

# Report Highlights

## Why DLA Performed This Audit

The audit's purpose 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 should adopt regulations to address the distance delivery of nursing services through technology.
2. The board should take steps to ensure the appropriate entities are notified when a licensee's prescriptive authority is suspended, revoked, or surrendered.
3. The DCBPL chief investigator should ensure nurse investigations are adequately documented and performed timely.
4. The board chair should take steps to ensure the required certified nursing aid (CNA) on-site training program reviews and self-evaluations are conducted prior to reapproving the programs.

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

April 27, 2018

Audit Control Number 08-20113-18

## REPORT CONCLUSIONS

Overall, the audit concluded the board served the public's interest by conducting meetings in accordance with State laws, amending certain regulations to improve the nurse and CNA occupations, and effectively licensing nurses and CNAs. The audit also concluded that the board failed to serve the public's interest by not adequately regulating the distance delivery of nursing services through technology, not adequately monitoring CNA training programs, and not notifying the appropriate entities when a licensee's prescriptive authority was suspended, revoked, or surrendered. In addition, the audit found improvements were needed in the Division of Corporations, Business and Professional Licensing's (DCBPL) investigative process.

In accordance with AS 08.03.010(c)(14) the board is scheduled to terminate June 30, 2019. We recommend the legislature extend the board's termination date six years to June 30, 2025, which is two years less than the eight year maximum allowed per statute. The reduced extension is mainly due to the failure of the board to regulate the distance delivery of nursing services through technology and the board's re-approval of CNA training programs without adequate review. Additionally, the board failed to address three of the four prior sunset audit recommendations.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

### Division of Legislative Audit



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August 7, 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 Nursing and the attached report is submitted for your review.

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

April 27, 2018

Audit Control Number  
08-20113-18

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(14) the board is scheduled to terminate on June 30, 2019. We recommend that the legislature extend the board's termination date to June 30, 2025.

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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ACN	Audit Control Number
APRN	Advanced Practice Registered Nurse
AS	Alaska Statute
board	Board of Nursing
CISA	Certified Information Systems Auditor
CNA	Certified Nursing Aid
CPA	Certified Public Accountant
DEA	Drug Enforcement Administration
DCBPL	Division of Corporations, Business and Professional Licensing
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
FY	Fiscal Year
LPN	Licensed Practical Nurse
RN	Registered Nurse

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# ORGANIZATION AND FUNCTION

## Board of Nursing

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

The board is composed of seven members. State law requires that one member be a licensed practical nurse (LPN), one be a registered nurse (RN) engaged in nursing education, one be an advanced practice registered nurse (APRN), two be RNs at large, and two be public members. Public members may not have a direct financial interest in the health care industry. Exhibit 1 shows the board members as of March 31, 2018.

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

Specifically, the board regulates nursing practices by:

- Establishing and amending policies and regulations necessary and desirable to enforce State statutes, including developing standards for nursing education and practice.

## Exhibit 1

### Board of Nursing Members as of March 31, 2018

Starla Fox  
*Registered Nurse*

Julie Gillette  
*Public Member*

Linda Hutchings  
*Public Member*

Joseph Lefleur  
*Registered Nurse, Baccalaureate Education*

Jennifer Stukey, Chair  
*Licensed Practical Nurse*

Wendy Thon, Secretary  
*Advanced Practice Registered Nurse*

Sharyl Toscano  
*Registered Nurse*

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

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- Approving curricula for nursing and nurse aid programs, along with adopting standards for basic and continuing competency programs designed to prepare persons for licensure and ensure the maintenance of competency.
  - Issuing initial licenses on the basis of examination or endorsement to qualified applicants.
  - Establishing criteria through regulation for renewal of licenses.
  - Holding hearings to resolve investigations that may lead to revocation, suspension, or other disciplinary action against an individual holding a license issued by the board.
  - Periodically reviewing and approving the facility training programs for certified nursing aids (CNAs).
  - Requiring APRNs with prescriptive authority and a federal Drug Enforcement Administration number register with the controlled substance prescription database.
  - Defining the qualifications and duties of the executive administrator in regulation and delegating authority of the board to the executive administrator to conduct board business.

