



An Audit Report on

Licensing and Enforcement at the Board of Chiropractic Examiners

August 2020

Report No. 20-041



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Overall Conclusion

The Board of Chiropractic Examiners (Agency) had adequate processes to help ensure that it conducted most licensing and enforcement functions in accordance with applicable requirements. However, to ensure consistent compliance with requirements, the Agency should obtain required documents and necessary approvals, and retain required documentation. The Agency also should regularly update its internal policies and Texas Administrative Code rules to align with its processes and Texas Occupations Code requirements.

The Agency also had weaknesses in its controls to protect confidential data and other general controls related to data availability. To minimize security risks, auditors communicated details about the identified weaknesses separately to the Agency's management in writing.

Pursuant to Standard 9.61 of the U.S. Government Accountability Office's *Generally Accepted Government Auditing Standards*, certain information was omitted from this report because that information was deemed to present potential risks related to public safety, security, or the disclosure of private or confidential data. Under the provisions of Texas Government Code, Section 552.139, the omitted information is also exempt from the requirements of the Texas Public Information Act.

Licensing

For all new licenses tested, the Agency included in the license holder's files (1) all the required documentation it received from the applicants and (2) a completed new application checklist. For renewal licenses, the Agency sent renewal notifications in a timely manner and verified submission of required renewal application forms. The Agency also ensured that applicants paid the required fees and established a process to verify licensees' continuing education hours.

However, the Agency should strengthen its processes to ensure that it consistently follows its rules for processing applications for applicants with prior criminal convictions and documenting its reviews of those applications. It also should ensure that all license holders (1) comply with fingerprinting requirements prior to license renewal and (2) verify continuing education on their applications as required.

Background Information

The Board of Chiropractic Examiners (Agency) was created by the 51st Legislature in 1949. The Board licenses chiropractors, verifies licensure for the public, sets standards for professional conduct, and enforces the laws that govern the practice of chiropractic.

For the 2020-2021 biennium, the Agency was appropriated approximately \$1.8 million. The Agency has a FTE (full-time equivalent) cap of 13.

Sources: The Agency and the General Appropriations Act (86th Legislature).

Enforcement

For all complaint files tested, the Agency included required documentation; contained necessary reviews and approvals; and were accurately entered into the Licensing and Enforcement management system, FileMaker Pro. However, it did not establish (1) schedules for complaint disposition as required by Texas Occupations Code, Section 201.205, and (2) timeliness expectations for complaints closed at the executive director level.

Policies and Procedures

Some of the Agency’s documented policies and procedures and Texas Administrative Code sections did not align with its processes; did not address requirements in the Texas Occupations Code; or were in conflict with the Texas Occupations Code.

Information Technology Controls

The Agency had adequate access controls over its network and information system and has documented policies and procedures related to passwords and data classification. However, it should address weaknesses in its controls to protect confidential data or other general controls related to data availability.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
1-A	The Agency Has Adequate Controls to Ensure That It Issues Licenses Only to Eligible Applicants; However, It Does Not Consistently Retain Documentation of Certain Eligibility Reviews	Medium
1-B	The Agency Has Established an Adequate License Renewal Process; However, It Should Strengthen Document Retention and Update Its Online License Renewal Application	Medium
1-C	The Agency Has Established Adequate Continuing Education Audit Sampling Processes	Low
2	While the Agency Had Processes in Place for Its Enforcement Functions, It Should Establish Schedules for Complaint Disposition to Ensure Consistent Compliance with Applicable Requirements	Medium
3	The Agency’s Internal Policies and Procedures and Texas Administrative Code Did Not Match Its Current Enforcement Processes	Medium
4-A	The Agency Had Adequate Access Controls Over Its Network and Information System	Low
4-B	The Agency Should Strengthen Its Controls Over Confidential Data and Certain General Controls Over Information Technology	Priority

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
<p>^a A chapter/subchapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.</p> <p>A chapter/subchapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.</p>		

Auditors communicated other, less significant issues separately in writing to Agency management.

Summary of Management's Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Agency agreed with the recommendations in this report.

Audit Objective and Scope

The objective of this audit was to determine whether the Agency has processes and related controls to help ensure that it conducts licensing and enforcement functions in accordance with applicable requirements.

The scope of this audit covered licensing and enforcement activities processed by the Agency from September 1, 2018, through January 31, 2020. Licensing activities included new and renewed applications for a chiropractic license and continuing education verification audits. Enforcement activities included both open and closed complaints.

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Detailed Results

Chapter 1

The Agency Has Processes for Issuing New and Renewal Chiropractic Licenses and for Verifying Continuing Education Hours; However, It Should Strengthen Its Document Retention and Ensure That Its Texas Administrative Code Aligns with Current Licensing Processes

The Board of Chiropractic Examiners (Agency) issues both new and renewal licenses for the practice of chiropractic to qualified applicants as required by statute and the Agency’s administrative rules. The Agency also verifies license holders’ continuing education hours as required by Texas Occupations Code, Section 201.356 (see text box for details).

