

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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August 11, 2021

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

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
BOARD OF CHIROPRACTIC EXAMINERS
SUNSET REVIEW

June 22, 2021

Audit Control Number
08-20128-21

In accordance with AS 08.03.010(c)(5), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date five years 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

| | |
|-------|--|
| ACN | Audit Control Number |
| AS | Alaska Statute |
| 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 |

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ORGANIZATION AND FUNCTION

Board of Chiropractic Examiners (board)

The board, established under AS 08.20.010, is comprised of five members appointed by the governor to serve staggered four-year terms. Board membership consists of four licensed chiropractors who have practiced in Alaska for at least two years and one public member. The public member must not have a direct financial interest in the health care industry. Board members, as of March 11, 2021, are listed in Exhibit 1.

Alaska statutes define the board's duties, which include establishing regulations necessary for:

- continuing education;
- the application, performance, and evaluation of chiropractic core methodology;
- the training, qualifications, scope of practice, and employment of chiropractic interns and chiropractic preceptors;
- the designation of one or more nationally recognized certification programs for chiropractic clinical assistants; and
- the performance of patient examinations authorized under AS 08.20.100(b).

Additionally, statutes state the board may:

- issue a license to qualified applicants;
- impose a disciplinary sanction on a board licensee or refuse to issue a license; and

Exhibit 1

Board of Chiropractic Examiners Members as of March 11, 2021

Brian Larson, Chiropractor
(Soldotna)
Chair

Gabriel King
(North Pole)
Public Member

Timothy Kanady, Chiropractor
(Anchorage)

John Lloyd, Chiropractor
(Anchorage)

James Morris, Chiropractor
(Dutch Harbor)

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

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

- establish a utilization review committee to review complaints concerning the reasonableness or appropriateness of care provided, fees charged, or costs of services provided.

DCBPL provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services, collecting fees, receiving application forms, publishing notices for meetings, and assisting with board regulations. DCCED is required by AS 08.01.065 to adopt regulations that establish the amount and manner of payment of application, examination, license, permit, and investigation fees.

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

- conduct an investigation if it appears a person is engaged or about to engage in a prohibited professional practice;
- bring an action in Superior Court to enjoin the act;
- 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; and
- issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In developing conclusions regarding whether the Board of Chiropractic 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 to 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 continued operations.

Overall, the audit concluded that the board served the public's interest by conducting meetings in accordance with State laws, amending certain regulations to improve the chiropractic profession, and effectively licensing and regulating chiropractic physicians. Additionally, the audit found one board member did not meet statutory requirements for appointment and additional resources were needed to investigate cases in a timely manner.

In accordance with AS 08.03.010(c)(5), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date five years to June 30, 2027, which is less than the eight-year maximum allowed in statute. The reduced extension is due to an issue identified during the audit that may impact the board's ability to protect the public. The details of the issue are not included in this report to preserve the confidentiality of an ongoing investigation. The reduced extension reflects the need for continued oversight.

Detailed report conclusions are as follows.

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

The board's operations were conducted in an effective manner. From July 2017 through January 2021, the board held at least two meetings each year as required by regulation. A review of five of 19 board meetings held during the audit period found the meetings were appropriately public noticed, allotted time for public comment, and a quorum was consistently achieved. Further, the audit determined the board did not duplicate the efforts of other entities.

Additionally, the audit found the board's public member was employed in the health care industry and, consequently, did not meet statutory requirements for appointment. Statutes prohibit the public member from having a direct financial interest in the health care industry. (See Recommendation 1)

The board amended regulations in the public's interest. Between July 2017 and January 2021 the board amended regulations to:

- clarify continuing professional education requirements for applicants that hold or have held a license in another state and are applying for a license by examination to ensure continued competence of the licensee;
- align license requirements with the National Board of Chiropractic Examiner requirements;
- establish criteria and minimum experience levels for a chiropractic physician acting as a preceptor to ensure the competency of chiropractic preceptors;
- clarify allowable practices for chiropractic interns and chiropractic clinical assistants to protect the public; and
- remove the oral exam from the examination requirements to improve licensing efficiency.

The board licensed individuals in accordance with statutes and regulations.

The audit concluded that the board licensed chiropractors in accordance with statutes and regulations. From July 2017 through January 2021 the board issued 65 new licenses and permits. Auditors' review of 10 new and 30 renewed licenses and permits issued during the audit period confirmed the licenses and permits were issued in accordance with applicable laws and regulations. As shown in Exhibit 2, there were 306 active board licenses and permits as of January 31, 2021.