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

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

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.



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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.

In addition to an executive administrator who reports directly to the board, DCBPL employs a licensing supervisor, four nursing licensing examiners, a CNA licensing examiner, a dedicated office assistant, a nurse consultant, and two dedicated investigation staff to support board operations.

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# REPORT

## CONCLUSIONS

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

Overall, the audit concluded the board served the public's interest by conducting meetings in accordance with State laws, amending certain regulations to improve the nurse and certified nursing aid (CNA) occupations, and effectively licensing nurses and CNAs. The audit also concluded that the board failed to serve the public's interest by not adequately regulating the distance delivery of nursing services through technology, not adequately monitoring CNA training programs, and not notifying the appropriate entities when a licensee's prescriptive authority was suspended, revoked, or surrendered. In addition, the audit found improvements were needed in the Division of Corporations, Business and Professional Licensing's (DCBPL) investigative process.

In accordance with AS 08.03.010(c)(14) the board is scheduled to terminate June 30, 2019. We recommend the legislature extend the board's termination date six years to June 30, 2025, which is two years less than the eight year maximum allowed per statute. The reduced extension is mainly due to the failure of the board to regulate the distance delivery of nursing services through technology and the board's re-approval of CNA training programs without adequate review. Additionally, the board failed to address three of the four prior sunset audit recommendations.

Detailed report conclusions are as follows.

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## **The board conducted meetings and licensed applicants in accordance with State law.**

Board meetings were generally conducted in an effective manner. From July 1, 2014, through January 31, 2018, the board held 14 regular and five adjudication meetings. A review of 13 board meetings found meetings were appropriately public noticed and properly allotted time for public comment.<sup>1</sup> Quorum was met for all of the 13 meetings reviewed.

The board operated in the public's interest by licensing nurses in accordance with State laws and regulations. A random sample of 26 new licenses and 25 renewal licenses issued during the audit period was tested. All 51 licenses were found to have been issued in compliance with statutes and regulations.

From FY 15 through FY 17, the board issued 8,065 new licenses,<sup>2</sup> as shown in Exhibit 2. As of January 31, 2018, there were 19,677 nurse and CNA licensees, representing a 42 percent increase when compared to the 2010 sunset audit.<sup>3</sup> Board staff indicated that the increase was due, in part, to nurses outside of Alaska obtaining Alaska licensure to provide nursing services through technology (telehealth) and nurses traveling to Alaska for non-permanent assignments.

The audit identified a concern that the nurse license approval process was overly time consuming. To help evaluate the license approval process, auditors examined data related to nursing applications submitted between January 2016 and January 2018. Auditors found that approximately 90 percent of the nursing applicants were issued licenses within 90 days of submittal. According to DCBPL management, delays in processing applications were mainly due to an increase in the volume of applications and challenges with processing incomplete applications. At the time of the audit, DCBPL management was implementing an electronic nurse application form to be completed and submitted online. The online application is expected to improve the timeliness of initial licensure.

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<sup>1</sup>The sample included nine regular and four adjudication meetings. Adjudication meetings are not required by law to be public noticed and no public comment was taken.

<sup>2</sup>Temporary permits and licenses are not included in the new or active license count.

<sup>3</sup>The prior audit identified 13,874 licensees as of June 30, 2009 (ACN 08-20070-10). The largest percentage increases were 71 percent (or 454) for APRNs and 49 percent (or 4,578) for RNs.

## Exhibit 2

### Board of Nursing Licensing Activity FY 15 through January 31, 2018

	New Issued (Exclusive of Renewals)			Total Licenses as of January 31, 2018
	FY 15	FY 16	FY 17	
Certified Nurse Aide	594	492	669	3,627
Advanced Nurse Practitioner Preceptorship*	1	3	30	46
Advanced Practice Registered Nurse	105	100	156	1,089
Certified Registered Nurse Anesthetist	15	25	28	181
Licensed Practical Nurse	119	129	116	852
Registered Nurse	1,604	1,710	2,169	13,882
Totals	2,438	2,459	3,168	19,677

Source: Compiled from DCBPL licensing database.

