

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 18, 2020

1:31 p.m.

MEMBERS PRESENT

Senator Click Bishop, Chair
Senator Gary Stevens, Vice Chair
Senator Mia Costello
Senator Joshua Revak

MEMBERS ABSENT

Senator Elvi Gray-Jackson

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Board of Examiners in Optometry
Pamela Steffes - Sitka

- CONFIRMATION ADVANCED

Board of Professional Counselors
Eleanor Vinsor - Juneau

- CONFIRMATION ADVANCED

Workers' Compensation Appeals Commission
Deirdre Ford - Anchorage
Amy Steel - Anchorage

- CONFIRMATIONS ADVANCED

SENATE BILL NO. 172

"An Act extending the termination date of the State Medical Board; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 172

SHORT TITLE: EXTENDING THE STATE MEDICAL BOARD
SPONSOR(s): SENATOR(s) OLSON

02/03/20 (S) READ THE FIRST TIME - REFERRALS
02/03/20 (S) L&C, FIN
02/18/20 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

PAMELA STEFFES, Appointee
Board of Examiners in Optometry
Sitka, Alaska

POSITION STATEMENT: Testified as Appointee to the Board of Examiners in Optometry.

DEIRDRE FORD, Appointee
Workers' Compensation Appeals Commission
Department of Labor and Workforce Development (DOLWD)
Anchorage, Alaska

POSITION STATEMENT: Testified as Appointee to the Workers' Compensation Appeals Commission.

AMY STEELE, Appointee
Workers' Compensation Appeals Commission
Department of Labor and Workforce Development (DOLWD)
Anchorage, Alaska

POSITION STATEMENT: Testified as Appointee to the Workers' Compensation Appeals Commission.

ELEANOR VINSON, Appointee
Board of Professional Counselors
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the Board of Professional Counselors.

SENATOR DONNY OLSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 172.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on SB 172, reviewed the sunset audit for the State Medical Board.

SARA CHAMBERS, Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Reviewed the fiscal note for SB 172.

TIM OLSEN, Physician Assistant and Chair
State Medical Board
Anchorage, Alaska

POSITION STATEMENT: During the hearing on SB 172, assured the committee that the findings and recommendations in the sunset audit for the State Medical Board would be addressed.

ACTION NARRATIVE

[1:31:44 PM](#)

CHAIR CLICK BISHOP called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at call to order were Senators Costello, Stevens, and Chair Bishop. Senator Revak arrived soon thereafter.

CONFIRMATION HEARINGS

Board of Examiners in Optometry

Board of Professional Counselors

Workers' Compensation Appeals Commission

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SENATOR REVAK joined the committee.

[1:33:04 PM](#)

CHAIR BISHOP announced the first order of business would be consideration of governor appointees. He asked each appointee to place their name and affiliation on the record, give a brief introduction, and discuss the reason they want to serve on the board or commission. He noted that public testimony would be taken after all appointees have testified and the names would be forwarded to the full body for consideration. This hearing was not an indication of any future vote.

[1:33:52 PM](#)

PAMELA STEFFES, Appointee, Board of Examiners in Optometry, Sitka, Alaska, stated that she graduated from high school in Sitka and has been working at SouthEast Alaska Regional Health Consortium (SEARHC) as a hospital-based optometrist for nearly 21 years, serving patients from Yakutat to Prince of Wales. She

related that she is a fellow of the American Academy of Optometry and a Diplomate of the American Board of Optometry. She has served on this board for the last four years and would like to continue as the board works to implement new regulations. She offered her belief that as a hospital-based optometrist she brings a slightly different perspective to the board as it works to ensure public safety.

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SENATOR STEVENS asked her to comment on her interesting educational background.

MS. STEFFES related that chemistry stimulated her interest in optometry school and she was fortunate to work for an optometrist in Sitka while going to school. She decided early-on that working in this field in Sitka was her goal. She also serves in this capacity for the local Native corporation. That work drove her to get her Masters' in Business in 2012.

SENATOR STEVENS congratulated her on her educational achievements.

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CHAIR BISHOP suggested she stay online for public testimony at the end of the hearings.