However, the Agency did not follow its requirements for processing new license applicants with prior convictions; did not always retain eligibility documentation; and did not update its online license renewal applications.

Summary of Agency Activity

Between September 1, 2018, through January 31, 2020, the Agency:

- Issued 458 new licenses (see Chapter 2-A).
- Issued 3,113 renewal licenses (see Chapter 2-B).
- Conducted 398 continuing education audits (see Chapter 2-C).

Source: The Agency.

Chapter 1-A

The Agency Has Adequate Controls to Ensure That It Issues Licenses Only to Eligible Applicants; However, It Does Not Consistently Retain Documentation of Certain Eligibility Reviews

**Chapter 1-A
Rating:
Medium ¹**

The Agency has developed sufficient processes for issuing chiropractic licenses to qualified applicants as required by statute. Specifically, for each of the 64 license application files tested for new licenses the Agency issued from September 1, 2018, through January 31, 2020, the Agency retained:

- All required documentation received from the applicant, including a completed and signed new license application form.
- A completed and signed new application checklist.
- Proof of payment of applicable new application license fees.

¹ The risk related to the issues discussed in Chapter 1-A is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

The Agency also entered accurate licensing information into its Licensing and Enforcement management system, FileMaker Pro, for all 64 files tested.

However, the Agency should strengthen its processes to ensure that it follows its rules for processing applications for applicants with prior criminal convictions established in Title 22, Texas Administrative Code, Section 72.18(i). Specifically, for 8 (12.5 percent) of 64 new license applications tested, the applicants had prior criminal convictions. According to 22 TAC 72.18(i), the Agency's executive director was required to review those applications, obtain all required information from the applicants, and refer the applications to the Agency's governing board's Licensure/Educational Standards Committee (LESC). The LESL would then have determined whether the applicant may sit for the jurisprudence examination or be granted a license.

Instead, for all eight applicants with prior criminal convictions tested, the Agency's staff, rather than the LESL, reviewed the applications and determined whether each applicant could sit for the jurisprudence examination or be granted a license. Additionally, the Agency staff did not retain documentation of their reviews and the rationales for their decisions. Retaining eligibility and conviction documentation for the new license applications helps ensure that applications are fully reviewed and that the Agency grants licenses only to applicants who meet requirements to practice chiropractic in the state.

In addition, two of those eight applicants omitted prior criminal convictions on their new license applications. The Agency became aware of the criminal convictions while processing the applications. However, for one of those applications, the Agency did not ask the applicant to provide additional information about the criminal convictions as required by Title 22, Texas Administrative Code, Section 72.18(g).

Recommendations

The Agency should:

- Comply with Title 22, Texas Administrative Code, Section 72.18(i), by referring applicants with prior criminal convictions to the Licensure/Educational Standards Committee, or update the Texas Administrative Code to be consistent with the Agency's process.
- Retain all documentation required to support eligibility for the chiropractic licenses issued.

- Comply with Title 22, Texas Administrative Code, Section 72.18(g), by requesting criminal conviction information from applicants prior to processing applications.

Management's Response

1. *Management agrees with this recommendation. The Board is in the process of revising 22 TAC §72.18 to remove the out-of-date language requiring the Licensure Committee to review all applicants with prior criminal convictions. The Board is scheduled to vote to adopt a new §72.18 at its August 20, 2020, meeting; if adopted, the new §72.18 will be filed with the Secretary of State by our General Counsel and effective approximately September 15, 2020. Under the new §72.18, the Board delegates authority to review minor criminal convictions to the executive director and eliminates the Licensure Committee's involvement in the process.*
2. *Management agrees with and has implemented this recommendation. The agency will retain all necessary criminal conviction information received from an applicant.*
3. *Management agrees with and has implemented this recommendation. The agency will ensure all criminal conviction information is received from an applicant before final processing of an application.*

The Agency Has Established an Adequate License Renewal Process; However, It Should Strengthen Document Retention and Update Its Online License Renewal Application

**Chapter 1-B
Rating:
Medium ²**

The Agency has established an adequate process for renewing chiropractors' licenses in accordance with statute and rules. Specifically, the Agency sent renewal notifications in a timely manner, verified submission of required renewal application forms, and assessed applicable renewal fees.

For all 60 license renewal applications tested, the Agency:

- Sent written notice of the impending license expiration to the applicant at least 30 days before the expiration, as required by Texas Occupations Code, Section 201.354.
- Ensured that the applicants applied for renewal in the form prescribed by the Agency.
- Ensured that all license holders paid the required renewal fees, including any applicable late fees.

