

Arizona Ombudsman-Citizen's Aide  
Final Report of Investigation  
Case #20062035  
February 8, 2008  
Arizona State Board of Chiropractic Examiners

**Summary**

We received an anonymous complaint against the Board of Chiropractic Examiners (Board) in July 2006. The complaint letter had six allegations. Pursuant to Arizona Administrative Code Section R4-16-304, we declined to investigate the complaint because it was anonymous.

After we declined to investigate, the president of a chiropractic association contacted us and requested we conduct an investigation under his name. Consequently, we decided to proceed with the investigation. Our preliminary review of the complaint resulted in four allegations:

**Allegations:**

1. The Board is enforcing record keeping standards that are unclear and inconsistent.
2. The Board is inconsistently disciplining chiropractors.
3. The Board is violating patient and complainant confidentiality.
4. The Board is inconsistently enforcing the requirement that licensees note "DC" following their names in advertising and correspondence.

**Investigative Method**

We examined Board rules and statutes and reviewed Board meeting and investigative interview recordings. We also examined the documents the complainant sent to us and interviewed the executive director and deputy director of the Board.

In addition, we inspected a random, representative sample of 20 licensees who received disciplinary actions between the dates of 6/1/06 and 6/1/07. We used our sample to review Board disciplinary actions and enforcement. We also obtained information regarding record keeping practices, investigative procedures, and enforcement practices.

**Allegation 1:** The Board is enforcing record keeping standards that are unclear and inconsistent.

**Finding: Unsubstantiated**

We examined how the Board reviews the record keeping practices of its licensees. Further, we analyzed the Board's rationale and evidence supporting their decision to punish a licensee for record keeping violations for the licensees in our sample.

We used a tool that the Board uses when evaluating patient records to see if the Board was consistently applying standards. The tool incorporated the same patient record competencies required by the Council on Chiropractic Education (CCE). The CCE is the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the doctor of chiropractic degree. As the accrediting agency, the CCE has the responsibility to set professional standards and become the reliable authority regarding the quality of education or training offered by the institutions.

Of the 20 sample cases, 16 had record keeping violations. All 16 cases had investigative file records that reflected missing, substandard, or incorrect patient records. We did not find evidence that licensees were punished for record keeping violations where none existed.

**Analysis**

Apparently there are very different opinions throughout the chiropractic community about what constitutes adequate record keeping. Everyone agrees that patient records are used to verify a diagnosis, support treatment, and reconcile claims. The community also agrees that patient records should be accurate and reliable. However, there are widely different opinions within the community about what information, exactly, is necessary to accomplish that.

The 2005 report from the Department of Health and Human Services, Office of the Inspector General was highly critical of the chiropractic profession's participation in the Medicare program and found that 67% of chiropractic claims were not medically necessary or were miscoded.

It is beyond the scope of our office to determine what record keeping standards the Board should apply to the chiropractic profession. Nevertheless, we are interested in how the Board is informing licensees about the standards they are enforcing and whether they are enforcing those standards consistently.

According to A.A.C. R4-7-902(3), chiropractors licensed by the Board are required to create and maintain patient records. The patient records must include the patient's health history, examination and diagnostic results, x-ray-films (if taken) and reports, a treatment plan, and notes for each visit.

When the Board receives complaints against licensees involving issues such as standard of care, billing practices, or treatment procedures; the related patient records are always reviewed. The patient record is the document that memorializes the history of what the doctor did and why he did it. According to the executive director, patient records are crucial in tracking down and verifying the potential source of the complaint.

The deputy director provided us with an evaluation tool used by Board staff while reviewing patient records. The tool was created to simplify, as well as maintain the consistency of the record review process. It is based on CCE patient record competencies and includes three evaluative categories: code evaluation, diagnostic tests, and service record data. Prior to making the tool available to licensees in 2007, the Board staff used the tool internally for at least two years.

When we compared the Board record keeping standards to those of the CCE, we found that there were some differences. For example, for patient records, the CCE requires a chiropractor to:

“...enter clinical findings, diagnosis or initial clinical impressions, identity of the doctor and other care providers, care plans, progress notes, and follow-up evaluations in a manner that is legible, accurate, organized and reflects the clinical decision-making process...”