\*An Advanced Nurse Practitioner Preceptorship is a license issued under 12 AAC 44.460 for an applicant to engage in clinical practice in order to complete a course of study to become an advanced practice registered nurse.

### Turnover of investigation staff contributed to untimely investigations.

A review of board complaints and investigation data found instances where cases were not addressed timely or in accordance with department policy. There were 1,361 cases<sup>4</sup> open or opened between July 1, 2014 and January 31, 2018. A total of 273 cases were open over 180 days during this period. Auditors reviewed 28 of the 273 cases and found 13, or 46 percent, had periods of unjustified inactivity ranging from 61 days to 3.6 years. Many of the 13 cases had multiple periods of inactivity. Staff turnover contributed to delays. (Recommendation 3) As of January 31, 2018, a total of 92 cases remained open (33 complaints and 59 investigations).

Additionally, the audit identified two cases with inadequate documentation. Specifically, the long term care ombudsman identified two licensed practical nurses (LPNs) that may have been operating beyond their scope of practice, which posed a threat to public safety. One of the LPNs did not renew their license during the investigation and one continued to hold an active license.

<sup>4</sup>Cases include both complaints and investigations.

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Both cases took four years to resolve. Auditors found the case files lacked the documentation necessary to evaluate the investigations. However, auditors did identify that the investigations were delayed approximately one and a half years because the case files were in storage during an office remodel. (Recommendation 3)

The audit found DCBPL's investigation unit does not have procedures in place to notify the Board of Pharmacy<sup>5</sup> or Drug Enforcement Administration when a licensee's prescriptive authority has been suspended, revoked, or surrendered. Although disciplinary actions that include suspending, revoking, or surrendering prescriptive authority are infrequent (auditors found eight advanced practice registered nurses (APRNs) had their prescriptive authority suspended, revoked, or surrendered during the audit period), risk to public safety warrants immediate notification. (Recommendation 2)

Furthermore, the audit identified eight board related complaints were received by the Office of the Ombudsman between July 2014 and February 2018. The audit identified the complaints were addressed in an efficient manner.

### **CNA training programs were not adequately monitored by the board.**

The audit found the board failed to adequately monitor CNA training programs during the audit period. Regulations require the board to perform on-site reviews prior to reapproving CNA training programs every two years (see Exhibit 3 for CNA training program review regulations). As of March 31, 2018, there were 22 board approved training programs located across the state. Auditors reviewed the board's monitoring of five of the 22 programs and found four of the five had not received an on-site review prior to re-approval. According to DCBPL management, the board delegated the responsibility for the reviews to a contractor until FY 14, at which point the contract was terminated due to a conflict of interest. The procurement process to replace the contractor was not successful. To meet monitoring responsibilities, DCBPL reclassified a position to

<sup>5</sup>The Board of Pharmacy maintains a controlled substance prescription database that prescribers and dispensers must consult prior to prescribing or dispensing a controlled substance, with limited exceptions. The database is intended to reduce misuse, abuse, and diversion of controlled substances.

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create a new nurse consultant position to conduct the CNA reviews. The position was hired in October 2015 and reviews began after the position was trained in spring 2016. (Recommendation 4)

### Exhibit 3

#### Regulations for CNA Training Program Reviews

12 AAC 44.857. Training program reviews

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

### The board did not meet the public need for telehealth regulations.

The board worked to improve the nursing and CNA occupations by amending regulations, including the following:

- Changed the license name from Advanced Nurse Practitioner to Advanced Practice Registered Nurse and updated the scope of practice of APRNs. These changes brought the APRN name and scope of practice in line with national standards.
- Amended continuing education requirements to clarify the period within which credits had to be completed in relation to license renewal. This change helps ensure licensees obtain adequate continuing education each renewal period.
- Added a retired nursing license status and fee. This change distinguishes between a lapsed license and retired license, which allows retirees to use the nursing designation, preceded by the word “retired”.
- Updated the qualifications for performing CNA training program on-site reviews. This change clarified which board members could perform the reviews and allowed for a DCBPL nurse consultant

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staff member to perform the reviews. This change helps ensure timely on-site reviews are performed by qualified individuals.