However, the Agency did not ensure that all license holders had completed the fingerprinting requirement prior to renewal. For 9 (15 percent) of 60 renewals tested, the applicant did not submit a complete and legible set of fingerprints as required by Texas Occupations Code, Section 201.3545. Without fingerprints, the Agency cannot obtain the required criminal history checks. Not performing criminal history checks on applicants increases the risk that the Agency would renew licenses to chiropractors with criminal convictions directly related to their duties and responsibilities.

Also, the Agency did not retain documentation for 9 (15 percent) of 60 license renewals showing that it searched a national practitioner database to determine whether another state has taken any disciplinary action against a license holder. Texas Occupations Code, Section 201.314, requires this search to occur prior to processing the renewals. Auditors verified that three of those nine license holders were also licensed in other states.

In addition, the Agency did not require applicants to verify compliance with requirements for continuing education. Of 60 license renewals tested, 56 were renewals of active licenses for which continuing education is required. For 4 (7 percent) of those 56 renewals of active licenses, the applicants did not verify on the application whether they met the continuing education

² The risk related to the issues discussed in Chapter 1-B is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

requirement. Although those four applications were not complete, the Agency renewed the applicants' licenses. Not requiring license renewal applicants to verify continuing education may increase the risk that license holders will not maintain professional proficiency.

The Agency's online application also contains an incorrect Texas Administrative Code citation for continuing education verification requirements. Specifically, the application cites Title 22, Texas Administrative Code, Section 75.5, instead of correctly citing Title 22, Texas Administrative Code, Section 73.1, which was effective February 21, 2019. Having an incorrect citation in the application may result in an applicant not being aware of the continuing education requirements for licensees.

Recommendations

The Agency should:

- Ensure that all license renewal applicants submit a complete and legible set of fingerprints prior to renewing the license as required by the Texas Occupations Code, Section 201.3545.
- Collect and retain documentation showing that it searched a national practitioner database as required by the Texas Occupations Code, Section 201.314.
- Update its online license renewal application to:
 - ♦ Make the continuing education verification question mandatory and require that all applicable license renewal applicants verify the continuing education requirement on their applications as required by Title 22, Texas Administrative Code, Section 72.14.
 - ♦ Include the correct Texas Administrative Code citation for continuing education requirements for licensees.

Management's Response

1. *Management agrees with this recommendation and the process has been fully implemented.*
2. *Management agrees with and has implemented this recommendation. The agency licensing staff will collect and retain appropriate documentation showing that it searched a national practitioner database pursuant to Texas Occupations Code §201.314.*

3(a). Management agrees with this recommendation. Where applicable, a licensee that is at the licensee's first renewal (1-11 months after the license is initially issued) is not required to meet continuing education requirements. Those continuing education hours are not due until the licensee's second renewal.

3(b). Management agrees with this recommendation. The Board revised 22 TAC §73.1 (Continuing Education Requirements for Licensees) effective on June 30, 2020; the agency's General Counsel and programming specialist will change the cites to the rule on the online application form and all applicable forms by October 1, 2020.

Chapter 1-C

The Agency Has Established Adequate Continuing Education Audit Sampling Processes

**Chapter 1-C
Rating:
Low³**

The Agency has established a process to verify license holders' completion of continuing education hours as required by Texas Occupations Code, Section 201.356. Specifically, for all 33 renewals tested, the Agency appropriately notified the license holders of the continuing education audit, requested written continuing education verification, and took appropriate action if the license holders did not meet the requirements.

Texas Occupations Code, Section 201.356, requires the Agency to (1) assess the continuing education needs of license holders; (2) adopt requirements for mandatory continuing education for license holders in subjects relating to the practice of chiropractic; (3) establish a minimum number of hours of continuing education required to renew a license; (4) adopt a procedure to assess a license holder's participation and performance in continuing education programs; and (5) identify key factors for the competent performance by a license holder of the license holder's professional duties.

³ The risk related to the issues discussed in Chapter 1-C is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

To help ensure that licensed chiropractic examiners acquire the required continuing education, the Agency performs continuing education audits on a sample of 10 percent of the license renewal applications received each month. From September 1, 2018, through January 31, 2020, the Agency conducted 398 continuing education audits. For all 33 continuing education audits tested, the Agency:

- Notified the license holders of the audit requirements and instructions on completing the audit form.
- Verified whether the continuing education information on the form complied with the requirements.
- Took appropriate action if the continuing education requirements were not met, by changing the license status to continuing education conditional (see text box for more information about license status).

License Status

Licenses are required to complete a minimum number of continuing education hours per year. If a licensee does not meet the number of hours specified by the Agency, his or her license is put into "CE [Continuing Education] Conditional" status.

Licenses can remain in conditional status not to exceed one year. If at the end of one year the licensee has not completed the required continuing education, his or her license is put into non-renewable status, or expired status if the license expiration date has passed.

Licenses in CE conditional status are permitted to continue practicing; however, after a license is put into non-renewable or expired status, the licensee is ineligible to practice in the State of Texas.

Source: The Agency.

