

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



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September 22, 2008

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Veterinary Examiners. The attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF VETERINARY EXAMINERS

September 22, 2008

Audit Control Number
08-20059-08

This review examines the activities of the Board of Veterinary Examiners to determine if there is a demonstrated public need for its continued existence. Under AS 08.03.010(c)(21), the Board of Veterinary Examiners is currently scheduled to terminate June 30, 2009. We recommend the legislature extended the board's termination date to June 30, 2017.

The audit was conducted in accordance with generally accepted government audit standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

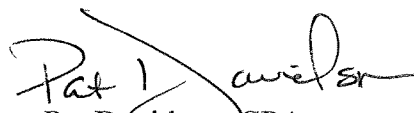

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Veterinary Examiners (BVE or board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BVE shall be continued. Currently, AS 08.03.010(c)(21) states that the board will terminate on June 30, 2009. If the legislature does not extend the termination date for the board, BVE will have one year to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended
2. To determine if the board is operating in the public's interest
3. To determine if the board has exercised appropriate regulatory oversight of licensed veterinarians and veterinary technicians.

Scope

The assessment of operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities for FY 05 through FY 08.

Methodology

The major areas of our review were board proceedings, licensing, and complaint investigation. During the course of our audit we:

- Reviewed and evaluated applicable statutes and regulations related to the licensing of veterinarians and veterinarian technicians.
- Reviewed the minutes of BVE meetings.
- Reviewed the annual reports issued by the board.
- Analyzed the complaints filed with the Department of Commerce, Community and Economic Development's Office of Consumer Affairs and Investigations in order to evaluate the investigative support being provided to BVE.

- Requested information regarding any complaints regarding the BVE from the Department of Administration's Division of Personnel, the Equal Employment Opportunity Commission, the Human Rights Commission, The Office of Victim's Rights, and the State Ombudsman.
- Analyzed the financial records related to the revenues generated and the operating costs incurred by BVE to determine if sufficient revenues are being collected to cover the board's costs.
- Tested files related to applicants for, and holders of, licenses issued by BVE.
- Conducted interviews with employees of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business, and Professional Licensing and the BVE chair and its members.
- Attended a BVE board meeting.

ORGANIZATION AND FUNCTION

The Board of Veterinary Examiners (BVE or board) was established for the purpose of controlling and regulating the practice of veterinary medicine in Alaska.

The board regulates the profession of veterinary care in the State by examining applicants and approving the issuance of licenses to qualified applicants, establishing or amending regulations necessary to enforce state statutes, and conducting disciplinary proceedings in accordance with law.

Applicants for a veterinary license are required to pass the North American Veterinary Licensing Examination and a state written exam which covers specific Alaskan issues of veterinary practice.

BVE is made up of five members. State law requires four board positions be filled by licensed veterinarians that have been engaged in the practice of veterinary medicine in the State for at least five years prior to appointment. The remaining position is to be filled by an individual from the general public.

The Department of Commerce, Community, and Economic Development, Division of Corporations, Business, and Professional Licensing provides administrative and investigative assistance to the Board of Veterinary Examiners. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates that the department shall adopt regulations that establish the amount and manner of payment of applications fees, examination fees, registration fees, permit fees, and investigative fees.

Exhibit 1

Board of Veterinary
Examiners
(As of June 30, 2008)

Professional Members

Steve Torrence, DVM, Chair
Timothy Bowser, DVM
David Hunt, DVM
Vacant

Public Member

Martin Buser

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REPORT CONCLUSIONS

Under AS 08.03.010(c)(21), the Board of Veterinary Examiners (BVE or board) will terminate on June 30, 2009. If the legislature does not take action to extend the board's termination date, AS 08.03.020 provides that the board will have one year in which to conclude its administrative operations.

The regulation and licensing of veterinarians and veterinary technicians benefits the public. BVE has demonstrated an ability to conduct its affairs in an efficient manner. The board continues to propose changes to regulations to improve the effectiveness of the board and ensure that veterinarians and veterinarian technicians licensed in the State of Alaska are competent and capable of maintaining the integrity of the profession.

