

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

October 26, 2010

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 Nursing (BON), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF NURSING

September 30, 2010

Audit Control Number
08-20070-10

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Under AS 08.03.010(c)(13), BON will terminate on June 30, 2011. If the legislature does not extend the termination date, BON will have one year to conclude its administrative operations. In our opinion, BON's termination date should be extended until June 30, 2019. The board has generally displayed an ability to conduct its business in a professional, competent, and efficient manner – with the exception of the areas noted in the recommendations. BON is serving the public interest by promoting the competence and integrity of those who provide services to the public as licensed nurses and nurse aides.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and 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 recommendations 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 Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Nursing (BON) 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 BON should be reestablished. Currently, under AS 08.03.010(c)(13), BON will terminate on June 30, 2011, and will have one year from that date 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 interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed registered nurses, licensed practical nurses, advanced nurse practitioners, certified registered nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.

The assessment of the operations and performance of BON 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 BON.

Scope and Methodology

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions for fiscal years ending June 30, 2006, through June 30, 2010. During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing and certification of registered nurses, licensed practical nurses, advanced nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.
- Minutes of meetings of BON.

- Annual Reports issued by BON and the investigative unit of the Division of Corporations, Business and Professional Licensing (DCBPL).
- Complaints filed with DCBPL, Office of the Ombudsman, and the Alaska Human Rights Commission.
- Financial records related to the revenues generated and the operating costs incurred by BON.
- Complaints and related investigative case files maintained by the investigative unit of DCBPL.
- Files related to applicants for, and holders of, licenses issued by BON.
- Files related to applicants for board member seats maintained by the Division of Boards and Commissions with the Office of the Governor.

Additionally we interviewed employees of DCBPL and members of BON.

ORGANIZATION AND FUNCTION

The Board of Nursing (BON) was established for the purpose of controlling and regulating the practice of nursing in the State. Alaska Statute 08.68.100 identifies BON's responsibilities and authority to provide effective control and regulation of the practice of nursing as well as the standards for training necessary to promote, preserve, and protect the public's health, safety and welfare.

Board Membership

BON is composed of seven members. State law requires that one member be a licensed practical nurse (LPN) currently involved in institutional nursing services, one member be a registered nurse (RN) engaged in baccalaureate nursing education, three members be RNs at large, and two members be persons who have no direct financial interest in the health care industry. For current board members, see Exhibit 1.

Board Duties

In general BON regulates admission into the practice of nursing; establishes and enforces competency by ensuring compliance with professional standards and adopting regulations; and ensures that training programs are performing up to both statewide and national standards.

Most licensing requirements are established by statute. Nurses are either licensed by examination or endorsement.

Examinations for RNs and LPNs are nationally administered exams; the National Council Licensure Examination is administered through a contract with the private sector. Certified nurse aides are tested using the National Nurse Aide Assessment Program (NNAAP) exam. The NNAAP was formulated by the National Council of State Nursing Boards and is administered locally in conjunction with the training centers that have been approved by BON.

Licenses by endorsement, including certifications of nurse aides by endorsement, are issued to nurses licensed in other states that have licensing requirements acceptable to BON.

BON regulates nursing practices in part by:

Exhibit 1

Board of Nursing
As of September 30, 2010

Beth Farnstrom, RN
Chairperson

Agnes Jack, LPN

Janine McCready, Public
Member

Denise Ekstrom, RN, ANP

Thomas Hendrix, PhD, RN
Baccalaureate Nursing
Education

Kevin Dougherty, Public
Member

Erin Pringle, RN Position

1. Establishing and amending policy and regulations necessary and desirable to enforce state statutes.
2. Approving curricula for nursing and nurse aide programs; along with adopting standards for basic and continuing competency programs designed to prepare persons for licensure and ensure the maintenance of competency.
3. Issuing licenses on the basis of examination or endorsement to qualified applicants.
4. Holding hearings to resolve investigations that may lead to revocation, suspension, or other disciplinary action against an individual holding a license issued by the board.
5. Periodically reviewing and approving the facility training programs for individuals employed and certified as nursing aides.
6. Keeping the public informed of pertinent information through the use of BON's website which includes disciplinary databases, advisory opinion databases, board meetings and agenda's, meeting minutes, licensure information, regulations and other public notices.

Division of Corporations, Business and Professional Licensing (DCBPL)

DCBPL staff provide administrative support, including budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and posting public notices.

