

# Report Highlights

## Why DLA Performed This Audit

The audit was performed to determine if there is a continued need for the board and whether its termination date should be extended. The board is set to sunset June 30, 2020, and will have one year from that date to conclude its administrative operations.

## What DLA Recommends

1. The board should adopt regulations to provide guidance for registering with the controlled substance prescription database.
2. The board should develop procedures to ensure licensees with a Drug Enforcement Administration (DEA) number register in the controlled substance prescription database.
3. The board chair should work with DCCED's Division of Corporations, Business, and Professional Licensing's director to establish and implement procedures to ensure the board reports disciplinary actions in accordance with state law.

# A Sunset Review of the Department of Commerce, Community, and Economic Development (DCCED), State Medical Board (board)

April 26, 2019

**Audit Control Number 08-20118-19**

## REPORT CONCLUSIONS

The audit concluded the board served the public's interest by effectively licensing physicians, osteopaths, podiatrists, physician assistants, and paramedics. The board monitored licensees and worked to ensure only qualified individuals practiced in Alaska. Furthermore, the board developed and adopted certain regulatory changes to protect the public, improve the licensing process, and improve the delivery of services.

The audit also concluded the board did not serve the public interest by inconsistently reporting board license actions to the Federation of State Medical Boards (FSMB). In addition, the board did not adopt regulations to require licensees register in the controlled substance prescription database and did not adequately monitor licensees to ensure those with a DEA number registered with the controlled substance prescription database.

In accordance with AS 08.03.010(c)(13), the board is scheduled to terminate on June 30, 2020. We recommend the legislature extend the board's termination date to June 30, 2025, which is three years less than the eight year maximum allowed per statute. The reduced extension is mainly due to the failure of the board to consistently report license actions to the FSMB, adopt regulations governing registration in the controlled substance prescription database, and monitor compliance with the registration requirement.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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July 24, 2019

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 State Medical Board and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
STATE MEDICAL BOARD  
SUNSET REVIEW

April 26, 2019

Audit Control Number  
08-20118-19

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(13), the board is scheduled to terminate on June 30, 2020. 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. The Objectives, Scope, and Methodology describes the fieldwork procedures utilized to develop this report's findings and recommendations.

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

Kris Curtis, CPA, CISA  
Legislative Auditor

## ABBREVIATIONS

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ACN	Audit Control Number
AS	Alaska Statute
board	State Medical Board
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
DCBPL or division	Division of Corporations, Business, and Professional Licensing
DCCED	Department of Commerce, Community, and Economic Development
DEA	Drug Enforcement Administration
DLA	Division of Legislative Audit
FSMB	Federation of State Medical Boards
FY	Fiscal Year
NPDB	National Practitioner Data Bank
USDHHS	United States Department of Health and Human Services

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# ORGANIZATION AND FUNCTION

## State Medical Board

The State Medical Board (board) is established under the authority of AS 08.64.010 and is comprised of eight members who are appointed by the governor to serve staggered four-year terms. Board membership consists of five physicians “residing in as many separate geographical areas of the state as possible,” one physician assistant, and two public members with “no direct financial interest in the healthcare industry.” Professional board members must be residents and actively licensed in the State of Alaska. Board members, as of May 31, 2019, are listed in Exhibit 1.

Alaska Statute 08.64.101 establishes the board’s duties, which include the following:

- examine and issue licenses to applicants;
- develop written guidelines to ensure that licensing requirements are not unreasonably burdensome and the issuance of licenses is not unreasonably withheld or delayed;
- after a hearing, impose disciplinary sanctions on persons who violate this chapter or the regulations or orders of the board;
- adopt regulations ensuring that renewal of licenses is contingent upon proof of continued competency;
- under regulations adopted by the board, contract with a private professional organization to establish an impaired medical professional program to identify, confront, evaluate, and treat persons licensed under this chapter who abuse alcohol, other drugs, or other substances, or are mentally ill or cognitively impaired;