In our opinion, the termination date of Board of Veterinary Examiners should be extended to June 30, 2017.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing, in conjunction with the Board of Veterinary Examiners, should review licensing fees as provided by statute and consider decreasing fees.

The Board of Veterinary Examiners (BVE or board) has had a significant cumulative surplus of revenues at the end of the last four fiscal years. Additionally, the Division of Corporations, Business and Professional Licensing has not reviewed BVE licensing rates since 2004. At the end of FY 08, the board had an estimated operating surplus of \$78,000. This surplus exceeds the Board's total operating expenses for each of the prior three years (FY 05 – FY 07).

AS 08.01.065(c) states that:

...the department shall establish fee levels under (a) of this section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. The department shall annually review each fee level to determine whether the regulatory costs of each occupation are approximately equal to fee collections related to that occupation.

The division was unable to provide an explanation of the Board's need for the cumulative surplus of excess revenue from licensing fees. Without the required annual review of licensing fee levels, it is likely that BVE will continue to accumulate revenue in excess of its regulatory costs.

We recommend the division, in conjunction with the Board, review the licensing fees and regulatory expenditures as required by statute and determine whether a fee decrease is necessary to reduce BVE's current surplus.

Recommendation No. 2

The Office of the Governor should fill vacant seats on the Board of Veterinary Examiners in a timely manner.

As of August 31, 2008, one of the veterinarian seats on the board has been vacant since March 2008. A vacancy of even one member on a board of five presents an undue hardship to the remaining board members.

Alaska Statute 08.01.020 states that board members are appointed by the Governor and serve at the pleasure of the Governor. Alaska Statute 08.98.010 states that four members of the board shall be licensed veterinarians who have been in active practice in the state for at least five years preceding appointment and one shall be a public member.

Turnover in the Office of Boards and Commissions has negatively impacted the Governor's ability to make timely appointments to the Board of Veterinary Examiners.

With only four board members¹, the board is continually at risk of not having a quorum and if for any reason, two of the current board members are unable to attend a scheduled meeting or continue as a member, the board will not be able to carry out its responsibilities.

We recommend that the Office of Boards and Commissions, Office of the Governor, fill vacancies on the board in a timelier manner.

¹ Three of the current board members are practicing veterinarians and/or practicing veterinarian/business owners and the public member is a musher/business owner.

A NALYSIS OF PUBLIC NEE D

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). This analysis was not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The Board of Veterinary Examiners (BVE or board) has served the public through its examination and licensing of qualified applicants, by adopting regulations to carry out laws governing veterinary practice, and by making licensing decisions and taking disciplinary actions.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board receives its primary revenue from licensing and renewal fees. Renewals are conducted on a biennial basis creating a two-year cycle in board revenues. The board has proven to be cognizant of expenditures and works to reduce costs when possible.

The BVE licensing fee level has not been reviewed since 2004. Since then, BVE has had a cumulative surplus at the end of every fiscal year from FY 05 to FY 08, see Exhibit 2 on the next page. We recommend that the division review licensing rates and consider changes to fee levels to reduce this cumulative surplus in licensing income, see Recommendation No. 1.

Exhibit 2

**Board of Veterinary Examiners
Schedule of License Revenue and Expenditures
As of June 30, 2008
(Unaudited)**

	FY 05	FY 06	FY 07	FY 08
Total Revenues	<u>\$153,495</u>	<u>\$33,149</u>	<u>\$158,806</u>	<u>\$34,218</u>
Direct Expenditures				
Personal Services	31,688	26,773	26,550	26,009
Travel	6,153	8,605	10,885	10,582
Services	10,439	10,446	4,832	33,462 ²
Commodities	<u>8</u>	<u>54</u>	<u>8</u>	<u>0</u>
Total Direct Expenditures	<u>48,288</u>	<u>45,878</u>	<u>42,275</u>	<u>70,053</u>
Administrative Indirect Costs	<u>20,498</u>	<u>17,160</u>	<u>25,103</u>	<u>22,413</u>
Total Expenditures	<u>68,786</u>	<u>63,038</u>	<u>67,378</u>	<u>92,466</u>
Annual Revenues over (under) Expenditures	<u>84,709</u>	<u>(29,889)</u>	<u>91,428</u>	<u>(58,248)</u>
Beginning Cumulative Surplus (Deficit)	(10,000) ³	74,709	44,820	136,248
Ending Cumulative Surplus (Deficit)	<u>\$74,709</u>	<u>\$44,820</u>	<u>\$136,248</u>	<u>\$78,000</u>