While the Agency Had Processes in Place for Its Enforcement Functions, It Should Establish Schedules for Complaint Disposition to Ensure Consistent Compliance with Applicable Requirements

**Chapter 2
Rating:
Medium ⁴**

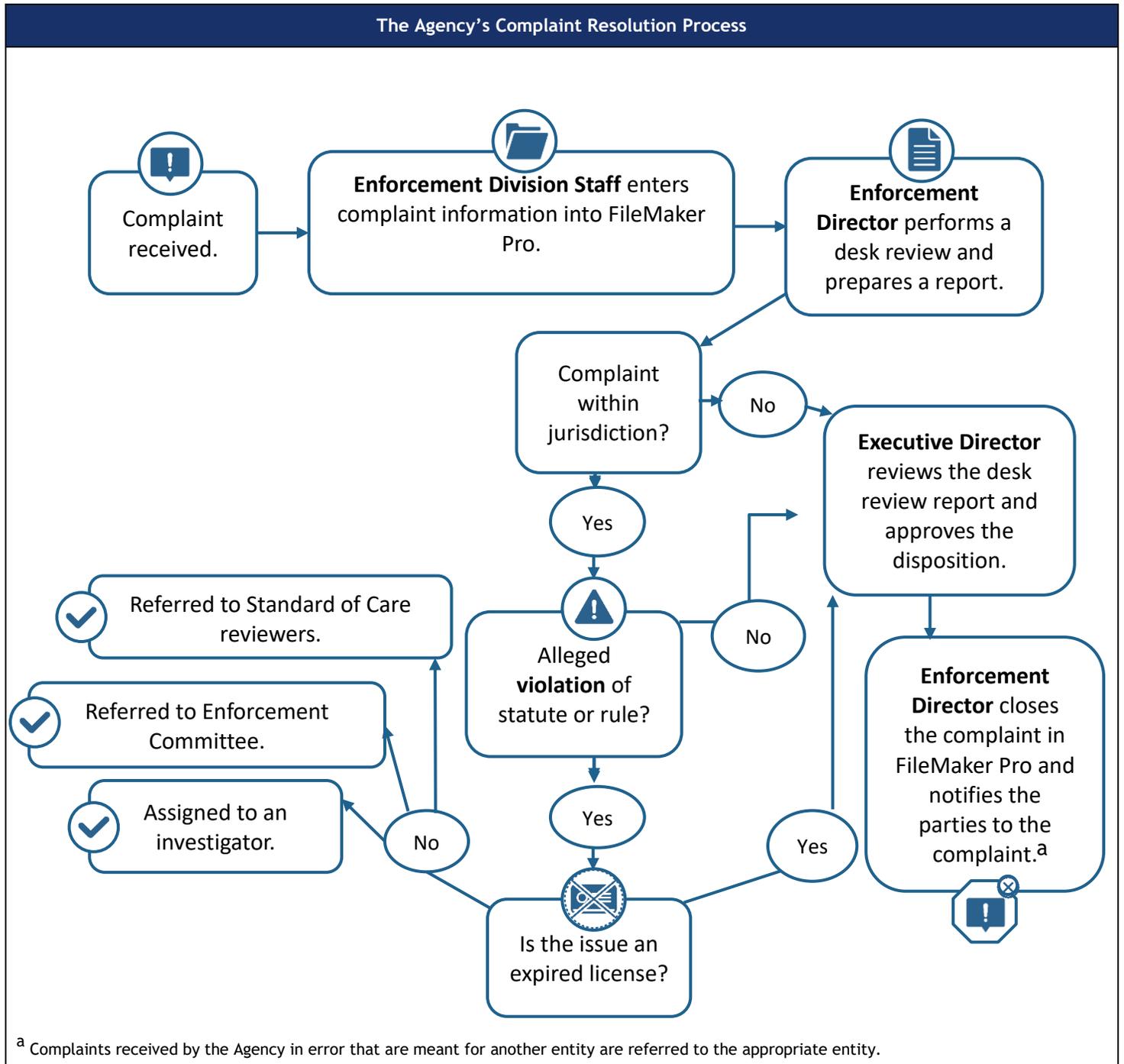
The Agency had adequate processes and controls for conducting its enforcement functions in accordance with most of the applicable requirements. Specifically, the Agency ensured that it (1) accurately entered all required information about complaints into its Licensing and Enforcement management system, FileMaker Pro; (2) included all required documentation in each complaint file; (3) sent notifications of complaints in a timely manner; and (4) assessed applicable penalties.

However, the Agency should strengthen its controls by establishing schedules for the disposition of each complaint not closed within 30 days to ensure compliance with applicable statutes and requirements.

Figure 1 on the next page outlines the complaint resolution process.

⁴ The risk related to the issues discussed in Chapter 2 is rated as Medium because they present risks or results that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

Figure 1



Source: Based on information provided by the Agency.