The DCBPL investigative unit is empowered with the authority to act on its own initiative or in response to a complaint. They may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in a practice over which the Department of Commerce, Community and Economic Development has authority.
2. Issue an order for a licensed individual to stop the practice.
3. Bring an action in superior court to enjoin the act.
4. Examine the books and records of an individual.
5. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

The Board of Nursing (BON) is operating in an efficient and effective manner and should continue to regulate the professions it governs. We believe the board is safeguarding the public's interest by ensuring the competence and integrity of those who present themselves to the public as licensed registered nurses, licensed practical nurses, advanced nurse practitioners, certified registered nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.

BON has conducted its business in a satisfactory manner. It continues to propose changes to regulations to improve the board's effectiveness and to ensure that professionals are properly licensed.

Under AS 08.03.010(c)(13), BON is scheduled to be terminated on June 30, 2011. If not extended by the legislature, under AS 08.03.020, the board will have a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date to June 30, 2019.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Nursing (BON) should take steps to ensure all appropriate entities are notified when an advanced nurse practitioner's (ANP) authority to write prescriptions has been revoked or suspended.

During the prior sunset review, we recommended that BON develop procedures to notify the Board of Pharmacy when there is a termination or change to a nurse's prescriptive authority as required by regulation. After our review in FY 02, BON repealed these regulations and developed a disciplinary database accessible on their website.

During the period from July 1, 2002, to March 31, 2010, there were two incidents where a nurse's authorization to write prescriptions was revoked by BON. One involved an ANP whose license to practice was revoked along with prescriptive authority. In January 2010, another ANP lost prescriptive authority for a period of one year.

The ANP, whose nursing license and authority to write prescriptions was revoked, continued to write prescriptions after the revocation, putting the public at risk. The other ANP whose authority to write prescriptions was revoked for a time frame of one year, has the opportunity to continue writing prescriptions. The disciplinary database accessible on the BON website is not an effective control for stopping illegal prescriptions from being filled.

Nurses must apply with BON in order to receive authorization to write prescriptions. Once the state grants authorization, the nurse must receive a registration number from the federal Drug Enforcement Agency (DEA) before they can start writing prescriptions. The DEA keeps a database listing the current status of registration numbers. Currently, there is no statute or regulation in place requiring the board to notify the DEA if a nurse's ability to write prescriptions has been revoked. Not notifying the DEA that a prescriber's authorization has been revoked or suspended can result in illegal prescriptions being filled.

BON is established under AS 08.68 for the purpose of controlling and regulating the practice of nursing, including: ANPs, nurse anesthetists, registered nurses (RN), licensed practical nurses (LPN), and certified nurse aides (CNA). BON's mission statement is: "*to actively promote and protect the health of the citizens of Alaska through the safe and effective practice of nursing as defined by law.*" We recommend BON establish procedures to ensure that the DEA is notified whenever authorization to write prescriptions is revoked or suspended. We also recommend that BON ensure in-state pharmacies, hospitals, and clinics are aware of the disciplinary proceedings database on BON's website.

Recommendation No. 2

The BON chairman should take steps to ensure that the required training program reviews are being conducted.

BON is not consistently providing the required oversight of CNA training programs.

The required site reviews are not being conducted for all the CNA training programs. As of June 30, 2010, only 11 of the 21 required reviews for the year had been performed. As a result, training programs are being given approval to operate for another two years without the reviews being conducted or processed.

Additionally, in years the on-site reviews are not done, the self-evaluation forms completed by the training program staff are not being processed. As a result, BON is not aware of any issues that are highlighted in the self-evaluations.

According to regulation 12 AAC 44.857, Training Program Review:

- (a) The board will approve a certified nurse aide training program for a two-year period. Within two years after the date of the initial approval of a certified nurse aide training program, the board will conduct an on-site review of the training program to determine continued compliance with regulations 12 AAC 44.835 - 12 AAC 44.847 and 12 AAC 44.852 - 12 AAC 44.860. If the board determines that the training program complies with those requirements, the board will extend its approval of that program for another two years.... (c) During a year in which on-site review is not scheduled, the program provider shall complete a self-evaluation form provided by the board.*

When the Nurse Consultant I position was vacated in 2002, the vacancy was not filled. As a result, the site reviews were only done sporadically. In June 2009, the board contracted for a part-time person to complete the site reviews. However, this has not fully addressed the problem.