Although the board amended certain regulations to improve the nurse and CNA occupations as shown above, it failed to address the need for regulations covering the distance delivery of nursing services via technology (telehealth). The board permitted nurses to practice telehealth without formal statutory or regulatory guidance. In FY 15, a licensee approached the board and asked for guidance on providing telehealth services, prompting the board to issue an advisory opinion. The board's advisory opinion defined telehealth, and provided limited guidance. The guidance was inadequate to promote, preserve, and protect the public's health, safety, and welfare. (Recommendation 1)

According to AS 08.68.100(9), the board is allowed to publish advisory opinions regarding whether nursing practice procedures or policies comply with acceptable standards of nursing practice as defined under the board's statutes. Board statutes do not address telehealth as part of a nurse's scope of practice, nor do regulations. Unregulated telehealth services pose a risk for not maintaining acceptable standards of practice or not adequately protecting patients' confidentiality. Furthermore, advisory opinions are not subject to public review and comment. The board did discuss telehealth regulations at multiple board meetings, but was unable to agree on regulatory language.

**The board operated in a surplus for several years, but entered a deficit during FY 18.**

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. DCBPL management decreased fees in FY 15 to reduce the board's cumulative surplus. As shown in Exhibit 4, the board had a deficit of <\$337,422> as of March 31, 2018. According to DCBPL management, a fee analysis is scheduled for May 2018. CNAs renewed licenses in March 2018, while LPN license renewals are scheduled to occur by September 2018, and the remaining board licensees by November 2018. Exhibit 5 presents a schedule of board fees from FY 14 through March 31, 2018.



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**Exhibit 4****Board of Nursing  
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 Fees	\$1,024,727	\$2,589,410	\$1,063,761	\$2,847,309	\$868,172
Other Sources	2,497	6,744	1,620	1,693	814
Total Revenues	1,027,224	2,596,154	1,065,381	2,849,002	868,986
Direct Expenditures					
Personal Services	850,867	919,911	983,406	1,095,073	702,498
Travel	26,960	33,063	18,344	19,814	18,225
Services	289,470	294,532	282,701	362,166	219,615
Commodities	3,681	3,274	2,975	2,522	1,074
Total Direct Expenditures	1,170,978	1,250,780	1,287,426	1,479,575	941,412
Indirect Expenditures*	798,751	682,300	808,047	1,079,880	809,911*
Total Expenditures	1,969,729	1,933,080	2,095,473	2,559,455	1,751,323
Annual Surplus (Deficit)	(942,505)	663,074	(1,030,092)	289,547	(882,337)
Beginning Cumulative Surplus (Deficit)	1,564,891	622,386	1,285,460	255,368	544,915
Ending Cumulative Surplus (Deficit)	\$622,386	\$1,285,460	\$255,368	\$544,915	(\$337,422)

Source: DCCED management.

\*Indirect expenditures are based on prior year estimates.

