

December 17, 2024

Lindsey Perry, CPA, CFE,
Auditor General Arizona Auditor General's Office
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018-7271

Re: Arizona Board of Chiropractic Examiners- Special Audit

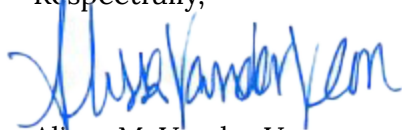
Dear Ms. Perry,

The Arizona Board of Chiropractic Examiners ("Board") has reviewed and responded to the Special Audit.

The Board and its staff commend the professionalism and thoroughness of the Auditor General's team and Sjoberg Evashenk Consulting, Inc. The Board has already begun addressing the findings and implementing the recommendations.

We look forward to presenting the positive changes made when meeting with the Joint Legislative Audit Committee of the Arizona Legislature.

Respectfully,



Alissa M. Vander Veen
Executive Director

Enclosure: Board's Response

Cc: Ms. Angela Powell, Board Chair

Chapter 1: Board regularly requested or subpoenaed information outside the scope of complaint allegations contrary to statute, potentially resulting in unwarranted disciplinary actions and lengthy complaint investigations

Recommendation 1: Cease its practice of subpoenaing and requesting information that is unrelated to complaint allegations when investigating complaints.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to working with the Arizona Attorney General to properly limit the scope of subpoenas during investigations, ensuring they remain focused on the specific issues related to the complaint in accordance with statutory guidelines.

Recommendation 2: Cease the practice of using investigations as a means to monitor compliance with continuing education requirements and to evaluate the quality of a licensee's record-keeping and develop administrative procedures for reviewing these matters outside of the complaint investigation process.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees to stop using investigations for continuing education compliance and record-keeping. With the Thentia database launched in July 2023, licensees now submit certificates during renewal, allowing compliance to be reviewed then, not during investigations. As of January 2024, the Board stopped requesting continuing education information in investigations and is committed to developing administrative processes for record-keeping compliance outside the investigation process.

Recommendation 3: Develop and implement policies and/or procedures that include guidance for Board staff to tailor information requests and subpoenas that are directly related to the complaint filed and within the scope of the investigation.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will collaborate with the Arizona Attorney General to develop policies and procedures that align with statutory requirements under A.R.S. § 32-929. These policies will provide clear guidance for Board staff to tailor information requests and subpoenas to ensure they are directly related to the complaint file, in compliance with the statute, and will limit the scope of subpoenas during the investigatory process.

Recommendation 4: Develop and implement a documented process for the Board's Executive Director and the Board's legal counsel to review subpoenas to help ensure that the information requested or required to be provided is directly related to the complaint filed and within the scope of the investigation.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement a policy and process to have a more thorough review of its investigative subpoenas by the Executive Director including review by the Assistant Attorney General when necessary. Thus, ensuring the information requested is related to the complaint and scope of the investigation.

Recommendation 5: Include information in its subpoenas informing licensees regarding their ability to petition the Board or the Courts to revoke, limit or modify the subpoena, consistent with the practice of the Superior Courts of Arizona.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees with this finding and has already updated the language in its subpoenas and letter templates. Additionally, the Board will submit the revised templates to the Arizona Attorney General for review to ensure they are compliant.

Chapter 2: Board did not consistently apply statutes and rules regarding licensees' continuing education and recordkeeping, but did consistently initiate investigations for complaints related to improper division of fees for patient referrals

Recommendation 6: The Board should conduct a formal review of its use of psychosexual evaluations to assess and document their relevance and appropriateness in evaluating a chiropractor's professional competence. If determined appropriate, it should develop and implement policies, procedures, and/or guidance for when to order a licensee to complete psychosexual evaluation, including outlining how the Board will use the evaluation results.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will collaborate with the Arizona Attorney General, the Arizona Department of Health Services, the National Association of Boards of Psychology, the American Psychological Association, Arizona Healthcare Licensing Boards, and other relevant agencies to develop a comprehensive policy, procedure, and formal guidelines for incorporating psychosexual evaluations into the investigation process. These resources will help ensure that best practices, ethical standards, and legal requirements are followed throughout the evaluation process.