We recommend that BON take steps to ensure that the onsite reviews and self evaluations are being completed in a timely manner to ensure that the training programs are presenting qualified applicants.

Recommendation No. 3

The Division of Corporations, Businesses, and Professional Licensing's (DCBPL) chief investigator should take steps to ensure that complaints and cases are investigated timely.

DCBPL's investigative section often does not complete investigations in a timely manner. The section's effectiveness is further diminished by the outdated and unreliable Enforcer database system currently in use.

It is DCBPL's responsibility to provide investigative support for BON. Investigators examine and research each complaint to determine jurisdiction and whether a violation exists. If the complaint meets these conditions, a case is opened and a priority is assigned. The priority reflects the level of imminent danger to the public.

During the period of July 1, 2006, through March 31, 2010, there were a total of 136 complaints and 412 cases active. Of these, 6 complaints and 20 cases were inspected for a more in-depth analysis.

Nine cases and two complaints experienced lengthy periods of inactivity (six months or more). One of those cases was assigned a priority level of "2".¹

Investigative staff attributed the delays to higher priority cases and tasks taking precedence. Staff also believed that the investigative database contributed to the problem. The database does not have a user-friendly mechanism for flagging inactive cases. Consequently, supervisors and investigators are not effectively monitoring caseloads. Ineffective monitoring leads to unnecessary delays.

Complaints and cases that are not investigated timely may allow an individual who is practicing inappropriately, or outside of his or her scope, to continue these violations.

Cases with life threatening repercussions should take priority. However, it is still reasonable for the public to expect that all complaints against licensees will be addressed as efficiently as possible. We recommend that the DCBPL chief investigator establish procedures to ensure that priorities within each assigned level are outlined and that cases and complaints with periods of inactivity are identified and addressed.

¹A priority level of "1" signifies incidents which represent an immediate danger to the public health and safety.

A priority level of "2" signifies incidents which, by the severity of their nature, dictate a high priority.

A priority level of "3" signifies incidents that are less serious in nature and do not appear to constitute immediate or severe public danger or serious damages.

A priority level of "4" signifies incidents involving failure to comply with statutes or regulations which are discovered through the course of proactive enforcement, but do not meet the criteria of priority 1 through 3.

Recommendation No. 4

The director of Boards and Commissions, Office of the Governor should fill the LPN board position with an LPN currently involved in institutional nursing services.²

The LPN board member appointed on June 12, 2007, for the institutional nursing services position is not currently involved in that field. She is currently an emergency medical technician and works for an emergency medical services company conducting training. There is no evidence on file that she has ever been involved in institutional nursing services.

The prior board member appointed to this position did not meet statutory requirements either. That board member was a clinical nurse, not an institutional nurse.

Under AS 08.68.010, BON is made up of seven members: one LPN currently involved in institutional nursing services, one RN engaged in baccalaureate nursing education, three RNs at large, and two public members.

It is the responsibility of the LPN currently involved in the institutional nursing services board member position to give technical advice related to the special needs of those in long-term care facilities and nursing homes. Without representation by an LPN involved in institutional nursing services, the long term care facilities and nursing homes are being underrepresented on the board. Accordingly, we recommend that the current LPN member be removed from the LPN board position and replaced with an individual meeting the statutory requirement.

²Institutional nursing services include facilities such as long-term care, Pioneer's Homes, and nursing homes.

ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are 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 Nursing (BON) has served the public by ensuring that qualified applicants are licensed as nurses or certified as nurse aides. Regulations related to licensure and certification provide reasonable assurance of competence, without being overly restrictive to entry into the nursing profession.

BON has generally displayed an ability to conduct its business in a professional, competent, and efficient manner - with the exception of the areas noted in the recommendations. BON has consistently proposed changes to statutes and regulations to improve its effectiveness in regulating the nursing profession in Alaska.

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.

BON has changed many regulations as well as added several new ones, to bring the nursing profession in Alaska into line with the Model Nurse Practice Act that was commissioned by the National Council of State Boards of Nursing (NCSBN). The idea is to standardize as many of the regulations as possible across the United States and Canada so that nurses can be licensed in multiple states. BON has also worked on implementing the commitment to ongoing regulatory excellence (CORE) best practices. These best practices are based on data collected by the NCSBN from boards of nursing and stakeholder groups to measure outcomes, outputs, and efficiencies of nursing regulations during 2000 and 2002. This data was analyzed to discover those boards with consistently high ratings in outputs and effectiveness in each of five functional groups: discipline, licensure, education program approval, practice and governance. BON has adopted the CORE format and has formed a strategic plan around the five functional groups.

