obstetrics and administer related exams.

A 2014 article published in the *Journal of Manipulative and Physiological Therapeutics* lists the results of a cross-sectional survey completed in 2011 by licensure officials from the Federation of Chiropractic Licensing Boards that gathered information on chiropractic practice laws by state. The results identified 97 different diagnostic, evaluation, and management services that are allowed depending on a practitioner's state. The survey obtained partial or complete survey responses from 96% of U.S. jurisdictions and is the most recent assessment of chiropractic scope. Similar surveys were administered in 1987, 1992, and 1998.

The 97 services included diagnostic and examination certifications (for example, full spine, soft tissue, barium studies, surface scanning electromyography, vascular analysis, throat swab, blood/urine analysis, pre-employment/school and U.S. Department of Transportation physicals); physical examination, gender-specific services, physiotherapeutics, and specialty adjusting techniques (abdominal exam, stethoscopic exam, pap smear, rectal exam, ultrasound, transcutaneous electrical nerve simulation [TENS], cryotherapy, hydrocollation, hernia exam, etc.); and adjunctive and specialty services (diet formulation, botanical therapy, ear and colonic irrigation, obstetrics, vitamin injection, oxygen therapy, electro-acupuncture, electrolysis, etc.).

The report identified states with the broadest and narrowest scope of practice based on the ability to perform (with or without additional training/certification) the 97 procedures. Examples of states identified in the survey include:

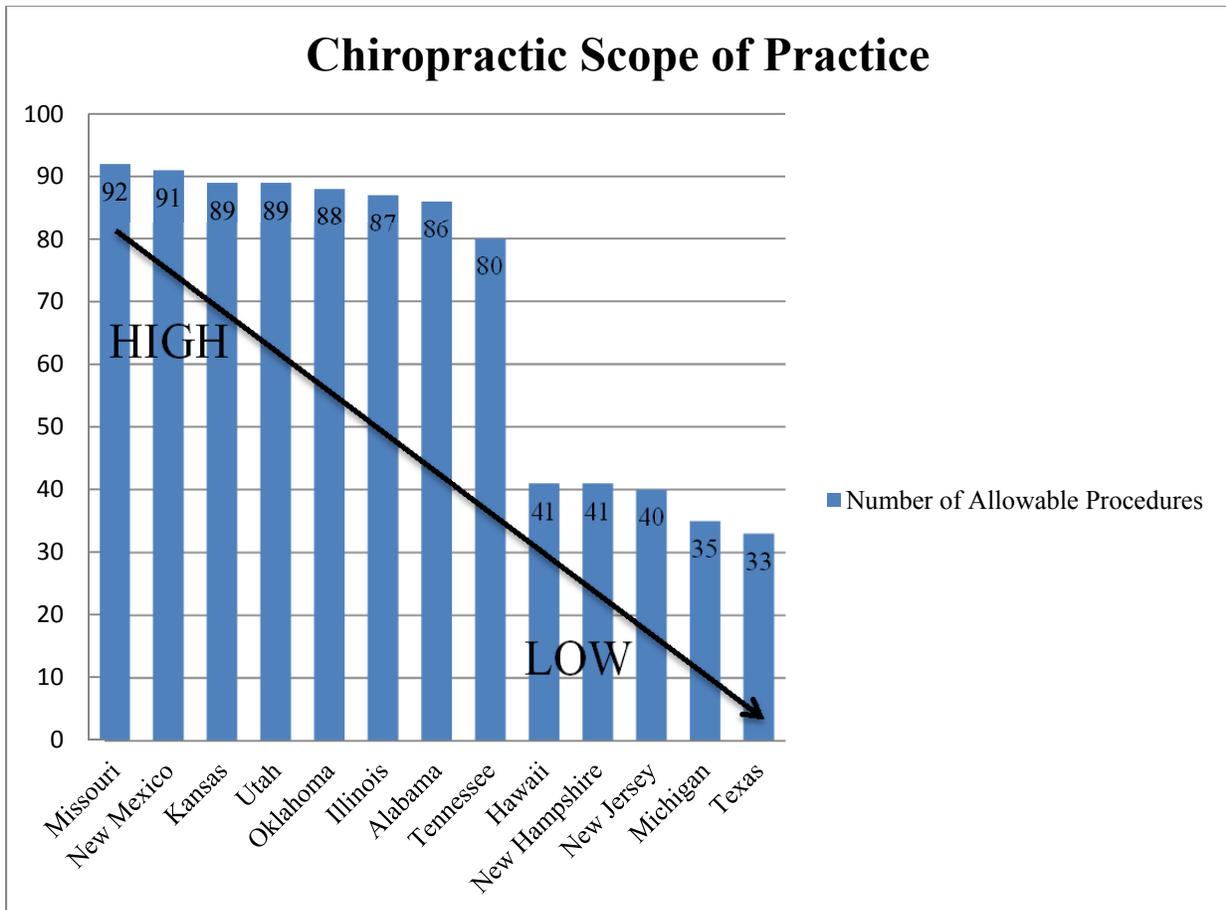
Broad Scope

Missouri: 92
 New Mexico: 91
 Kansas: 89
 Utah: 89
 Oklahoma: 88
 Illinois: 87
 Alabama: 86