Open Complaints

The Agency has processes and controls for its open complaints process. For 33 open complaints tested, 26 were generated by the public. For those 26 open complaints, the Agency:

- Accepted only complaints that were in written format as required by Title 22, Texas Administrative Code, Section 80.2.
- Sent notices to the parties to the complaints within the required timeframe and included information within the notices as required by Title 22, Texas Administrative Code, Section 80.1(e).
- Accepted only complaints that were not anonymous as required by Texas Occupations Code, Section 201.2065.

Additionally, for all 33 open complaints tested the Agency accurately entered the information from the complaint form into the Licensing and Enforcement management system, FileMaker Pro.

Closed Complaints

The Agency had adequate processes and controls in place over its enforcement functions to ensure that it investigated and closed complaints in compliance with requirements. Specifically, for all 44 closed complaint files tested, the Agency:

- Ensured that each complaint file included all necessary documentation supporting the disposition of the complaint (see text box for a list of complaint documentation).
- Referenced the rule allegedly violated on the investigator report or the first letter to the respondent, depending on the type of violation.
- Closed the complaints with correct dispositions, based on the documents reviewed.
- Accurately entered the information from the complaint form into the Licensing and Enforcement management system, FileMaker Pro.
- Assessed applicable penalties appropriately.

Closed Complaint Documentation

A closed complaint file may include:

- Complaint form.
- Notices sent to the parties of the complaint.
- Desk review report.
- Investigative report.
- Standard of Care reviewer report (as needed).
- Enforcement Committee report/recommendations.
- Correspondence.
- Evidence.
- Sanctions and penalty assessment.
- Board Order.
- Agreed Order.
- Other legal documents.

Source: The Agency.

Additionally, 13 of those 44 complaints required that the respondent of the complaint be notified. For all 13 of those complaints, the Agency sent a notice of complaint that included all required information to the respondent. The Agency took more than 30 days to close 36 of the 44 closed complaints tested. For each complaint, Texas Occupations Code, Section 201.205, requires the Agency to: (1) dispose of a complaint in a timely manner; (2) establish a schedule for conducting each phase of the complaint process not later than 30 days after the Agency receives the complaint; and (3) notify the parties to the complaint of the projected time requirements for pursuing the complaint or any changes in the schedule. However, the Agency did not develop schedules for any of the 36 complaints it closed after 30 days; this included 27 of the 35 complaints that were closed at the executive director level (see below for more information about those complaints).

Complaints Closed by the Executive Director

Complaints closed at the executive director level are usually less complex and may be resolved in less time than complaints referred to the Agency's governing board's Enforcement Committee⁵ or external Standard of Care reviewers, which are complex and require multiple levels of review (see text box for more information).

All 35 complaints tested that were closed at the executive director level were appropriately reviewed, approved, and signed by the executive director. The Agency took from 1 day to 257 days to review and close those 35 complaints (see Table 2 on the next page).

The Agency had not established timeliness expectations for complaints closed by the executive director. While there are reasons that some less-complex complaints may take longer to resolve, setting completion goals for certain types of complaints will enable the Agency to measure its performance in closing complaints in a timely manner as required by the Texas Occupations Code.

Types of Complaints Closed by the Executive Director

Types of complaints closed at the executive director level included the following:

- Complaints that the Agency determined did not involve violations of statutes or rules.
- Complaints that are outside the Agency's jurisdiction.^a
- Complaints that are referred to another state agency.
- Complaints related to practicing with an expired license or without a license.
- Complaints that lack sufficient information to pursue.

^a The Agency has authority to resolve complaints that (1) are against a person who is licensed by the Agency (or a person who is practicing chiropractic activity without a license) and (2) contain alleged violations listed in Texas Occupations Code, Chapter 201, or Title 22, Texas Administrative Code, Chapters 71 to 82.

Source: The Agency.

⁵ The Enforcement Committee is a standing committee of the Agency's Board of Directors that reviews complaints referred to it by the Agency or appealed to the committee by chiropractors.

Table 2

Type of Disposition	Number of Complaints	Range in Days to Resolve (Open)
No Violation	12	33 days to 112 days
Expired License	12	1 day to 257 days
Non-Jurisdictional ^a	8	5 days to 229 days
Insufficient Information	2	6 days to 88 days
Practicing without a License	1	13 days

^a Non-jurisdictional category also includes complaints referred to other state agencies.

Source: The Agency.

Recommendations

The Agency should:

- Comply with Texas Occupations Code, Section 201.205, by establishing schedules for each complaint with the timeline for each phase of the complaint and notifying the parties to the complaint of the schedule.
- Establish expectations for timelines for complaints that are closed by the executive director.