And

“...know and understand those elements essential to the patient record including demographic data, clinical findings and patient care information, financial transactions, reports, correspondence and communications...”

According to A.A.C. R4-07-902 (3), regarding patient records, the Board requires a chiropractor to:

“...create and maintain a patient record that includes the patient’s health history, examination findings, diagnostic results, x-ray films if taken, x-ray reports, treatment plan, and notes for each patient visit. The notes for each patient visit shall include the patient’s name, the date of service, and chiropractic physician’s findings, all services rendered, and the name or initials of the chiropractic physician who provided the services to the patient.”

Although the Board’s standards on record keeping use the basic premise of the CCE requirements, they are more specific. However, they do not appear to either exceed or fall below CCE requirements.

The deputy director explained to us that the Board's goal is to ensure that patient records reflect appropriate chiropractic care. We tested the Board's goal by applying their record keeping standards to our random sample of licensees disciplined for record keeping violations. We compared the findings of fact and the investigative file records against the standards in the review tool. We did not find inconsistencies. Based on the results of our record keeping analysis, we did not substantiate the allegation that the Board is enforcing inconsistent and unclear record keeping standards.

### Education and Outreach

The Board has made significant efforts, and is still making efforts, to educate licensees about record keeping requirements. Again, it is not within our purview to determine whether the standards the Board applies are too lax or too strict. Rather, we wanted to see if the Board was making reasonable efforts to inform licensees about the standards they were using. We found that in previous years, the Board has brought record keeping issues to the forefront. For example:

The Board devoted over half the July 2000 newsletter to addressing common record keeping errors.

The Board has placed sections devoted to practice standards in every newsletter since 2000 and gives chiropractic professionals the opportunity to suggest topics for future newsletters.

The Fall 2006 newsletter contained links and referrals to several resources for information about chiropractic record keeping.

The Board's website has a link to the Department of Health and Human Services, Office of the Inspector General report on chiropractic services in the MEDICARE program.

The Board's website provides a link to a summary of a lecture on Chiropractic record keeping.

The Board's website contains the Patient Records Audit Sheet that the Board uses to audit records during an investigation. It includes the criteria they use to evaluate diagnostic testing.

The Board has sponsored two courses on the Chiropractic Act and record keeping. The outline of the courses is posted on the Board's website.

The Board is preparing the final rulemaking for the improvement of Chiropractic Act definitions and unprofessional conduct clarifications, which include record keeping.

The Board also invites licensees to participate in the policy process by informing them that they can petition the Board for a review of a policy under A.R.S. §41-1033.

The Board has recently established a "Newsflash" page on their website designed to keep licensees and the public informed of events that impact the chiropractic profession.

#### Insurance Fraud Complaints

Under A.R.S. § 20-466(G), the Arizona Department of Insurance (AZDOI) Fraud Unit investigates insurance fraud. The fraud unit may forward investigation referrals to the appropriate licensing authority for any further regulatory action against a licensee. If the Board receives a referral from the fraud unit, the referral is reviewed and the Board opens an investigation, if necessary.

The executive director explained to us that the Board also occasionally receives complaints against chiropractors directly from insurance companies. Complaints from insurance companies are considered public complaints. These complaints are subjected to the same investigative protocol as any other complaint submitted by a member of the public.

Prior to 2006, the AZDOI fraud unit routinely sent investigation referrals to the Board without any additional information. This contributed to extended Board investigations because the Board had difficulty obtaining supporting information from AZDOI and the insurance companies. This prompted the Board to meet with AZDOI to discuss a more effective method of submitting the referrals.

As a result of the collaboration between the Board and AZDOI, referrals sent by AZDOI are now accompanied by supporting documentation from the insurance company. AZDOI also encourages insurance companies to file complaints concerning Board licensees directly with the Board, so that the Board can effectively evaluate the allegations and request supporting information if necessary.