Narrow Scope

Texas: 33
 Michigan: 35
 New Jersey: 40
 New Hampshire: 41
 Hawaii: 41
 Mississippi: 42

Chart 1
2011 Federation of Chiropractic Licensing Boards Survey Results:
States Representing the High and Low End of the Scope of Practice Spectrum



Source: *The Journal of Manipulative and Physiological Therapeutics*.

Tennessee has a relatively broad scope of practice and, based on the results of the 2011 survey, allows for 80 different procedures to be performed. The board is in the process of a proposed rules change, most of which clarifies the allowed scope of practice with more precise language.

Education and Training Requirements

To obtain a license to practice chiropractic care, an applicant must meet specific educational and training requirements. Qualifying for licensure in Tennessee includes meeting requirements identified in statute and the board's rules, including

- graduating from an accredited chiropractic school (there are 14 chiropractic schools across the U.S., and all are four-year programs) and providing a copy of a chiropractic college diploma;
- evidence of completing the National Chiropractic Board Examination with a score of at least 375 on parts I, II, III, IV, and Physiotherapy;
- a letter of recommendation within the last 12 months from a licensed chiropractic physician;
- passage of a criminal background check; and
- an official transcript of grades showing two full academic years of undergraduate college or university work of at least 60 semester hours or its equivalent from an accredited institution. Applicants graduating from chiropractic school in 2000 or after must have a bachelor's degree.

DIVISION OF HEALTH RELATED BOARDS' COMPLAINT PROCESS

The Division of the Health Related Boards' Office of Investigations, in conjunction with the Office of General Counsel, is responsible for reviewing, investigating, and prosecuting complaints brought against practitioners licensed in Tennessee.