Management's Response

1. *Management agrees with this recommendation. The agency attempts to comply with Texas Occupations Code §201.205 within the constraints of a lack of personnel and an antiquated database that requires manual scheduling. The agency is in the process of procuring a new database that will assist in scheduling. The agency will continue to update complainants and respondents on the status of complaints. The new database, under the direction of IT staff, should be implemented by the end of the 3rd Qtr of FY2021.*
2. *Management agrees with this recommendation. The Board voted to propose the repeal and replacement of 22 TAC §80.2 (Complaint Procedures) at its May 2020 meeting. The Board is scheduled to vote to adopt the new rule at its August 20, 2020 meeting. If adopted, the new §80.2 will be filed with the Secretary of State by the General Counsel and become effective on approximately September 15, 2020. Under new §80.2(e), the Executive Director is given authority to dismiss certain complaints for lack of jurisdiction or evidence. The Board shall establish*

a policy under the direction of the Executive Director and General Counsel by the end of October 2020 that the executive director shall dismiss a complaint within 7 days after it is determined the complaint falls under the criteria of §80.2(e).

The Agency's Internal Policies and Procedures and Texas Administrative Code Did Not Match Its Current Enforcement Processes

**Chapter 3
Rating:
Medium ⁶**

The Agency's documented policies and procedures did not align with its enforcement processes. In addition, some sections of the Texas Administrative Code (TAC) related to the Agency did not align with the Agency's processes. Other sections of TAC related to the Agency either did not address requirements in or were in conflict with the Texas Occupations Code.

Internal Policies and Procedures

The Agency did not update its documentation of internal policies and procedures to align with the Agency's current enforcement processes. The Agency asserted that its documented internal policies and procedures were last updated in 2015 and that enforcement processes had changed since then. Specifically, the Agency's documented internal policies and procedures still referred to:

- Executives who were no longer with the Agency.
- An email notification system that was no longer used by the Agency.
- A section of the TAC that is incorrect.

Not reviewing and updating internal policies and procedures regularly increases the risks that staff will not receive accurate guidance, that staff will not make decisions based on consistent criteria, and that the Agency's processes will not comply with statutory requirements.

Texas Administrative Code

The Agency did not update sections of its TAC to ensure that they matched its current processes and addressed requirements in Texas Occupations Code, Section 201.156(c). The Agency did not review and update its sections of TAC at least annually as required by Texas Government Code, Section 2002.051(b). Specifically, sections of TAC related to the Agency:

- Referred to sections of the TAC that were no longer in effect or that did not apply.
- Referred to sections of the TAC that were incorrect.

⁶ The risk related to the issues discussed in Chapter 3 is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

- Did not include procedures on retention and expunction of files on license holders, including complaints, adverse reports, and other investigative information, as required by Texas Occupations Code, Section 201.156(c). Not including procedures on retention and expunction of files on license holders may lead to inconsistent inclusion of information in license holders' files.

Texas Occupations Code

Effective June 2019, Texas Occupations Code, Section 56.003, prohibits a licensing authority from taking disciplinary action against a person based on the person's default on a student loan or breach of student loan repayment contract or scholarship contract by (1) suspending the person's license; or (2) taking disciplinary action against the person. However, certain sections of the TAC related to the Agency's treatment of license applicants who have defaulted on their student loans conflict with the Texas Occupations Code. Specifically:

- Title 22, TAC, Section 72.14(c), states that the Agency shall not renew a license of a licensee who is in default of a student loan or repayment agreement.
- Title 22, TAC, Section 80.8, allows the Agency to take disciplinary action against a licensee who has defaulted on a student loan, student repayment contract, or a scholarship contract.

Although the Agency has initiated the process to repeal or replace the TAC sections discussed above, timely updating of the TAC is important because the Agency, the public, and chiropractors rely on those rules to help ensure that chiropractors are properly licensed to practice. Under Agency administrative rules as of July 2020, an applicant could be denied a license renewal or face disciplinary action due to defaulting on a student loan, which is prohibited by the Texas Occupations Code. Not updating the TAC in a timely manner creates a risk that a license could be improperly denied or disciplinary action improperly imposed.

Recommendation

The Agency should review and update its Texas Administrative Code regularly to (1) reflect the Agency's current licensing and enforcement processes and (2) ensure consistency with the Texas Occupations Code.

Management's Response

Management agrees with this recommendation. Beginning in mid-2018, the Board began a much-needed rewrite and revision of all its rules. When the law changed after the 2019 legislative session to prohibit disciplinary actions based on the default of student loans (thus making the Board's rules on the subject void), agency staff were instructed not to process any complaints based on those rules. Because the agency was not enforcing a void rule, the needed rule changes were given a lower priority to those rules more directly affecting licensees.

The Board has almost completed its rule revision project, including invalid references to student loan defaults. The Board repealed references to student loan default in 22 TAC §72.3 (Qualifications) effective June 30, 2020. The Board voted to propose the repeal and replacement of §72.14 (License Renewal) and to propose the repeal of §80.8 (Default on Student Loans) at its May 2020 meeting. If adopted at the August 20, 2020 meeting, those two revisions to the Board's rules will be filed with the Secretary of State by the General Counsel and become effective approximately September 15, 2020, which will eliminate all references to student loan defaults.

