# Report Highlights

## Why DLA Performed This Audit

The purpose of the audit was to determine if there is a need for the board's continued existence and whether its termination date should be extended. The board is set to sunset June 30, 2018, and will have one year from that date to conclude its administrative operations.

## What DLA Recommends

All prior audit recommendations were resolved and there were no new recommendations as part of the current sunset audit.

# A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Professional Counselors (board)

**April 14, 2017**
**Audit Control Number 08-20102-17**

## REPORT CONCLUSIONS

The board is serving the public's interest by effectively licensing and regulating professional counselors and certified counselor supervisors. The board monitors licensees and works to ensure only qualified individuals practice in Alaska. Furthermore, the board develops and adopts regulations to improve the professional counselor occupation.

In accordance with AS 08.03.010(c)(6), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2026.

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# ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

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May 24, 2017

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 Department of Commerce, Community, and Economic Development, Board of Professional Counselors, and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
BOARD OF PROFESSIONAL COUNSELORS
SUNSET REVIEW

April 14, 2017

Audit Control Number
08-20102-17

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(6), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2026.

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, 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.

Kris Curtis, CPA, CISA
Legislative Auditor

## ABBREVIATIONS

| | |
|---|---|
| AAC | Alaska Administrative Code |
| ACN | Audit Control Number |
| AS | Alaska Statute |
| board | Board of Professional Counselors |
| CISA | Certified Information Systems Auditor |
| CPA | Certified Public Accountant |
| DCBPL | Division of Corporations, Business, and Professional Licensing |
| DCCED | Department of Commerce, Community, and Economic Development |
| DLA | Division of Legislative Audit |
| FY | Fiscal Year |
| SB | Senate Bill |

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# ORGANIZATION AND FUNCTION

## Board of Professional Counselors

The State Board of Professional Counselors (board) is a regulatory board consisting of five members appointed by the governor. The board consists of one public member and four licensed professional counselors.

Per Alaska Statutes, at least one of the counselor members must be employed in the private sector and at least one must be employed in the public sector. In addition to the public member requirements set out in AS 08.01.025, the public member[1] may not have been a licensed professional counselor or employed in a commercial or professional field related to counseling.

**Exhibit 1**

**Board of Professional Counselors Members**
**As of January 31, 2017**

Anne Brainerd Marko
*Licensed Professional Counselor*
*Chair*

Debra Hamilton
*Licensed Professional Counselor*

Harold Henderson
*Licensed Professional Counselor*

Stephanie Johnson
*Licensed Professional Counselor*

Eleanor Vinson
*Public Member*

Alaska Statute 08.29.020 establishes the powers of the board. They include adopting regulations for:

1. Licensing professional counselors, establishing criteria for supervisor certification, and approving counselor supervisors; the board may provide for licensure in areas of counseling specialization;

2. Establishing continuing education requirements for license renewal;

3. Adopting a code of ethics for professional counselors;

4. Establishing education and training requirements that must be met before professional counselors can administer and use assessment instruments described in AS 08.29.490(1)(c); and

[1] AS 08.29.010(b).

5. Adopting and enforcing regulations necessary to carry out the board's duties.

The board issues licenses to professional counselors and certifications for counselor supervisors who meet the standards of education and training determined to be necessary by the board. The board may also suspend, refuse to renew, or revoke licenses.

## The Department of Commerce, Community, and Economic Development

By statute, the Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing (DCBPL) provides administrative support to the board. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving application forms, publishing notices of examinations and meetings, and assisting with board regulation development.

Alaska Statute 08.01.087 gives DCBPL authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged or about to engage in a prohibited professional practice.

2. Bring an action in Superior Court to enjoin the act.

3. Examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010.

4. Issue subpoenas for the attendance of witnesses and records.

Alaska Statute 08.01.065 requires the department to adopt regulations that establish the amount and manner of payment of application fees, and license and certification fees.

# REPORT CONCLUSIONS

In developing our conclusion regarding whether the Board of Professional Counselors' (board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

Overall, the audit concludes the board is serving the public's interest by effectively licensing and regulating professional counselors and certified counselor supervisors. The board monitors licensees and works to ensure only qualified individuals practice in Alaska. Furthermore, the board develops and adopts regulations to improve the professional counselor occupation.

In accordance with AS 08.03.010(c)(6), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2026.

Detailed report conclusions are as follows.