Exhibit 2

| Board of Chiropractic Examiners Licensing Activity FY 18 through January 31, 2021 | | | | |
|--|---|--------------|--------------|--|
| | New Issued (Exclusive of Renewals) | | | Total Active as of January 31, 2021 |
| | FY 18 | FY 19 | FY 20 | |
| Chiropractic Physician | 22 | 18 | 15 | 306 |
| Chiropractic Physician Temporary Permit | 4 | 0 | 0 | 0 |
| Locum Tenens Practice ¹ | 1 | 0 | 0 | 0 |
| Total | 27 | 18 | 15 | 306 |

Source: Compiled from DCBPL licensing database.

Delays were identified in the board’s investigative process.

Thirty-six investigations were open or opened between July 2017 and January 2021, and 11 of these cases were open over 180 days during the period. Auditors reviewed all 11 cases open over 180 days and found that seven had unjustified periods of inactivity. The seven cases involved the same chiropractor and were combined into one case. Four unjustified periods of inactivity were identified with the case ranging from 55 to 208 days. According to Division of Corporations, Business and Professional Licensing (DCBPL) investigative staff, competing priorities and limited resources contributed to the delays. (See Recommendation 2)

Areas of concern identified during the audit have been omitted from this report.

Certain details identified during the audit relating to DCBPL’s investigative process have been omitted from this report. The details were omitted to preserve the confidentiality of an ongoing investigation.

¹ According to AS 08.20.163(a), the board may grant a temporary permit to a chiropractor for the purpose of the chiropractor’s substituting for another chiropractor licensed in Alaska.

Exhibit 3

Board of Chiropractic Examiners Schedule of Revenues and Expenditures FY 18 through January 31, 2021 (Unaudited)

| | FY 18 | FY 19 | FY 20 | July 1, 2020 - January 31, 2021 |
|---|--------------------|------------------|--------------------|------------------------------------|
| Revenues | | | | |
| Licensing Fees | \$ 36,390 | \$ 211,760 | \$ 24,395 | \$ 194,310 |
| Other Sources | 505 | 0 | 0 | 0 |
| Total Revenues | <u>36,895</u> | <u>211,760</u> | <u>24,395</u> | <u>194,310</u> |
| Direct Expenditures | | | | |
| Personal Services | 58,977 | 66,101 | 79,507 | 52,038 |
| Travel | 15,220 | 6,618 | 5,152 | 0 |
| Services | 13,173 | 4,534 | 20,803 | 15,052 |
| Commodities | 123 | 108 | 0 | 0 |
| Total Direct Expenditures | <u>87,493</u> | <u>77,361</u> | <u>105,462</u> | <u>67,090</u> |
| Indirect Expenditures* | <u>33,707</u> | <u>37,569</u> | <u>37,226</u> | <u>21,591</u> |
| Total Expenditures | <u>121,200</u> | <u>114,930</u> | <u>142,688</u> | <u>88,681</u> |
| Annual Surplus (Deficit) | (84,305) | 96,830 | (118,293) | 105,629 |
| Beginning Cumulative Surplus (Deficit) | <u>65,940</u> | <u>(18,365)</u> | <u>78,465</u> | <u>(39,828)</u> |
| Ending Cumulative Surplus (Deficit) | <u>\$ (18,365)</u> | <u>\$ 78,465</u> | <u>\$ (39,828)</u> | <u>\$ 65,801</u> |

* Indirect expenditures are estimated as of January 31, 2021, using the board's prior year indirect expenditures allocated for seven months.
Source: Department of Commerce, Community, and Economic Development management.

Licensing fees generally covered the cost of regulating the profession.

The board primarily receives its revenue from licensure 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 a cumulative deficit of \$39,828 at the end of FY 20. According to DCBPL management, the deficit was within a reasonable range and no fee changes were recommended. Exhibit 4 shows board fees for the period FY 18 through FY 21.

Exhibit 4

| Board of Chiropractic Examiners License Fees FY 18 through FY 21 | |
|---|---------------|
| Fee Type | Amount |
| Application fee for initial license, locum tenens permit, or any courtesy license | \$250 |
| License fee for all or part of the initial biennial license period | \$600 |
| Biennial license renewal fee | \$600 |
| Temporary permit fee | \$150 |
| Examination fee | \$200 |
| Locum tenens permit fee | \$150 |
| Inactive license fee | \$150 |
| Retired status license fee | \$150 |
| Specialty designation fee | \$50 |
| Fee for any courtesy license | \$150 |
| Continuing education course approval fee | \$125 |
| Continuing education course change approval fee | \$50 |
| Delayed renewal penalty fee | \$100 |
| Peer review fee charged to a complainant | \$50 |

Source: DCBPL regulations.

