

# 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, 2018, and will have one year from that date to conclude its administrative operations.

## What DLA Recommends

1. The Division of Corporations, Business, and Professional Licensing's (DCBPL) director, in consultation with the board, should take action to improve procedures to ensure licensure requirements are met.
2. DCBPL's director should address the Federal Bureau of Investigations audit findings and concerns.
3. The director of the Office of the Governor, Boards and Commissions should work to fill the public member position.

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

October 11, 2017

Audit Control Number 08-20109-17

## REPORT CONCLUSIONS

In all areas except licensing, the audit found the board was operating in the public's interest. In general, meetings were conducted effectively, investigations were appropriately processed, and the board actively issued or changed regulations to improve the industry and better protect the public.

The audit concluded the board and DCBPL staff should improve its licensing procedures. Testing found that applicants were not consistently issued licenses in accordance with statutes, regulations, and/or procedures. Additionally, improvements are needed to comply with the federal standards over criminal history record information obtained as part of the licensing process.

In accordance with AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2022.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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October 31, 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 Board of Massage Therapists (board) and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
BOARD OF MASSAGE THERAPISTS  
SUNSET REVIEW

October 11, 2017

Audit Control Number  
08-20109-17

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2022.

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

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|       |                                                                   |
|-------|-------------------------------------------------------------------|
| AAC   | Alaska Administrative Code                                        |
| ACN   | Audit Control Number                                              |
| AS    | Alaska Statute                                                    |
| board | Board of Massage Therapists                                       |
| CISA  | Certified Information Systems Auditor                             |
| CPA   | Certified Public Accountant                                       |
| DCBPL | Division of Corporations, Business, and Professional<br>Licensing |
| DCCED | Department of Commerce, Community, and<br>Economic Development    |
| DLA   | Division of Legislative Audit                                     |
| DPS   | Department of Public Safety                                       |
| FBI   | Federal Bureau of Investigations                                  |
| FY    | Fiscal Year                                                       |

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# ORGANIZATION AND FUNCTION

## Board of Massage Therapists

The Board of Massage Therapists (board) is composed of five members appointed by the governor (see Exhibit 1). By statute, four board members must be licensed massage therapists actively engaged in the practice of massage therapy for a period of three years immediately preceding appointment. The remaining position is to be filled by an individual from the general public. Statute prohibits the public member from being a licensed health care provider, an employee of the State, or a current or former member of another occupational licensing board.

The board's self-defined mission is:

*To provide public safety to massage consumers and to regulate the profession of massage therapy by setting and maintaining industry standards.*

Alaska statute defines the practice of massage therapy as the provision, for compensation, of a service involving the systematic manipulation and treatment of the soft tissues, including the muscular and connective tissue of the human body, to enhance the functions of those tissues and promote relaxation and well-being.

Per AS 08.61.020, the duties of the board include:

1. Examining and issuing licenses to qualified applicants;
2. Adopting regulations governing the licensing of massage

## Exhibit 1

### Board of Massage Therapists Members as of August 2017

David Edwards-Smith, Chair  
*Licensed Massage Therapist*

Ron Gibbs  
*Licensed Massage Therapist*

Traci Gilmour  
*Licensed Massage Therapist*

Jill Motz  
*Licensed Massage Therapist*

Vacant  
*Public Member*

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

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therapists and the practice of massage therapy;

3. Establishing standards of professional competence, ethical conduct, and continuing education for massage therapists;
4. Providing the public with a list of licensed massage therapists;
5. Determining the states that have educational and licensing requirements equivalent to the requirements of this state;
6. Approving one or more nationally recognized competency examinations and publishing and periodically updating the list of approved examinations; and
7. Enforcing massage therapist statutes and regulations.

**The Department of  
Commerce, Community,  
and Economic  
Development (DCCED)**

By statute, DCCED'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 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.

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

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## BACKGROUND INFORMATION

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House Bill 328, passed in 2014, created the Board of Massage Therapists (board) for the purpose of regulating entry into the practice of massage therapy. Per the board's 2015 annual report, having a regulatory board for the massage therapy industry allows massage therapists to establish themselves as health care professionals, bill insurance companies for services provided, create a legal way for the public to file a complaint, give voice to the public over the practice of massage therapy, and hold massage therapists accountable through licensure.