Chapter 3: Board did not refer allegations of criminal wrongdoing to appropriate criminal justice agencies as required by statute for applicable complaints we reviewed, with 1 exception, increasing public safety risks and potentially delaying or hindering criminal investigations

Recommendation 7: Revise and implement its policy to require it to report all allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency within 48 hours.

Board response: The finding is agreed to and a different method of dealing with the finding will be implemented.

Response explanation: The Board will work to revise and implement its policy to report all allegations of criminal wrongdoing to the appropriate criminal justice agency within 48 hours. However, the Board emphasizes that there is no statutory requirement mandating such a timeline. While the Board is committed to timely reporting, it believes that requiring a fixed 48-hour window for all reports could undermine its discretion in evaluating each case thoroughly. The broad language of the statute gives the Board the discretion to assess each case individually and determine when an "allegation of evidence" is sufficiently substantiated before making a report. This flexibility allows the Board to avoid reporting frivolous complaints or prematurely involving authorities, which could waste resources or harm innocent professionals.

The Board must retain the flexibility to ensure that allegations are properly substantiated and that resources are used effectively, without prematurely involving authorities in cases that may not warrant it. The Board will continue to consult with the Attorney General in relevant cases and will update its policy to ensure timely, appropriate, and well-informed decisions on criminal referrals, consistent with best practices followed by other health care boards.

Recommendation 8: Revise and/or develop and implement policies or procedures that include requirements and guidance for Board staff to coordinate with criminal justice agencies when conducting complaint investigations that include allegations of criminal wrongdoing. At a minimum, the requirements and guidance should outline how Board staff should work with criminal justice agencies to share information and/or coordinate investigations with criminal justice agency personnel and when and how its staff should review the results of these agencies' investigations.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will work with the Arizona Attorney General to develop policies for coordinating with criminal justice agencies during investigations, ensuring compliance with A.R.S. 32-929(C). The Board will also engage stakeholders, including the local law enforcement, the Department of Insurance and Financial Institutions, other healthcare boards, and victim advocacy groups, to align practices with law enforcement standards and ensure fairness. This collaboration will align practices with law enforcement standards and ensure fairness and best practices in handling criminal allegations.

Recommendation 9: Provide training for Board members and staff on its policies and procedures related to reporting allegations of criminal wrongdoing to criminal justice agencies.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will train members and staff on policies for reporting criminal wrongdoing under A.R.S. 32-929(C). This training will be enhanced through collaboration with the Arizona Attorney General, law enforcement, other healthcare boards, and relevant stakeholders to ensure consistency, transparency, and best practices.

Chapter 4: Board has made progress in resolving complaints dating back to fiscal year 2018 but continued to not resolve complaints within 180 days, which may affect patient safety and cause undue burden for licensees under investigation for lengthy periods of time

Recommendation 10: Resolve complaints within 180 days.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board strives to resolve complaints within 180 days but faces challenges due to limited resources, staff, and external support. While a backlog of complaints exists, considerable progress has been made in addressing it. To improve efficiency, the Board has hired two full-time investigators and collaborated with the Arizona Legislature to implement a rolling monthly license renewal system, which has reduced strain on resources and allowed for more focus on investigations. Despite these efforts, the increasing complexity of complaints has contributed to longer resolution times. Note that there is no statutory requirement mandating the resolution of complaints within 180 days. Current statutory timeframes, such as those outlined in A.R.S. § 32-929, focus on specific actions like issuing notices or determining whether

probable cause exists, but do not require completion of the entire investigation within a fixed period. In response to these challenges, the Board is focused on continuous process improvements, including streamlining case management, enhancing coordination between departments, and implementing better tracking systems to monitor investigation progress. The Board will continue to utilize the Arizona Management System to drive improvements in this process. The Board remains committed to improving its processes and will continue to explore additional measures to enhance efficiency while ensuring thorough, fair, and timely investigations.

