

Report Highlights

Why DLA Performed This Audit

The purpose of this 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, 2019, and will have one year from that date to conclude its administrative operations.

What DLA Recommends

1. The board president should take steps to correct a regulation error.
2. DCCED's Division of Corporations, Business, and Professional Licensing's chief investigator, in consultation with the board, should implement controls to ensure the appropriate entities are notified when a licensee's prescription authority is suspended or revoked.

A Sunset Review of the Department of Commerce, Community, and Economic Development (DCCED), Board of Dental Examiners (board)

April 26, 2018

Audit Control Number 08-20111-18

REPORT CONCLUSIONS

The audit concludes that the board operated in the public's interest by effectively licensing and regulating dentists, dental hygienists, and dental assistants. The board monitored licensees and worked to ensure only qualified individuals practiced in Alaska. Furthermore, the board was active in amending regulations to improve the industry.

In accordance with AS 08.03.010(c)(7), the board is scheduled to terminate on June 30, 2019. We recommend that the legislature extend the board's termination date eight years to June 30, 2027.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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July 25, 2018

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 Dental Examiners and the attached report is submitted for your review.

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

SUNSET REVIEW

April 26, 2018

Audit Control Number
08-20111-18

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(7), the board is scheduled to terminate on June 30, 2019. We recommend that the legislature extend the board's termination date to June 30, 2027.

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.

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
AS	Alaska Statute
board	Board of Dental Examiners
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
DEA	Drug Enforcement Administration
DLA	Division of Legislative Audit
FY	Fiscal Year
SB	Senate Bill

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ORGANIZATION AND FUNCTION

Board of Dental Examiners

The Board of Dental Examiners (board) was established for the purpose of regulating the practice of dentistry in Alaska. The board is comprised of nine members: six licensed dentists; two dental hygienists; and one public member who does not have a direct financial interest in the health care industry. The dentist and dental hygienist board members must have practiced in Alaska for the five years immediately preceding appointment to the board.

Alaska Statute 08.36.070 establishes the board's duties and powers, which include:

1. Providing for the examination of applicants and the credentialing, registration, and licensure of qualified applicants.
2. Holding hearings and ordering the disciplinary sanction of a person who violates statutes and regulations.
3. Adopting regulations ensuring that renewal of a license, registration, or certificate is contingent upon proof of continued professional competence.
4. Issuing permits or certificates to licensed dentists, licensed dental hygienists, and dental assistants who meet standards determined by the board for procedures that require specific education and training.

Exhibit 1

Board of Dental Examiners Members as of March 31, 2018

Paul Silveira, President <i>Dentist</i>
Thomas Kovaleski <i>Dentist</i>
Michael Moriarty <i>Dentist</i>
David Nielson <i>Dentist</i>
Steven Scheller <i>Dentist</i>
Dominic Wenzell <i>Dentist</i>
Paula Ross <i>Hygienist</i>
Gail Walden <i>Hygienist</i>
Robin Wahto <i>Public Member</i>

Source: Office of the Governor, Boards and Commissions website.

**The Department of
Commerce, Community,
and Economic
Development's Division of
Corporations, Business,
and Professional Licensing
(DCBPL)**

Under AS 08.36.070(a)(9), the board issues permits to licensees to perform moderate sedation, deep sedation, general anesthesia, local anesthesia, coronal polishing, and restorative functions. Dental radiological equipment is required to be registered with the board.

Per AS 08.36.073, the board has a dedicated staff member to conduct investigations into alleged violations based on complaints filed with the Department of Commerce, Community, and Economic Development (DCCED) or the board. The investigator is directly responsible and accountable to the board; however, only DCCED has authority to terminate the investigator's employment, and DCCED provides administrative supervision.

DCCED's Division of Corporations, Business, and Professional Licensing (DCBPL) provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving application forms, publishing notices for meetings, and assisting the board with regulations.

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 witness and records.