## Exhibit 1

### State Medical Board Members as of May 31, 2019

Catherine Hyndman  
*Chair*

Bruck Clift  
*Physician*

Steven Humphreys  
*Physician*

Sai-Ling Liu  
*Physician*

Joy Neyhart  
*Physician*

Timothy Olson  
*Physician Assistant*

Camille Carlson  
*Public*

Douglas Mertz  
*Public*

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

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- adopt regulations that establish guidelines for the practice of physicians who render a diagnosis, provide treatment, or prescribe, dispense, or administer a prescription drug to a person without conducting a physical examination. This includes guidelines that are based on a nationally recognized model policy for standards of care of a patient who is at a different location than the physician;
  - require all licensees that have a federal Drug Enforcement Administration registration number to register in the controlled substance prescription database;
  - adopt regulations authorizing the executive secretary to grant a license to an applicant under this chapter; and
  - adopt regulations authorizing a member of the board, the executive secretary, or a person designed by the board to issue a temporary permit under AS 08.64.270(a) or AS 08.64.275(a) if the applicant meets the requirements established under this chapter.

## **Division of Corporations, Business, and Professional Licensing**

The Department of Commerce, Community, and Economic Development's Division of Corporations, Business, and Professional Licensing (DCBPL or division) provides administrative and investigative assistance to the board. Administrative assistance includes creating budgets, collecting fees, maintaining files, receiving 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 investigation 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 in or is about to engage in a prohibited professional practice;
2. bring an action in Superior Court to enjoin the act;



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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; and
  4. issue subpoenas for the attendance of witnesses and the production of records.

To support board operations, DCBPL employs an executive administrator who reports directly to the board, a licensing supervisor, three medical licensing examiners, a dedicated office assistant, and one dedicated investigator.

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## BACKGROUND INFORMATION

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### **Controlled Substance Prescription Database Registration Requirement**

Senate Bill 74, effective July 2017, required occupational board licensees that prescribe controlled substances to register with the controlled substance prescription database maintained by the Board of Pharmacy. The database is intended to reduce misuse, abuse, and diversion of controlled substances. Practitioners are required to check the database prior to dispensing, prescribing, or administering medications, with certain exclusions.

To inform licensees of the new requirements, the Board of Pharmacy mailed notices to various professions' licensed prescribers and posted announcements on the controlled substance prescription database website. The Board of Pharmacy's website specified that licensed prescribers with a federal Drug Enforcement Administration (DEA) registration number must submit a registration request and pay a registration fee to the Board of Pharmacy to register with the controlled substance prescription database. Licensed prescribers were also required to register online with the controlled substance prescription database through a third-party vendor, via the Board of Pharmacy's website. The third-party vendor accepts a registration request and assigns a pending status until a registrant completes a validation through email. Biennial renewal of the controlled substance prescription database registration with payment of the fees is required at the time a registrant renews their professional license.

Senate Bill 74 also directed the State Medical Board (board) to adopt regulations that require licensees with a DEA registration number to register with the controlled substance prescription database. At the time of this audit, the board had not adopted regulations to guide the registration process. Regulation changes were limited to expanding the definition of unprofessional conduct to include not registering in the database; requiring review of the controlled substance prescription database prior to prescribing or dispensing; and adding a maximum daily dosage of opioids.

The board updated license renewal applications in December 2018 to require licensees report their DEA and controlled substance

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## **Disciplinary Action is Reported to Two National Data Banks**

prescription database registration numbers. The renewal application form permitted a licensee to report a status of “pending” for the controlled substance prescription database registration number in recognition that the registration process may take 8 to 10 weeks. The initial license application form was updated in February 2019 to include instructions on registering with the controlled substance prescription database and to require an applicant provide both DEA and controlled substance prescription database registration numbers.

Both federal and state law direct the board to report disciplinary actions in a timely manner (typically within 30 days) to a data bank maintained by the Federation of State Medical Boards (FSMB) or the U.S. Department of Health and Human Services (USDHHS). National data banks are designed to restrict the ability of incompetent physicians to move from state to state without disclosure or discovery of physicians’ damaging or incompetent performance. This data helps protect the public from unsafe licensees.

The FSMB, a nonprofit association of 70 medical and osteopathic state boards, maintains a repository of board actions and licensure data on physicians practicing in the United States. USDHHS maintains the National Practitioner Data Bank (NPDB), a database that lists disciplinary information about U.S. physicians and other healthcare practitioners.

Alaska Statute 08.64.335 requires the board to report license or permit refusals, suspensions, surrenders, and disciplinary sanctions under AS 08.64.331 to the FSMB. The board is also required to report license application withdrawals per 12 AAC 40.986 and abandoned license applications per 12 AAC 40.987. Federal regulations<sup>1</sup> require state boards of medical examiners to report actions relating to a physician’s professional competence or conduct to the NPDB. Actions include:

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<sup>1</sup> Title 45 of the Code of Federal Regulations, Subtitle A, 60.5(b).