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development (DCCED) must “*establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation.*” BON reviews and provides feedback on changes to fees proposed by the division.

BON revenues come from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BON receiving most of its revenues during the odd-numbered fiscal years. We reviewed the Division of Corporations, Business, and Professional Licensing's (DCBPL) internal records to identify BON revenues and expenditures. Exhibit 2 (shown below) presents BON's revenues and expenditures for FY 07 through FY 10.

Exhibit 2

Board of Nursing Schedule of Revenues and Expenditures FY 07 – FY 10 (Unaudited)					
		FY 07	FY 08	FY 09	FY 10
Revenue	\$	2,436,683	1,055,587	2,688,408	1,055,141
Direct Expenditures					
Personal Services		555,647	580,516	646,370	627,158
Travel		23,289	14,867	12,615	23,081
Contractual		316,439	205,323	318,455	253,686
Supplies		4,459	4,083	7,534	5,169
Total Direct Expenditures		899,834	804,789	984,974	909,094
Indirect Expenditures		761,660	721,682	751,754	876,908
Total Expenditures		1,661,494	1,526,471	1,736,728	1,786,002
Annual Surplus (Deficit)		775,189	(470,884)	951,680	(730,861)
Beginning (Deficit)	Cumulative Surplus	883,330	1,658,519	1,187,635	2,139,315
Ending Cumulative Surplus (Deficit)	\$	1,658,519	1,187,635	2,139,315	1,408,454

Due to errors in the reporting of information to BON and DCBPL, there was a large cumulative surplus at the end of FY 10. The errors were the result of a past DCBPL employee who did not have the accounting experience necessary to schedule expenditures and revenues properly or to forecast future revenues and expenditures - experience which is necessary to set fees for future periods. To address this, DCCED is recommending to BON that licensing fees for the occupations regulated by the board be dropped approximately 20% for the FY 11 and FY 12 renewal cycles.

that licensing fees for the occupations regulated by the board be dropped approximately 20% for the FY 11 and FY 12 renewal cycles.

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

New regulations were enacted to address the passing rate for registered nurse (RN) and certified nurse aide (CNA) training program students. Programs are monitored for their pass rates and if one falls below a cumulative pass rate of 80% annually, then the program must submit a plan for improvement to the board and come into compliance prior to being approved for continuing the program (12 AAC 44.055).

BON instituted new regulations regarding criminal background checks for licensees and required photographs with applications (12 AAC 44.319 and 12 AAC 44.290(a)(1)(A) respectively).

BON passed regulations allowing RN's to administer Food and Drug Administration regulated vitamins and minerals as provided by their health care provider (12 AAC 44.945(d)). BON also passed standards for the delegation of nursing duties to other persons (12 AAC Article 9).

BON made several suggestions for statutory changes. These changes included rescinding obsolete statutes, as well as changing the wording for other existing statutes, and were ordered by priority. To date, none of these changes have been made.

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.

BON's website has information on licensing, agendas, board meetings, minutes, regulations and complaints. The board's website contains several helpful links for obtaining additional information regarding the profession of nursing. Interested persons are encouraged to call the BON office to schedule testimony time and get information for up-coming board meetings. The location, date and time for board meetings are also posted on the State of Alaska Online Public Notice website and are published in the Anchorage Daily News.

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

Public notices of proposed regulations are published in major newspapers. Meetings are adequately advertised, and time is set aside for public testimony.

There is evidence of extensive participation from the public in the continued development of BON regulations. Meeting minutes evidenced public comment on existing regulations and on proposed regulations. Public comments were heard by teleconference during times when interested persons were unable to attend the meetings in person.

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.

There have been 136 complaints and 412 cases active during the time period from July 1, 2006, to March 31, 2010. Listed in Exhibit 3 (shown below) is a summary of the actions taken for those complaints and cases.

Exhibit 3

Complaints	Number of Actions
Case Opened	68
No Action (no violation, insufficient evidence, etc.)	41
Corrective Action Taken	4
Other	4
Advisement Letter	2
Still Under Investigation	17
Total Complaints	136
Cases	
Advisement Letter	14
No action (no violation, insufficient evidence, etc.)	52
License Action	231
Corrective Action Taken	21
Other	43
Still Under Investigation	51
Total Cases	412

Of these, 6 complaints and 20 cases were inspected for a more in-depth analysis. Of the 26 files reviewed, 11 were not investigated in a timely manner (see Recommendation No. 3).