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FINDINGS AND RECOMMENDATIONS

The prior 2013 sunset audit made two recommendations:

- The governor should make Board of Chiropractic Examiners (board) appointments in compliance with statutory requirements.
- The Division of Corporations, Business and Professional Licensing (DCBPL) director should continue efforts to improve the investigative case management system's integrity and confidentiality.

The prior recommendation that the governor should make board appointments in compliance with statutory requirements has not been resolved. Although the public member identified in the prior sunset audit was no longer on the board, a similar deficiency was identified and the prior recommendation is reiterated in this audit as Recommendation No. 1.

The prior audit recommendation to address deficiencies in the investigative case management system has been partially addressed and the outstanding issues are not significant enough to warrant restating the recommendation. DCBPL has addressed a number of the investigative case management system deficiencies by improving system processes to reduce lost work and increase the reliability of reported information; however, security issues related to case confidentiality remain. All investigators continue to have the ability to view and update case information regardless of the business need. DCBPL management is aware of the security risk and feels the risk is justified to facilitate workload assignments.

In addition to reiterating a prior recommendation, this audit makes one new recommendation.

Recommendation No. 1:
The governor should make board appointments in compliance with statutory requirements.

The board's public member, as of March 2021, did not meet statutory requirements for appointment. Specifically, the public member was a certified emergency medical technician. According to AS 08.20.020, the public member must not have a direct financial interest in the health care industry.

According to the Office of the Governor, Boards and Commission's director, the public member noted his employment during the appointment process and no additional follow-up was conducted due to human error.

Public board members are intended to provide a consumer perspective to help protect the public's interest. The consumer perspective is impaired when a public member has a direct financial interest in the health care industry.

We recommend the governor appoint board members in compliance with statutory requirements. Additionally, we recommend that the public board member be replaced with an appointee that meets statutory requirements.

**Recommendation No. 2:
DCBPL's director
should allocate
sufficient resources
to ensure cases are
addressed in a timely
manner.**

All 11 cases open over 180 days from July 2017 through January 2021 were evaluated by auditors. It was identified that seven of the cases involved the same chiropractor and were combined into one case. Auditors found the case had four periods of unjustified inactivity ranging from 55 to 208 days. According to DCBPL investigative staff, the inactivity was the result of competing priorities and insufficient resources. Cases that are not investigated timely may increase the risk to public safety.

The duty to investigate occupational licensing complaints is statutorily assigned to DCBPL. The efficiency with which complaints are investigated is one of the evaluation criteria used in the legislative sunset oversight process. Specifically, AS 44.66.050(c) requires examining:

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.

We recommend DCBPL's director allocate sufficient resources to ensure cases are addressed in a timely manner.

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Chiropractic 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. Under AS 08.03.010(c)(5), the board will terminate on June 30, 2022, 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 the board's operations and performance 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 July 2017 through January 2021. Financial information is presented, unaudited, from July 2017 through January 2021.

Methodology

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

- The prior sunset audit report (ACN 08-20080-13) 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 Notices System to verify the board meetings were adequately public noticed.
 - Various state and news related websites to identify complaints against the board or other board related concerns.
 - Board annual reports to gain an understanding of board activities.
 - Expenditures, revenues, and fee levels for the board to determine whether fees covered the costs of board operations.
 - Board investigation data to assess the efficiency of the investigative process.
 - Various state and federal websites for potential duplication of board activities.
 - Internal controls over the licensing database and investigative case management system to determine if controls were properly designed and implemented.

To identify and evaluate board activities, we conducted interviews with State agency staff and board members. Specific areas of inquiry included board operations, regulations, duplication of effort, fee levels, and complaints against the board.

During the audit the following samples were selected:

- Board meetings held from July 2017 through January 2021. A random sample of five of 19 meetings (26 percent) were reviewed 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.

-
-
- A random sample of 40 licenses was tested. Ten new licenses were selected from 65 new licenses issued from July 2017 through January 2021. Thirty renewal applications were selected from the 301 license renewals that were applied for during the December 31, 2020, renewal period. The 10 new and 30 renewal applications were assessed for statutory, regulatory, and control compliance. The sample size was based on moderate control risk, low inherent risk, and moderate audit risk.
 - Board related investigation data for cases open or opened from July 2017 through January 2021. All cases open over 180 days were reviewed for unjustified periods of inactivity. The results were not 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 Chiropractic Examiners termination date should be extended.