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- License revocations, suspensions, or restrictions;
  - License censures, reprimands, or probations;
  - License surrenders;
  - Consent agreements; and
  - Penalties and administrative fines resulting from a formal proceeding.

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# REPORT CONCLUSIONS

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In developing our conclusion regarding whether the State Medical Board'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 concludes the board served the public's interest by effectively licensing physicians, osteopaths, podiatrists, physician assistants, and paramedics. The board monitored licensees and worked to ensure only qualified individuals practice in Alaska. Furthermore, the board developed and adopted certain regulatory changes to protect the public, improve the licensing process, and improve the delivery of services.

The audit also concluded the board did not serve the public interest by inconsistently reporting board license actions to the Federation of State Medical Boards (FSMB). In addition, the board did not adopt regulations to require licensees register in the controlled substance prescription database and did not adequately monitor licensees to ensure those with a Drug Enforcement Administration (DEA) number registered with the database.

In accordance with AS 08.03.010(c)(13), the board is scheduled to terminate on June 30, 2020. We recommend that the legislature extend the board's termination date to June 30, 2025, which is three years less than the eight year maximum allowed per statute. The reduced extension is mainly due to the failure of the board to consistently report license actions to the FSMB, adopt regulations governing registration in the controlled substance prescription database, and monitor compliance with the registration requirement.

Detailed report conclusions are as follows.

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

The board's operations, licensing, and investigations were conducted in an effective manner. A review of 19 board meetings held from FY 16 through January 2019 found the meetings were appropriately publicly noticed, allowed time for public comment, and a quorum was consistently met. The audit also determined that the board does not duplicate the efforts of another governmental or private sector agency.

A review of board investigative activity identified that 308 cases were open or opened between FY 16 and January 2019, and all but 47 cases were closed during the audit period. The audit found 64 of the cases were open for over 180 days. Testing of a random sample of 13 cases open for over 180 days found the cases were actively worked by investigative staff.

The board operated in the public's interest by licensing physicians, osteopaths, podiatrists, physician assistants, and paramedics in accordance with state laws and regulations. A random sample of 25 new licenses and 15 renewals issued during the audit period confirmed all were licensed in accordance with statutes and regulations.

As shown in Exhibit 2, from FY 16 through January 31, 2019, the board issued 1,663 new licenses and permits. As of January 2019, there were a total of 5,073 licenses and permits, representing a nine percent increase when compared to the prior 2012 sunset audit.<sup>2</sup>

**Board actions were inconsistently reported to the FSMB.**

Two prior audits of the board identified that the board was not reporting board disciplinary actions to the FSMB and the National Practitioner Data Bank (NPDB) as required by state and federal law. During the audit period, the board issued 140 board disciplinary actions. Testing of board actions identified 44 (31 percent) were not reported to FSMB as required. (Recommendation No. 3) No NPDB reporting errors were identified by the audit.

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<sup>2</sup> The number of licenses reported in the 2012 sunset audit (ACN 08-20078-12) was 4,634.



**Exhibit 2**

**State Medical Board  
License and Permit Activity  
FY 16 through January 31, 2019**

New Issued  
(Exclusive of Renewals)

	FY 16	FY 17	FY 18	FY 19	Active as of January 31, 2019
<b>Licenses:</b>					
Physician	258	227	346	122	3,415
Physician – Courtesy	0	0	1	0	0
Physician Assistant	60	51	63	17	568
Mobile Intensive Care Paramedic	51	39	30	19	469
Osteopathic Physician	55	35	65	17	422
Podiatrist	1	2	2	0	28
<b>Permits:</b>					
Physician Resident	8	23	32	29	70
Physician Temporary	0	0	2	46	45
Physician Assistant Temporary	0	0	0	22	22
Osteopathic Physician Resident	4	5	5	2	14
Osteopathic Physician Temporary	0	0	0	8	8
Mobile Intensive Care Paramedic Temporary	0	0	0	7	7
Physician Locum Tenens	0	0	3	6	5
<b>Totals</b>	<b>437</b>	<b>382</b>	<b>549</b>	<b>295</b>	<b>5,073</b>

Source: Compiled from Division of Corporations, Business, and Professional Licensing database.