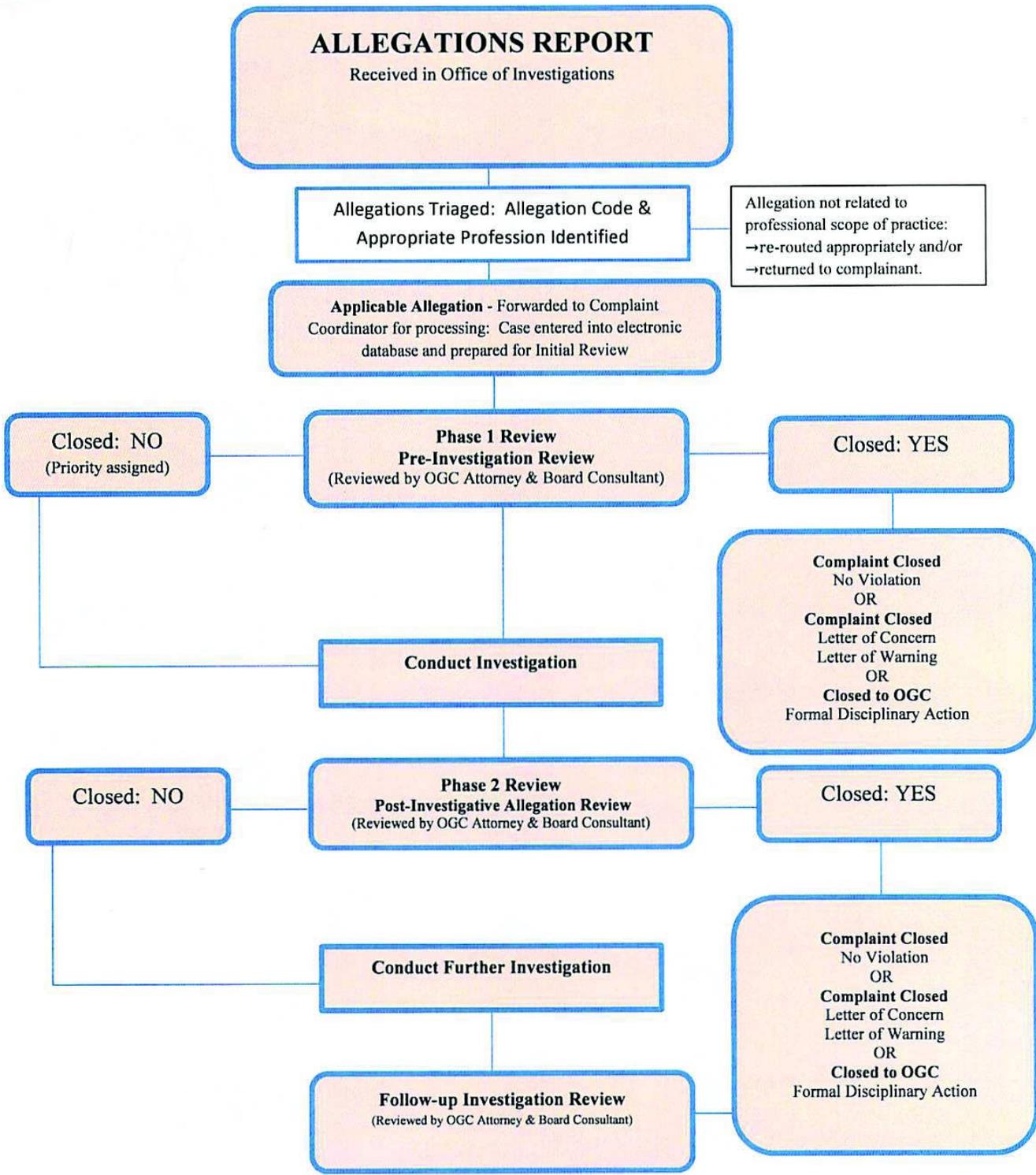
Complaint Review

When the Office of Investigations receives a complaint against a licensed practitioner, the phase I, pre-investigation review starts, and both a consultant who is trained and licensed in chiropractic medicine and an attorney assigned to the board review it to determine if the practitioner violated any statutory prohibitions. If they determine that no violations have occurred, the complaint is closed with no action. When an action borders on being a violation—or is a minor violation that would not warrant sanctions—the board sends a letter of concern or a letter of warning. However, if the consultant and attorney believe the allegations, if proven true, would be a violation, they assign the complaint a priority code and send it to an investigator for a full investigation. Priority codes are critical to the investigation process because they indicate the level of harm a practitioner poses to patients. The higher the priority code, the faster an investigation must be completed to reduce the chance of other patients being harmed by the accused practitioner. Table 2 lists the priority codes as well as the length of time for investigations to be completed.

Table 2		
Description of Priority Levels		
Priority Level	Complaint's Level of Harm	Days to Complete the Investigation
1	Potential Harm Minimal	150 Days or Less
2	Potential Harm	120 Days or Less
3	Actual Harm/No Immediate Jeopardy	21 Days or Less
4	Immediate Jeopardy	2-5 Days or Less

Investigations

After the initial investigation, the phase II review begins. If the board attorney and consultant determine that no violation has occurred, informal disciplinary action is an option, which includes issuing a letter of concern or warning for instances of minor infractions. These letters serve to alert the practitioner to stop certain actions and advise the practitioner to avoid repeating them. If they conclude that a violation has occurred and do not pursue informal disciplinary action, they may proceed with formal disciplinary action and close the case to the Office of General Counsel for action. If additional information is still needed, the Office of General Counsel may request that the issue be further investigated before making a determination. (See flowchart on the following page.)



Allegation not related to professional scope of practice:
→re-routed appropriately and/or
→returned to complainant.

Disciplinary Actions

During the disciplinary action process, an attorney in the Office of General Counsel determines which terms in the board’s statutory provisions were violated by the practitioner. An attorney then recommends an appropriate disciplinary action to the Board of Chiropractic Examiners. After the board agrees on a disciplinary action, it issues an order to the practitioner that includes a list of the disciplinary actions with which the practitioner must comply. Disciplinary actions can include a suspended or revoked license, the completion of a continuing education course, or the payment of civil penalties and case costs.

Finding

1. The Office of Investigations did not consistently meet investigation time lines for complaints against licensees

Based on interviews with staff and a review of closed complaint files, the Office of Investigations did not consistently meet timeliness benchmarks for complaint investigations. There were 76 newly opened complaints in 2015 that included a range of different allegations against practitioners as shown in the following table.

Table 3
2015 Opened Complaints Analysis

Number of Complaints	Allegation Description
33	Unprofessional Conduct
25	Advertising
4	Fraud/False Billing
4	Unlicensed Practice
4	Care of Services
1	Other
1	Sexual Misconduct
1	Action in Another State
1	Criminal Charges
1	Malpractice/Negligence
1	Medical Record Request

Source: Tennessee Department of Health Board Statistical Complaint Report.