The Agency Had Adequate Access Controls Over Its Network and Information System; However, It Should Strengthen Its Controls Over Confidential Data and Other General Information Technology Controls

The Agency had adequate access controls over its network and information systems. However, auditors identified weaknesses in the Agency's controls to protect confidential data and other general controls related to data availability.

Chapter 4-A

The Agency Had Adequate Access Controls Over Its Network and Information System

**Chapter 4-A
Rating:**

Low⁷

The Agency relies in part on the Health Professions Council (see text box) for certain information technology functions, including setting up network access and establishing certain policies and procedures. While the Health Professions Council set up access and developed policies and procedures, the Agency ensured that access was appropriately granted and the policies and procedures were properly implemented. Specifically:

Health Professions Council

The Health Professions Council is a state agency that helps to coordinate activities between the varying Texas medical regulatory agencies.

For the Agency, the Health Professions Council provides information technology support, including network and software support, as well as providing information technology policies and procedures.

Source: Health Professions Council.

- **Network Access.** The Agency appropriately assigned and restricted network access to its current employees. Additionally, it implemented adequate password and network lockout settings.
- **FileMaker Pro Access.** The Agency assigned an appropriate level of access to its Licensing and Enforcement management system, FileMaker Pro, and ensured that Agency employees were assigned edit access and permissions appropriate to their job duties.
- **USAS Access.** The Agency assigned appropriate access to the Uniform Statewide Accounting System (USAS). The users were current employees and their access was appropriate for their job duties.

⁷ The risk related to the issues discussed in Chapter 4-A is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

- **Policies and Procedures.** The Agency has adopted policies and procedures provided by the Health Professions Council regarding passwords and data classification as required by Texas Administrative Code Title 1, Chapter 202.

Chapter 4-B

The Agency Should Strengthen Its Controls Over Confidential Data and Certain General Controls Over Information Technology

**Chapter 4-B
Rating:
Priority⁸**

Auditors identified weaknesses in the Agency’s controls to protect confidential data and other general controls related to data availability. To minimize security risks, auditors communicated details about the identified weaknesses separately to the Agency’s management in writing.

Pursuant to Standard 9.61 of the U.S. Government Accountability Office’s *Generally Accepted Government Auditing Standards*, certain information was omitted from this report because that information was deemed to present potential risks related to public safety, security, or the disclosure of private or confidential data. Under the provisions of Texas Government Code, Section 552.139, the omitted information is also exempt from the requirements of the Texas Public Information Act.

⁸ The risk related to the issues discussed in Chapter 4-B is rated as Priority because they present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Board of Chiropractic Examiners (Agency) has processes and related controls to help ensure that it conducts licensing and enforcement functions in accordance with applicable requirements.

Scope

The scope of this audit covered licensing and enforcement activities processed by the Agency from September 1, 2018, through January 31, 2020. Licensing activities included new and renewed applications for a chiropractic license and continuing education verification audits. Enforcement activities included both open and closed complaints. The scope also included a review of significant internal control components related to the Agency's licensing and enforcement functions (see Appendix 3 for more information about internal control components).

Methodology

The audit methodology included conducting interviews with Agency management and staff; reviewing statutes, rules, and Agency policies and procedures; collecting information and documentation on licensing, enforcement, and complaint processes; analyzing data on licensing, renewals, and enforcement; and performing selected tests and procedures on the information obtained.

Data Reliability and Completeness

To test the Agency's processes, auditors used data from the Agency's Licensing and Enforcement management system, FileMaker Pro, related to the issuance of chiropractic licenses and to complaints and enforcement actions from September 1, 2018, through January 31, 2020. Auditors (1) observed Agency staff extract the data sets, (2) performed data analyses, and (3) reviewed the query parameters used to extract the data.

Auditors determined that the licensing and complaint and enforcement data was sufficiently reliable for the purposes of this audit.

Sampling Methodology

Auditors selected nonstatistical samples of new licenses issued, licenses renewed, continuing education verification audits, open complaints, and closed complaints. Specifically:

- To test the Agency's process for issuing new chiropractic licenses (population of 458 new licenses issued from September 1, 2018, through January 31, 2020), auditors selected a nonstatistical sample of 60 licenses primarily through random selection. Auditors selected an additional 4 licenses for testing based on risk. This sampling design was chosen to ensure the sample would address specific risk factors identified in the population. The test results as reported do not identify which items were randomly selected or selected using professional judgment.
- To test the Agency's process for renewing chiropractic licenses, auditors selected a nonstatistical, random sample of 60 licenses from a population of 3,113 license renewals processed from September 1, 2018, through January 31, 2020.
- To test the Agency's process for assessing license holders' participation and performance in required continuing education, auditors selected:
 - ♦ A nonstatistical, random sample of 25 verification audits from a population of 360 continuing education verification audits the Agency conducted from September 1, 2018, through December 31, 2019.
 - ♦ A nonstatistical, random sample of 8 verification audits from a population of 38 continuing education verification audits the Agency conducted from January 1, 2020, through January 31, 2020.
- To test the Agency's complaint/enforcement process, auditors selected a nonstatistical, random sample of (1) 33 cases from a population of 164 open complaint/enforcement cases and (2) 44 cases from a population of 219 cases the Agency closed from September 1, 2018, through January 31, 2020.