Alaska Statute 08.01.065 requires DCCED adopt regulations that establish the amount and manner of payment of application, registration, and license fees.

REPORT CONCLUSIONS

In developing our conclusion regarding whether the Board of Dental Examiners' (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.

The audit concluded that the board operated in the public's interest by effectively licensing and regulating dentists, dental hygienists, and dental assistants. The board monitored licensees and worked to ensure only qualified individuals practiced in Alaska. Furthermore, the board was active in amending regulations to improve the industry.

The audit also concluded that improvements are needed to correct a board-related regulation error and to ensure appropriate entities are notified when a licensee's prescription authority is suspended or revoked.

In accordance with AS 08.03.010(c)(7), the board is scheduled to terminate on June 30, 2019. We recommend that the legislature extend the board's termination date eight years to June 30, 2027.

Detailed report conclusions are as follows.

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

Board meetings held from FY 15 through March 2018 were conducted in an effective manner. Board meetings were public noticed timely, a quorum was consistently met, and time was allowed for public comment. The audit also determined that the board does not duplicate the efforts of another governmental or private sector agency.

A review of board investigative activity found 73 cases were open or opened between July 2014 and January 2018. Seventeen cases remained open as of January 2018. A review of 10 investigative case files concluded that cases were actively investigated.

Although investigations were processed timely, auditors found Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing's (DCBPL) investigation unit does not have procedures in place to notify the Board of Pharmacy¹ or the federal Drug Enforcement Administration when a licensee's prescription authority has been suspended or revoked. Disciplinary actions that include suspending or revoking prescription authority are infrequent (auditors found two dentists had their prescription authority suspended or revoked during the audit period); however, risk to public safety warrants immediate notification. (Recommendation 2)

The audit found the board generally issued and amended regulations in the public's interest. One of the significant regulation revisions amended sedation regulations to conform to industry standards and improve public safety. The updated regulations include sections to guide the use of sedation on patients that are younger than 13 years of age, provide additional safeguards for dental offices that administer anesthesia, and allow the board to perform on-site inspection of dental facilities where sedation is administered. Other regulation changes during the audit period include:

- Clarified continuing education requirements for dental hygienists and dentists to ensure competency of applicants applying for licensure by credential (12 AAC 28.937(b) and 12 AAC 28.951(b)).
- Updated the jurisprudence examination² language for dentists to ensure competency of applicants applying for licensure by credential (12 AAC 28.951(d)).
- Decreased the application timeline for personal interviews to ensure applicants are licensed timely (12 AAC 28.915).
- Clarified disciplinary sanction language for failing to make records available for inspection during investigations to ensure complaints are pursued timely (12 AAC 28.906).

¹The Board of Pharmacy maintains a controlled substance prescription database that prescribers and dispensers must consult. The database is intended to reduce misuse, abuse, and diversion of controlled substances.

²12 AAC 28.951(d) specifies an applicant for a dental license must document completion of the jurisprudence examination prepared by the board, covering the provisions of AS 08.32, AS.08.36, and 12 AAC 28.

Auditors identified one board-related regulation that referenced a repealed regulation in error. (Recommendation 1)

The board licensed individuals according to statutes and regulations.

The audit found the board licensed dentists, dental hygienists, dental assistants, and issued permits³ in accordance with statutes and regulations. A random sample of 40 licenses⁴ issued during the audit period was tested, and all were found to be approved by the board in compliance with state laws.

As shown in Exhibit 2, from FY 15 through FY 17, the board issued 613 new licenses. As of January 31, 2018, there were a total of 2,399 active licenses, certificates, permits, and endorsements.

³Permits are issued to licensed dentists, dental hygienists, and dental assistants for the purposes of administering moderate sedation, deep sedation, general anesthesia, and local anesthesia.

⁴Tested licenses included new applications and renewals. Individual license types tested include: dentists, dental hygienists, dentist general anesthetic permit, dentist parenteral sedation permit, and hygienist local anesthetic permit.