### Licensing Requirements

There are three ways a massage therapist can obtain licensure:

1. Through examination based on the requirements in 12 AAC 79.100;
2. Through credentials based on the requirements in 12 AAC 79.110; or
3. Through transition provided the applicants met requirements under 12 AAC 79.120. Applicants who wanted to obtain licensure through transition were required to submit an application by June 30, 2017.<sup>1</sup>

Board statutes require all licensees pass a state and federal background check in order to be licensed. Fingerprints are required to be submitted for both the initial application and at every renewal cycle. Per AS 08.61.030(9), AS 08.61.040(7), and AS 08.61.050(3), the board shall issue a license or renewal to a person who:

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<sup>1</sup>The applicant needed to provide verification they owned, operated, or worked for a massage therapy business and performed the practice of massage therapy before July 1, 2015, by submitting proof they operated as a massage therapist or were an active member of a national professional massage therapy association for one of the five years immediately preceding July 1, 2015.

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*Has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or who has been convicted of, or pled guilty or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely.*

To address this requirement, applicants are required to answer several professional fitness questions as part of the initial license application in addition to submitting fingerprints that allow for a background check. The applicant is asked if they have been convicted of a crime or are currently charged with a crime; if they have any professional license that has been revoked, suspended, or surrendered; if they have been addicted to or excessively used habit-forming drugs in the past five years; and whether they have been disciplined by an employer or national certifying organization for unethical conduct or sexual misconduct in connection with the delivery of massage therapy services within the past five years. If an applicant answers “yes” to any of the professional fitness questions, further evaluation is conducted by Division of Corporations, Business, and Professional Licensing (DCBPL) support staff, the board, and/or by investigation staff.

DCBPL written policies and procedures provide guidance to staff in addressing “yes” answers to professional fitness questions. Per procedures, DCBPL staff should ensure an applicant submits an explanation and a copy, if applicable, of court records. Under certain circumstances, applications with “yes” answers should be forwarded to a supervisor and/or the DCBPL investigation section for additional review. The board is responsible for reviewing and considering all information in the application packet prior to licensure.

According to the 12 AAC 79.130(c),<sup>2</sup> the board is allowed to approve applications for licensure without receipt of a background check

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<sup>2</sup>Department of Law has provided guidance that an occupational board may issue a license before the results of a background check have been received and evaluated.

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report. If a background check report later discloses disqualifying criminal history, the board can respond through disciplinary action. It is the responsibility of DCBPL staff to track applicants who have been issued a license and are awaiting a background report.

Furthermore, the board may approve applications pending receipt of items such as fees, fingerprint background cards, and proof of completion of additional courses. It is DCBPL staff's responsibility to obtain necessary documents and information prior to issuing a license.

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# REPORT

## CONCLUSIONS

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In developing our conclusions regarding whether the Board of Massage Therapists' (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.

In all areas except licensing, the audit found the board was operating in the public's interest. In general, meetings were conducted effectively, investigations were appropriately processed, and the board actively issued or changed regulations to improve the industry and better protect the public.

The audit concluded the board and DCBPL staff should improve its licensing procedures. Testing found that applicants were not consistently issued licenses in accordance with statutes, regulations, and/or procedures. Additionally, improvements are needed to comply with the federal standards over criminal history record information obtained as part of the licensing process.

In accordance with AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2022.

Detailed report conclusions are as follows.

### **Board operations, except licensing, served the public's interest.**

Board meetings held from February 2015 through August 2017 were conducted in an effective manner. A review of the 19 board meetings held during this period found that meetings were generally public noticed timely. As a new board, the majority of board meetings addressed statutory and regulatory changes as well as approving massage therapy applicants for licensure. Board meetings allowed for public comment and a quorum was consistently met. In March 2017, the public board member's

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term expired. The position remained vacant as of October 2017. (Recommendation 3)

A review of board investigative data found 44 cases were opened between December 2015 (first case) and August 2017. Thirty-three cases were closed during this period and 11 remain open as of August 2017. During this time, there were four cases open for over 180 days. These four cases along with eight additional cases were judgmentally selected to determine whether periods of inactivity were reasonable and if professional fitness questions were adequately addressed. The review found six of the 12 cases became inactive due to an investigator's reassignment to a high priority case on another board that impacted public safety. Investigative inactivity on the six cases ranged from 56 to 95 days, however once the investigator resumed work, all cases were actively pursued. The other six cases reviewed were actively investigated and professional fitness questions were addressed.

