

Report Highlights

Why DLA Performed This Audit

The audit was performed to determine if there is a continued need for the board and if its termination date should be extended. The board is set to sunset on June 30, 2022, and will have one year from that date to conclude its operations.

What DLA Recommends

1. The audit makes no formal recommendations.

A Sunset Review of the Department of Commerce, Community, and Economic Development, State Physical Therapy and Occupational Therapy Board (board)

April 2, 2021

Audit Control Number 08-20125-21

REPORT CONCLUSIONS

Overall, the audit concludes that the board served the public's interest by conducting meetings in accordance with state laws; amending certain regulations to improve the professions of physical therapy and occupational therapy; and effectively licensing and regulating physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants.

In accordance with AS 08.03.010(c)(17), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date eight years to June 30, 2030.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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May 24, 2021

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Physical Therapy and Occupational Therapy Board and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT STATE PHYSICAL THERAPY AND OCCUPATIONAL THERAPY BOARD SUNSET REVIEW

April 2, 2021

Audit Control Number
08-20125-21

This audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(17), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date to June 30, 2030.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

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

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

| | |
|-------|--|
| ACN | Audit Control Number |
| AS | Alaska Statute |
| CISA | Certified Information Systems Auditor |
| CPA | Certified Public Accountant |
| DCBPL | Division of Corporations, Business and Professional Licensing |
| DLA | Division of Legislative Audit |
| FY | Fiscal Year |

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ORGANIZATION AND FUNCTION

State Physical Therapy and Occupational Therapy Board

The State Physical Therapy and Occupational Therapy Board (board) was established for the purpose of controlling and regulating the practice of physical therapy and occupational therapy in the state. The board is composed of seven members appointed by the governor. Statutes require the board consist of one physician, three physical therapists or two physical therapists and a physical therapy assistant, two occupational therapists or an occupational therapist and an occupational therapy assistant, and one public member. Board members may not serve more than two consecutive terms. The public member may not have a direct financial interest in the healthcare industry. Board members, as of March 31, 2021, are listed in Exhibit 1.

The board regulates admission into the practices of physical and occupational therapies; establishes and enforces competency by ensuring compliance with professional standards; and ensures the standard of care is maintained by requiring continuing education.

Alaska Statute 08.84.010(b) authorizes the board to:

- pass upon the qualifications of applicants;
- provide for the examination of applicants;
- issue temporary permits and licenses to persons qualified under this chapter;
- suspend, revoke, or refuse to issue or renew a license under AS 08.84.120;

Exhibit 1

State Physical Therapy and Occupational Therapy Board Members as of March 31, 2021

Keith Poorbaugh
Chair, Physical Therapist

Robert Calhoon
Occupational Therapist

Enlow Walker
Secretary, Physician

Lisa Radley
Physical Therapist

Jodi Pfeiffer
Physical Therapy Assistant

Nathan Missler
Occupational Therapist

Rebecca Dean
Public Member

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

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

- keep a current register listing the name, business address, date, and number of the license of each person who is licensed to practice under this chapter; and
- adopt regulations under AS 44.62 (Administrative Procedures Act) necessary to carry out the purposes of this chapter including regulations establishing qualifications for licensure and renewal of licensure under this chapter.

The Division of Corporations, Business and Professional Licensing (DCBPL) provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services and functions such as collecting fees, receiving and issuing application forms, publishing notices for meetings, and assisting with board regulations. The Department of Commerce, Community, and Economic Development 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. DCBPL staff may:

- conduct an investigation if it appears a person is engaged or about to engage in a prohibited professional practice;
- bring an action in Superior Court to enjoin the act;
- examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; and
- issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In developing our conclusions regarding whether the State Physical Therapy and Occupational Therapy 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 to this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

Overall, the audit concludes that the board served the public's interest by conducting meetings in accordance with state laws; amending certain regulations to improve the professions of physical therapy and occupational therapy; and effectively licensing and regulating physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants.

In accordance with AS 08.03.010(c)(17), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date eight years to June 30, 2030.

Detailed report conclusions are as follows.

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

The board's operations were conducted in an effective manner. From FY 18 through January 31, 2021, the board held at least two meetings each year as required by regulation. Auditors' review of five board meetings found meetings were appropriately public noticed and allotted time for public comment, and a quorum was consistently achieved. Board member composition complied with statutory requirements. Further, the audit determined the board did not duplicate the activities of another governmental or private sector entity.

Although no statutory changes were made during the audit period, the board supported bills during the 30th and 31st legislatures to align statutory terminology with national standards.

From FY 18 through January 31, 2021, the board completed two regulatory projects that, in part:

- expanded continuing education opportunities to meet renewal requirements, which removed impediments to licensure;
- updated terminology to align with national standards;
- updated forms used to evaluate applicants to ensure applicants meet professional requirements;
- repealed the requirement for physical or occupational therapists to be physically present in Alaska when performing telerehabilitation services, thereby expanding the availability of services; and
- reduced license application fees in response to the board's surplus.

The board licensed individuals in accordance with statutes and regulations.