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**The board did not adopt controlled substance prescription database registration regulations.**

The board worked to improve the delivery of medical services, opioid education, and the licensing process by promulgating or amending certain regulations including the following:

- Added guidance for the distance delivery of medical services via technology. This change helps provide medical services to individuals in underserved remote areas of Alaska.
- Added opioid continuing medical education requirement to initial and renewal license applications. This change helps protect the public by ensuring medical professionals are trained in opioid use and addiction.
- Added the ability to temporarily issue a license when an applicant meets specific requirements. This change allows applicants determined qualified and competent to provide medical services while waiting for board approval of a license.
- Amended licensure requirements to allow for credential verification through the Federation Credential Verification Services of the FSMB. This change helps expedite the licensing process.
- Amended abortion regulations as a result of a lawsuit that cited that existing rules restricted second-trimester abortions. The board acknowledged some existing rules were more than 30 years old and revised the regulations to address the lawsuit's concerns.
- Expanded categories of unprofessional conduct in the medical profession. This change allows the board to hold licensees accountable for certain unprofessional conduct.
- Amended regulations to require licensees to review information from the controlled substance prescription database prior to prescribing or dispensing controlled substances and added a maximum daily dosage for opioids. This change helps protect the public.

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**The board did not ensure licensees register with the controlled substance prescription database.**

Although the board was active in promulgating and amending regulations, the board failed to adopt regulations to specifically require licensees register with the controlled substance prescription database. (Recommendation No. 1) This oversight may have contributed to the high percentage of licensees that did not register with the database.

According to AS 08.64.101(a)(7), the board shall require that a licensee who has a federal DEA registration number register with the controlled substance prescription database. The audit reviewed a random sample of 25 new licenses and 15 renewal licenses issued during the audit period to evaluate whether licensees that reported a DEA registration number also registered with the controlled substance prescription database. Nineteen of 25 new licensees reported a DEA registration number on their application, of which five (26 percent) failed to register with the controlled substance prescription database. Thirteen of the 15 renewal licensees also reported a DEA registration number, of which four (31 percent) failed to register with the controlled substance prescription database. (Recommendation No. 2) Incomplete database information limits the ability to reduce misuse, abuse, and diversion of controlled substances.

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

Primarily, the board receives its revenue from licensure, permit, and renewal fees. Renewals are conducted on a biennial basis creating a two-year cycle in board revenues. The 2012 audit of the board identified a surplus and noted licensing fees were reduced in FY 11 to address the surplus. Since 2012, the balance declined to a deficit of \$27,622 in FY 16. In response to the deficit, the division increased fees for the FY 19 licensing period. As shown in Exhibit 3, the board had a \$588,738 surplus as of January 31, 2019. The board's schedule of fees is shown in Exhibit 4.

**Exhibit 3****State Medical Board  
Schedule of Revenues and Expenditures  
FY 16 through January 31, 2019  
(Unaudited)**

	FY 16	FY 17	FY 18	July 1, 2018 – January 31, 2019
Revenues:				
Licensing Fees	\$320,690	\$1,510,164	\$347,304	\$2,068,330
Other Sources	1,346	3,997	3,517	184
Total Revenues	<u>322,036</u>	<u>1,514,161</u>	<u>350,821</u>	<u>2,068,514</u>
Direct Expenditures:				
Personal Services	685,786	610,407	698,833	346,706
Travel	26,482	13,248	17,577	10,901
Services	152,685	288,228	116,625	56,393
Commodities	2,988	2,130	2,016	691
Total Direct Expenditures	<u>867,941</u>	<u>914,013</u>	<u>835,051</u>	<u>414,691</u>
Indirect Expenditures	<u>342,339</u>	<u>435,261</u>	<u>454,506</u>	<u>263,614</u>
Total Expenditures	<u>1,210,280</u>	<u>1,349,274</u>	<u>1,289,557</u>	<u>678,305</u>
Annual Surplus (Deficit)	<u>(888,244)</u>	<u>164,887</u>	<u>(938,736)</u>	<u>1,390,209</u>
Beginning Cumulative Surplus (Deficit)	<u>860,622</u>	<u>(27,622)</u>	<u>137,265</u>	<u>(801,471)</u>
Ending Cumulative Surplus (Deficit)	<u><u>\$(27,622)</u></u>	<u><u>\$137,265</u></u>	<u><u>\$(801,471)</u></u>	<u><u>\$588,738</u></u>

Source: DCBPL management.