## The board operated in the public interest and does not duplicate the efforts of other entities.

Board operations were conducted in an effective manner. The audit found that from FY 15 through January 31, 2017, the board held four meetings each year. This exceeded the minimum number required by statute; however, the board's workload supported the number of meetings held. Board meetings were public noticed timely, each meeting allowed time for public comment, and a quorum was consistently met. The audit also determined that the board does not duplicate the efforts of another governmental or private sector agency.

A review of complaint and investigative data showed cases were addressed timely. There were 26 complaints open or opened between July 1, 2014, and January 31, 2017. Of the 26 complaints, 15 resulted in investigations, all of which were closed during the audit period. A review of case files found cases were actively investigated.

The board worked to improve the professional counseling occupation by amending:

- Three regulations[2] to provide additional ethics requirements for counselor supervisors, continuing education, and adoption of a code of ethics. These changes align requirements with national practices and help promote ethical practice.

- Regulation 12 AAC 62.120 to clarify approved degrees from regional or nationally accredited institutions, making it easier for both licensees and the public to understand educational requirements.

- Regulation 12 AAC 62.310 to include a specific number of continuing education hours. The requirement ensures licensees are engaged in interactive education to develop skills that better serve the public.

## The board licensed and certified individuals according to statutes and regulations.

The board operated in the public's interest by licensing professional counselors and issuing counselor supervisor certifications in accordance with state laws and regulations. A random sample of 25 licenses issued during the audit period was tested. All 25 licenses were found to have been issued in compliance with statutes and regulations, which included verification of related supervisory certifications.

As shown in Exhibit 2, from FY 14 through FY 16, the board issued 190 new licenses and 73 supervisor certifications. As of January 31, 2017, there were a total of 657 professional counselors, representing a 46 percent increase in licensees when compared to the 2009 sunset audit.[3]

[2]12 AAC 62.130, 12 AAC 62.200, and 12 AAC 62.900.

[3]The prior audit identified 449 total professional counselor licensees as of June 30, 2009 (ACN 08-20061-09).

**Exhibit 2**

Board of Professional Counselors
Licensing and Certification Activity
FY 14 through January 31, 2017

| | New Issued (Exclusive of Renewals) | | | Total as of |
|---|---|---|---|---|
| | FY 14 | FY 15 | FY 16 | January 31, 2017 |
| Professional Counselor Licenses | 69 | 71 | 50 | 657 |
| Counselor Supervisor Certifications | 22 | 26 | 25 | 373 |
| Totals | 91 | 97 | 75 | 1,030 |

Source: Compiled from DCBPL licensing database.

**Division of Corporations, Business, and Professional Licensing (DCBPL) management, in consultation with the board, adjusted fees to cover the cost of board operations.**

Primarily, the board receives its revenue from licensure, certification, and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle in board revenues. As shown in Exhibit 3, the board had deficits of $154,756 in FY 13 and $169,445 at the end of FY 15. In response to those deficits, fees were increased for the FY 14 through FY 15 licensing period, and again for the FY 16 through FY 17 licensing period. Due to the surplus at the end of FY 16, DCBPL management and the board are proposing to decrease fees in FY 18. Exhibit 4 presents a schedule of fees from FY 13 through FY 17.

**Exhibit 3**

**Board of Professional Counselors**
**Schedule of Revenues and Expenditures**
**FY 13 through March 31, 2017**
(Unaudited)

| | FY 13 | FY 14 | FY 15 | FY 16 | July 1, 2016 - March 31,2017 |
|---|---|---|---|---|---|
| Revenues | | | | | |
| Licensing Fees | $ 17,685 | $231,595 | $ 41,641 | $ 402,810 | $ 56,115 |
| Other Sources | - | 2,608 | - | 182 | - |
| Total Revenues | 17,685 | 234,203 | 41,641 | 402,992 | 56,115 |
| Direct Expenditures | | | | | |
| Personal Services | 58,266 | 62,610 | 69,553 | 57,670 | 36,952 |
| Travel | 15,305 | 16,324 | 26,311 | 13,354 | 10,084 |
| Services | 4,790 | 10,648 | 12,740 | 26,720 | 3,149 |
| Commodities | 400 | 66 | 149 | 199 | 98 |
| Total Direct Expenditures | 78,761 | 89,648 | 108,753 | 97,943 | 50,283 |
| Indirect Expenditures | 35,447 | 40,982 | 51,150 | 40,499 | 30,375* |
| Total Expenditures | 114,208 | 130,630 | 159,903 | 138,442 | 80,658 |
| Annual Surplus (Deficit) | (96,523) | 103,573 | (118,262) | 264,550 | (24,543) |
| Beginning Cumulative Surplus (Deficit) | (58,233) | (154,756) | (51,183) | (169,445) | 95,105 |
| Ending Cumulative Surplus (Deficit) | $(154,756) | $(51,183) | $(169,445) | $ 95,105 | $ 70,562 |

*Source:* DCCED management.