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**Exhibit 5****Board of Nursing  
License Fees  
FY 14 through FY 18****FY 14 FY 15 FY 16 FY 17 FY 18****Registered Nurse, Licensed Nurse Practitioner, and Advanced Practice****Registered Nurse fees:**

Nonrefundable application fee for initial license	50	50	50	50	50
License fee for all or part of the initial biennial license period	175	165	165	165	165
Biennial license renewal fee	175	165	165	165	165
Temporary Permit fee	50	50	50	50	50
Prescriptive authority application fee	50	50	50	50	50
Authorization fee for all or part of the initial biennial authorization period:					
Certified registered nurse anesthetist	60	60	60	60	60
Advanced practice registered nurse	60	60	60	60	60
Biennial authorization renewal fee:					
Certified registered nurse anesthetist	60	60	60	60	60
Advanced practice registered nurse	60	60	60	60	60
Reexamination application fee	25	50	50	50	50
Late renewal penalty fee	50	100	100	100	100
Nonrefundable fingerprint processing fee	59	60	60	60	60
Courtesy license fee	50	50	50	50	50
Retired nurse state license one-time fee	0	0	0	165	165

**Certified Nurse Aide fees:**

Nonrefundable application fee for initial certification	50	50	50	50	50
Examination fee	50	50	50	50	50
Certification fee for all or part of the initial biennial certification period	120	100	100	100	100
Biennial nurse aide certification renewal fee	120	100	100	100	100
Certified nurse aide training program approval fee	500	500	500	500	500
Reexamination fee	25	25	25	25	25
Nonrefundable fingerprint processing fee	59	60	60	60	60

Source: DCBPL Regulations.

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## FINDINGS AND RECOMMENDATIONS

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The prior 2010 sunset audit<sup>6</sup> made four recommendations:

- The Board of Nursing (board) should take steps to ensure all appropriate entities are notified when an advanced practice registered nurse's (APRN)<sup>7</sup> authority to write prescriptions has been revoked or suspended.
- The board chair should take steps to ensure that the required certified nursing aid (CNA) training program reviews are being conducted.
- The Division of Corporations, Business and Professional Licensing (DCBPL) chief investigator should take steps to ensure that complaints and cases are investigated timely.
- The director of Boards and Commissions, Office of the Governor, should fill the licensed practical nurse (LPN) position with an LPN currently involved in institutional nursing.

The prior audit recommendation to notify appropriate entities of APRN prescriptive authority revocation or suspension was not resolved and is reiterated in this sunset audit as Recommendation 2.

The prior recommendation to complete required CNA training program reviews was not resolved. According to DCBPL staff, reviews were not completed for almost a two year period beginning in FY 15. The recommendation is reiterated in this sunset audit as Recommendation 4.

The prior audit recommendation to investigate complaints and cases timely was not resolved. Testing of the investigation process found unjustified periods of inactivity for 13 of 28 cases reviewed. The prior recommendation is reiterated in this sunset audit as Recommendation 3.

The prior LPN board member recommendation was resolved by an FY 14 statute change which removed the institutional nursing

<sup>6</sup>ACN 08-20070-10.

<sup>7</sup>In 2010, APRNs were known as Advanced Nurse Practitioners.

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requirement from the LPN board member qualifications.

In addition to reiterating three prior recommendations, the audit makes one new recommendation.

### **Recommendation No. 1:**

**The board should adopt regulations to address the distance delivery of nursing services through technology.**

The board has permitted the distance delivery of nursing services via technology (telehealth) without formal statutory or regulatory guidance. In FY 15, a licensee approached the board and asked for guidance on providing telehealth services which prompted the board to issue an advisory opinion. The board's advisory opinion<sup>8</sup> defined telehealth and provided limited guidance on the scope of practice. The guidance was inadequate to promote, preserve, and protect the public's health, safety, and welfare. Although the board discussed the need for regulations to guide the distance delivery of nursing services, the board could not agree on regulatory language.

Per AS 08.68.100(a)(1), the board shall adopt regulations pertaining to the scope of practice of nursing in Alaska. Providing insufficient guidance to licensees increases the risk that nurses may not maintain acceptable standards of practice or may not adequately protect patients' confidentiality.

We recommend the board adopt regulations to address the distance delivery of nursing services through technology. Additionally, the board should ensure statutes appropriately allow for the establishment of telehealth regulations.