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DEIRDRE FORD, Appointee, Workers' Compensation Appeals Commission, Department of Labor and Workforce Development (DOLWD), Anchorage, Alaska, stated that she was reappointed as chair of the appeals commission and it's been a pleasure to serve in that capacity for the last three years. She came out of retirement to serve as chair of the commission and feels that this has been a wonderful and challenging opportunity to pay back her good fortune to live in Alaska since 1978. When she arrived in the state, she was a librarian but couldn't find work. The state made it possible to return to school and become a lawyer. She practiced legal defense work for about 25 years then 3.5 years as a workers' compensation hearing officer before retiring. When people on both sides of the bar asked her to apply to the appeals commission she did so. It's been a pleasure to try to bring some stability to the commission and she would like to serve for another four years.

SENATOR STEVENS asked what the time commitment is to serve as chair of the Workers' Compensation Appeals Commission.

MS. FORD said it is a full-time position, but the daily and weekly time commitment depends on the number of appeals and oral arguments and the complexity of the cases. She relayed that she would like to work on revising some regulations when she doesn't have an oral argument pending, a motion, or decision to write for the commissioners to consider.

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CHAIR BISHOP thanked her for reapplying and for helping give injured Alaskans a fair hearing.

MS. FORD said that was her goal.

[1:41:09 PM](#)

AMY STEELE, Appointee, Workers' Compensation Appeals Commission, Department of Labor and Workforce Development (DOLWD), Anchorage, Alaska, stated that she was seeking confirmation as an employer representative commissioner on the appeals commission. She referenced her resume that shows that she was a Workers' Compensation Board member from 2011-2019. She said she wants to serve because she has specialized knowledge in workers' compensation that would benefit the state. She relayed that she currently works as the senior claims adjuster for Chenega Corporation overseeing workers' compensation and other claims.

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SENATOR REVAK asked her to discuss her involvement in the Zurich Western Customer Round Table.

MS. STEELE explained that Zurich North America is the insurance company her employer uses for workers' compensation. She has been asked to participate and provide feedback about different topics.

SENATOR REVAK said it sounds like a great experience.

CHAIR BISHOP observed that her degrees were in biology and chemistry but she was working in workers' compensation.

[1:44:10 PM](#)

MS. STEELE explained that after she graduated she took a job in Georgia to do water sampling, but the company decided she would be a better fit doing drug screenings and running OSHA programs. After that she moved into risk management and ended up in insurance.

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ELEANOR VINSON, Appointee, Board of Professional Counselors, Department of Commerce, Community and Economic Development (DCCED), Juneau, Alaska, stated that she held a degree in sociology. She moved to Valdez in 1977 and thereafter lived in different locations and traveled throughout the state. She opined that her experience in different regions of the state would help her service on the board. She worked for DCCED in professional licensing for a number of years and was appointed to this board as a public member after she retired.

[1:46:05 PM](#)

At ease

[1:46:24 PM](#)

CHAIR BISHOP reconvened the meeting and opened public testimony on the appointees. Finding none, he closed it.

[1:46:39 PM](#)

CHAIR BISHOP stated that in accordance with AS 39.05.080, the Senate Labor and Commerce Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Board of Examiners in Optometry

Pamela Steffes - Sitka

Board of Professional Counselors

Eleanor Vinsor - Juneau

Workers' Compensation Appeals Commission

Deirdre Ford - Anchorage

Amy Steel - Anchorage

Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

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At ease

SB 172-EXTENDING THE STATE MEDICAL BOARD

[1:55:25 PM](#)

CHAIR BISHOP reconvened the meeting and announced the consideration of SENATE BILL NO. 172, "An Act extending the

termination date of the State Medical Board; and providing for an effective date."

He noted that this was the first hearing and public testimony would be heard.

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SENATOR DONNY OLSON, Alaska State Legislature, Juneau, Alaska, sponsor of SB 172, stated that this bill extends the life of the State Medical Board for five years. He explained that the board is composed of physicians and lay people who review medical license applications. This board safeguards the people of Alaska by ensuring that these licensees are operating in a legal and professional manner.

CHAIR BISHOP asked Ms. Curtis

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KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, Juneau, Alaska, reviewed the sunset audit for the State Medical Board. She directed attention to the April 26, 2019 sunset audit of the Department of Commerce, Community and Economic Development (DCCED), State Medical Board that was in members' packets. She explained that the purpose of a sunset audit is to determine whether a board or commission is serving the public's interest and should be extended. She paraphrased the following 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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MS. CURTIS directed attention to the Background Information section of the audit that begins on page 5. She related that the section explains the following:

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.