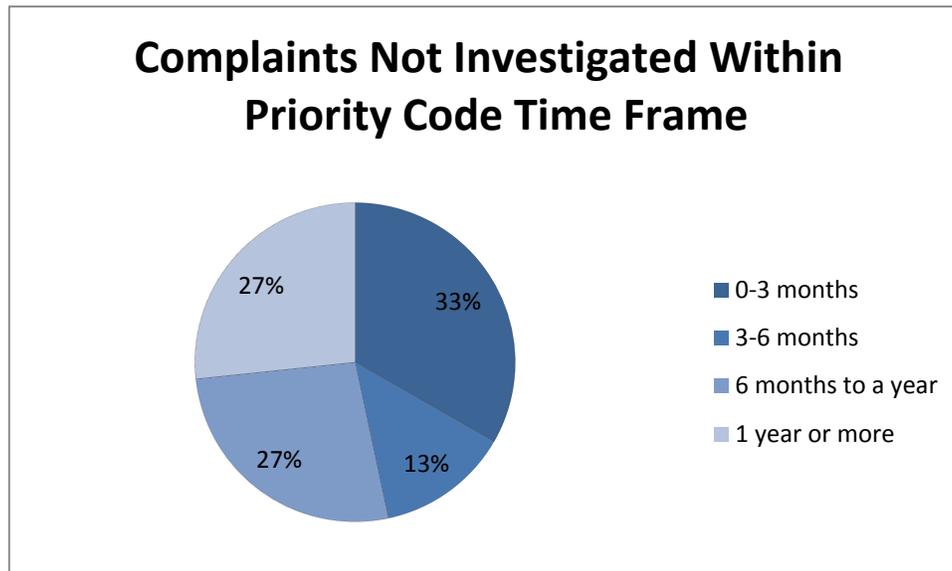
In 2015, the Office of Investigations closed 79 complaints—42 of which resulted in active investigations. Out of the 79 closed complaints,

- 36 complaints were closed with a letter of warning;
- 6 complaints were closed with a letter of concern;

- 19 complaints were closed to the Office of General Counsel for formal disciplinary action; and
- 18 complaints were determined to not be violations and were closed without further action.

From the 79 closed complaints, we selected 25 complaint files to determine the length of each investigation. The chosen sample size did not permit auditors to generalize results to the entire complaint population. Given the high degree of variation and the dissimilarity of factors associated with each complaint investigation, we selected a judgmental sample in order to satisfy qualitative aspects of the analysis. This enabled a more in-depth review of each complaint, gave a greater understanding of factors affecting the length of each investigation, and allowed for the discovery of other variables not previously identified.

All of the selected complaint cases reviewed were a “P2” status, which allows 120 days for completing the investigation. Of the 25 cases reviewed, only 9 were completed within 120 days; 15 went beyond the time frame allowed to complete the investigation (one case was resolved during the investigation). Four of the investigations that exceeded 120 days took longer than a year to complete. Two of these complaints were resolved with a letter of concern, and two resulted in penalties levied against the licensees. A summary of the cases that went beyond the 120-day deadline, by category of investigation length, is illustrated below.



The Assistant Director of the Office of Investigations acknowledged external factors that have affected the length of investigations include staffing shortages, licensee attorneys, and licensee relocation to another state. Board counsel indicated that the Office of Investigations’ prioritizing cases of immediate harm over those of financial harm—the bulk of chiropractic complaint investigations—creates investigative delays. With the new LARS Alert System, the Office of Investigations can alert investigators and supervisors as a case nears the end of its allowable investigative time frame. The Office of Investigations was recently fully staffed with

investigators, which management stated was making a positive impact on investigative effectiveness.

Recommendation

The Office of Investigations should closely monitor ongoing investigations and use case tracking technology. Management should assess the timeliness of the investigation process with the LARS alert system and a fully staffed investigative unit.

Management's Comment

We concur. As of December 2015, the Office of Investigations for Health Related Boards became fully staffed with field investigators, which will support our efforts to return to timely investigations. Further, the Office of Investigations, under the leadership of a new director, has implemented several new methods of tracking complaints, not the least of which is an electronic monitoring and alerting system. The director, all management, team leaders, and the field investigators receive a 14-day alert and a 5-day count down as investigations near the assigned benchmark due date. The benchmark due dates are assigned according to the attendant harm or risk of harm alleged in a complaint.

Additionally, new policies have been established to require all assigned complaints to be opened and reviewed by an investigator within one day of receipt and the active investigation shall commence within 10 days of the initial review. Team leaders now have the ability to electronically monitor the caseload of all assigned investigators.

APPLICATION AND LICENSURE PROCESS

The Board of Chiropractic Examiners grants licensure, which must be renewed every two years, to chiropractic physicians, chiropractic therapy assistants, and chiropractic X-ray technologists. Applications are available on the board's website and must be submitted by standard mail with all required documentation and fees. The Division of Health Related Boards sets application processing timeliness standards for the boards—the Board of Chiropractic Examiners has a 100-day benchmark to meet for initial applications and a 14-day time frame for licensure renewals. The board's administrative staff verify and process all applications and send letters notifying applicants about the status and outcome of their licensure applications.

Observation

1. The board's application and licensing process is functioning in accordance with written policies and procedures

Based on interviews with board staff, review of documentation, and observation of the application process, we found that all required documentation was present in approved licensure application files and the majority of applications were processed in a timely manner.