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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, budgetary, 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 MIKE DUNLEAVY

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER
Anchorage Office

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Anchorage, Alaska 99501
Main: 907.269.8100
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RECEIVED

OCT 19 2021

LEGISLATIVE AUDIT

August 2, 2021

Zachary Kennedy
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RE: Confidential Management Letter No. 1, Department of Commerce, Community, and Economic Development, Board of Chiropractic Examiners Sunset Review

Dear Mr. Kennedy:

Thank you for the opportunity to comment on the Confidential Management Letter regarding the Board of Chiropractic Examiners (board). The department concurs with the conclusions that the board is generally operating in the public interest in accordance with statutes and regulations and has the following comments on the letter:

Status of prior recommendations

We are unclear what is meant by the statement "reduce lost work and increase the reliability of reported information." To avoid attracting unwarranted concern from legislators, we would appreciate clarity on this statement. We are not aware of any instances of lost work or unreliable information within the case management system.

The department maintains its position that the investigative case management system's audit trail, augmented supervisory checks, and severe state penalties provide substantial security against internal misuse of investigative data.

Recommendation No. 1: The Office of the Governor should make board appointments in compliance with statutory requirements.

Because this recommendation is not directed to the department, we have no response.

Recommendation No. 2: DCBPL's director should allocate sufficient resources to ensure cases that pose a risk to the public safety are addressed in a timely manner.

The department agrees that investigations should be completed timely. Per DCBPL Investigative SOP #4: "The State of Alaska owes a duty to its citizens to pursue their complaints with a sense of urgency and in a complete manner. The division also owes a duty to licensees to resolve complaints, which create significant stress and can damage business and professional reputations, in a speedy and through manner."

The measure for this recommendation is based on the division's own expectation that supervisory reviews of all cases are performed at various milestones. In addition, the division's policies are set with an expectation that the demand for services will be met with the resources to attain the stated goals. Because the workload and available resources are imbalanced, the division is taking the following steps to recalibrate the policies while adhering to its standards outlined in SOP #4:

- The division director authorized creation of an additional senior investigator position who, like other managers, carries a caseload in addition to supervisory responsibility. An additional Investigator III position was also created to assist the healthcare team. These positions were filled last winter and are contributing to increased quality control within the unit.
- Due to the substantial investigative caseload, the policy requiring mandatory reviews at 180 days by the senior investigator and 365 days by the chief investigator has been reviewed and updated to establish these timed checks as *target* windows.
- The chief investigator updated the unit's system of case prioritization to formalize allocation of resources to the highest priority cases while documenting the pending status of lower-priority cases in the case management system. The one case cited with gaps in documentation has posed significant due process challenges: a formal complaint had never been brought forward and the witnesses were non-cooperative, both of which are foundational to licensing investigations. The investigator was concurrently assigned to higher priority life, health, and safety cases and relied on the advising attorney's assertion that the respondent did not pose a risk for reoffending. The cited case remains open and is being carefully yet assertively pursued in partnership with the Department of Law.

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 907-269-8125.

Sincerely,



Julie Anderson
Commissioner

cc: Sara Chambers, Director, Division of Corporations, Business and Professional Licensing
Glenn Hoskinson, Legislative Liaison, DCCED

Agency Response from the Office of the Governor

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500



550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450

Governor Mike Dunleavy
STATE OF ALASKA

September 20, 2021

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SEP 20 2021

LEGISLATIVE AUDIT

Ms. Kris Curtis
P.O. Box 113300
Juneau, AK 99811

Dear Ms. Curtis:

After reviewing the August 27, 2021 preliminary audit report, I agree that appointments should be made in compliance with statutory requirements (Recommendation 1). An error in evaluating Mr. King's background missed that he was an emergency medical technician in addition to being a firefighter. As suggested in Recommendation 1, Mr. King was removed from the Board of Chiropractic Examiners public seat.

I defer to Commissioner Anderson and staff at the Division of Corporations, Business and Professional Licensing on Recommendation 2 which speaks to allocation of resources.

If you have any questions or need additional information, please contact my Boards and Commissions Director, Courtney Enright, at 907-269-0006.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Dunleavy".