* FY 17 indirect expenditures are estimated based on prior year actuals.

**Exhibit 4**

**Board of Professional Counselors**
**License Fees**
**(FY 13 through FY 17)**

| | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 |
|---|---|---|---|---|---|
| Application fee for any initial license | $ 50 | $ 125 | $ 125 | $ 200 | $ 200 |
| License fee for all or part of any initial biennial license period | 275 | 400 | 400 | 650 | 650 |
| Biennial license renewal fee | 275 | 400 | 400 | 650 | 650 |
| Supervisor fee | 50 | 125 | 125 | 200 | 200 |

*Source:* DCBPL Regulations.

## DCBPL's backlog of regulation projects limited the board's ability to finalize tele-health regulations.

Senate Bill (SB) 74, signed into law in 2016, contained new requirements over healthcare services delivery, prescription medication, and many other related aspects of healthcare in the state. The law required regulations be implemented for mental health occupations to guide the distance delivery of services through technologies.

DCBPL staff provides regulation support to occupational boards by drafting regulations in a standard format; DCBPL staff then provides drafted regulations to boards for review, typically at the next board meeting. In July 2016, the board approved and submitted to DCBPL a series of new tele-health regulations for drafting. As of early February 2017, the regulations had not been drafted due to a backlog of regulation projects. The backlog was caused by an increase in DCBPL's regulatory workload due to SB 74. Auditors noted that DCBPL staff had appropriately prioritized regulation projects when choosing which projects to address.

The board's proposed regulations address the use of technology for professional counseling services, the safety and confidentiality of communications, and the client's informed consent. There is a risk

that, without regulations, tele-health may be provided in a manner that compromises public safety and/or confidentiality of communications. Implementing regulations is also important given that technologies may help address the lack of access to professional counseling services in rural areas of the state.

# FINDINGS AND RECOMMENDATIONS

## Current Status of Prior Recommendations

The prior 2009 sunset audit made four recommendations:

- The Division of Corporations, Business, and Professional Licensing (DCBPL or division) professional licensing administrative officer should take steps to improve its administrative support.
- The division's chief investigator should establish procedures to ensure information is consistently recorded in the case management system and should take steps to ensure complaints/cases are investigated in a timely manner.
- The division's professional licensing supervisors should take steps to ensure salient investigative information is forwarded to the investigative section.
- The Office of the Governor should take steps to make the necessary appointments to keep the board at full membership.

All prior sunset recommendations were resolved. DCBPL implemented procedures to improve administrative support and ensure salient information was forwarded to the investigation section. Specifically, staff actions were reviewed by supervisors, and licensing and investigation updates were provided at each board meeting. License testing found that information was appropriately forwarded to the investigations section. Board members interviewed as part of the audit had no complaints with division licensing support.

The audit also found that information was accurately recorded in the case management system and cases were actively investigated. Additionally, there were no significant board vacancies during the scope of the audit.

No new recommendations were made as part of this audit.

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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 Professional Counselors (board) to determine if there is a demonstrated public need for its continued existence.

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 the board should be reestablished. Currently, under AS 08.03.010(c)(6) the board will terminate on June 30, 2018, 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's interest.

3. To determine the status of recommendations made in the prior sunset audit.

## 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 from FY 15 through January 31, 2017. Financial information is presented, unaudited, from FY 13 through March 31, 2017.

## Methodology

During the course of our audit, we reviewed and evaluated the following:

- The prior sunset audit report (ACN 08-20061-09) to identify issues affecting the board and to identify prior sunset audit recommendations.

- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.

- The State's online public notice system to verify the board meetings were adequately public noticed.

- Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.

- Expenditure, revenue, and fee levels for the board to determine whether fee levels covered the costs of operations.

- Investigation data of the board for cases open six months or longer from FY 15 through January 31, 2017, to determine whether complaints were actively investigated.