### **Recommendation No. 2:**

**The board should take steps to ensure the appropriate entities are notified when a licensee's prescriptive authority is suspended, revoked, or surrendered.**

The audit identified eight APRNs that had their prescriptive authority suspended, revoked, or surrendered between July 1, 2014, and January 31, 2018. In all cases, the board did not notify the Board of Pharmacy or the Drug Enforcement Administration (DEA) about the licensing action. The entities were not notified because there were no statutes or regulations in place that require notification.

The board is established under AS 08.68 for the purpose of controlling and regulating the practice of nursing, including:

<sup>8</sup>Per AS 08.68.100(9), the board may publish advisory opinions.

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APRNs, nurse anesthetists, registered nurses, LPNs, and CNAs. The board's mission statement is: "to actively promote and protect the health of the citizens of Alaska through the safe and effective practice of nursing as defined by law."

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

Per federal law,<sup>9</sup> the DEA may rescind or revoke the federal authority to prescribe controlled substances if an existing DEA registrant loses his or her state privileges. Failure to notify the DEA that an APRN's prescriptive authority has been suspended, revoked, or surrendered may result in improper or unauthorized prescriptions.

We recommend the board take steps to ensure the appropriate entities are notified when a licensee's prescriptive authority is suspended, revoked, or surrendered.

### **Recommendation No. 3:**

**The DCBPL chief investigator should ensure nurse investigations are adequately documented and performed timely.**

The audit identified 13 investigations with periods of unjustified inactivity and two investigations which were inadequately documented. Specifically:

- Thirteen cases in a random sample of 28<sup>10</sup> had periods of unjustified inactivity ranging from 61 days to 3.6 years. Furthermore, 10 of the 13 cases had multiple periods of inactivity. The periods of unjustified inactivity were mainly due to changes in investigative staff assigned to the case and competing priorities.
- The long term care ombudsman identified two licensees for investigation that were potentially practicing outside a LPN's scope of practice. Auditors could not evaluate the investigations

<sup>9</sup>21 U.S. Code § 824 - Denial, revocation, or suspension of registration.

<sup>10</sup>The sample of 28 cases was taken from a universe of 273 cases open over 180 days during the audit period.

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due to a lack of documentation in the DCBPL case files. One of the licensees continued to practice during the four years that the investigation was open, potentially posing a risk to public safety. The DCBPL investigator files note that the two cases were put in storage from October 2012 until April 2014 due to an office remodel and did not progress during that time.

Per AS 08.01.050(a)(19), DCBPL is responsible for investigating and monitoring occupational licensing activity. Investigations and complaints that sit idle for extended periods may pose a risk to public safety.

We recommend the DCBPL chief investigator ensure nurse investigations are adequately documented and performed timely.

#### **Recommendation No. 4:**

**The board chair should take steps to ensure the required CNA on-site training program reviews and self-evaluations are conducted prior to reapproving the programs.**

The audit found the required self-evaluations were not received and on-site reviews were not conducted prior to board re-approval of CNA training programs. During the audit, the process to approve five of 22 CNA training programs was reviewed. Auditors found on-site reviews were not conducted for four of the five programs as required prior to re-approval. Additionally, self-evaluations were not obtained and reviewed. The board's failure to adequately monitor programs may lead to undetected deficiencies, which could result in inadequately trained CNAs.

According to board staff, on-site reviews and monitoring of self-evaluation forms were not completed timely because the contractor hired to complete the reviews was terminated in FY 14, and procurement to hire another contractor was not successful. DCBPL received approval for a nurse consultant position, which was filled in October 2015; however, the nurse consultant did not begin performing reviews until spring 2016. Programs were approved by the board without on-site visits or self-evaluations due to a lack of resources to complete the reviews and a need for the programs to continue to be available to train CNAs.

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Regulation 12 AAC 44.857(a) and (c) requires CNA training programs be board-approved every two years with an on-site review. Self-evaluations are to be completed during a year in which an on-site review is not scheduled.

We recommend the board chair take steps to ensure the required CNA training program on-site reviews and self-evaluations are conducted prior to reapproving the programs.