**Exhibit 4**

**State Medical Board  
License and Permit Fees  
FY 16 through FY 19**

Fee Type	FY 16	FY 17	FY 18	FY 19
<b>Physicians, Podiatrists, and Osteopaths:</b>				
Nonrefundable Application Fee:				
Initial license	\$200	\$200	\$200	\$400
Locum tenens permit	100	100	100	150
Courtesy license	100	100	100	100
Permit Fee:				
Temporary permit	75	75	75	200
Initial or extended locum tenens	100	100	100	150
Biennial Renewal Fee:				
Active license renewal	300	300	300	425
Inactive license renewal	125	125	125	275
License fee for all or part of the initial biennial license period	300	300	300	425
Residency permit nonrefundable application and permit fee	50	50	50	100
Retired status license one-time fee	50	50	50	150
Courtesy license fee	100	100	100	150
<b>Physician Assistants:</b>				
Nonrefundable application fee for initial license	150	150	150	200
License for all or part of the initial biennial license period	200	200	200	250
Temporary license fee	50	50	50	75
Authorization to Practice Fee:				
Temporary authorization	50	50	50	0
Locum tenens authorization	50	50	50	0
Biennial Fee:				
License renewal	200	200	200	250
Inactive license renewal	100	100	100	175
Fee for establishing or changing a collaborative relationship	100	100	100	125
Graduate Physician Assistant Fee:				
Nonrefundable application and license	50	50	50	100
<b>Mobile Intensive Care Paramedics:</b>				
Nonrefundable application fee for initial license	50	50	50	100
License fee for all or part of the initial biennial license period	50	50	50	75
Biennial license renewal fee	50	50	50	75
Temporary permit fee	50	50	50	75
Provisional license fee	50	50	50	75

Source: DCBPL regulations.

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## FINDINGS AND RECOMMENDATIONS

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The prior 2012 sunset audit made three recommendations:

- The division's director should continue to address deficiencies in the investigative case management system.
- The division's director should implement procedures to ensure board disciplinary actions are reported in accordance with state and federal law.
- The division's director should ensure continuing medical education reviews comply with state law.

The prior audit recommendation to address deficiencies in the investigative case management system has been materially addressed. Division of Corporations, Business, and Professional Licensing (DCBPL) management strengthened its procedures over the data in the investigative case management system, upgraded the system to address some of the deficiencies, and contracted oversight and management of the system to a third party.

The prior recommendation to implement procedures to ensure board disciplinary actions are reported in accordance with state and federal law has not been fully addressed and is reiterated in this audit as Recommendation No. 3.

The prior audit recommendation to ensure continuing medical education reviews comply with state law has been addressed by DCBPL's transition to a new licensing database that includes programming language to calculate the appropriate number of reviews based on set parameters. Auditor review of the system's calculation of the 2019 sample size confirmed the correct number of reviews was calculated.

Two new recommendations were made as part of this audit.

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**Recommendation No. 1:**

**The board should adopt regulations to guide the process for registering with the controlled substance prescription database.**

The board did not adopt regulations to require licensees with a Drug Enforcement Administration (DEA) number register with the controlled substance prescription database. Senate Bill 74, Section 60 included uncodified law that directed all boards that licensed occupations with prescription authority to adopt regulations to implement the law.

Rather than adopt regulatory guidance for registering, the board expanded the regulatory definition of unprofessional conduct to include licensees that do not register. The board also implemented regulations that require review of the controlled substance prescription database prior to prescribing or dispensing and added an opioid maximum daily dosage. Board members did not consider the importance of establishing regulations to guide in the process and believed the regulatory changes that were made were sufficient to satisfy the requirements of Senate Bill 74.

The database was intended to reduce misuse, abuse, and diversion of controlled substances. The lack of regulations regarding registration requirements increases the risk that licensees will not register which, in turn, limits the database's effectiveness. As described in Recommendation No. 2, the audit found a high degree of noncompliance with the registration requirements.

We recommend the board adopt regulations to guide the process for registering with the controlled substance prescription database.

**Recommendation No. 2:**

**The board should develop procedures to ensure licensees with a DEA number register in the controlled substance prescription database.**

Per AS 08.64.101(a)(7), effective July 2017, the board must require a licensee who has a DEA registration number to register with the controlled substance prescription database. The audit reviewed 25 new licenses (of which 19 had a DEA number) and 15 renewal licenses (of which 13 had a DEA number).