Exhibit 2

**Board of Dental Examiners
Licensing Activity
FY 15 through January 31, 2018**

	New Issued (Exclusive of Renewals)			Total Active as of January 31, 2018
	FY 15	FY 16	FY 17	
Dental Assistant Coronal Polishing Certificate	38	56	46	206
Dental Assistant Restorative Functions Certificate	3	1	3	18
Dental Hygiene Courtesy License	3	6	4	4
Dental Hygienist	26	42	28	641
Dental Hygienist Restorative Function Endorsement	0	0	36	41
Dentist	43	42	67	820
Dentist Courtesy License	9	24	2	2
Dentist General Anesthetic Permit	1	1	5	31
Dentist Parenteral Sedation Permit	5	11	20	73
Hygienist Local Anesthetic Agent	28	44	19	563
Totals	156	227	230	2,399

Source: Compiled from DCBPL licensing database.

DCBPL management, in consultation with the board, increased fees to cover the costs of regulating the profession.

The board receives its revenue from licensure and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle in board revenues. DCBPL management increased fees in FY 15 and again in FY 17 to more closely align revenues with the annual costs of the board. As shown in Exhibit 3, the board had a deficit of (\$35,864) as of March 2018. According to DCBPL management, a fee analysis is scheduled for 2018. License and registration fees are listed in Exhibit 4.

Exhibit 3

**Board of Dental Examiners
Schedule of Revenues and Expenditures
FY 14 through March 31, 2018
(Unaudited)**

	FY 14	FY 15	FY 16	FY 17	July 1, 2017 - March 31, 2018
Revenues					
Licensing Revenue	\$75,095	\$479,846	\$103,201	\$686,060	\$66,491
Total Revenues	75,095	479,846	103,201	686,060	66,491
Direct Expenditures					
Personal Services	154,086	116,909	132,528	167,345	99,584
Travel	12,796	14,040	8,138	5,286	6,937
Services	105,918	55,437	17,491	61,412	38,534
Commodities	525	1,102	427	846	161
Total Direct Expenditures	273,325	187,488	158,584	234,889	145,216
Indirect Expenditures	108,227	90,087	102,251	186,587	139,941*
Total Expenditures	381,552	277,575	260,835	421,476	285,157
Annual Surplus (Deficit)	(306,457)	202,271	(157,634)	264,584	(218,666)
Beginning Cumulative Surplus (Deficit)	180,038	(126,419)	75,852	(81,782)	182,802
Ending Cumulative Surplus (Deficit)	(\$126,419)	\$75,852	(\$81,782)	\$182,802	(\$35,864)

Source: DCCED management

*FY 18 indirect costs were estimated based on prior year actuals.