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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 Nursing (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)(14) 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 this 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 our audit we reviewed and evaluated the following:

- The prior sunset audit report (ACN 08-20070-10) 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

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changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.

- The State's online public notice system to verify the board meetings were adequately public noticed.
- Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.
- Expenditure, revenues, and fee levels for the board to determine whether fee levels covered the costs of operations.
- Investigation data of the board to access the efficiency of the investigative process.
- Various state and news related websites to identify complaints against the board or other board related concerns. Eight complaints received by the Office of the Ombudsman were reviewed to examine the nature and efficiency with which the complaints were processed and resolved.
- Various nursing organization websites for potential duplication of board activities.

Internal controls over the licensing database and investigative case management system were assessed to determine if controls were properly designed and implemented. Additionally, 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, complaints against the board and the national nursing compact.

During the audit the following samples were selected:

- Investigation data of the board for cases open six months or longer from July 1, 2014 through January 31, 2018. A random sample of 28 of 273 cases (10 percent) open 180 days were reviewed for unjustified periods of inactivity. Test results were projected to the population.

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- A random sample of 51 licenses, 26 new and 25 renewal applications, was selected from 10,251 new and 17,755 renewal applications submitted between July 1, 2014 and January 31, 2018. Applications were assessed for statutory and regulatory compliance. The sample size was based on low control risk and inherent risk and moderate audit risk. Test results were projected to the population.

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## APPENDIX SUMMARY

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

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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

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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

OFFICE OF THE COMMISSIONER

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

October 30, 2018

RECEIVED

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 Nursing Sunset Review, April 27, 2018

Dear Ms. Curtis:

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

Recommendation No. 1 – The board should adopt regulations to address the distance delivery of nursing services through technology.

Since this recommendation is directed to the statutory duties of the board, the division has no response. It is noted that the board has drafted telehealth regulations and intends to finalize the proposed regulations for public comment at their November 2018, meeting.

Recommendation No. 2 – The board should take steps to ensure the appropriate entities are notified when a licensee's prescriptive authority is suspended revoked, or surrendered.

The division agrees with this recommendation and has implemented administrative procedures to ensure these notifications occur, including a policy that the DEA and Alaska Board of Pharmacy receive notification of this type of license discipline. This manner of notification has already been instituted and is presently working well. The division has received feedback from DEA that they are very pleased with the notification process.

The retired nurse application checklist will include a notation for the licensing examiner to make the notification to the pharmacy board and DEA registration that the APRN has relinquished her prescriptive authority.

The Executive Administrator will propose to the board at the November 2018, meeting a formal governance policy requiring the Board of Pharmacy and DEA receive notification of an APRN with a loss of legend and/or controlled substance prescriptive authority whether by license revocation, license surrender, or disciplinary action by consent agreement.

Kris Curtis, CPA, CISA  
Division of Legislative Audit  
October 30, 2018  
Page 2

Recommendation No. 3 - The chief investigator should ensure nurse investigations are adequately documented and performed timely.

The division constantly seeks to improve processes to resolve allegations completely and quickly and has taken steps prior to the audit to monitor and enforce timely investigations. A Standard Operating Procedure (SOP) was adopted in 2017 to require investigative staff to enter case notes explaining any gaps between meaningful investigative activities greater than sixty days. While there are times when investigations cannot progress due to factors outside the investigator's control (i.e. board member or expert review, litigation and/or opposing counsel response to settlement offers), the case documentation should explain why the action is not moving forward to make the record reflective of those challenges.

The standard described above is being reinforced by in-service training with all investigators on a bi-annual basis. Presently, there are three (3) investigators assigned to the Board of Nursing to address the volume of complaints/investigations.

In addition to the investigators ensuring adequate timeliness, better management oversight by the Chief and Senior Investigators will be performed. The Senior Investigator will conduct quarterly case reviews with the investigator along with reviewing any open matters greater than six months and determine if adequate progression is being made. The Chief Investigator will review any matters greater than one year to determine if adequate progression is being made and there are no unwarranted delays.