Auditors noted that the application form for new licenses did not require an applicant provide evidence of registration with



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the controlled substance prescription database.<sup>3</sup> Division staff processed the applications and the board approved the applications without regard for whether or not the applicant registered with the database. Auditors checked the database and found that five of the 19 new license applicants with a DEA number (26 percent) had not registered – four applicants were not listed in the database and one was listed in the database with a status of “pending.”

Auditors noted that the renewal application was revised in November 2018 to request applicants for renewal licenses list their controlled substance prescription database registration number. However, applicants were permitted to list a status of “pending,” and division staff did not verify that a licensee obtained a registration number at a later date. Four of the 13 renewal applicants with a DEA number (31 percent) had a status of “pending.”

The board and DCBPL failed to comply with AS 08.64.101(a)(7) due to a lack of procedures and the board’s decision to allow licensees a grace period before enforcing the new requirements. The law did not provide for a grace period and had an effective date of July 2017.

The controlled substance prescription database was intended to reduce misuse, abuse, and diversion of controlled substances. Incomplete information within the database limits its effectiveness, which increases the risk that controlled substances may be abused or diverted.

We recommend the board develop procedures to ensure licensees with a DEA number register with the controlled substance prescription database.

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<sup>3</sup> The new license application form was revised in February 2019 after the start of this audit to request an applicant’s controlled substance prescription database registration number.

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**Recommendation No. 3:** Of the 140 board disciplinary actions issued by the State Medical Board between FY 16 and January 2019, 44 (31 percent) were not reported to the FSMB as required by AS 08.64.335.

**The board chair should work with DCBPL’s director to establish and implement procedures to ensure board disciplinary actions are reported in accordance with state law.**

Alaska Statute 08.64.335 states:

*The board shall promptly report to the Federation of State Medical Boards for inclusion in the nationwide disciplinary data bank license and permit refusals under AS 08.64.240, actions taken by the board under AS 08.64.331, and license and permit suspensions or surrenders under AS 08.64.332 or 08.64.334.*

The 44 disciplinary actions not reported to FSMB were actions taken by the board under AS 08.64.331. According to DCBPL management, staff misunderstood the types of actions to be reported. Additionally, the board and DCBPL lacked written procedures to ensure the actions were correctly reported in a timely manner.

The national data bank maintained by FSMB is designed to restrict the ability of incompetent physicians to move from state to state without disclosure or discovery of a physician’s damaging or incompetent performance. DCBPL’s failure to report disciplinary actions increases the risk to public safety.

We recommend the board chair work with DCBPL’s director to establish and implement procedures to ensure board disciplinary actions are reported in accordance with state law.

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# OBJECTIVES, SCOPE, AND METHODOLOGY

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In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the State Medical Board (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)(13) the board will terminate on June 30, 2020, 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, 2015, through January 31, 2019. Financial information is presented, unaudited, from July 1, 2015, through January 31, 2019.

## Methodology

During the audit, we reviewed and evaluated the following:

- The prior sunset audit report (ACN 08-20078-12) to identify issues affecting the board and to identify prior sunset audit recommendations.

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- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
  - The State's online public notices system to verify board meetings were adequately public noticed.
  - Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.
  - Expenditures, revenues, and fee levels to determine whether fee levels covered the costs of board operations.
  - Board investigation data to access the efficiency of the investigative process.
  - Board disciplinary actions issued between July 1, 2015, and January 31, 2019, were reviewed for compliance with statutory and federal reporting requirements.
  - Various state and news related websites to identify complaints against the board or other board related concerns.
  - Various websites containing information for potential duplication of board activities.

Internal controls over the licensing database 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, statutory duties, regulations, duplication of effort, fee levels, and complaints against the board.