No complaints or investigations specifically involving the actions and activities of BON were received, or undertaken by, either the Office of the Ombudsman or the Office of Victim's Rights within the past six fiscal years.

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.

BON is adequately regulating entry into the profession of nursing. Controls are in place and consistently performed to ensure it has presented only qualified applicants to serve the public. When received, the applications are subjected to a checklist to verify that all required documentation, such as test scores and proof of education or experience, are present, ensuring that the applicant meets all statutory and regulatory requirements.

Exhibit 4 (shown below) is a summary of new licenses and permits issued by BON for the time period from July 1, 2005, to June 30, 2009. This information was compiled from annual reports issued by the board.

Exhibit 4

New Licenses Issued (Exclusive of Renewals)	FY 05	FY 06	FY 07	FY 08	FY 09	Total Licenses (as of June 30, 2009)
Registered Nurse	815	1084	1561	1251	1611	9304
Licensed Practical Nurse	110	114	176	129	188	958
Advanced Nurse Practitioner	51	47	60	58	60	635
Registered Nurse Anesthetist	4	17	25	22	11	135
Certified Nurse Aide	692	907	1201	1077	544	2842

Fiscal year 2009 experienced a sharp decline in the number of CNAs licensed as a result of some training programs closing and others limiting the numbers of students they would accept.

We reviewed the requirements for licensure and they appear reasonable and appropriate to ensure that qualified professionals are licensed and the public's best interest is protected. Continuing education requirements are reasonable and are audited in accordance with statute.

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 found no evidence that the board has not complied with state personnel practices, including affirmative action, in the qualifying process of applicants. Each time the board has denied an applicant's licensure or certification, reasoning has been based on requirements set out by statute and regulation, not on the personal attributes of applicants. The reasons for denials are stated in writing, with the applicant always informed of their rights and of the process by which they can contest or appeal any denial of licensure or certification.

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.

See discussion in Recommendations No. 1 through No. 4 in the Findings and Recommendations section of this report. DCBPL, along with BON, should take measures to address the following:

1. Establish procedures to ensure that the Drug Enforcement Agency is notified when prescriptive authority is revoked or suspended and establish procedures to ensure in-

state pharmacies, hospitals, and clinics are aware of the disciplinary proceedings database on the board's website.

2. Ensure that onsite reviews and self evaluation forms are completed in a timely manner for all CNA training programs.
3. Ensure complaints and cases are investigated timely.
4. Fill the licensed practical nurse (LPN) board member position with an LPN meeting statutory requirements.

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.

In FY 09, BON adopted a balanced scorecard form of strategic planning based on the CORE best practices and set their strategic goals by the five functional groups: discipline, licensure, education program approval, practice and governance. They set their agendas to complement their strategic goals and revisit their plan annually in October. The board is continuing to implement these best practices and is improving their strategic goals.

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

There are several state and national organizations that provide newsletters, continuing education, and legislative support. The NCSBN provides national licensing exams for the nursing professions, acts as a clearing house for applicants of licensure by reciprocity, provides legislative support, and assists state boards in the standardization of regulations. We conclude that there is no evidence that any of these organizations provide the same public protection or duplicate the operations of BON. In addition, we did not find evidence of other state or private sector agencies that conduct or duplicate the efforts of BON.

STATE CAPITOL
PO Box 110001
Juneau, Alaska 99811-0001
907-465-3500
fax: 907-465-3532



550 West 7th Avenue # 1700
Anchorage, Alaska 99501
907- 269-7450
fax 907- 269-7463
www.gov.alaska.gov
Governor@alaska.gov

Office of Governor Sean Parnell
STATE OF ALASKA

November 22, 2010

RECEIVED

NOV 22 2010

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

LEGISLATIVE AUDIT

Dear Ms. Davidson,

This letter is in response to your October 29, 2010 letter to Governor Parnell regarding the "CONFIDENTIAL" preliminary audit report on the Board of Nursing (BON).

Recommendation No. 4: The director of Boards and Commissions, Office of the Governor should fill the LPN board position with an LPN currently involved in institutional nursing services.

The Office of the Governor agrees that the member appointed to the LPN seat is not currently involved in institutional nursing services. We are working to appoint an LPN who meets the statutory criteria.

If you need additional information, please contact me at 907-465-3934.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hooley".