The Board of Nursing has also implemented several regulations changes to improve the workflow between the executive administrator, the investigators, and the board.

Recommendation No. 4 - The board chair should take steps to ensure the required CNA on-site training program reviews and self-evaluations are conducted prior to reapproving the programs.

Since this recommendation is directed to the board, the division has no response.

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,



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 Nursing

Jennifer Stuke, LPN  
Chair  
Board of Nursing

4838 East Corral Circle, Wasilla, Alaska, 99654 | 907.229.8841 | jstukey@ndtcak.org

October 24, 2018

Legislative Budget and Audit Committee  
Kris Curtis, CPA, CISA, Legislative Auditor  
Division of Legislative Audit  
PO BOX 113300  
Juneau, Alaska 99811-3300

RECEIVED

OCT 26 2018

LEGISLATIVE AUDIT

**Dear Legislative Budget and Audit Committee:**

This is the written response to the Board of Nursing Sunset Audit. I will respond to each of the four recommendations in the following paragraphs. I will state if I agree or disagree with the recommendation, and I will indicate the methods that will be used to implement the regulation.

Recommendation 1:

The board shall adopt regulations to address the distance delivery of nursing services through technology.

I agree with this recommendation. The method used to implement this regulation will be that the executive administrator will put the development of the Telehealth Regulations on the November 2018 agenda. The November 2018 meeting will not adjourn until a Telehealth Regulations is developed and read into the board minutes.

Recommendation 2:

The board should take steps to ensure the appropriate entities are notified when a licensee's prescriptive authority is suspended, revoked, or surrendered

I agree with this recommendation. The BON has to consider two options related to prescriptive authority and the suspension, revocation or surrender of the APRN license thus the AK DEA license. One option is that it is a rarer case that the revocation, surrender or suspension is done at a board meeting after a short investigation process. In the cases that this would pertain, the BON would have in place a policy that the EA and staff would develop for notification of the legal entities involved regarding the removal of the scheduled and legend prescriptive authority. Two, these cases more involved. Most of these cases go beyond the Investigation department to Law. Once they are at law, it can be 1-2 or more years for resolution of these cases. Most of the board is newly turned over and the EA have been on the job for slightly over two years. The process from Law to the BON has to be defined in policy as well so that



prompt notification of the legal entities can be accomplished at the conclusion/resolution of these cases. This will be addressed at the next BON meeting in November.

Recommendation 3:

The chief investigator should ensure investigations for nurses are adequately documented and performed timely.

I agree with this recommendation. The BON has limited oversight of the Investigation department. The BON receives, at each meeting. The listing of cases outstanding and those closed. The dates of the cases are defined by the year the case was opened. A more careful and considered review should be done by the Board to find out the status of cases that are >1 year old, how many are in litigation and how many may still be in review by an expert. Due to changes in personnel in the Investigation department, some cases were not followed as thoroughly when investigators changed. The plan at this time would be to have the Chief of Investigations and the Senior Investigator at the next board meeting to address old cases and their movement/resolution.

Recommendation 4:

The board chair should take steps to ensure the required CNA training program reviews and self-evaluations are conducted prior to re-approving programs.

I agree with this recommendation. The method used to implement this recommendation will be that the executive administrator and/or nurse consultant will document the review of the programs and self-evaluation prior to program re-approval. This documentation will be presented at the quarterly board of nursing meetings. The board has noticed an improvement in timely program reviews and self-evaluations with the hire of a new nurse consultant with program development and review experience.

In conclusion of addressing these recommendations, as board chair, I am requesting that the recommendations remain on every quarterly agenda to maintain relevance and ensure compliance so as board members change, they are aware of the areas that need improvement. This will ensure that the recommendations are addressed between the Sunset Audit dates.

Sincerely,



**Jennifer Stuke, LPN**  
Chair  
Alaska State Board of Nursing