The audit utilized the following samples:

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- Investigation data of the board for cases open six months or longer from July 1, 2015, through January 31, 2019. A random sample of 13 of 64 cases (20 percent) open 180 days were reviewed for unjustified periods of inactivity. A random sample of five of nine (56 percent) monitor cases was also reviewed for unjustified periods of inactivity and to evaluate reasons why cases were placed in monitor status. Investigation data was also reviewed for compliance with statutory reporting requirements. Test results were not projected to the populations.
  - A random sample of 40 license applications was tested. Twenty-five new applications were selected from the 1,663 new licenses issued between July 1, 2015, and January 31, 2019. Fifteen renewal applications were selected from the 5,073 active licensees subject to the December 31, 2018, renewal period. The 25 new and 15 renewal applications were assessed for statutory and regulatory compliance. The sample size was based on low control risk and inherent risk and low/moderate audit risk. Test results were projected to the populations.
  - A random sample of 19 of 188 licensees (10 percent) subject to continuing medical education requirements was reviewed for regulatory compliance. Test results were not 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 State Medical Board's 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;

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8. the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and the area of activity or interest;
  9. the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
  10. the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
  11. the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

# Agency Response from the Office of the Governor



OFFICE OF THE GOVERNOR  
Governor Michael J. Dunleavy  
STATE OF ALASKA

November 20, 2019

Ms. Kris Curtis  
Legislative Auditor  
Legislative Budget and Audit Committee  
P.O. Box 113300  
Juneau, AK 99877-3300

RECEIVED  
NOV 21 2019  
LEGISLATIVE AUDIT

Dear Ms. Curtis:

Thank you for the opportunity to respond to the recommendations contained in the April 26, 2019 audit report for the State Medical Board. The audit report contains recommendations that are out of the scope of responsibility for the Governor's Office of Boards and Commissions.

If I can be of further assistance, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Gina Ritacco".

Gina Ritacco  
Boards and Commissions

550 West 7<sup>th</sup> Avenue, Suite 1700, Anchorage, AK 99501

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



THE STATE  
of ALASKA  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community,  
and Economic Development

OFFICE OF THE COMMISSIONER

550 West Seventh Avenue, Suite 1535  
Anchorage, Alaska 99501  
Main: 907.269-8100  
Toll free fax: 907.269.8125

November 16, 2019

Kris Curtis  
Legislative Auditor  
P.O. Box 113300  
Juneau, Alaska 99811-3830

RECEIVED

NOV 18 2019

LEGISLATIVE AUDIT

Dear Ms. Curtis:

Thank you for the opportunity to comment on the Confidential Management Letter No. 1, Department of Commerce, Community, and Economic Development (DCCED), State Medical Board Sunset Review. The department has the following response to the information and recommendations presented in the letter:

Recommendation No. 1: The board should adopt regulations to provide guidance for registering with the controlled substance prescription database.

Since this recommendation is directed to the board, the department has no response on their behalf.

Recommendation No. 2: The board should develop procedures to ensure licensees with a DEA number register in the controlled substance prescription database.

Since this recommendation is directed to the board, the department has no response on their behalf. The division does not have authority to independently discipline licensees of the State Medical Board.

Recommendation No. 3: The board chair should work with the DCBPL's director to establish and implement procedures to ensure board disciplinary actions are reported in accordance with state law.

The department agrees with this recommendation, and the division has implemented administrative procedures to ensure disciplinary actions are reported to the FSMB in accordance with AS 08.64.335. Division staff are currently submitting these required reports and have consistently done so since May 15, 2019.

Again, thank you for the opportunity for the department 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, appearing to read "Julie Anderson".

Julie Anderson  
Commissioner

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

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# Agency Response from the State Medical Board



THE STATE  
of ALASKA  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Commerce, Community,  
and Economic Development

STATE MEDICAL BOARD

550 West Seventh Avenue, Suite 1500  
Anchorage, AK 99501-3567  
Main 907.269.8163  
Toll free fax: 907.269.8156

November 18, 2019

Kris Curtis  
Legislative Auditor  
P.O. Box 113300  
Juneau, Alaska 99811-3830

RECEIVED

NOV 18 2019

LEGISLATIVE AUDIT

Ms. Curtis:

Thank you for providing the State Medical Board with a copy of your initial findings and recommendations. The Board concurs with the audit finding that Board operations, licensing, and investigations are functioning effectively.

The Board offers following responses to the proposed recommendations:

Recommendation No. 1: The board should adopt regulations to provide guidance for registering with the controlled substance prescription database. In accordance with AS 17.30.200(o), a prescribing practitioner must register with the database. The Board adopted regulations in 2017, including: 12 AAC 40.967(34) establishing failure to comply with the statutory requirement to register as unprofessional conduct; and 12 AAC 40.975 establishing requirements for the prescription of controlled substances, including a review of the database before prescribing schedule II or III prescriptions. The Board believes this meets the requirement to adopt regulations to implement the registration requirement, as required by AS 08.64.101(7). It is Board's understanding that the registration requirement set forth in statute, under 17.30.200(o) is not to be repeated in regulation.