The audit concluded the board issued and renewed physical therapist, physical therapy assistant, occupational therapist, and occupational therapy assistant licenses in accordance with statutes and regulations. From FY 18 through January 31, 2021, the board issued 911 new licenses and permits. A random sample of 15 new and 10 renewed licenses and permits found all were issued in accordance with applicable laws and regulations. As of January 31, 2021, there were 1,762 active licenses and permits. (See Exhibit 2)

The audit noted the total number of licenses and permits increased by approximately 53 percent when compared to the prior 2013 sunset audit.¹ Licenses in both professions increased while permits for both professions decreased. According to the board chair, telehealth contributed, in part, to the increase in licenses.

¹ The prior sunset audit (ACN 08-20083-13) reported 1,152 licenses and permits as of March 2013.

Exhibit 2**State Physical Therapy and Occupational Therapy Board
License and Permit Activity
FY 18 through January 31, 2021**

| | New Licenses Issued (Exclusive of Renewals) | | | Total Active as of January 31, 2021 |
|---|--|-------|-------|--|
| | FY 18 | FY 19 | FY 20 | |
| Occupational Therapist | 67 | 92 | 70 | 479 |
| Occupational Therapist Limited Permit | 5 | 1 | 0 | 0 |
| Occupational Therapy Assistant | 6 | 9 | 6 | 49 |
| Occupational Therapy Assistant Limited Permit | 0 | 1 | 0 | 0 |
| Physical Therapist | 132 | 182 | 118 | 1,068 |
| Physical Therapist Limited Permit | 5 | 2 | 0 | 1 |
| Physical Therapy Assistant | 36 | 27 | 24 | 165 |
| Totals | 251 | 314 | 218 | 1,762 |

Source: Compiled from DCBPL licensing database.

**The board operated
in the public's interest
by investigating
complaints.**

A review of board investigation data found 55 investigations were open or opened between July 1, 2017, and January 31, 2021. A total of 11 cases were open over 180 days. A shortage of supervisory personnel, high investigative workloads, and timing of board approval for consent agreements contributed to the cases being open over 180 days. Auditors reviewed four of the investigative cases open over 180 days and identified one case with a period of inactivity of 69 days. The case was related to continuing education and a low risk to the public.

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

The board primarily receives its revenue from licensure and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle in board revenues. Exhibit 3 presents a schedule of board fees from FY 18 through FY 21. As shown in Exhibit 4, the board operated with a surplus from FY 18 through January 31, 2021. In response to the surplus, Division of Corporations, Business and Professional Licensing (DCBPL) management worked with the board to decrease fees in FY 20.

Exhibit 3

| State Physical Therapy and Occupational Therapy Board License and Permit Fees FY 18 through FY 21 | | | | |
|--|--------------|--------------|--------------|--------------|
| Fee Type | FY 18 | FY 19 | FY 20 | FY 21 |
| Physical or Occupational Therapists: | | | | |
| Nonrefundable application fee for initial license | \$150 | \$150 | \$150 | \$150 |
| License fee for all or part of the initial biennial license period | 240 | 240 | 200 | 200 |
| Biennial license renewal fee | 240 | 240 | 200 | 200 |
| Permit Fee: | | | | |
| Temporary permit fee | 65 | 65 | 65 | 65 |
| Limited permit fee | 65 | 65 | 65 | 65 |
| Physical or Occupational Therapy Assistants: | | | | |
| Nonrefundable application fee for initial license | 150 | 150 | 150 | 150 |
| License fee for all or part of the initial biennial license period | 175 | 175 | 130 | 130 |
| Biennial license renewal fee | 175 | 175 | 130 | 130 |

Source: DCBPL regulations.

Exhibit 4

**State Physical Therapy and Occupational Therapy Board
Schedule of Revenues and Expenditures
FY 18 through January 31, 2021
(Unaudited)**

| | FY 18 | FY 19 | FY 20 | July 1, 2020 – January 31, 2021 |
|---|-------------------|-------------------|-------------------|------------------------------------|
| Revenues | | | | |
| Licensing Fees | \$ 405,168 | \$ 125,615 | \$ 373,380 | \$ 56,415 |
| Third Party Reimbursements | 1,064 | 724 | - | - |
| Total Revenues | <u>406,232</u> | <u>126,339</u> | <u>373,380</u> | <u>56,415</u> |
| Direct Expenditures | | | | |
| Personal Services | 108,617 | 125,786 | 125,431 | 67,654 |
| Travel | 5,869 | 5,938 | 1,679 | - |
| Services | 4,345 | 5,226 | 6,754 | 887 |
| Commodities | 252 | 15 | - | - |
| Total Direct Expenditures | <u>119,083</u> | <u>136,965</u> | <u>133,864</u> | <u>68,541</u> |
| Indirect Expenditures | <u>97,853</u> | <u>107,456</u> | <u>101,927</u> | <u>59,118*</u> |
| Total Expenditures | <u>216,936</u> | <u>244,421</u> | <u>235,791</u> | <u>127,659</u> |
| Annual Surplus (Deficit) | 189,296 | (118,082) | 137,589 | (71,244) |
| Beginning Cumulative Surplus (Deficit) | <u>73,765</u> | <u>263,061</u> | <u>144,979</u> | <u>282,568</u> |
| Ending Cumulative Surplus (Deficit) | <u>\$ 263,061</u> | <u>\$ 144,979</u> | <u>\$ 282,568</u> | <u>\$ 211,324</u> |

* Indirect expenditures are estimated as of January 31, 2021, using the board's prior year indirect expenditures allocated for seven months.