After enacting regulations to implement statutes, the board worked to improve the occupation by adding and revising the following regulations:

- 12 AAC 79.200 was added to require licensed massage therapists to apply for renewal biennially on September 30 of odd numbered years and to define the requirements for renewal. This addition helps to ensure massage therapists continue to operate in the public interest.
- Three regulations (12 AAC 79.210, 12 AAC 79.210(d), and 12 AAC 79.210(g) and (h)) added verbiage regarding continuing education requirements. This addition helps to ensure massage therapists continue to operate in the public interest.
- 12 AAC 79.220 was added to provide notification that applicants are subject to a random audit of continuing education requirements. This addition helps ensure massage therapists maintain their quality of care.
- 12 AAC 79.910 was amended to clarify definitions of moral

turpitude. This change improved the efficiency of board operations and the application process.

To address state and local concerns on human trafficking, the board has been discussing the licensing of massage therapy establishments. This would require a statutory change.

**The certifications offered by private organizations duplicate the licensing functions of the board to some degree.**

Private organizations offer massage therapist certifications and memberships including the Federation of State Massage Therapy Boards, the National Certification Board of Therapeutic Massage and Bodywork, and the American Massage Therapy Association. These organizations provide continuing education, examinations, career guidance, and accreditation. The certifications offered by private organizations duplicate the licensing functions of the board to some degree. However, state licensing is required to qualify as a health provider for insurance purposes.

**The board and Division of Corporations, Business, and Professional Licensing (DCBPL) staff did not consistently process licensing applications in accordance with statutes, regulations, and procedures.**

As shown in Exhibit 2, from July 2015 through August 2017, the board issued 1,186 new licenses. This number was almost double the 600 licenses that DCBPL management expected.

Exhibit 2

| Board of Massage Therapists<br>Licensing Activity<br>FY 16 through August 31, 2017 |       |       |                  |
|------------------------------------------------------------------------------------|-------|-------|------------------|
| New Issued (Exclusive of Renewals)                                                 |       |       |                  |
|                                                                                    | FY 16 | FY 17 | July-August 2017 |
| Massage Therapist                                                                  | 756   | 363   | 67               |

Source: Compiled from DCBPL licensing database.

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A random sample of 25 plus six judgmentally selected licenses issued during the audit period were tested. The audit found three<sup>3</sup> of the 31 licenses reviewed were licensed without adequate supporting documentation and/or review. Deficiencies included:

- A background check report for one licensee was not obtained for the initial licensing period by DCBPL staff. The applicant was approved and issued a license even though the background check report had not been received.<sup>4</sup> The licensee operated without a background check report from licensure in September 2015 through receipt of the background check report in July 2017 as part of the license renewal process. DCBPL staff did not follow up to ensure a background check report was received and evaluated timely as part of issuing the initial license.
- One applicant answered “yes” to a professional fitness question but there was no evidence in the licensing file that an explanation was provided and considered by the board. The applicant was issued a license despite the missing explanation.
- One applicant answered “yes” to a professional fitness question and provided an explanation that the applicant’s national board certification was revoked for violating the national board’s code of ethics and standards of practice. DCBPL staff and the board did not have the “yes” professional fitness reviewed by the investigative section to help evaluate risk to public safety. The applicant was issued a license under the condition that the applicant take a two hour ethics course.

In all three instances, the board and DCBPL staff did not process licensing applications in accordance with statutes, regulations, and procedures. Improvements are needed in the licensing process to reduce the risk to public safety. (Recommendation 1)

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<sup>3</sup>Two of 25 randomly selected licenses and one of six judgmentally selected licenses.

<sup>4</sup>Per regulation, licenses can be issued to an applicant even though the background check report has not been received. If the background check report discloses disqualifying criminal history, the board can respond through disciplinary action.

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**The board and DCBPL did not comply with federal criminal history record information standards.**

The Federal Bureau of Investigations (FBI) Criminal Justice Information Services periodically assess compliance over fingerprint standards and dissemination of national criminal history record information. In April 2017, the FBI conducted a National Identity Services audit that included the Board of Massage Therapists. The audit resulted in the following findings:

- Confidential criminal history information was communicated in an unsecure method.
- Applicants were not notified in writing that their fingerprints were to be used for an FBI background check and were not advised of the procedures for obtaining, changing, correcting, or updating an FBI identification record.