Jason Hooley
Director
Boards and Commissions

cc: Mike Nizich, Chief of Staff, Office of the Governor

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Sean Parnell, Governor
Susan K. Bell, Commissioner

November 18, 2010

RECEIVED

NOV 19 2010

LEGISLATIVE AUDIT

Ms. Katina Holmberg
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Preliminary Report, Board of Nursing, Department of Commerce, Community and Economic Development (DCCED)

Dear Ms. Holmberg:

Thank you for report dated September 30, 2010 regarding audit conclusions and recommendations concerning the State Board of Nursing (BON). I appreciate your review and the opportunity to provide input into the process. In general, the department concurs with the report conclusion and recommendation and our comments are provided below.

Report Conclusions

DCCED agrees with the report conclusion that the BON "is operating in an efficient and effective manner and should continue to regulate the profession it governs. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who present themselves to the public as LPNs and CNAs." DCCED diligently strives to fulfill its duty of supporting licensed professionals and State boards to protect the public.

Recommendation No. 1

DCCED concurs that notification to the Federal Drug Enforcement Agency and other appropriate entities should occur when an advanced nurse practitioner's authority to write prescriptions is revoked or suspended. The Department will work with the BON, the Board of Pharmacy and other affected healthcare agencies and professionals to establish protocols for awareness of disciplinary proceedings and sanctions on a licensee.

Recommendation No. 2

DCCED supports the report recommendation for timely certified nurse aide training program reviews and/or training program self-evaluations. One difficulty in finding equitable solutions to this issue is past budget cuts and the resulting reduction in state personnel. A part time contract employee has not sufficiently filled the training inspection service gap. DCCED will endeavor to assist the BON chairman in finding solutions that provide adequate levels of inspection and self-evaluation review.

Recommendation No. 3

DCCED concurs that the Division of Corporations, Business and Professional Licensing (CBPL) chief investigator should take steps to ensure complaints and cases are investigated timely, and the division has already implemented positive measures toward that end. Specifically, the preliminary report recommends establishing procedures to ensure consistent treatment of complaints and cases in the priority levels assigned, that priorities are outlined and that cases and complaints with periods of inactivity are identified and addressed. The preliminary report also presents that staff believe the existing database did not have a user-friendly mechanism for flagging inactive cases and this contributed to delays.

CBPL was previously aware of the above described issues and took steps to improve timely investigations, including management changes, investments in updated technology, and staff training. A new Chief Investigator was hired in July 2010 and will be establishing procedures to outline priorities and to identify cases with inactive periods. In June 2010 CBPL implemented a new database system (GLSuite) that has significant functionality improvements over the prior outdated "Enforcer" system, including a more user-friendly mechanism for flagging inactive cases. In addition, staff training has and will continue to occur to maximize the utilization of the new system. CBPL expects that these steps will help ensure complaints and cases are investigated in a timely manner.

Recommendation No. 4

DCCED supports the management letter comments that the Licensed Practical Nurse board member should represent the institutional nursing services discipline as outlined in AS 08.68.010. We will work with the BON and the Office of the Governor Boards and Commissions to ensure that the LPN Board seat meets the statutory requirements.

Analysis of Public Need

CBPL reviewed the information presented in this section of the preliminary report and concurs with the reports comments.

We have no other comments on this section.

Again, thank you for an opportunity to provide input. We are pleased your review has, in general, found the Board of Nursing to be working in an efficient and effective manner. Should you have any questions about the content of this letter, please do not hesitate to contact me at 907-465-2500.

Regards,



Susan K. Bell
Commissioner

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LEGISLATIVE AUDIT

Beth Farnstrom
Chair of the Board of Nursing
18751 Villages Scenic Parkway
Anchorage, AK 99516
b_gartner@yahoo.com
Phone (h) 907-349-6074

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

November 14, 2010

Dear Ms. Davidson,

As the Chair of the Board of Nursing, I have reviewed the preliminary audit report on the Department of Commerce, Community and Economic Development (DCCED), Board of Nursing Sunset Review, September 30, 2010. A few clarifications I would like to address.

Recommendation No. 1

BON should take steps to ensure all appropriate entities are notified when an advanced nurse practitioner's (ANP) authority to write prescriptions has been revoked or suspended.