Recommendation 11: Develop and implement time frames for the various steps in its complaint investigation and resolution process based on severity-ranking, including notice of complaint, initial action, and final resolution.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to developing and implementing timeframes for key steps in the investigation process. These timeframes will be tailored to the severity of the complaint, ensuring that more serious cases receive expedited attention while allowing sufficient time for thorough investigations in more complex cases. The Board will look to best practices and standards followed by other Arizona healthcare licensing boards, other state chiropractic licensing boards, and recommendations from Federal Chiropractic Licensing Boards (FCLB) which have developed severity-based timelines for their investigation processes.

Recommendation 12: Ensure high priority complaints are investigated and prioritized for Board review before low priority complaints by investigating and prioritizing Board review for high-priority complaints according to the developed time frame.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to prioritizing high-priority complaints for investigation, with timeframes tailored to the severity of each case. Serious complaints will be expedited, while complex cases will receive adequate time for thorough investigation. The Board will use data and reporting to ensure efficient resource allocation and timely completion. Additionally, the Board will incorporate best practices from other Arizona healthcare licensing boards, chiropractic boards, and the Federal Chiropractic Licensing Boards (FCLB) to implement effective, severity-based timelines for complaint prioritization.

Recommendation 13: Avoid delaying complaint adjudication when the parties of the complaint may be subject to civil litigation unless necessary, and ensure timely completion of all complaints based on their severity level regardless of whether related complaints may be adjudicated by other agencies or courts unless otherwise ordered to do so by an appropriate authority.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will ensure timely complaint resolution based on severity, avoiding delays unless necessary, or directed by an appropriate authority.

Chapter 5: Immediately discontinue efforts to persuade licensees to support/oppose legislation, including using public resources to advocate for its position.

Recommendation 14: Immediately discontinue efforts to persuade licensees to support/oppose legislation, including using public resources to advocate for its position.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees and has already implemented the immediate discontinuation of efforts to persuade licensees to support or oppose legislation, including the use of public resources for advocacy.

Recommendation 15: Develop and implement Board policies and procedures related to lobbying and advocacy activities, including:

Recommendation 15a: Specifying that any efforts to influence legislation should be conducted through the Board's designated public lobbyist and within the framework provided by statute.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board agrees with the recommendation and will immediately cease efforts to persuade licensees on legislation, refraining from using public resources for advocacy. It is committed to complying with all relevant laws, including A.R.S. § 41-1232.01, and will focus on providing neutral, accurate information to licensees and the public. The Board will align its policies and procedures with those of other Arizona healthcare boards to ensure compliance with ethical standards and state law.

Recommendation 15b: Developing a protocol for communicating with licensees about legislative issues to ensure the Board is providing complete and accurate information.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will create a protocol for communicating with licensees on legislative issues, ensuring accurate, neutral information. A Legislative Committee made up of legal counsel and members of the Board will oversee all communications, ensuring compliance with legal standards and collaborating with other boards to share best practices. This will ensure transparent, objective updates on legislation for licensees.

Chapter 6: Board did not always comply with open meeting law, including the call to the public, and altered 7 meeting recordings, limiting the public's access to information on Board decisions and the public's ability to address Board during public meetings

Recommendation 16: Comply with all statutory open meeting law requirements including but not limited to ensuring meeting notices, agendas, executive sessions, minutes, and calls to the public are handled and documented as required by statute.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to complying with open meeting laws, ensuring fairness and transparency. In response, it has reviewed and updated its agendas, meeting notes, and scripts to align with statutory requirements and best practices and implemented policies for drafting agendas and meeting preparation.