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

From FY 05 – FY 08 the board developed proposed statutory changes and sought legislative sponsorship to introduce a bill. House Bill 297 was introduced, the board chairman testified in support of it, and the bill was signed into law on June 24, 2008 (Chapter 108 SLA 08). This law amended licensing statutes allowing veterinary students in their final year of graduate studies to return to the State to work under the supervision of an Alaska licensed veterinarian. Additionally, this law clarified statutes related to out of state veterinarians performing wildlife services and the use of out-of-state consulting services.

The board has also worked on improvements to the veterinarian regulations. Regulation changes involved:

² The increase in FY 08 Services account was primarily due to the large amount of legal fees incurred for interagency legal services.

³ The beginning cumulative deficit shown in FY 05 was obtained from Department of Commerce, Community, and Economic Development Board of Veterinary Examiners Sunset Review, Audit Control No. 08-20036-05.

- Reducing the passing score for the State’s jurisprudence exam⁴.
- Addressing time requirements for the division’s receipt of applications for the North American Veterinarian Licensing Examination.
- Assessing and restructuring fees for veterinary technician exams.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

Board meeting dates, times and locations are published both on the State’s Online Public Notice system and in the Anchorage Daily News. In addition, the board’s licensing examiner notifies all licensees and persons on the interested parties listing she maintains of upcoming board meetings. Board members also encourage their peers to attend. One board member attends the Alaska State Veterinary Medical Association meetings, at his own expense, and gives a BVE report.

Review of the State’s Online Public Notice system determined public notice was not given for the board’s May 17, 2007, meeting. This omission was caused by staff turnover in the division’s publications technician position.

Time was provided at every public meeting for public comment and board meetings are purposely rotated between Fairbanks, Anchorage, and Juneau to give interested parties every opportunity to attend.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Notice of proposed regulation changes are posted on the State’s Online Public Notice system and in the Anchorage Daily News. Proposed regulation changes are subjected to the State’s public notice practice. From FY 05 to FY 08 all regulation changes were public noticed.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims’ rights or the office of the ombudsman have been processed and resolved.

No complaints have been filed with the State Department of Administration’s Division of Personnel, the Equal Employment Opportunity Commission, the Human Rights Commission, the State Ombudsman, or the Office of Victim’s Rights.

⁴ The passing score was lowered from 95% to 90%. The jurisprudence exam tests a licensee’s understanding of Alaska statutes and regulations governing veterinary practice in Alaska. The exam is an open book test.

From the period of July 1, 2005 through June 19, 2008, 42 veterinarian/veterinarian technician investigation cases were open or opened with the Division of Corporations, Business and Professional Licensing's Office of Consumer Affairs and Investigations Section (OCAI).⁵ Cases involving continuing education enforcement are assigned to the division's Juneau Paralegal section but are also assigned a case number by OCAI.

Types of cases open or opened include:

- Violating Professional Ethics (1)
- Unlicensed Practice (9)
- Standard of Care (6)
- Prescriptive Practice (3)
- Negligence (9)
- Licensing Application Problems (3)
- Incompetence (2)
- Fraud/Misrepresentation (3)
- Drug Diversion (1)
- Continuing Education (5)

Of these 42 cases open or opened, 24 were closed in an average of four months time. The disposition of the 24 closed cases were: 12 cases were closed with no action taken; six cases were closed with some licensing action taken; five cases were closed after the investigator had issued an advisement letter; and the final case was closed when the licensee came into compliance with regulations.

