HOUSE FINANCE COMMITTEE
March 11, 2022
9:03 a.m.

9:03:10 AM

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 9:03 a.m.

MEMBERS PRESENT

Representative Kelly Merrick, Co-Chair
Representative Dan Ortiz, Vice-Chair (via teleconference)
Representative Ben Carpenter
Representative Bryce Edgmon
Representative DeLena Johnson
Representative Andy Josephson
Representative Bart LeBon
Representative Sara Rasmussen (via teleconference)
Representative Adam Wool

MEMBERS ABSENT

Representative Neal Foster, Co-Chair
Representative Steve Thompson

ALSO PRESENT

Representative Andi Story, Sponsor; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Sara Chambers, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development.

PRESENT VIA TELECONFERENCE

Representative Jonathan Kreiss-Tompkins; Justin Ruffridge, Chair, Board of Pharmacy.

SUMMARY

HB 246 ACCESS TO MARIJUANA CONVICTION RECORDS

HB 246 was HEARD and HELD in committee for further consideration.

HB 306 EXTEND BOARD OF PHARMACY

HB 306 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the agenda for the meeting.

#hb246
HOUSE BILL NO. 246

"An Act restricting the release of certain records of convictions; and providing for an effective date."

9:03:59 AM

Co-Chair Merrick indicated there was one amendment from Legislative Legal.

9:04:25 AM
AT EASE

9:05:08 AM
RECONVENED

Co-Chair Merrick OPENED public testimony.

9:05:26 AM

Co-Chair Merrick CLOSED public testimony.

9:05:31 AM
AT EASE

9:20:03 AM
RECONVENED

Co-Chair Merrick stated that HB 246 was set aside.

HB 246 was HEARD and HELD in committee for further consideration.

#hb306
HOUSE BILL NO. 306

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

9:20:19 AM

REPRESENTATIVE ANDI STORY, SPONSOR, indicated that the bill amended the statute to extend the termination date of the Board of Pharmacy to June 30, 2028. The current sunset date was June 30, 2022. The bill would have an immediate effective date. She emphasized the importance of the board to protect the public's safety and wellbeing and described the responsibilities of pharmacists and of board members. The Prescription Drug Monitoring Program (PDMP) was housed within the Board of Pharmacy, and board members were responsible for adopting regulations and monitoring the program. The board was composed of seven members, five of which must be licensed pharmacists actively engaged in the state for a period of three years immediately preceding appointment. The remaining two board members were prohibited from having a direct financial interest in the healthcare industry. She read from the sponsor statement (copy on file):

> House Bill 306 extends the termination date of the Board of Pharmacy until June 30, 2028. The current sunset date is June 30, 2022.
>
> The first Alaska Board of Pharmacy was created in 1913. Those provisions were repealed in 1955 and a new board was enacted with many of the same functions.
>
> The Board of Pharmacy benefits Alaskans by regulating pharmacies, pharmacists, pharmacy technicians, and pharmacy interns, and ensuring the practice of pharmacy is done safely and within the bounds of state law. Allowing the board to terminate would not be in the best interest of the state.
>
> The Division of Legislative Audit (DLA) found in their 2021 audit of the Board of Pharmacy that the "board served the public's interest by effectively conducting its meetings and actively amending regulations; however, improvements over the board's licensing functions are needed." DLA recommended the extension of the board for six years to reflect "the need for more timely oversight of the board's evolving role in combating the public health opioid crisis."

I respectfully ask for your support in the passage of HB306.

Representative Story highlighted the importance of pharmacists during the COVID-19 pandemic and appreciated the committee's consideration of the extension of the board.

Co-Chair Merrick invited the legislative auditor to the table.

9:23:37 AM

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, reviewed the Division of Legislative Audit's sunset review for the Board of Pharmacy. She read directly from the audit report (copy on file):

> Overall, the audit concluded that the board served the public's interest by effectively conducting its meetings and actively amending regulations; however, improvements over the board's licensing function are needed. Further, the audit concluded that Division of Corporations, Business and Professional Licensing (DCBPL) staff investigated complaints unrelated to the controlled substance prescription database (CSPD) in a timely manner and activity worked toward implementing new CSPD requirements.
>
> At the time of the audit, occupational boards were not effectively monitoring or enforcing CSPD requirements. Additionally, DCBPL licensing staff were not consistently entering the existence of a Drug Enforcement Administration (DEA) registration number into DCBPL's licensing database, which prevented the licensing database from being used to monitor compliance with CSPD registration requirements.
>
> In accordance with AS 08.03.010(c)(16), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date six years, to June 30, 2028, which is less than the eight-year maximum allowed in statute. The reduced extension reflects the need for more timely oversight of the board's evolving role in combating the public health opioid crisis.

Ms. Curtis asked members to turn to page 13 of the audit report and directed attention to Exhibit 4, which detailed the standard licensing information and financial information in the audit. She relayed that as of January 31, 2021, there were 4,280 active licenses, which included individual licenses and facility licenses. There was a 17 percent increase when compared to the prior 2017 sunset audit due to three new license types.