MS. CURTIS turned to Exhibit 2 on page 11 that shows that the board issued about 1,600 new licenses from July 1, 2015 through January 31, 2019. At the end of January 2019 there were 5,073 active licensees, which represents a nine percent increase compared to the previous sunset audit in 2012.

She turned to Exhibit 3, Schedules of Revenues and Expenditures, on page 14. It shows that at the end of FY18, the board had a deficit of just over \$800,000. The board responded to the deficit by raising fees, which are listed in Exhibit 4 on page 15.

MS. CURTIS directed attention to the three recommendations for improvements that begin on page 18.

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.

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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 the controlled substance prescription database.³ 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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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.

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.

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.

[2:03:11 PM](#)

MS. CURTIS directed attention to the responses to the audit. On page 31, the commissioner of the Department of Commerce, Community and Economic Development (DCCED) stated that corrective action had been taken in accordance with state law.

On page 33 the board chair, in response to Recommendation No. 1, reiterated her belief that the statutes clearly require licensees to register so regulations appear to be unnecessary. She also stated that the Department of Law reviewed the regulations the board created and found them to be sufficient. The chair did say the board would consult the Department of Law and take action that was deemed necessary.

In response to Recommendation No. 2 to develop procedures to ensure that licensees register, the chair stated a procedure had been created to ensure compliance. The chair further stated that it was not the board's intention to grant a grace period to comply with the law, only for enforcing the law.

The chair agreed with Recommendation No. 3 to implement procedures that disciplinary actions are reported to the national databases.

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CHAIR BISHOP asked if there were questions.

[2:04:36 PM](#)

SENATOR STEVENS asked if the normal extension was 8 years and the audit recommendation was a 5-year extension.

MS. CURTIS answered yes.

SENATOR STEVENS asked if she believes these deficiencies will be corrected in 5 years.

MS. CURTIS replied she hoped so but Legislative Audit did not have a mechanism to check until the next sunset in 5 years.

SENATOR STEVENS asked if she thought a 3-year extension might be better.

MS. CURTIS replied Legislative Audit will take a hard look at the controlled substance database across all professions and the degree of compliance when it conducts a sunset audit on the Board of Pharmacy. She noted that pharmaceuticals was the reason that the board received a 4-year extension on the last audit.

[2:05:53 PM](#)

SENATOR COSTELLO called the audit surprising. She asked if the board or the physician would be liable if there was a death or egregious outcome as a result of prescription drug abuse and it turns out that the board wasn't doing due diligence in asking people to report and hasn't written regulations.

CHAIR BISHOP said the Department of Law could answer that at the next hearing. He expressed concern that there was a prescription drug abuse epidemic and the board still was not in compliance three years after Senate Bill 74 passed.

He asked Ms. Chambers to discuss the fiscal note.

2:08:25 PM

SARA CHAMBERS, Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), Juneau, Alaska, explained that SB 172 was a sunset audit so there was no appropriation request for FY21 because the board would go away if the board sunsets. The costs in subsequent years reflect the cost of the medical board itself. There was \$30 thousand in travel for eight board members and one staff to attend four board meetings per year. Services fees for public noticing of board meetings, training and conference fees, and per diem stipends for board members amounts to \$1,500 per year.

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CHAIR BISHOP thanked Ms. Chambers and opened public testimony.

2:11:05 PM

TIM OLSEN, Physician Assistant and Chair, State Medical Board, Anchorage, Alaska, assured the committee that the findings and recommendations in the audit would be addressed in a short period of time.

2:12:15 PM

SENATOR STEVENS asked what he meant by a "short period of time."

MR. OLSEN answered that the inconsistency resulted from the lack of clarity on the guidelines set forth for the board, but now all the required regulations will be passed.

SENATOR STEVENS asked for a time certain.

MR. OLSEN replied there was a large turnover in state medical board members which made it difficult to give a more specific answer, but it would require just one telephonic meeting that could take place in the next month.

CHAIR BISHOP listed the individuals available to answer questions.

2:14:23 PM

CHAIR BISHOP said his office would work with members to find a path forward and public testimony would remain open.

SENATOR OLSON said in closing that he anticipated that the board would come together to address the problems the audit highlighted.

CHAIR BISHOP held SB 172 in committee.

2:15:50 PM

There being no further business to come before the committee, Chair Bishop adjourned the Senate Labor and Commerce Standing Committee meeting at 2:15 p.m.