Of the remaining 18 open cases, four were assigned to the Juneau Paralegal and involve continuing education issues and a longer time to close, eight cases involve the same individual and are related in nature⁶, and six cases remain open. These six cases have been open an average of seven months and have a priority level of 3 or lower⁷.

OCAI is effectively investigating complaints and taking disciplinary action when necessary. Additionally, we conclude that the board is operating efficiently by taking necessary enforcement actions and that these actions are both fair and objective.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Veterinary licensing requirements involve passing national and state examinations. The national examination is developed and graded nationally. The state examination is developed by the board and includes statutory and regulatory material specific to Alaska. This state exam is reviewed continually by the board for updates. In addition, the board and the

⁵ The Investigations Unit within the Department of Commerce, Community and Economic Development's Division of Corporations, Business and Professional Licensing was reorganized effective July 1, 2008 as the Office of Consumer Affairs and Investigations.

⁶ The Office of Consumer Affairs and Investigations is working to find this individual who may be currently out of state.

⁷ Priority levels are defined as:

Level 1 - Incident represents an immediate danger to public,

Level 2 - Incidents which by the severity of their nature dictate a high priority,

Level 3 - Incidents that are less serious in nature and do not appear to constitute immediate or severe public danger or serious damages,

Level 4 - Incidents involving failure to comply with statutes or regulations which are discovered through the course of proactive enforcement on the part of the Investigative Unit, but do not meet the criteria of priority 1 - 3. This type of enforcement can only occur when manpower and caseload allow.

Department of Commerce, Community, and Economic Development, Division of Corporations, Business, and Professional Licensing work together to ensure continuing education requirements are met and license renewals are issued only to qualified licensees.

The exhibit below summarizes new licenses and permits issued by the board from FY 05 to FY 08.

Exhibit 3					
New Licenses or Permits Issued (Exclusive of Renewals)	FY 05	FY 06	FY 07	FY 08	Current License Holders as of June 30, 2008
Veterinarians	18	17	13	18	296
Veterinary Technicians	20	12	11	17	130
Temporary Permits	7	4	3	8	-
Temporary Licenses	4	2	1	1	-
Courtesy Licenses	51	49	49	53	-

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that the board was not complying with state personnel practices, including affirmative action in qualifying applicants. Each time the board denied an applicant, the reason for this denial was based on requirements set out in licensing regulations. Applicants are informed in writing of the reason for their denial, their rights, and the process to contest or appeal.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The majority of current board members are in their second term of service. Board member experience and the efficiency of their licensing examiner have allowed the board to consistently meet their goals. We have not identified any statutory changes necessary for the board to better serve the interests of the public.

Regulatory Changes

In 2008 a controversy arose regarding a possible conflict between a statute and regulation. The controversy centered on whether or not the client confidentiality aspects of 12 AAC 68.100 would impede a veterinarian in reporting animal cruelty under AS 03.55.110 to animal control, the department, or a peace officer when the client may be the perpetrator.

Legislative Affairs' Division of Legal and Research Services addressed this controversy by opining:

...that there is not a recognized veterinarian-client testimonial privilege or other legal barriers in Alaska statute or regulation that currently serves to prevent a veterinarian from voluntarily reporting a suspected instance of animal cruelty.

To ensure there is no lingering confusion regarding this issue, on June 13, 2008 the board unanimously approved a motion to initiate a regulation project to amend regulation, 12 AAC 68.100, with the following subsection:

...(b) Any veterinarian licensed in this state who reports, in good faith and in the normal course of business, a suspected incident of animal cruelty, as described by law, to the proper authorities shall be immune from liability in any civil or criminal action brought against such veterinarian for report of such incident.

Other

As of August 31, 2008, one of the veterinarian seats on the board has been vacant since March 2008. Because the board is only five members, having a vacant seat on the board poses potential hardship, see Recommendation No. 2.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

The objectives adopted by the board are in line with its missions⁸. Major objectives the board has successfully met from FY 05 to FY 08 include:

- updating and distributing the Alaska Board of Veterinary Examiners Handbook annually;
- reviewing and evaluating current statutes and legislative proposals and developing new proposals as needed;
- continuing to license veterinarians and veterinarian technicians and monitoring continuing education hours; and
- continuing to review and evaluate current regulations and develop new regulations as needed.