To determine if key policies and procedures were followed and essential documentation submitted and verified, we selected and reviewed a random sample of 26 chiropractic physician applications out of 108 applicants from January 1, 2015, through March 4, 2016. We obtained documentation from calendar year 2015 and measured compliance based on the presence of the following key indicators: (1) proof of educational requirements; (2) proof of national examination passage; (3) background check completion; (4) receipt of fees; (5) letters of recommendation; and (6) if the 100-day processing timeliness benchmark was met. The initial sample target was 25 files; however, 2 files were unavailable—one was with the Office of Investigations and the other was physically inaccessible due to its unknown location in a crowded storage room. This can partly be attributed to a scanning backlog created by problems with the LARS information system implementation. Auditors provided the board staff with alternate random file numbers to locate, and as a result, one more file was obtained for our review than was initially requested.

Of 26 applications, 20 were initial applications for chiropractic physicians and 6 were reinstatement applications for practitioners who had let their licenses expire. All 20 initial applications contained all key documents, and only two applications (10%) were not processed within the 100-day time frame.

The department's internal reports also show application processing for chiropractors, assistants, and X-ray technicians was timely. See below.

Table 4
100-Day Benchmark for Initial Application Processing
July 1, 2015, to December 31, 2015

Profession	Number Issued	Over Benchmark	Average Duration	Compliance Rate
Chiropractic Physician	21	2	52	90.4%
Chiropractic Therapy Assistant	10	0	23	100%
Chiropractic X-Ray Technician	3	0	16	100%

Source: Division of Health Related Boards' Semi Annual Report, July 1, 2015, to December 31, 2015.

Table 5
14-Day Benchmark for Renewal Application Processing
July 1, 2015, to December 31, 2015

Profession	Number Issued	Over Benchmark	Average Duration	Compliance Rate
Chiropractic Physician	294	7	3	97.6%
Chiropractic Therapy Assistant	88	2	3	97.7%
Chiropractic X-Ray Technician	25	0	2	100%

Source: Division of Health Related Boards' Semi Annual Report July 1, 2015, to December 31, 2015.

PRACTITIONER PROFILES

The Consumer Right to Know Act of 1998 recognizes the public's need for information when choosing healthcare providers. Increased consumer knowledge can lead to better-informed decision-making within the health care arena. Section 63-51-105, *Tennessee Code Annotated*, otherwise known as the Consumer Right to Know Act of 1998, requires the Board of Chiropractic Examiners to collect a practitioner's information and provide it to the Department of Health, which is responsible for disseminating this information to the public. The department provides practitioner profiles, across 30 professional fields, on the Health Related Boards' website. The profile includes education, professional certifications, disciplinary actions within the last 10 years, and the primary practice addresses for each licensed provider.

A completed practitioner profile is required as part of licensure. If there are any changes to information, the practitioner must update the board within 30 days of the change. New practitioners usually cannot provide their practice address because they have not had time to gain employment.

Finding

2. The Board of Chiropractic Examiners does not provide addresses of all practitioners to inform citizens seeking information

We reviewed profile information in October 2015 and found that 377 out of 976 active, full-time, Tennessee practitioners did not have a practice address listed. Board staff asserted that those 377 licensees are new practitioners who do not yet have practice addresses. Licensees are required by statute to inform the board of their practice address as required by Section 63-51-105, *Tennessee Code Annotated*. From these 377, we randomly selected 20 to compare to the board's practitioner profiles and to information gained from Internet searches in March 2016. Of the 20 practitioners, none had updated board profiles, but 16 had an active practice address listed online. The 16 practitioners without updated profile information have been licensed for an

average of 12.5 years; we calculated the shortest licensure length to be 1.9 years and longest to be 25.1 years.

Prior to the audit, the board's director stated he advised the board staff to put a reminder in the 2015 fall newsletter for licensees to update their practitioner profiles. The director noted that some profiles may be missing practice addresses due to uncertainty surrounding an applicant's long-term employment prospects within the state, or they could be working for a temporary employer. The board's director stated that while practitioners have a statutory obligation to provide correct information, many practitioners ignore this duty. Section 63-51-117, *Tennessee Code Annotated*, grants the board the authority to refuse to issue or renew a license for any licensee who fails to provide required information and to assess a fine of up to \$50 for each day of noncompliance. During the review, we found no evidence that the board had sanctioned licensees whose profiles lacked required information.

Recommendation

The Board of Chiropractic Examiners should require complete and correct practitioner profiles at renewal, consider checks between licensure periods to gather any missing information, and reiterate to licensees their ongoing responsibility to notify the board of any changes to their personal information. It is important that the profiles reflect accurate and up-to-date information so that the public can make informed medical decisions. If necessary, the board should impose fines and withhold licensure for noncompliant licensees.