The FBI audit also noted deficiencies in the fingerprint chain of custody. Fingerprint cards were mailed directly to applicants who had fingerprints taken by a certified vendor. Once the fingerprints were taken, the fingerprint card was returned to the applicant to be mailed back to DCBPL. DCBPL then mailed the fingerprint card to the Department of Public Safety (DPS) for processing. Returning fingerprints back to the applicant breaks the chain of custody. Proper chain of custody is important to ensure fingerprints are not tampered with prior to processing by DPS.

DCBPL has taken action to rectify one of the findings by including verbiage in the application that submitted fingerprints will be sent to the FBI for a federal background check. However, as of October 2017 the other issues remain outstanding. (Recommendation 2)

**DCBPL management, in consultation with the board, reduced FY 18 licensing fees.**

Primarily, the board receives its revenues 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 surplus of \$265,128 at the end of FY 17. Effective June 2017, licensing and renewal fees were lowered from \$350 to \$290 for the renewal cycle in September 2017. License fees for FY 16 through FY 18 are shown in Exhibit 4.

**Exhibit 3****Board of Massage Therapists  
Schedule of Revenues and Expenditures  
FY 15 through FY 17  
(Unaudited)**

|                                        | FY 15      | FY 16     | FY 17     |
|----------------------------------------|------------|-----------|-----------|
| Licensing Revenue                      | \$660      | \$586,230 | \$228,015 |
| Total Revenue                          | 660        | 586,230   | 228,015   |
| Direct Expenditures                    |            |           |           |
| Personal Services                      | 34,676     | 116,046   | 76,106    |
| Travel                                 | 6,585      | 17,726    | 10,216    |
| Contractual                            | 12,627     | 52,528    | 67,008    |
| Supplies                               | 273        | 13        | 155       |
| Total Direct Expenditures              | 54,161     | 186,313   | 153,485   |
| Indirect Expenditures                  | 16,424     | 68,579    | 70,815    |
| Total Expenditures                     | 70,585     | 254,892   | 224,300   |
| Annual Surplus (Deficit)               | (69,925)   | 331,338   | 3,715     |
| Beginning Cumulative Surplus (Deficit) | -          | (69,925)  | 261,413   |
| Ending Cumulative Surplus (Deficit)    | \$(69,925) | \$261,413 | \$265,128 |

Source: DCCED management.

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**Exhibit 4**

| Board of Massage Therapists<br>License Fees<br>FY 16 through FY 18            |       |       |       |
|-------------------------------------------------------------------------------|-------|-------|-------|
|                                                                               | FY 16 | FY 17 | FY 18 |
| Nonrefundable application fee for initial license                             | \$200 | \$200 | \$200 |
| Massage therapy license fee for all or part of the initial biennial licensing | 350   | 350   | 290   |
| Massage therapy biennial license renewal fee                                  | 350   | 350   | 290   |
| Nonrefundable fingerprint processing fee                                      | 60    | 60    | 60    |

Source: DCBPL Regulations.

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# FINDINGS AND RECOMMENDATIONS

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## **Recommendation 1:**

**Division of Corporations, Business, and Professional Licensing’s (DCBPL) director, in consultation with the Board of Massage Therapists (board), should take action to improve procedures to ensure licensure requirements are met.**

Three of 31 license applications<sup>5</sup> tested as part of the audit were licensed without adequate supporting documentation and/or review. Deficiencies included:

- A background check report for one initial applicant was not completed. The licensee operated without a background check report from licensure date of September 2015 through receipt of the background check report July 2017 during the license renewal process. Regulation<sup>6</sup> requires applicants submit their fingerprints for a background check report in order to obtain a license to practice massage therapy. Per regulation,<sup>7</sup> licenses can be issued to applicants even though a background check report has not been received. However, DCBPL staff must ensure the background check is completed timely. The applicant’s fingerprint card was sent back multiple times due to incomplete information. DCBPL staff did not perform additional follow-up to obtain a completed fingerprint card because staff failed to list the applicant on the DCBPL spreadsheet used for tracking background reports.
- One applicant answered “yes” to a professional fitness question, however no evidence could be located to demonstrate that the applicant provided an explanation. Furthermore, it is unclear whether the board considered an explanation prior to licensing.
- One applicant answered “yes” to a professional fitness question and provided an explanation which included evidence of a permanent revocation of a national board certification for violating the respective code of ethics and standards of practice. DCBPL staff and the board did not forward the application to the investigative section for review. A license was granted with the requirement that the individual take a two credit ethics course. The background check did not show any convictions, and according to the board chair, the board believed that a license could not be denied based on the revocation of a national certificate. However, DCBPL procedures called for the application to be forwarded to

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<sup>5</sup>Twenty-five applications were randomly selected and six were judgmentally selected. Two of 25 and one of six were found to be issued without adequate supporting documentation and/or review.