The regulations adopted by the Board were reviewed by the Office of the Attorney General prior to being finalized. Their memo to the Board indicated that the regulations are "consistent with statutory provisions as amended not only under ch. 25, SLA 2016 but also under ch. 2, SSLA 2017: a more recent session law that made additional amendments to a number of the same statutory provisions, particularly AS 17.30.200 (controlled substance prescription database).

However, in the interest of thoroughness the Board will obtain guidance from the Office of Attorney General and take any necessary action for compliance with these statutes.



Recommendation No. 2: The board should develop procedures to ensure licensees with a DEA number register in the controlled substance prescription database. As noted, it was the Board's intention to use the 12/31/18 renewal process to get licensees into compliance with the registration requirement, and included such information in the renewal application. Following the renewal, the Board has worked with its executive administrator to develop an audit procedure to ensure compliance with the registration requirement. Although the registration requirement is not required to qualify for licensure (in fact, registration cannot be obtained until a license is issued), the application process for initial licensure is also used to notify potential licensees of the registration requirement, and such information is included in the application. The Board has worked with its executive administrator to develop a procedure to ensure compliance with the registration requirement, with a follow-up process amid issuance of temporary permits and conversion from temporary to permanent license.

These new procedures were finalized at the May 2019 Board meeting and are currently in process of being implemented. Instances of noncompliance will be referred to investigators as directed by the Board and will be subject to sanctions implemented under the Board's Disciplinary Guidelines at their August and November 2018 meetings.

The Board would like to clarify that its intention was not to grant a grace period for compliance with the database requirements, only for the enforcement of violations. Multiple notices have been provided to licensees and applicants, and information continues to be provided regarding use and registration with database.

Recommendation No. 3: The board chair should work with DCBPL's director to establish and implement procedures to ensure board disciplinary actions are reported in accordance with state law. The Board agrees that correct and accurate reporting is necessary. The Board disagrees with the assertion that this is a continuation of the previous issue from the 2012 audit. That audit revealed that various unrelated actions had been reported late or, in some cases not reported. However, the current issue is related to the nonreporting a specific type of action, imposition of civil fine, which was not implemented until after the previous audit. It was the Board's understanding that an imposition of civil fine was a nonreportable action, used to resolve technical violations not related to the delivery of patient care. The Board agrees that this is a misinterpretation, and it is the Board's understanding that the Division has corrected the issue, has begun reporting these actions, and is implementing procedures and staff training for correct reporting.

Thank you for the opportunity to respond to the audit findings and recommendations. Please let me know if you need anything further.

Sincerely,



Catherine Hyndman, M.D.

President, Alaska State Medical Board



# Legislative Auditor's Additional Comments

## ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347  
legaudit@akleg.gov

November 25, 2019

Members of the Legislative Budget  
and Audit Committee:

I have reviewed the State Medical Board (board) president's response to the audit report. Nothing contained in the response causes me to revise or reconsider the report conclusions and recommendations. However, I offer the following rebuttal to the board president's response to Recommendation Nos. 1 and 3.

In her response to Recommendation No. 1, the board president is unsure whether regulations are required to provide guidance for registering with the controlled substance prescription database given that the statutes clearly require registration. Given the high rate of licensee noncompliance with the registration requirement identified by the audit, regulations designed to ensure compliance are warranted. Please note that Section 60(b) of Senate Bill 74 (SB 74) requires the Department of Commerce, Community, and Economic Development and all boards that regulate an occupation that includes a practitioner who is required to register with the controlled substance prescription database to adopt regulations to implement SB 74 statutory changes.

The board president stated that Recommendation No. 3 was not a continuation of a previous issue from the 2012 audit of the board. We acknowledge the 2012 audit identified errors with timely reporting of board actions, whereas the 2019 audit identified unreported board actions. However, in both the 2012 and 2019 sunset audits we recommend procedures be implemented to ensure board disciplinary actions are reported in accordance with law.

In summary, I reaffirm the report conclusions and recommendations.

Sincerely,

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

Kris Curtis, CPA, CISA  
Legislative Auditor