In FY 2006, a total of 178 complaints were filed against licensed chiropractors. Of the 178 complaints, 43 (or 24%) of the complaints were referred by the fraud unit, and 16 (or 9%) were filed by insurance companies. The combined total complaints from AZDOI and individual insurance companies made up about a third of the total complaints opened by the Board in 2006.

In FY 2007, there were a total of 117 complaints filed against licensed chiropractors. Eight of those complaints were filed by insurance companies. The Board did not receive any referrals from the AZDOI fraud unit. Therefore, complaints about insurance fraud went from 33% in FY 2006 to 7% in FY 2007.

### Billing Errors

During the course of our investigation we were concerned that a considerable number of complaints related to billing errors. As the Board is already aware, chiropractic insurance billing practices have been spotlighted by the U.S. Department of Health Services, Office of Inspector General report released in 2005. Although the report focused on chiropractic services billed to Medicare, we found some of the same concerns occurring with non-Medicare cases.

While reviewing the cases initiated by insurance companies, we found that their complaints focused on either the lack of documentation to support a billing code, or lack of documentation to support a medical treatment. This translates into a violation of A.R.S § 32-924(5) (Unprofessional or dishonorable conduct), and A.R.S. 32-924(22) (Billing for services not provided).

Record keeping is not mentioned directly in statute. Rather, the definition of unprofessional or dishonorable conduct contained in section R4-7-902 of the Arizona Administrative Code includes failure to create and maintain a patient record.

As the Board looks at the complaint, it might find that patient records do not have sufficient information to justify the billing. Rather than making a finding of fraud, which implies knowingly misrepresenting the truth, the Board can call it a record keeping error. A record keeping violation is easier to prove because the Board doesn't have to prove intent.

We could not determine if chiropractors are unaware of billing code requirements for specific treatments, or if they lack record keeping training. It could be a combination of both. When we listened to formal interviews, we commonly found that chiropractors said that they did not know certain documents were required for a particular treatment and believed what they submitted for billing purposes was appropriate.

**Allegation 2:** The Board is inconsistently disciplining chiropractors.

### Finding: Unsubstantiated

We examined Board disciplinary actions from our sample. We compared disciplinary actions among licensees with the same or similar violations. We did not find a disciplinary case where the Board handed down a disciplinary action that was significantly more or less severe than other similar cases.

### Analysis

We correlated the basis of the violation with the disciplinary action. What made this a difficult task was the fact that none of the licensees in our entire sample was disciplined for just one violation. In fact, all the cases in our sample had at

least three Chiropractic Act violations. For example, one licensee was disciplined for failing to comply with a Board subpoena, misrepresenting credentials as a radiologist, failing to create and maintain patient records, and failing to use and affix the initials "D.C." after his name.

The Board (as with most regulatory agencies) considered the entire case when determining the discipline, which made it difficult to attribute a specific disciplinary action to a certain violation. No licensee in our sample was disciplined only for record keeping.

We used our sample of 20 licensees to compare disciplinary actions. All disciplinary actions in this sample were ordered by the Board between the dates of 6/1/06 and 6/1/07. Out of 20 cases, 16 of them had record keeping violations. Record keeping violations were used in our analysis because they had a specific discipline used only for that violation (record keeping continuing education). Also, our sample had a reasonable representation of record keeping violations.

We found that the Board required each licensee with a record keeping violation to take either four or six hours of continuing education in record keeping. The violations ranged from undated treatment notes, to missing patient histories and treatment plans. The difference of two continuing educational credits did not appear to show an inconsistent or disparaging record of disciplinary actions.

**Allegation 3:** The Board is violating patient and complainant confidentiality.

Finding: **Substantiated, in one instance.**

We initiated a review of the Board's meeting minutes and found one occasion where a patient/complainant's name was revealed in meeting minutes approved by the Board.

#### Analysis

We initially reviewed a total of four Board meetings, two from 2007 and two from 2006. At the beginning of each Board meeting, a statement is read explaining that only the initials of the complainant and/or the patient will be used. If the name is read, the name would be changed to initials when the final meeting minutes are written.

At the Board meeting that took place on 7/13/2006, the name of a patient was listed in the description of a document read into record. The name was listed once. Subsequent mentions of the name were listed as initials. In this case, the Board did not protect the identity of a patient.