Management's Comment

We concur. Board staff, utilizing the department's e-notify, should remind licensees periodically of the requirement to maintain up-to-date profile information, including practice location, and include a statement reminding licensees that discipline can occur for failure to comply with state law. Board staff will prepare, for review by the full board, a policy authorizing board staff to utilize agreed citations (with a monetary penalty established by the board) as a vehicle to address practitioners who refuse to update their profile within 30 days after receiving a prompt by staff. Additionally, the department's modernization of its online renewal system (expected to be fully functional by September 2017), will permit licensees to update existing profile information online. Finally, in the department's final phase of its upgrade to its online renewal system, online renewal will be linked to a mandatory update of existing profile information.

CONTINUING EDUCATION COMPLIANCE

The Board of Chiropractic Examiners requires licensees to complete the requisite amount of continuing education courses as specified in the board's rules. Licensees must submit proof of compliance with continuing education requirements to the board's administrative office on an annual basis no later than January 15 of each year for the preceding calendar year. The board

requires chiropractic physicians to complete 24 hours annually, and if the licensee practices acupuncture, 6 of these 24 hours must pertain to acupuncture practice. Chiropractic X-ray operators and therapy assistants must complete six hours annually.

The board accepts continuing education courses conducted by the International Chiropractors Association, the American Chiropractic Association, or the Tennessee Chiropractic Association, and courses approved by the Tennessee Chiropractic Association or Federation of Chiropractic Licensing Boards PACE (Providers of Approved Continuing Education) program that are consistent with its continuing education rule (Rule 0260-02-.12).

Finding

3. The board has chosen to grant waivers and extensions rather than enforce compliance with continuing education requirements, yet recent changes may improve both the process and outcome

Based on interviews with the board's administrative staff and director, board meeting discussions, and review of documentation, the board has had difficulty with the oversight and enforcement of continuing education requirements for licensees.

The board audits all continuing education submissions for proof of documentation—and Rule 0260-02-.12 permits the board to grant a waiver for continuing education credits if the applicant can demonstrate physical inability or an undue hardship. The board also has the authority to impose disciplinary action against a licensee for failure to complete and substantiate continuing education credits. However, the board has consistently chosen to grant extensions and waivers as opposed to imposing fines for noncompliance.

During calendar year 2013, administrative staff faced coordination and organization problems that resulted in the board waiving continuing education requirements for that year. The board decided in April 2015 to waive all continuing education compliance requirements for licensees during 2013. Problems continued into 2014 that prompted the board to issue extensions for submission deadlines. As of December 15, 2015, approximately 18 chiropractic physicians, 31 chiropractic therapy assistants, and 5 chiropractic X-ray technologists had still not completed their continuing education requirements for calendar year 2014. As of March 2016, 275 out of a total of 1,697 licensees (15.9%) had not yet submitted any continuing education verification. Compliance rates for submissions received are illustrated in the following table.

Table 6
2015 Continuing Education Compliance as of March 2016

License Type	Total Active Licensees	Compliance Rate
Chiropractic Physician	1,141	78%
Chiropractic Therapy Assistant	446	78.2%
Chiropractic X-Ray Technician	110	64.5%

Source: Board of Chiropractic Examiners 2015 audit results.

In response to the administrative problems related to continuing education, the board recently revised its rules to change the continuing education submission deadline to the license renewal date. Currently, all continuing education submissions are due by January 15 of each year.

Under the proposed change, each applicant would submit continuing education verification along with the licensure renewal application, based on each applicant's birth month and on a two-year continuing education cycle. This change would spread out the workload over a 12-month period. Under the new rules, failure to meet continuing education requirements will result in a \$600 civil penalty, and the requirement to complete deficient hours along with the standard annual requirement. The board has also added an excel spreadsheet to the board's website that reflects submitted and verified continuing education credits for the calendar year for each licensee. The board ultimately plans to outsource the continuing education monitoring.

Recommendation

The board should require continuing education compliance for all licensee types and reduce the frequency with which waivers and extensions are granted.

Management's Comment

We concur. To the extent that waivers were granted based in part on administrative matters, board staffing matters have stabilized and waivers should now be based solely on the reasons stated in board rules. Moreover, the board has agreed to participate in a pilot project whereby licensees under their jurisdiction will be required to participate in a web-based continuing education tracking system. The required request for proposal has been prepared, is under review, and should be available for bid in the near future.

SELF-SUFFICIENCY

Section 4-29-121(a), *Tennessee Code Annotated*, requires the commissioner of the Department of Finance and Administration to provide a list of all regulatory boards—including health related boards that were not self-sufficient during the preceding fiscal year—to the Senate and House Government Operations Committees and to the Office of Legislative Budget Analysis. In addition, under Section 4-29-121(b), any such regulatory board identified as not self-sufficient for two consecutive fiscal years must be reviewed by a joint evaluation committee of the legislature in the next legislative session. This statute effectively requires each health-related board to be self-supporting by collecting fees in an amount sufficient to pay the operational costs of the board.