Recommendation 17: Consult with the Open Meeting Law Enforcement Team within the Attorney General's Office to determine what type of manner restrictions it can place on speakers during the call to the public, including whether it can prohibit speakers from discussing information the Board is required to keep confidential.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board looks forward to collaborating with the Arizona Attorney General's Open Meeting Law Enforcement Team to enhance its processes and procedures related to the call to the public, specifically regarding the manner restrictions it can place on members of the public, and how it handles public comments that may contain confidential information.

Recommendation 18: Develop and implement a policy and revise its call to the public script to specify the time, place, and manner restrictions for calls to the public that are consistent with guidance it receives from the Open Meeting Law Enforcement Team within the Attorney General's Office.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will collaborate with the Arizona Attorney General's Open Meeting Law Enforcement Team to refine its policies and procedures, ensuring they align with the guidance provided regarding the call to the public, as well as its related policies, procedures, and scripts.

Recommendation 19: Post unaltered meeting recordings as required by statute and cease the practice of deleting information from recordings.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board redacted sensitive information, such as patient names, from meeting audio to protect privacy, not to alter the record or compromise transparency. The Board will consult with other state agencies and healthcare boards to learn how they balance transparency and confidentiality. It is open to further discussions with stakeholders, the Arizona Attorney General's Office, and the legislature to find an effective balance in a digital age.

Recommendation 20: Provide regular training, during onboarding and annually, for all Board members and staff on Arizona's open meeting law, including specific requirements for meeting notices, agendas, executive sessions, minutes, and the call to the public.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to ensuring all members and staff are trained on Arizona's open meeting law. It will continue developing a training program, including onboarding for new members and annual refresher courses. This training will cover key aspects like meeting notices, agendas, executive sessions, minutes, and the call to the public. The Board will formalize this process through a Board Member Training Policy and a clear schedule, ensuring compliance and transparency throughout members' tenure.

Chapter 7: Board's Executive Directors—past and present—have not established processes for ensuring consistency in some Board practices and communicating changes in Board practices to licensees and the public, resulting in several issues we identified during this audit and potential confusion among licensees and the public

Recommendation 21: For all complaints received moving forward, use the Disciplinary and Sanctioning Guidelines adopted in July 2024 when adjudicating complaints to determine appropriate disciplinary and non-disciplinary actions to address violations.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has adopted Disciplinary Sanctioning Guidelines to ensure consistent, fair, and transparent enforcement. These Guidelines will guide all complaint adjudications, helping determine appropriate actions for violations. They are publicly available on the Board's website and are referenced during meetings and in Investigative Reports to maintain consistency and compliance.

Recommendation 22: Develop and provide training to Board members regarding key Board functions, including but not limited to complaint handling, the State's Open Meetings Law, and authorized lobbying/advocacy activities.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop and provide training on complaint handling to ensure that members understand the appropriate procedures for managing and resolving complaints effectively. Training on authorized lobbying and advocacy activities will also be provided to ensure that Board members are aware of the legal parameters around such activities. The Board will formalize this training plan through a Board Member Training Policy and a training schedule. New members will receive this training during onboarding, and all members will participate in annual refresher courses to ensure ongoing compliance with legal and procedural requirements. This comprehensive training approach will ensure that Board members are well-equipped to carry out their duties in a transparent and legal manner.

Recommendation 23: Continue to develop and implement its IT system, including developing and implementing management reports for overseeing its licensing and complaint handling processes.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to continuing the development of its IT system to enhance licensing and complaint-handling processes. To support this, the Board has hired an external IT consultant to refine its systems. This includes creating management reports to improve oversight of case progress, performance, and resource allocation. The Board will collaborate with the consultant to ensure these systems are efficient, and aligned with best practices, improving operations and transparency.