<sup>6</sup>12 AAC 79.120(b)(1)(c).

<sup>7</sup>12 AAC 79.130(c).

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investigations for further review. It is unclear why DCBPL staff did not forward the application.

Alaska Statute 08.61.030(9) states that:

*The board may issue a license to a person who has not been convicted of, or pled guilty or no contest to, a crime involving moral turpitude, or who has been convicted of, or pled guilty or no contest to, a crime involving moral turpitude if the board finds that the conviction does not affect the person's ability to practice competently and safely.*

The lack of a thorough and timely evaluation of the above applicants' professional fitness increased the risk to public safety.

We recommend DCBPL's director, in consultation with the board, take action to improve procedures to ensure licensure requirements are met.

## **Recommendation 2:**

**DCBPL's director should address the Federal Bureau of Investigations (FBI) audit findings and concerns.**

DCBPL did not comply with federal standards over criminal history record information. The FBI audit conducted in April 2017 found DCBPL did not have secure channels of communication. Additionally, applicants were not notified in writing that their fingerprints were to be used for an FBI background check and were not advised of the procedures for obtaining, changing, correcting, or updating an FBI identification record. Additionally, the federal audit found inadequate chain of custody for fingerprint cards. A chain of custody ensures the integrity of the applicant/fingerprint process.

DCBPL addressed one of the findings by including verbiage in the application that submitted fingerprints will be sent to the FBI for a federal background check. However, as of October 2017, the other issues remain outstanding.

According to 28 CFR 20.21(f)(1), (2), and (3), whichever State

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agency collects, stores, and disseminates criminal history record information must prevent unauthorized access to information; ensure that the information is restricted to authorized users; and that the information cannot be modified, destroyed, accessed, changed, purged, or overlaid by other entities. Additionally, per 28 CFR 50.12(b), applicants must be advised of procedures for obtaining a change, correction, or updating FBI identification records.

Per DCBPL management, staff was unaware the communications and fingerprint cards did not meet federal standards. Ensuring data is secure protects individual privacy and promotes public safety.

We recommend DCBPL's director address the FBI audit findings and concerns.

**Auditor's Note:** Details regarding the unsecure channels of communication are being withheld from this report to prevent the weakness from being exploited. Pertinent details have been communicated to agency management in a separate confidential document.

### **Recommendation 3:**

**The director of the Office of the Governor, Boards and Commissions should work to fill the public member position.**

The public member position on the board became vacant March 2017 and remained vacant as of October 2017.

Per AS 08.61.010, the board is statutorily required to consist of five members appointed by the governor, one of which is a public member who is not a licensed health care provider, employee of the State, or a current or former member of another occupation licensing board. According to Boards and Commissions staff, stringent requirements make it difficult to find interested applicants.

The Office of the Governor, Boards and Commissions section is responsible for actively recruiting, interviewing, and vetting board applicants. The lack of a public board member prevents the board

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from conducting business with appropriate public input and perspective.

We recommend the director of the Office of the Governor, Boards and Commissions work to fill the public member position.

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# OBJECTIVES, SCOPE, AND METHODOLOGY

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In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Massage Therapists (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)(12), the board will terminate on June 30, 2018, and will have one year from that date to conclude its administrative operations.

## Objectives

The two 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.

## 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 February 2015 through August 2017. Financial information is presented, unaudited, from FY 15 through FY 17.

## Methodology

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

- 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

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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 fees covered the costs of operations.
- Licensing data to determine whether licenses were issued in accordance with the board's statutes and regulations.
- Board investigation data from December 2015 (first case) through August 2017. Twelve (four cases open for over 180 days and eight judgmental cases) of the 44 cases opened during the period were selected to determine whether periods of inactivity were reasonable and if professional fitness questions were adequately addressed.
- Various State and news related websites to identify complaints against the board or other board related concerns.
- Websites for various private organizations that provide certifications, accreditation, examination, and continuing education services to evaluate duplication of efforts.
- The board's Federal Bureau of Investigations (FBI) audit on fingerprint standards and dissemination of national criminal history record information to gain an understanding of the board's compliance with federal requirements.
- 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 an FBI auditor, Division of Corporations, Business, and Professional Licensing staff, and board members. Specific issues of inquiry included the FBI audit, board operations, regulations,

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fees, duplication of effort, and complaints against the board.