Observation

2. The Board of Chiropractic Examiners failed to meet the self-sufficiency requirements during fiscal year 2015

The Board of Chiropractic Examiners did not collect enough fees during fiscal year 2015 to meet the self-sufficiency requirement imposed on all regulatory and health-related boards. The board ended fiscal year 2015 with a deficit of \$8,568.90 because of unusually high investigative costs. During 2015, the board's investigative costs reached \$66,339.89—a 66% increase from 2014. The board also received \$17,159.36 less in fee revenue in 2015, an 8.1% decrease from the prior year.

Table 7
Fiscal Year 2015 Year-End Financial Report

Fiscal Year	Investigative Costs	Total Expenditures	Fee Revenue	Current Year Net	Cumulative Carryover
2013	\$33,640.67	\$130,116.53	\$221,907.35	\$91,790.82	\$433,561.08
2014	\$39,980.44	\$169,316.01	\$212,506.66	\$43,190.65	\$476,751.73
2015	\$66,339.89	\$203,916.27	\$195,347.30	-\$8,568.97	\$468,182.76

Source: Tennessee Board of Chiropractic Examiners.

Despite the most recent deficit, the board maintains a reserve balance of \$468,182.76, over twice as large as the amount of expenditures in 2015. However, since 2013 the board's total expenditures have increased by 57% while total revenue has fallen 12%—a trend which may pose a future threat to the board's self-sufficiency.

Health-related boards operate yearly from state-appropriated dollars and report all balances to the Department of Finance and Administration by October 31 of each year. Boards carry any reserve balances with them from year to year, and are responsible for resolving any deficit balance. Each year, the Department of Finance and Administration transfers the amounts contained in the boards' financial reports back to the general fund for reimbursement of

operational costs from the previous fiscal year. Boards that fail to be self-supporting violate statute and create a financial and administrative burden for state government.

Recommendation

The board should continue to monitor expenses and fee revenues, determine whether current expenditure and revenue trends are likely to continue, and take action as necessary to decrease expenses or increase revenue.

Management's Comment

We concur. The latest financial projection below reflects a tentative positive year net balance for fiscal year 2016.

Tennessee Board of Chiropractors					
FY16 Actual Revenue and Expenditures Through December 31, 2015					
with FY16 Year End Projection					
		Projection	Through 12/31/15		
<u>Acct. Code</u>	<u>Description</u>	<u>FY 2016</u>	<u>FY 2016</u>	<u>FY 2015</u>	<u>FY 2014</u>
701	Salaries & Wages	\$34,756.68	\$21,397.86	\$34,755.42	\$34,511.33
70102	Longevity	\$0.00	\$0.00	\$0.00	\$0.00
70104	Overtime	\$0.00	\$0.00	\$0.00	\$0.00
702	Employee Benefits	<u>\$11,426.68</u>	<u>\$4,983.00</u>	<u>\$16,261.39</u>	<u>\$16,772.44</u>
	Payroll Expenditures (701-702)	\$46,183.36	\$26,380.86	\$51,016.81	\$51,283.77
703	Travel	\$13,769.65	\$8,928.65	\$7,114.91	\$9,548.75
704	Printing & Duplicating	\$0.00	\$0.00	\$0.00	\$0.00
705	Utilities & Fuel	\$0.00	\$0.00	\$0.00	\$0.00
706	Communications	\$2,659.52	\$645.40	\$2,330.08	\$2,113.70
707	Maintenance & Repairs	\$0.00	\$0.00	\$0.00	\$0.00
708	Prof. Svc. & Dues	\$3,806.78	\$826.68	\$3,419.48	\$3,091.67
709	Supplies & Materials	\$0.00	\$0.00	\$267.32	\$0.00
710	Rentals & Insurance	\$0.00	\$0.00	\$0.00	\$0.00
711	Motor Vehicle Ops.	\$0.00	\$0.00	\$0.00	\$0.00
712	Awards & Indemnities	\$0.00	\$0.00	\$0.00	\$0.00
713	Grants & Subsidies	\$0.00	\$0.00	\$0.00	\$0.00
714	Unclassified	\$0.00	\$0.00	\$0.00	\$0.00
715	Stores for Resale	\$0.00	\$0.00	\$0.00	\$0.00
716	Equipment	\$0.00	\$0.00	\$0.00	\$0.00
717	Land	\$0.00	\$0.00	\$0.00	\$0.00
718	Buildings	\$0.00	\$0.00	\$0.00	\$0.00