Source: Department of Commerce, Community, and Economic Development management.

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FINDINGS AND RECOMMENDATIONS

The prior 2013 sunset audit made one recommendation:

- The Division of Corporations, Business and Professional Licensing's (DCBPL) director should continue efforts to improve the investigative case management system's integrity and confidentiality.

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

The audit makes no new recommendations.

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the State Board of Physical Therapy and Occupational Therapy (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)(17) the board will terminate on June 30, 2022, and will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are to:

1. Determine if the termination date of the board should be extended.
2. Determine if the board is operating in the public's interest.
3. Determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of board operations and performance was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from FY 18 through January 31, 2021. Financial information is presented, unaudited, from FY 18 through January 31, 2021.

Methodology

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

- The prior sunset audit report (ACN 08-20083-13) to identify issues affecting the board and to identify the prior sunset audit recommendation.

-
- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
 - The State's online public notice system to verify the board meetings were adequately public noticed.
 - Various state and news related websites to identify complaints against the board or other board related concerns.
 - Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.
 - Expenditures, revenues, and fee levels for the board to determine whether fee levels covered the costs of board operations.
 - Board investigation data to assess the efficiency of the investigative process.
 - 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. Internal controls over the investigation case management system were assessed to determine if controls were properly designed. 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.

During the audit, the following samples were selected:

- A sample of five of 14 board meetings held from FY 18 through January 31, 2021, was reviewed to gain an understanding of board proceedings and activities, the nature and extent of public

input, whether a quorum was maintained, and whether board vacancies impeded operations. The sample of five included one teleconference meeting randomly selected from four teleconference meetings; three in-person/videoconference meetings randomly selected from nine in-person/videoconference meetings; and one videoconference meeting which was judgmentally selected. Test results were projected to the population.

- A random sample of 25 licenses was tested. Fifteen new licenses were selected from 242 active new licenses issued after January 1, 2020. Ten renewal applications were selected from the 1,520 license renewals that were applied for during the June 30, 2020, renewal period. Applications were assessed for statutory, regulatory, and control compliance. The sample size was based on low control risk, low inherent risk, and high audit risk. Test results were projected to the population.
- A random sample of four of 11 investigative cases open over 180 days between July 1, 2017, and January 31, 2021, was reviewed for unjustified periods of inactivity. Test results were not projected to the population.

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APPENDIX SUMMARY

Appendix A provides the sunset criteria used in developing our conclusion regarding whether the State Board of Physical Therapy and Occupational Therapy's termination date should be extended.

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APPENDIX A

Analysis of Public Need Criteria AS 44.66.050(c)

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

1. the extent to which the board or commission has operated in the public interest;
2. the extent to which the operation of the board or commission has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
3. the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
4. the extent to which the board or commission has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
5. the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
6. the efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
7. the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

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

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



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

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June 11, 2021

Kris Curtis
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED

JUN 11 2021

LEGISLATIVE AUDIT

RE: Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development, State Physical Therapy and Occupational Therapy Board

Dear Ms. Curtis:

Thank you for the opportunity to comment on the Confidential Preliminary Audit Report regarding the State Physical Therapy and Occupational Therapy Board (board). The department concurs with the conclusions that the board is operating in the public interest and licenses appropriately and that the division is a responsive and supportive partner in their work.

We do continue to believe the security of the division's case management software is acceptable. This was recently confirmed by extending the division's contract with the vendor through state procurement and information technology protocols and according to established state security standards. Given the division's need to float trained investigators among programs according to caseload and case priorities, and because the case management system includes an audit trail to track any changes, I am satisfied that the current system meets security expectations.

We appreciate the recommendation of an eight-year extension of the board's sunset date.

Again, thank you for the opportunity for the DCCED to provide input on this matter. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-269-8125.

Sincerely,

A handwritten signature in blue ink that reads "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 Physical Therapy and Occupational Therapy Board

Kris Curtis, CPA, CISA
Legislative Auditor
PO Box 113300
Juneau, AK 99811

RECEIVED

JUN 17 2021

LEGISLATIVE AUDIT

June 10, 2021

Keith Poorbaugh
Chair State Physical Therapy and
Occupational Therapy Board

Dear Mr. Curtis,

I have reviewed the legislative audit for the Alaska Physical Therapy and Occupational Therapy Board. I appreciate the thorough review of the board functions and operations. I am pleased with the recommendation that the legislature extend the board's termination date eight years to June 30, 2030. I agree with the audit findings and accept the fact that there are no formal recommendations.

Your time and effort to ensure the continued existence of the Physical Therapy and Occupational Therapy board is greatly appreciated.

Regards,



Chair of the Board of Physical Therapy and Occupational Therapy