Since we found a violation, we then reviewed the minutes for every Board meeting from August 2006 through July 2007. We did not find another occasion where the name of a patient was disclosed. Although we substantiated this allegation, it appeared to be an isolated occurrence rather than a systemic problem.

We also reviewed the procedures the Board uses to protect patient identity. Minutes are reviewed by the executive director three times before they go to the Board for approval. Each of the Board members also reviews the minutes and the Boards and the Board collectively reviews the minutes at its next meeting. We believe these procedures are reasonable and adequate.

**Allegation 4:** The Board is inconsistently enforcing the requirement that licensees note "DC" following their names in advertising and correspondence.

**Finding: Substantiated**

There were four cases in our sample where chiropractors were disciplined for "D.C." violations. After reviewing the investigative files, we found another case that had a "D.C." violation that was not investigated by Board staff. In addition, we found an occasion where the evidence the Board used to prove a "D.C." violation was not clear.

**Analysis**

As required by A.R.S. §32-924(A)(17), practicing chiropractors must place the initials "D.C." after signing their name in any capacity as a "chiropractic doctor", "doctor of chiropractic", or "chiropractic physician".

The deputy director explained to us that the majority of "D.C." violations are observed when practicing chiropractors send any correspondence to their patients or to the Board. The initials are only required when the licensee is acting in the capacity as a "chiropractic doctor, "doctor of chiropractic", or chiropractic physician."

During our review of the investigative files, we found a case where a chiropractor under investigation sent a document to the Board without including "D.C." in the signature. The chiropractor was neither cited nor disciplined for the violation.

We also found a case where a chiropractor, under investigation by the Board, sent a copy of a hotel receipt for personal travel as verification that he was out of town. The chiropractor only signed his name on the hotel receipt, and did not include "D.C." The Board included the receipt signature with other occasions where the chiropractor signed his name (omitting the "D.C.") while acting as a chiropractor. At the 1/11/2007 Board meeting, the chiropractor's attorney explained that the hotel receipt was personal and not professional



communication or advertising. The Board did not clarify what relevance the hotel receipt had to A.R.S. §32-924(A)(17), especially since it was included as evidence of violation.

We are not disputing the Board's finding that this doctor failed to comply with A.R.S.32-924(A)(17) because there were other examples that the doctor displayed a pattern of failing to identify himself as a doctor of chiropractic. We are disputing the Board including a hotel receipt in that finding.

We believe it is not reasonable to require chiropractors to add "D.C." any time they sign their name. At times chiropractors sign their name, not as a physician, but as a private citizen. Examples of this include credit card bills, hotel registrations, personal checks, etc. Those instances do not fall under the requirements of A.R.S. § 32-924(A)(17) because the person is not acting as a physician. However, when a chiropractor signs something as a physician, they do fall under A.R.S. 32-924(A)(17).

### **Recommendations**

We acknowledge that the Board and its staff continue to improve in its regulatory and communication practices.

#### **Insurance and billing**

We believe that with increased insurance company involvement with chiropractic services, it is imperative that chiropractors become more familiar with billing and coding requirements.

Recommendation 1. The Board should include more information regarding billing and coding in its newsletter and website. It should consider developing a checklist, similar to what it does for record keeping, and make it available on its website.

Recommendation 2. The Board should consider adding a lecture period to the jurisprudence examination for new licensees. The lecture would include an emphasis on those areas of law most frequently violated, and tips on how to avoid violations.

#### **Confidentiality**

The Board has implemented reasonable and adequate procedures to protect the identity of patients. Therefore, we do not have an additional recommendation except to encourage the Board to continue to follow its procedures.

#### **Use of D.C.**

Recommendation 3. The Board should apply A.R.S. § 32-924(A)(17) to professional communication, advertisements and when the person is acting in any capacity as a physician.

Record keeping

It would be useful for licensees to have a clearer and more precise explanation of the record keeping standards written into law. The Board has been trying to implement a change to the Arizona Administrative Code that incorporates this. The final rule making package is scheduled to be heard by the Governor's Regulatory Review Commission on February 5, 2008.