721	Training of State Employees	\$3,283.00	\$2,688.00	\$890.00	\$0.00
722	Computer Related Items	\$1.22	\$0.61	\$0.00	\$0.00
725	State Prof. Svcs.	<u>\$3,819.52</u>	<u>\$1,827.37</u>	<u>\$3,922.02</u>	<u>\$7,972.97</u>
Total Other Expenditures (703-725)		\$27,339.69	\$14,916.71	\$17,943.81	\$22,727.09
Total Direct Expenditures		\$73,523.05	\$41,297.57	\$68,960.62	\$74,010.86
Allocated Expenditures					
	Administration	\$17,258.80	\$8,629.40	\$17,023.93	\$21,288.14
	Investigations	\$48,759.20	\$20,300.75	\$66,339.89	\$39,980.44
	Legal	\$45,200.00	\$33,095.02	\$50,268.41	\$32,671.19
	Cash Office	<u>\$1,478.06</u>	<u>\$739.03</u>	<u>\$1,323.42</u>	<u>\$1,365.38</u>
Total Allocated Expenditures		\$112,696.06	\$62,764.20	\$134,955.65	\$95,305.15
Total Expenditures		\$186,219.11	\$104,061.77	\$203,916.27	\$169,316.01
Board Fee Revenue		\$243,542.00	\$109,125.75	\$195,347.30	\$212,506.66
Current Year Net		\$57,322.89	\$5,063.98	(\$8,568.97)	\$43,190.65
Cumulative Carryover		\$525,505.65	\$473,246.74	\$468,182.76	\$476,751.73

Appendix 1 Audit Objectives

The objectives of the performance audit of the Board of Chiropractic Examiners were

- Background on the Chiropractic Profession: to provide background information on the chiropractic profession—including an overview of the field, the variation in scope of practice laws across states, and education and training requirements.
- Health Related Boards' Complaint Process: to analyze the complaint process to ensure that all policies and procedures were being followed, to determine whether investigation time frames were met, and to assess the Board of Chiropractic Examiners' use of disciplinary action.
- Application and Licensure Process: to determine whether the board is effectively and efficiently processing, evaluating, and executing its application and licensing role.
- Practitioner Profiles: to determine whether the board is collecting all the necessary information for practitioner profiles and whether or not the profiles are accurate, are up-to-date, and reflect all statutorily required information for healthcare consumers.
- Continuing Education Compliance: to determine whether the board is effectively and efficiently enforcing and verifying continuing education requirements for its licensees.
- Self-Sufficiency: to determine why the Board of Chiropractic Examiners did not meet self-sufficiency requirements outlined in Section 4-29-121, *Tennessee Code Annotated*, during fiscal year 2015.

**Appendix 2
Title VI and Other Information**

The Tennessee Human Rights Commission (THRC) issues a report, *Tennessee Title VI Compliance Program*, (available on its website) that details agencies' federal dollars received, Title VI and other human rights related complaints received, whether the agency Title VI implementation plans were filed timely, and THRC findings taken on agencies. Below are staff and board member demographics, as well as a summary of the information in the latest THRC report for the Department of Health that covers the Board of Chiropractic Examiners, as the board does not file Title VI compliance reports for itself.

The Department of Health filed its implementation plan with the THRC before the October 1, 2014, deadline. The Board of Chiropractic Examiners receives no federal funds. For fiscal year 2015, the Department of Health reported three Title VI complaints, and no findings were reported.

**Board of Chiropractic Examiners
Ethnicity and Gender
April 2016**

	White	Black	Other
Male	4	0	0
Female	3	0	0

**Board of Chiropractic Examiners
Staff Ethnicity and Gender
By Job Position
April 2016**

	Male	Female	White	Black
Administrative Director	1	0	0	1
Board Manager	0	1	0	1
Board Administrator	0	1	0	1

**Appendix 3
Financial Information
Board of Chiropractic Examiners**

	FY 2015	FY 2014	FY 2013
Payroll Expenditures			
Salaries	\$34,755.42	\$32,344.66	\$16,447.90
Longevity	\$0.00	\$2,165.67	\$1,039.29
Overtime	\$0.00	\$0.00	\$0.00
Benefits	\$16,261.39	\$16,772.44	\$6,911.14
Total Payroll Expenditures	\$51,016.81	\$51,283.77	\$24,398.33
Total Other Expenditures	\$17,943.81	\$22,727.09	\$25,705.71
Total Direct Expenditures	\$68,960.62	\$74,010.86	\$50,104.04
Allocated Expenditures			
Administrative	\$17,023.93	\$21,288.14	\$17,832.61
Investigative	\$66,339.89	\$39,980.44	\$33,640.67
Legal	\$50,268.41	\$32,671.19	\$26,956.02
Cash Office	\$1,323.42	\$1,365.38	\$1,583.19
Total	\$134,955.65	\$95,305.15	\$80,012.49
Total Expenditures	\$209,916.27	\$169,316.01	\$130,116.53
Board Fee Revenue	\$195,347.30	\$212,506.66	\$221,907.35
Current Year Net	-\$8,568.97	\$43,190.65	\$91,790.82
Cumulative Carryover	\$468,182.76	\$476,751.73	\$433,561.08

Source: Tennessee Board of Chiropractors Actual Revenue and Expenditures for fiscal year ending June 30, 2015.