- Various state and news related websites to identify complaints against the board or other board related concerns.

- Division of Corporations, Business, and Professional Licensing (DCBPL) FY 17 ongoing regulation projects to identify the reasonableness of progress towards developing draft regulations.

- Internal controls over the licensing database and investigative case management system were assessed to determine if controls were properly designed and implemented.

To identify and evaluate board activities, we conducted interviews with DCBPL staff and board members. Specific issues of inquiry included board operations, regulations, duplication of effort, and complaints against the board.

A random sample of 25 licensees was selected from 736 licensees that were active between FY 15 and January 31, 2017. Applications were assessed for statutory and regulatory compliance. The sample size

was based on low control and inherent risk and moderate/high audit risk. The sampled items included 15 initial and 10 renewal licensees. Testing results were projected to the population.

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# APPENDIX SUMMARY

In developing our conclusion regarding whether the board's termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c). Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

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# APPENDIX A

## Analysis Of Public Need Criteria (AS 44.66.050(c))

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

(1) the extent to which the board or commission has operated in the public interest;

(2) the extent to which the operation of the board or commission 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;

(3) the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;

(4) the extent to which the board or commission 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;

(5) the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board or commission 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;

(7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

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

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

(10) the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and

(11) the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

# Agency Response from the Office of the Governor

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Governor@alaska.gov

Governor Bill Walker
STATE OF ALASKA

August 17, 2017

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LEGISLATIVE AUDIT

Kris Curtis
Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300

Dear Kris Curtis:

Thank you for the opportunity to respond to the Legislative Budget and Audit Committee regarding the preliminary audit reports for the Board of Professional Counselors under the Department of Commerce, Community and Economic Development.

In speaking with the Division Operations Manager for the Division of Corporations, Business and Professional Licensing, Sara Chambers, she agrees that this board is meeting the needs that were the reason for the statute that created the board. They continue to regulate licensing standards, examine applicants, and, when necessary, provide disciplinary sanction of professional counselors.

There were no recommendations for our office in your report. We agree that the board is functioning in the best interest of the public and that the board's termination date should be extended until June 30, 2026.

Sincerely,

Shirley Marquardt
Director
Boards and Commissions

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# Agency Response from the Department of Commerce, Community, and Economic Development

THE STATE of ALASKA
GOVERNOR BILL WALKER

**Department of Commerce, Community, and Economic Development**
OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, AK 99811-0800
Main: 907.465.2500
Fax: 907.465.5442

August 14, 2017

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AUG 15 2017
LEGISLATIVE AUDIT

Kris Curtis, CPA, CISA
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RE: Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development, Board of Professional Counselors, April 14, 2017

Dear Ms. Curtis:

Thank you for the opportunity to comment on the Confidential Preliminary Report regarding the State Board of Professional Counselors. I am pleased to know that you are recommending a full extension of this board to June 30, 2026, and have no recommendations for this audit period.

Again, thank you for the opportunity for the DCCED to provide input on this matter. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Sincerely,

for/ Chris Hladick
Commissioner

cc: Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing

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# Agency Response from the Board of Professional Counselors

August 27, 2017

Kris Curtis, CPA, CISA

Legislative Auditor

PO Box 113300

Juneau, AK 99811-3300

RECEIVED

AUG 2 8 2017

LEGISLATIVE AUDIT

Dear Ms. Curtis,

Thank you for the opportunity to review and respond to the Legislative Audit for the Board of Professional Counselors, dated April 14, 2017. In reviewing the report, I was delighted to find that the prior recommendations had been sufficiently resolved and that there were no new recommendations. I am in full agreement and appreciative of your conclusions.

A significant accomplishment of our board has been to meet our fiscal operating responsibilities. Our board has been able to successfully recover from a deficit and now is able to decrease fees as we strive to assist in managing a prudent and reasonable budget. I would also concur with our prior Chair, that our board's success and efficiency is due, in great part, to the dedication and diligence of the State staff members with whom we work; each have played an invaluable role in having the information readily available for us to review in order to make timely and efficient decisions.

Thank you again for the opportunity to review the 2017 Sunset Audit report and we are grateful for the opportunity to serve the public as well as the Professional Counselor community.

Sincerely,

DocuSigned by:
Debra Hamilton
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Debra S. Hamilton, MA, LPC

Acting Chair, Board of Professional Counselors

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