Mike Dunleavy
Governor

cc: The Honorable Julie Anderson, Commissioner, Department of Commerce Community and Economic Development
Miles Baker, Legislative Director, Alaska Office of the Governor
Courtney Enright, Director of Boards and Commissions, Alaska Office of the Governor

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Agency Response from the Board of Chiropractic Examiners



September 20, 2021

RECEIVED
SEP 28 2021
LEGISLATIVE AUDIT

TO: The People of Alaska, the Honorable Governor of Alaska, the Alaska State Legislature, and the Division of Legislative Audit.

SUBJECT: Response to the Preliminary Sunset Audit Report of the Alaska Board of Chiropractic Examiners, Audit Control Number 08-21128-21.

The Alaska Board of Chiropractic Examiners wish each of you health, happiness and hope amidst this ongoing season of COVID, and commit our time and our hearts to each citizen, officer of the state and volunteer engaged in moving the Great State of Alaska forward toward a safer, healthier and stronger future and a better place to live.

As the Board of Chiropractic Examiners, each member serves as a volunteer at the will of the Governor and confirmation of the Alaska Legislature. Four of these members are professionals from the chiropractic profession, and the fifth member is a citizen of Alaska without a financial interest in the profession. These board members serve four years with the addition to extend service a second term, and serve without compensation for time, expertise or effort. The only remuneration is for travel and lodging and direct incurred expenses as required in service.

As with all professional boards, the Alaska Board of Chiropractic Examiners serves to overview the new and ongoing licensure of chiropractic physicians and functions of interns and certified clinical chiropractic assistants. The board interprets, adds or eliminates regulation and recommends statutory changes necessary for:

- continuing education of chiropractic physicians;
- the application, performance, and evaluation of chiropractic core methodology and ancillary methodology;
- The training, qualifications, scope of practice, and employment of chiropractic interns and chiropractic preceptors;
- The designation of one or more nationally recognized certification programs for chiropractic clinical assistants; and
- The performance of patient examinations authorized under AS 08.20.100(b);
- Issue licenses to qualified applicants;
- Impose disciplinary sanctions on a board licensee or refuse to issue a license;
- Establish a utilization review committee to review complaints concerning reasonableness or appropriateness of care provided, fees charged, or costs of services provided.

Brian E. Larson, DC, DACBSP®
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Legislative Audit Response
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Notably absent from this overt list of responsibilities is the review, selection or oversight of the process of applicants for service on the board and the investigation process relating to legal and ethical misdeeds of chiropractic professionals.

June 2021 Sunset Audit

The Division of Legislative Audit, per AS 44.66.050(c), conducted a routine sunset audit of the Alaska Board of Chiropractic Examiners as a course of normal internal function for the State of Alaska Legislature in FY'21. It was found the board generally operated in the public interest and did not duplicate the efforts of other entities.

While over all the board was found to be a benefit to the people of the State, and functioning overwhelmingly appropriate, there were two deficiencies noted, that incidentally were identically found in the 2013 Audit, specifically:

1. A citizen was appointed to be a member of the board through application with the Office of the Governor, Boards and Commissions, who had a direct financial conflict with AS 08.20.020, which outlines the qualifications for service. This individual was appointed by the governor and began attending board meetings prior to this fact coming to light, at which time the individual immediately and appropriately resigned. The member properly disclosed his primary employment as an Emergency Medical Technician/Paramedic with a municipal fire department, a fact that was overlooked and not properly considered by Boards and Commissions; and
2. Cases of legal or ethical wrongdoing by chiropractic physicians are investigated by the Division of Corporations, Business and Professional Licensing Investigations Unit. All cases involving chiropractic physicians were evaluated from 2017 to 2021 which were open over 180 days. Overall, the unit and investigators responded rapidly and professionally. However, there were seven (7) cases combined into one (1) case involving the same chiropractic physician and the same types of complaints. Four periods of inactivity from 58 to 208 days were documented. The case was referred to the Attorney General's office for dissolution, and was sent back to the District Attorney with instructions to actively prosecute. Reasoning for such delay or inactivity is competing priorities, and limited resources available to the investigations unit. This case(es) is still unresolved.
Failure to investigate and prosecute wrongdoings by chiropractic physicians in a timely manner increases the risk to the safety of the Alaska public, casts a negative light on many professionals diligently serving the public, and erodes the confidence of the public that such things will be properly and rapidly resolved by state officials.

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The recommendations of the Audit Committee for remediating the above articulated deficiencies, while extending the function of the Alaska Board of Chiropractic Examiners is to **decrease the sunset audit provision from the standard eight years to only five years.** While this may be an attempt to shorten the time frame to evaluate for resolution in these areas, it also becomes a punitive measure against those board members who volunteer from their lives and livelihoods serving the People of the State without compensation for measures of which they have **no control.** This is wrong.