Recommendation 4. If the Board cannot resolve this through the rule making process, we recommend the legislature consider putting a statement of record keeping standards in statute.

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## State of Arizona Board of Chiropractic Examiners

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February 7, 2008

Pat Shannahan  
Ombudsman-Citizen's Aide  
3737 N. 7<sup>th</sup> St., #209  
Phoenix, AZ 85014

Dear Mr. Shannahan,

Please accept the following as the Board's response to the findings in the investigation of Case No. 20062035. The Board would like to acknowledge the substantial level of work that was performed by your staff in reviewing files, recordings and other relevant documents, as well as time committed to interviews.

The Board is pleased, but not surprised, that the findings establish that the allegations in this matter are not substantiated. The Board of Chiropractic Examiners and staff are committed to a consistent goal of self-evaluation, planning and improvement to processes and procedures. We believe the findings of the investigation demonstrate this fact, as well as provide valuable recommendations and insight for continued improvement.

- The Board acknowledges that you found the allegation that the Board is enforcing record keeping standards that are unclear and inconsistent as unsubstantiated.
- The Board acknowledges that you found the allegation that the Board is inconsistently disciplining chiropractors is unsubstantiated.
- The Board acknowledges that you found the allegation that the Board is violating patient and complainant confidentiality as substantiated on one instance only. That instance being one occasion in which a patient name appeared in one paragraph of Board minutes. The Board also recognizes that your report explains that in all other cases, in which you reviewed the minutes of every Board meeting from August 2006 through July 2007, patients were identified by initials rather than name in public record. The Board recognizes the one error, and has amended the minute entry to replace the patient name with initials.
- The Board acknowledges that you found the allegation that the Board is inconsistently enforcing the requirement that licensees note "DC" after signing their name in any capacity as a "chiropractic doctor", "doctor of chiropractic", or "chiropractic physician". However, the Board would like to stress that in four out of five cases reviewed, the Board was consistent in its application of this law. In the one exception, the report appears to

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Member

**Evelyn Witherwax**  
Member

• • •  
**Patrice A. Pritzi**  
Executive Director

reflect that Board staff failed to notice the absence of the required language on a document submitted by a licensee being investigated for a different allegation. If this is the case, the Board did not fail to consistently apply the law. Rather, Board staff failed to notice the potential violation in this case, and therefore, it was not brought to the Board's attention for action.

**Recommendations:**

The Board agrees with all recommendations.

- **The Board will include more information regarding billing and coding in its newsletters and on its website.** The Board will use the annual newsletter to provide education to licensees on billing and coding issues that come to the attention of the Board in the course of investigations, much as it does with recordkeeping concerns. The annual newsletter is sent out in August or September of each year. The Board will also provide information on billing and coding concerns that come to the attention of the Board on its web site. The Board can begin posting information on the web site within six weeks. This timeframe allows time for the Board to review postings for approval at its monthly meeting.
- **The Board will develop a checklist regarding billing and coding similar to the record keeping checklist that is now posted on the Boards website. The billing and coding checklist will also be posted on the website.** The Board anticipates that a checklist may be posted within three months. This timeframe will allow time to obtain input for checklist content and to provide for Board review and approval at monthly Board meetings.
- **The Board is already in the process of adding a lecture period to the jurisprudence examination for new licensees.** The lecture will include an emphasis on those areas of law most frequently violated, and direction to the particular law that will provide guidance to avoid violations. It is the goal of the Board to implement the addition of the lecture period for the first week of May.
- **The Board will apply A.R.S. § 32-924(A)(17) to professional communications, advertisements and when the person is acting in any capacity as a physician.** A review of documents for compliance will be added to the investigation checklist to assist staff in identifying possible violations when the initial allegation is not related to this specific law.
- **The Board has established a rule to provide a clearer and more precise explanation of the record keeping standards in law.** The rule was approved by the Governor's Regulatory Review Council on February 5, 2008.

In closing, the Board would once again like to acknowledge the attention to detail, and the commitment of time, that your office has invested in this investigation, as well as its appreciation for your recommendations.

Sincerely,

Patrice Pritzl  
Executive Director