⁸ The mission of the board is:

To protect the health, safety, and welfare of Alaskans by ensuring that veterinarian practitioners possess and maintain a level of skill and knowledge necessary to provide safe, competent professional veterinary services to consumers and to protect the public from veterinary practitioners who pose a risk to the public's health, safety, and welfare.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

BVE does not duplicate the activities of another governmental agency or private sector organizations; however BVE collaborates with various state and local agencies/programs.

Within the Department of Environmental Conservation, Division of Environmental Health there is the State Veterinarian program. The relationship between this program and BVE board is one of collaboration rather than duplication. An example of this collaboration is the State Veterinarian providing the board with information for use in its handbook regarding reportable diseases, import/export and shipping regulations, and health certificate information.

We found that membership in the American Veterinary Medical Association (AVMA) is optional for veterinarians. Although most Alaska veterinarians are members of this association, AVMA does not regulate, investigate, or take disciplinary actions against its members. The State's version of the AVMA is the Alaska Veterinary Medical Association (AKVMA). The AKVMA seeks to promote excellence and professionalism of Alaska veterinarians and advance the health and well being of animals. Membership in AKVMA is voluntary and their efforts do not duplicate those of the board.

BVE is a member of the American Association of Veterinary State Boards (AAVSB). Among other duties, AAVSB is the single entity that reports national licensing examination scores to state boards and maintains a national clearinghouse for the approval of continuing education providers. The association with AAVSB merely is complimenting rather than duplicating BVE's efforts.

Lastly, we explored BVE's affiliation with the National Board of Veterinary Medical Examiners (NBVME). NBVME is organized and operated for the purpose of providing standard examinations that may be used by states as part of their licensure procedures for veterinarians. Again, this affiliation is complimenting rather than duplicating BVE's efforts.

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

October 23, 2008

Ms. Pat Davidson
Legislative Auditor
Legislative Audit Division
P.O. Box 113300
Juneau, AK 99811-3300

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Dear Ms. Davidson:

This letter is in response to your September 22, 2008 confidential preliminary audit report on the Board of Veterinary Examiners.

Recommendation No. 2

The Office of the Governor should fill vacant seats on the Board of Veterinary Examiners in a timely manner.

The Office of the Governor concurs with this recommendation. I appreciate your observation that turnover in the Boards and Commissions office may have played a role in the delay. I am pleased to report that the Governor recently made her selection for the vacant veterinarian seat. We find it challenging to find volunteers from the various professions who are willing and able to devote the time necessary to serve on the licensing boards. We will continue to make every effort to fill vacant board and commission positions in a timely manner.

If you need additional information, please contact me at 269-7450.

Sincerely,

Frank Bailey, Director
Boards and Commissions

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Sarah Palin, Governor
Emil Notti, Commissioner

October 16, 2008

RECEIVED
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Ms. Pat Davidson, CPA
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

Dear Ms. Davidson,

Re: Audit Report, ACN 08-20059-08
Board of Veterinary Examiners

Thank you for allowing us to comment on the Audit Report of the Board of Veterinary Examiners.

We fully agree that the Board has conducted itself in an efficient manner and that the Board should be extended to June 30, 2017.

We concur with your audit findings and recommendations that –

Recommendation No. 1: The Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing, in conjunction with the Board of Veterinary Examiners, should review licensing fees as provided by statute and consider decreasing fees.

Staff turnover in the Division did have a negative impact on assessing fees in a timely manner. Fees for the December 2008 renewals are being reduced to utilize some of the surplus of excess revenue and to bring revenue more in line with program costs.

Recommendation No. 2: The Office of the Governor should fill vacant seats on the Board of Veterinary Examiners in a timely manner.

We concur with this recommendation. As noted, the vacancy of even one position on a five member Board does present an undue hardship to the remaining board members and the Division in coordinating actions with the Board on licensing issues.

Thank you again for the opportunity to comment on your audit findings.

Sincerely,

Emil Notti / by CH

Emil Notti
Commissioner