Ms. Curtis directed members to turn to page 15 to view the board's schedule of revenues and expenditures. The board had a high surplus of almost $800 thousand as of January 31, 2021. She explained that the board discussed fee reductions during the February 2021 board meeting and decided against reducing fees. The board planned to add a new licensing examiner position, which would result in increased expenditures. Additionally, there was concern that the disciplinary matrix established to cover the new controlled substance prescription database (CSPD) requirements would result in future investigative expenditures. Fees were not reduced in recognition of the potential future expenditures.

Ms. Curtis relayed that a large portion of the audit was intended to evaluate the board's progress in administering the CSPD. The last sunset audit in 2017 concluded that changes to laws governing the database would give the board a more active role in reducing the abuse and diversion of controlled substances. The prior audit recommended a four-year extension to monitor the board's progress in implementing new laws that governed the database.

Ms. Curtis read from page 4 of the audit report in order to provide background information:

> Senate Bill 196, passed in 2008, required the Board of Pharmacy (board) to establish and maintain a CSPD.3 The law was passed with the intent to improve patient care and foster the goal of reducing misuse, abuse, and diversion of controlled substances. The statute requires each dispenser submit to the board, by electronic means, information regarding each prescription dispensed for a controlled substance. The CSPD electronically collects information from in-state pharmacies, as well as other dispensers of controlled substance prescriptions.

Ms. Curtis shared that important authority was missing from the original legislation that limited its effectiveness and prevented the legislation from meeting its intent. Significant changes were made to address the deficiencies in 2017 and 2018, which significantly impacted the way in which the board administered the database.

9:28:06 AM

Ms. Curtis directed members' attention to page 16 of the audit, which outlined the significant changes to the CPSD. She reported that during the audit period, administration of the CSPD significantly changed in terms of legal authority and organizational structure. The changes were intended to make the CSPD more effective at preventing the misuse, abuse, and diversion of controlled substances. She read the three significant changes from the audit:

> Register - licensees of the six occupational boards that prescribe or dispense controlled substances were required to register with the CSPD;
>
> Report - data regarding prescriptions and dispensed substances were required to be reported daily to the CSPD; and
>
> Review - practitioners were required to check the database prior to dispensing, prescribing, or administering medication, with specific exclusions.

Ms. Curtis noted that the audit concluded that changes to statutes and regulations made the database more capable of combating the opioid crisis.

Ms. Curtis continued to read from page 16 and 17 of the audit:

> Implementing the new CSPD laws required the coordination of six occupational boards. The Prescription Drug Monitoring Program (PDMP) is housed within the Board of Pharmacy; however, each applicable licensing board is responsible for monitoring and enforcing the requirements for their respective licensees. As of January 2021, each applicable board was at a different stage in implementing new CSPD laws

and none of the boards were fully monitoring or enforcing CSPD requirements.

Ms. Curtis directed members' attention to "Exhibit 7" on page 17 of the audit report, which summarized the degree each applicable occupational board monitored CSPD registration and reporting requirements. She highlighted that only the Board of Pharmacy monitored compliance with both the registration and the reporting requirements. However, none of the boards monitored whether licensees had complied with the requirement to review the CSPD prior to dispensing, prescribing, or administering controlled substances.

Ms. Curtis turned to page 19 of the audit report, which concluded that the new CPSD requirements were not actively enforced by the respective boards. She read from page 19:

> Enforcement was further limited by inadequate disciplinary matrices. Board disciplinary matrices needed to help guide the resolution of CSPD related cases were not available for all boards during the audit period. Exhibit 9 [on page 20] summarizes the status of the disciplinary matrices as of January 31, 2021. Several board matrices covered a failure to register, but not a failure to review CSPD information or a failure to report controlled substances to the CSPD. The Board of Examiners in Optometry disciplinary matrix did not address the CSPD.

Ms. Curtis proceeded to page 20 and continued reading as follows:

> Enforcement was further limited by inadequate disciplinary matrices. Board disciplinary matrices needed to help guide the resolution of CSPD related cases were not available for all boards during the audit period. Exhibit 9 summarizes the status of the disciplinary matrices as of January 31, 2021. Several board matrices covered a failure to register, but not a failure to review CSPD information or a failure to report controlled substances to the CSPD. The Board of Examiners in Optometry disciplinary matrix did not address the CSPD.

Ms. Curtis noted that the audit contained more detail regarding the CSPD, but she intended to advance to the findings and recommendations made by the audit.

9:31:25 AM

Representative Carpenter wanted to hear more details.

Ms. Curtis obliged and continued to read from page 20 and page 21:

> Only two of the applicable boards set prescription limitations in regulation. The State Medical Board set a limitation of 50 morphine milligram equivalents (MME) for initial opioid prescriptions only and the Board of Dental Examiners set a limitation of 60 MME. (See Recommendation 3)
>
> The Board of Pharmacy may, but is not required to, send patient specific utilization notifications to pharmacists and practitioners. Instead of sending patient-specific notifications, the PDMP coordinator provided summary data to applicable occupational boards as part of standard board reports and to practitioners as part of prescriber report cards. The following three metrics, referred to as "clinical alerts," were provided:
>
> 1. Number of patients treated with over 90 and 120 MME;
>
> 2. Number of patients treated with dangerous combinations; and
>
> 3. Number of patients who received controlled substances from five prescribers, at five pharmacies, over a three month period.