Regarding Recommendation 1: The Alaska Board of Chiropractic Examiners has no part in the review process or selection of applicants for service on the board. This is solely the responsibility of the Governor's Office, and the professionals careerly employed by the State in Boards and Commissions. If discipline, correction or retraining needs occur, it is the director of Boards and Commissions and the employees that evaluate those applications, not the volunteers of professional boards who have that responsibility, and hence, such paid state employees should be instructed/disciplined.

Given this repeated error was found and unchanged from the 2013 audit indicates this is more of a habitual dysfunction than an occasional event. Such failure needs to be cleaned up and eliminated. This latest situation created significant confusion and took far more time and finances to resolve than if it were simply performed properly from the start. Discipline and train where the responsibility lies—with Boards and Commissions, not the Alaska Board of Chiropractic Examiners.

In response to Recommendation 2: The Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing oversee and support the Alaska Board of Chiropractic Examiners, and provide the license examiners, support staff, investigative unit and interactions with the Legal Department of the State of Alaska.

Overwhelmingly, the Investigations Unit operates efficiently and with dedication in performing their duties. However, in the case(es) for which the board is being disciplined, there has been a failure to proceed to prosecution and resolution—partly because of the complexities of the case, the public profile of the questioned professional, and according to the audit team, lack of time and competing resources. In essence, the investigative unit is too small with too much work.

While time and resources become more challenged in state government, focus and prioritizing become critical. The responsibility of a unit leader is to focus, train and direct the work in the unit. They track progress and assist in moving each case forward while resolving challenges. If things get set aside, the unit leader helps resolve the delays. Understandably, interactions with

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the Department of Law are required for this case, but that does not relieve the responsibility to act completely and timely. Certainly the unit leader bears responsibility for failure to move a case to resolution.

Blaming the board where they have no authority or influence is not appropriate. If budgets are really that tight, perhaps the quasi-investigation units of Commerce, Revenue and wherever else they exist in State government should be moved to the Investigations Bureau of the State Troopers in Public Safety. Many of these cases involve a criminal component, such as sexual assault. Adding professional and ethical misdoing into such cases only strengthens the case. Something to think very seriously about.

At this point, I formally request the Alaska Board of Chiropractic Examiners be granted a full 8-year sunset audit period, and any remedial action or discipline occur in the units where the misdeeds involving application for board service and delays in prosecution of professional and ethical misdeeds happen.

Thank you for the opportunity to review and comment on this audit, and thank you for a comprehensive and unabashed review of the board. The Alaska Board of Chiropractic Examiners looks forward to continuing in serving the chiropractic profession and the People of the Great State of Alaska.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Larson", is written over a circular, scribbled background.

Brian E. Larson, D.C., DACBSP®
Chair, Alaska Board of Chiropractic Examiners

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Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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October 20, 2021

Members of the Legislative Budget
and Audit Committee:

I have reviewed the responses to the Board of Chiropractic Examiners (board) audit report. Nothing contained in the responses causes me to revise or reconsider the report conclusions or recommendations. However, I offer the following comments in response to statements made by the commissioner of the Department of Commerce, Community, and Economic Development (DCCED), and provide additional information related to the audit report's Objectives, Scope, and Methodology section.

DCCED's commissioner requested clarification regarding page nine of the audit, where we provide the status of a prior recommendation. Specifically, when summarizing the status of a prior finding, we state that the finding had been materially resolved by improvements that "reduce lost work and increase the reliability of reported information." The commissioner states that she is not aware of any instances of lost work or unreliable information within the case management system. To clarify, the lost work and unreliable information was identified in the board's 2013 sunset audit. This audit provides a status of the prior finding.

The commissioner indicates that the case associated with Recommendation No. 2 was a lower priority case and DCCED's attorney advised that the respondent was a low risk of reoffending. Our evidence confirmed this advice. However, our evidence also found that the day after this advice was provided, the attorney advised that an expert witness was needed to determine whether the respondent posed an immediate threat to the public's safety. Yet, the case sat idle as documented in Recommendation No. 2.

In summary, I reaffirm the report's conclusions and recommendations.

Additionally, I acknowledge that the Objectives, Scope, and Methodology section on pages 14 and 15 of the report failed to identify whether the sample results were projected to the

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population. I clarify that the sample results were projected to the population in regard to review of board meetings and license testing.

Sincerely,



Kris Curtis, CPA, CISA
Legislative Auditor