Exhibit 4

Board of Dental Examiners License and Registration Fees FY 14 through FY 18

Fee Type	FY 14	FY 15	FY 16	FY 17	FY 18
Dental Hygienists:					
Nonrefundable Application Fee:					
Initial Application Fee	\$85	\$100	\$100	\$100	\$100
Dental Hygienist Courtesy License Application	50	50	50	50	50
Initial Restorative Function Endorsement	50	60	60	100	100
Local Anesthetic Permit	60	60	60	60	100
Board Conducted Examination*	3,000	0	0	0	0
License Fee for All or Part of Biennial Period	120	150	150	200	200
Biennial License Renewal	120	150	150	200	200
Local Anesthetic Permit	50	60	60	100	100
Local Anesthetic Permit Renewal	50	60	60	100	100
Credential Review Fee	100	110	110	110	110
Dental Hygienist Courtesy License	50	50	50	50	50
Restorative Function Endorsement	50	60	60	60	60
Restorative Function Endorsement Renewal	50	60	60	60	60
Dentists:					
Nonrefundable Application Fee:					
Initial License by Examination	300	600	600	600	600
Initial Specialty License*	400	0	0	0	0
Dental Courtesy License	50	50	50	50	50
Branch Office Registration or Permit*	50	0	0	0	0
Parenteral Sedation or General Anesthetic Permit	50	100	100	100	100
Nonrefundable Application and Review Fee for License by Credentials	400	1,000	1,000	1,000	1,000
Board Conducted Clinical Examination*	5,000	0	0	0	0
License Fee for Biennial Period	290	350	350	450	450
Specialty License Fee for All or Part of Biennial Period*	290	0	0	0	0
Biennial Renewal	290	350	350	450	450
Branch Office Registration*	25	0	0	0	0
Branch Office Registration Renewal*	25	0	0	0	0
Parenteral Sedation Permit for Initial Period	50	1,000	1,000	1,000	1,000
Biennial Parenteral Sedation Permit Renewal	50	250	250	350	350
General Anesthetic Permit for Initial Period	50	1,000	1,000	1,000	1,000
General Anesthetic Permit	50	100	100	100	100
Biennial General Anesthetic Permit Renewal	50	250	250	350	350
Initial Continuing Education Course Submittal	25	40	40	50	50
Continuing Education Course Resubmittal	15	30	30	50	50

Source: DCBPL Regulations.

*Fee and/or license type was repealed effective December 2014.

FINDINGS AND RECOMMENDATIONS

The prior 2010 sunset audit made one recommendation:

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

The prior audit recommendation is considered resolved. The current sunset audit concluded that investigations were processed timely.

This audit makes two new recommendations.

Recommendation 1:

**The Board of Dental
Examiners (board)
president should take steps
to correct a regulation
error.**

A 2016 change to a dental radiological equipment regulation resulted in regulations referring to a repealed section of regulations. Specifically, 12 AAC 28.965 states:

*(b) The inspection of dental radiological equipment must
(1) be performed by an inspector who is on the list
maintained under (d) of this section;*

However, section 12 AAC 28.965(d) was repealed March 2016.

Per AS 44.62.060(b)(3), the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine its clarity, simplicity of expression, and absence of possible misapplication. The above error was not identified by the board, DCBPL's regulations specialist, or the Department of Law attorney during the regulation review. The anomaly makes it unclear who is authorized to inspect dental radiological equipment.

We recommend the board president take steps to correct the regulation error.

Recommendation 2:

DCBPL's chief investigator, in consultation with the board, should implement controls to ensure the appropriate entities are notified when a licensee's prescription authority is suspended or revoked.

The audit identified two licensed dentists that had their prescription authority revoked or suspended during the audit period. In both cases, the board did not notify the Board of Pharmacy or the Drug Enforcement Administration (DEA); there were no documented procedures that required notification.

Per AS 17.30.200, the Board of Pharmacy is responsible for administering the controlled substance prescription database. The database must be reviewed by pharmacists prior to dispensing controlled substances, with certain exceptions. Failure to notify the Board of Pharmacy when prescription authority has been revoked or suspended increases the risk that controlled substances may be abused or diverted.

Per federal regulation, the DEA may rescind or revoke the federal authority to prescribe controlled substances if an existing DEA registrant loses his or her state privileges.⁵ Failure to notify the DEA that a dentist's prescription authority has been suspended or revoked may result in improper or unauthorized prescriptions.

We recommend DCBPL's chief investigator, in consultation with the board, implement controls to ensure the appropriate entities are notified when a licensee's prescription authority is suspended or revoked.

⁵21 U.S. Code § 824 – Denial, revocation, or suspension of registration.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dental Examiners (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 08.030.010(c)(7), the board will terminate on June 30, 2019, 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 the statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from July 1, 2014, through January 31, 2018. Financial information is presented, unaudited, from July 1, 2013, through March 31, 2018.