Those sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- Statutes and rules relevant to the licensing and enforcement activities.
- Licensing and enforcement data from the Licensing and Enforcement management system, FileMaker Pro.
- Initial and renewal licensing applications, new application checklist, transcripts, jurisprudence examination results, and other documentation to support applicants' eligibility.
- The Agency's tracking spreadsheet for continuing education verification audits, audit forms, and course rosters.
- Supporting documentation for complaints/enforcement testing, such as complaint forms, investigative reports, and notice of alleged violations.
- User account data for the Agency's Licensing and Enforcement management system, FileMaker Pro; the Agency's staff's user account for the Uniform Statewide Accounting System (USAS); and Google's cloud-based file sharing and storage system, GSuite.

Procedures and tests conducted included the following:

- Interviewed Agency management and staff.
- Analyzed and tested initial and renewal licensing applications for compliance with eligibility requirements.
- Analyzed and tested complaint/enforcement data for compliance with applicable statutes, rules, and Agency policies.
- Tested continuing education verification audits for compliance with continuing education requirements.
- Tested user access for the Agency's network; the USAS; the Licensing and Enforcement management system, FileMaker Pro; and GSuite to determine whether that access was assigned appropriately.
- Tested certain processes related to protecting confidential information.

Criteria used included the following:

- Texas Occupations Code, Chapter 201.
- Title 22, Texas Administrative Code, Chapters 72, 73, and 80.
- The Agency's policies and procedures.
- Texas Government Code, Chapter 2002.
- Title 1, Texas Administrative Code, Chapter 202.

Project Information

Audit fieldwork was conducted from December 2019 through June 2020. 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 objective.

The following members of the State Auditor's staff performed the audit:

- Namita Pai, CPA, (Project Manager)
- Jennifer Grant, MPA (Assistant Project Manager)
- Shaun Alvis, JD
- Chase Dierschke, MAcy, CIA
- Matthew J. Montgomery
- Jessica Whittenton
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- James Timberlake, CIA, CFE (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgment and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 3 provides a description of the issue ratings presented in this report.

Table 3

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Internal Control Components

Internal control is a process used by management to help an entity achieve its objectives. Government Auditing Standards require auditors to assess internal control when internal control is significant to the audit objectives. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) established a framework for five integrated components and seventeen principles of internal control, which are listed in Table 4.

Table 4

Internal Control Components and Principles		
Component	Component Description	Principles
Control Environment	The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.	<ul style="list-style-type: none"> ▪ The organization demonstrates a commitment to integrity and ethical values. ▪ The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control. ▪ Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives. ▪ The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives. ▪ The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.
Risk Assessment	Risk assessment is the entity's identification and analysis of risks relevant to achievement of its objectives, forming a basis for determining how the risks should be managed.	<ul style="list-style-type: none"> ▪ The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives. ▪ The organization identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed. ▪ The organization considers the potential for fraud in assessing risks to the achievement of objectives. ▪ The organization identifies and assesses changes that could significantly impact the system of internal control.
Control Activities	Control activities are the policies and procedures that help ensure that management's directives are carried out.	<ul style="list-style-type: none"> ▪ The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels. ▪ The organization selects and develops general control activities over technology to support the achievement of objectives. ▪ The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.
Information and Communication	Information and communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.	<ul style="list-style-type: none"> ▪ The organization obtains or generates and uses relevant, quality information to support the functioning of internal control. ▪ The organization internally communicates information, including objectives and responsibilities

Internal Control Components and Principles		
Component	Component Description	Principles
		<p>for internal control, necessary to support the functioning of internal control.</p> <ul style="list-style-type: none"> ▪ The organization communicates with external parties regarding matters affecting the functioning of internal control.
Monitoring Activities	Monitoring is a process that assesses the quality of internal control performance over time.	<ul style="list-style-type: none"> ▪ The organization selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning. ▪ The organization evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the board of directors, as appropriate.

Source: Internal Control - Integrated Framework, Committee of Sponsoring Organizations of the Treadway Commission, May 2013.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair
The Honorable Dennis Bonnen, Speaker of the House, Joint Chair
The Honorable Jane Nelson, Senate Finance Committee
The Honorable Robert Nichols, Member, Texas Senate
The Honorable Giovanni Capriglione, House Appropriations Committee
The Honorable Dustin Burrows, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Board of Chiropractic Examiners

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