A random sample of 25 licenses and a judgmental sample of six licenses were selected from 1,185 licenses that were active as of August 31, 2017. Applications were assessed for statutory and regulatory compliance. The sample size was based on a moderate control risk, low inherent risk, and moderate audit risk. Testing results were projected to the population.

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## APPENDIX SUMMARY

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In developing our conclusion regarding whether the Board of Massage Therapists' 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

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### **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

STATE CAPITOL  
P.O. Box 110001  
Juneau, AK 99811-0001  
907-465-3500  
Fax: 907-465-3532



Governor Bill Walker  
STATE OF ALASKA

550 West Seventh Avenue, Suite 1700  
Anchorage, AK 99501  
907-269-7450  
fax: 907-269-7463  
gov.alaska.gov  
Governor@alaska.gov

November 16, 2017

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

RECEIVED  
NOV 28 2017  
LEGISLATIVE AUDIT

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 Massage Therapists under the Department of Commerce, Community and Economic Development.

Your findings are correct. Our office has found it difficult to find a public member who "is not a licensed health care provider, employee of the State, or a current or former member of another occupation licensing board." We continue to place Online Public Notices soliciting applicants. After speaking with the board contact, we believe the language in the statute AS 08.61.010 that requires the restrictions on this seat should be changed. We have encouraged the board to begin that legislative process.

We agree that the board is functioning in the best interest of the public. They continue to regulate licensing standards, examine applicants, and, when necessary, provide disciplinary sanction of professional massage therapists. We believe the board's termination date should be extended until June 30, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Shirley Marquardt".

Shirley Marquardt  
Director  
Boards and Commissions

SM/li

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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

November 28, 2017

RECEIVED

NOV 28 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 Massage Therapists, October 11, 2017

Dear Ms. Curtis:

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

Recommendation No. 1 – DCBPL's director, in consultation with the board, should take action to improve procedures to ensure licensees meet licensure requirements.

In its effort to continuously monitor and improve quality controls, the division agrees that additional checks are needed to ensure the administrative record is complete. With over 13,000 new licenses issued in FY17, additional supervisory resources are needed to ensure that all license files are reviewed to meet this standard.

Since the Board of Massage Therapists is a new entity, the division will continue to provide training to members to ensure they are aware of their roles and responsibilities in reviewing applications for licensure.

Recommendation No. 2 – DCBPL's director should address the FBI audit findings and concerns.

Since completion of the FBI's audit earlier this year, the division has responded quickly to address the agency's recommendations. Previous FBI audits, which are held every three years, did not identify these areas of concerns, so the need for these changes is new information to the division.

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".

Mike Navarre  
Commissioner

cc: Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing  
Micaela Fowler, Legislative Liaison, DCCED

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# Agency Response from the Board of Massage Therapists

## The Alaska Board of Massage Therapists

November 28<sup>th</sup>, 2017

Josephine Stern  
State of Alaska  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811

RECEIVED  
NOV 30 2017  
LEGISLATIVE AUDIT

Dear Josephine Stern

Thank you for the opportunity to review and respond to the Legislative Audit for the Alaska Board of Massage Therapists. In reviewing report, I am encouraged to know that this audit has revealed elements within this program which will be strengthened by the recommendations. As you know the Alaska Board of Massage Therapists is responsible for protecting the public through licensing, regulation and disciplinary actions for Massage Therapists.

The Board is concerned with the need of improvement of processes. I am in full agreement and appreciative of your conclusions. The board will be working with the Division of Corporations, Business and Professional Licensing's Director ensure licensure requirements are met.

Thanks to the support of the Division of Professional Licensing this new board has achieved significant accomplishments. This board has achieved a significant accomplishment and met the high demands of licensing over 1000 massage therapist when the program was expected to license approximately 600. Fortunately, the increase of licensees has enabled the board to lower the license fees for new applicants and renewing licensees. The Alaska Board of Massage Therapists is a new board that worked quickly meet the mandate to write regulations that met the boards statutory requirements to serve the public interest.

Thank you again for the opportunity to review the 2017 Sunset Audit report. It is an honor for the Board of Massage Therapists to serve the public. We look forward to a stronger more efficient program as we continue to serve.

Sincerely,



David Edwards-Smith  
Chair, The Alaska Board of Massage Therapists

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