Recommendation 24: Conduct research to identify standard processes or recommended practices for developing substantive policy statements, including but not limited to contacting and requesting information from other State agencies and health regulatory boards about their substantive policy statement processes.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board recognizes the importance of developing effective substantive policy statements and agrees with the recommendation to research best practices. To do this, the Board will reach out to state agencies, including the Arizona Department of Health Services and the Arizona Attorney General's Office, as well as other healthcare boards and organizations like the Federation of Associations of Regulatory Boards (FARB), and the Federation of State Medical Boards (FSMB) to gather information on their processes. Based on the findings, the Board will implement a process that aligns with best practices, ensuring all policy statements are well-researched, transparent, and legally compliant.

Recommendation 25: Develop and implement policies and procedures for creating and using substantive policy statements and other methods for communicating important information about its activities and practices to external parties, including but not limited to clarifying and/or communicating changes to its practices.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is committed to developing policies and procedures for creating and using substantive policy statements, as well as communicating important information to external parties. Building on research from other agencies and organizations like NARSA, FARB, FCLB and FSMB, the Board will establish clear processes for drafting, reviewing, and issuing policy statements that clarify or communicate changes to practices. These procedures will ensure transparency, consistency, and compliance with legal requirements while keeping stakeholders informed.

Recommendation 26: Discontinue using emails to licensees to communicate information that instead should be communicated through substantive policy statements.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will discontinue using email as the sole method for communicating essential information to licensees. Instead, it will use substantive policy statements for critical updates and changes. Email will remain a supplementary communication channel, alongside policy statements, public notices, and website updates, ensuring comprehensive and transparent communication.

Recommendation 27: Review prior communications issued through less formal methods and determine whether those communications should have been issued as a substantive policy statement and, if so, issue a substantive policy statement on the matter.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: In response to this recommendation, the Board will review prior communications sent through less formal methods to assess whether they should have been issued as substantive policy statements. If deemed necessary, the Board will take the appropriate steps to issue formal policy statements on those matters, ensuring clarity, consistency, and alignment with best practices moving forward.

Chapter 8: Board did not comply with some State conflict-of-interest requirements and recommended practices, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

Recommendation 28: Revise and implement its conflict-of-interest policies and procedures to help ensure compliance with State conflict-of-interest requirements and implementation of recommended practices, including:

Recommendation 28a: Requiring Board members and employees to complete a conflict-of-interest disclosure form upon appointment/hire, including attesting that no conflicts exist, if applicable, and reminding them at least annually to update their disclosure form when their circumstances change.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has ensured all members and staff complete updated conflict-of-interest disclosure forms. As of August 2024, all have submitted their Annual Conflict of Interest statements. To strengthen this process, the Board will develop a formal policy to better document disclosures, ensure timely updates, and address potential conflicts effectively.

Recommendation 28b: Storing all substantial interest disclosures, including disclosure forms and meeting minutes, in a special file available for public inspection.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will establish a dedicated file to store all substantial interest disclosures, including disclosure forms and meeting minutes. This file will be made available for public inspection.

Recommendation 28c: Developing and implementing a process to track Board member/employee completion of conflict-of-interest disclosure forms, including the date the form was completed.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement a process and procedure to monitor and record the completion of these forms by Board members and staff, including documenting the date each form is completed.

Recommendation 28d: Establishing a process to review and remediate disclosed conflicts.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will work with the Arizona Attorney General to create a policy for reviewing and remediating disclosed conflicts of interest, consulting with other healthcare boards for best practices. This policy will ensure transparency, fairness, and accountability, and will be clearly documented and followed by all members and staff.

Recommendation 28e: Providing periodic training on its conflict-of-interest requirements, process, and disclosure form, including providing training to all Board members and employees on how the State's conflict-of-interest requirements relate to their unique programs, functions, or responsibilities.

Board response: The finding is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will include conflict-of-interest training in its Board Training Policy, providing periodic sessions for all members and staff. The training will cover conflict-of-interest requirements, processes, and how they apply to individual roles and responsibilities.