The Board's plan is when an ANP's authority to write prescriptions has been revoked or suspended by the BON the Executive Administrator will:

- notify the DEA on the first day after the BON meeting concludes
- Submit the ANP's name to the Board of Pharmacy on the first day after the BON meeting concludes. The Board of Pharmacy will notify the pharmacies in the State of Alaska.
- notify the employer of an ANP on the first day after the BON meeting concludes
- update the ANP disciplinary data base found on the BON website with in two weeks after the BON meeting has concluded

Within 3 weeks after the BON meeting, the Executive Administrator will send out a message on the BON listserv stating when an ANP's authority to write prescriptions is revoked or suspended.

Recommendation No. 2

The BON chairman should take steps to ensure that the required CNA training program reviews are being conducted.

Recommendation No. 2 is for the required review of the CNA training programs. This issue has been addressed with Director Urion, Director Davis, Director Smith and Director Habeger. The Board of Nursing has had 4 Directors since I was appointed to the Board in March 2007. As found in the audit, the position of nurse consultant 1 was vacated in 2002. The Board identified that the posted position was not being filled due to the low salary compared to other nursing positions available. The best the Board has been able to do is a contract position. The contract employee has completed 3/4 of the first reviews of CNA programs as of July 2010 and others are in progress since then. The Board has recommended the position needs to be posted but with a competitive salary to ensure an experienced qualified candidate will apply. Director Habeger attended the October BON meeting and the issue of needing this position filled was addressed. I will continue to address this issue until the position is filled and in the interim the contract employee will continue the reviews.

Recommendation No. 3

The Division of Corporations, Business, and Professional Licensing's chief investigator should take steps to ensure that complaints and cases are investigated timely.

The Board of Nursing takes the responsibility that all complaints are investigated in a timely manner. I have learned that the Board of Nursing has some "older" cases due to a previous investigator who had some complaints that were never investigated. The current investigators are working to prioritize and complete the investigations. Chief, Quinten Warren has added another investigator to the BON and made Ken Weimer the senior investigator so there will now be a great deal more help to catch up the backlog plus deal with the daily intake. Also, the case situation will be monitored much more now than in the past as new procedures and computer system get up and running. The average of most cases would be that they are open from 3 months to one year if they do not involve litigation prior to the attorney general being involved, expert review and that type of process. Of course more complex cases or cases involving legal counsel and such do not fit these time frames. Cases are prioritized. The system is a 1-4 system with 1 being the highest priority, which would be cases of great potential for public harm and 4 being cases with low potential such as falsified application cases. The new GLS system is being used. However, it has many "bugs" in it which are still be rectified and causing all sort of disruptions and such. This system is actively being perfected each week. The chief and senior staff meet with other Division users in banking and security and them a meeting is held each week with the GLS people to address problems and working on correcting them. Hopefully by year's end the system will be working as expected. The Board will obtain an update with the investigative team at the January 2011 Board meeting.

Recommendation No.4

The Director of Boards and Commissions, Office of the Governor, should fill the LPN position with an LPN currently involved in institutional nursing services.

Recommendation No. 4 is the appointment of a qualified LPN. The previous Chair for the Board of Nursing recognized that the present LPN did not meet the requirements. The Chair contacted the previous Governor's office but no action was taken. The Board agrees that we need a practicing LPN for input on practice issues. The present LPN on the Board term ends March 2011. I have contacted Jason Hooley to address the issue for the future LPN appointment to the BON and have offered to evaluate potential LPN candidates prior to their appointment.

Analysis of Public Need on page 7 accounting error. I would like to highlight that the Volunteer Board of Nursing found the large accounting error that the state paid employees made. The Board will take credit for finding this error. With this error corrected, The Board was able to reduce our 2010 renewal fees.

Analysis of Public Need on Page 8 about statutory changes. The Board was asked by Director Davis in April 2008 to submit obsolete statutes. The Board promptly submitted 8 pages of changes with the rationale for the changes and the priority of these changes. The Board meets with the Director on a quarterly basis at our meeting. We have repeatedly asked our Director about where these statutory changes are in the system. The Board again asked Director Habeger at our October 2010 meeting if these statutes are going to be presented as a Division or should the BON present these changes on our own. Director Habeger informed the Board that there is an omnibus with our statute requests in place. Director Habeger will follow up on this and report back to the Board at the January 2011 meeting.

Thank you for the opportunity to address a few of the items that required clarification and actions to rectify the deficiencies addressed in the preliminary BON sunset audit.

Sincerely,



Beth Gartner Farnstrom, RN
BON Chair