Methodology

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

- The prior sunset audit report (ACN 08-20069-10) 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's 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.
 - Expenditures, revenues, and fee levels for the board to determine whether fee levels covered the costs of operations.
 - Investigation data of the board for cases open or opened from July 1, 2014, through January 31, 2018. A random sample of 10 of 23 cases open for over 180 days was reviewed for unjustified periods of inactivity.
 - Various State and news related websites to identify complaints against the board or other board related concerns.
 - Licensing data to determine whether licenses were issued in accordance with the board's statutes and 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 Division of Corporations, Business, and Professional Licensing staff and board members. Specific issues of inquiry were board operations, regulations, duplication of effort, fee level, complaints against the board, and licensure requirements for dentists and dental hygienists.

A random sample of 40 licensees was selected from the 2,399 licensees that were active as of January 31, 2018. License applications were

assessed for statutory and regulatory compliance. The sample size was based on low control and inherent risk, moderate audit risk, and moderate level of assurance. The sample items included initial and renewal licensees. Test results were projected to the population.

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APPENDIX SUMMARY

Appendix A provides the sunset criteria used in developing our conclusion regarding whether the Board of Dental Examiners' termination date should be extended.

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APPENDIX A

Analysis of Public Need Criteria 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;

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-
- (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 Department of Commerce, Community, and Economic Development



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community, and Economic Development

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October 30, 2018

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OCT 30 2018

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 Dental Examiners Sunset Review, April 26, 2018

Dear Ms. Curtis:

Thank you for the opportunity to comment on Confidential Preliminary Report regarding the Board of Dental Examiners. The department has the following response to the information and recommendations presented in the letter:

Recommendation No. 1 – The board president should take steps to correct a regulation error.

As this is a board matter, the department defers to the board for response. Division staff will support the board in adopting new regulations to correct this error.

Recommendation No. 2 -- DCBPL's chief investigator, in consultation with the board, should implement controls to insure the appropriate entities are notified when a licensee's prescription authority is suspended or revoked.

As a result of this recommendation, DCBPL's chief investigator adopted a policy on May 24, 2018, requiring the program investigator to notify the federal Drug Enforcement Agency (DEA) and the Board of Pharmacy/Prescription Drug Monitoring Program (PDMP) when license action is taken that adversely impacts a licensee's prescriptive authority. The DEA and the PDMP will receive a copy of the license actions pertaining to drug diversion, prescribing issues, standard of care/practice issues, and any mental health conditions that limit the ability to practice safely, or other matters affecting public safety.

Although this recommendation is in relation only to the Board of Dental Examiners audit, the division has expanded this policy to include all profession with prescriptive authority.

Division of Legislative Audit
October 30, 2018
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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,

A handwritten signature in blue ink that reads "Mike Navarre". The signature is fluid and cursive, with the first name "Mike" and last name "Navarre" clearly distinguishable.

Mike Navarre
Commissioner

cc: Janey McCullough, Director, Division of Corporations, Business and Professional Licensing
Angela Ramponi, Legislative Liaison, DCCED

Agency Response from the Board of Dental Examiners



Paul J. Silveira, D.M.D.

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October 15, 2018

Kris Curtis, CPA, CISA

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LEGISLATIVE AUDIT

Dear Kris,

This is a response to your preliminary report for Sunset Review of the Alaska Board of Dental Examiners. I have read the report and understand and agree with the conclusions. The first finding states that 12 AAC 28.965 (b)(1) refers the reader to a repealed section, I agree with this conclusion. This can be remedied by reworking the sentence to indicate where the list is maintained, this will be addressed in our next board meeting on December 7, 2018.

Finding number two states that if a dentist has their prescription authority has been suspended or revoked, there is no system in place to alert the Board of Pharmacy or the DEA. I agree with this conclusion and believe it can be addressed at the administrative level with a simple understanding, this will be discussed at the December 7, 2018 Board meeting.

Thank you for this opportunity to participate in this process.

Sincerely,

Paul Silveira DMD

President, Alaska Board of Dental Examiners