9:33:07 AM

Representative Wool did not know what the morphine amounts meant as he had not gotten morphine prescriptions. He asked whether 60 MME of morphine was a significant amount.

Ms. Curtis responded that she did not know what the amount meant either and had researched it prior to the committee meeting.

Representative Wool wanted to put the amount in terms of equivalence to understand it better. He asked what the equivalent amount of Percocet or Tylenol with Codeine would be.

Ms. Curtis admitted that she did not have the knowledge to properly answer the question and suggested that it would be better suited for the chair of the board or a board member.

Co-Chair Merrick indicated the chair would testify later in the meeting.

Representative LeBon speculated that in-state control of substances via a database would be effective and manageable with robust opportunity for oversight. He asked how medications coming from other states were entered into the database.

Ms. Curtis understood that pharmacies from other states were required to enter prescriptions into the database. There were exceptions to this requirement, and she offered that it would be a good idea to confirm the details of the exceptions. For example, she relayed that Native corporations and army bases were not required to enter prescriptions into the database.

9:35:52 AM

Ms. Curtis continued to read from the audit report on page 21 through page 22:

> The process of sending board reports evolved during the audit period. Not all boards were sent reports on a routine basis and not all board reports included the three metrics. Exhibit 10 identifies the number of board reports issued during the audit period and the number of reports that included one or more of the three clinical alert metrics.
>
> Beginning FY 18, CSPD information, referred to as Prescriber Report Cards, was provided to prescribing practitioners. The report cards were intended to give practitioners the ability to review their prescribing activity and compare the activity to other practitioners within the same occupation and within a specific specialty.

Quarterly report cards included:

- the three clinical alerts;
- the prescriber's current prescribing controlled substance volume sand duration, including comparison to peers;
- the top three prescribed controlled substances; and
- the number of patients searched in the CSPD.

Exhibit 11 illustrates the number of practitioners who received a prescriber report card by occupational board.

9:37:04 AM

Ms. Curtis reviewed the recommendations beginning on page 25:

The board chair and DCBPL's director should improve procedures and training to ensure applicants meet requirements prior to licensure.

Three of 25 individual applications tested (12 percent) were missing affidavits of moral character. Regulation 12 AAC 52.120(b)(8) requires an applicant provide two affidavits from reputable citizens that the applicant has known for at least one year attesting to the applicant's good moral character. Auditors noted that the DCBPL checklist used to ensure applications were complete was missing the requirement for affidavits of moral character, which contributed to the deficiency.

Five of 25 facility license applications tested (20 percent) did not include all the required regulatory documentation.

Ms. Curtis identified what the audit found to be the most concerning lack of documentation on page 26 through page 27:

One out-of-state wholesale drug distributor, one out-of-state pharmacy, and one in-state pharmacy were issued licenses when the applicants answered yes to a professional fitness question and the applicants'

licensing fi les lacked documentation of approval by a supervisor prior to issuance. Alaska Statute 08.80.261(a) states that the board may deny a license if the board finds the applicant has been convicted of a crime or acted in a way that does not conform to minimum professional standards. To help evaluate an applicant's professional fitness, the application asks a series of questions. Division policy (DOL-28) requires the licensing supervisor review and approve applications that contain "yes" answers to professional fitness questions. Two of the three licenses were issued without follow-up due to human error. DCBPL management stated that the fitness questions were reviewed by a supervisor for the third license; however, no evidence was included in the fi le to demonstrate the review and there was no evidence that additional information was obtained upon which to base the review.

According to DCBPL management, turnover in the licensing examiner position, a lack of training, and human error contributed to the facility license errors noted above.

Ms. Curtis reported that recommendation 2 [on page 27] advised the board to adopt regulations for renewing outsourcing facilities and third-party logistics provider licenses. The renewal regulations were not updated when two new license types were originally added and would be a simple fix.

Ms. Curtis added that recommendation 3 suggested applicable occupational boards and DCBPL's director should continue to coordinate efforts to improve the monitoring and enforcement of CSPD requirements. An advisory group had been formed in September 2020 consisting of all six occupational boards to help improve compliance amongst licensees. She recommended the utilization of the group to improve compliance.

9:39:33 AM

Ms. Curtis continued to read recommendation 4 on page 29:

The Department of Commerce, Community, and Economic Development's (DCCED) commissioner should allocate sufficient resources to ensure licensees holding a

> Drug Enforcement Administration (DEA) registration number are consistently recorded in DCBPL's licensing database.

Ms. Curtis reported that consistent record keeping had not been happening, and that data matches with the CSPD and registration monitoring were not possible without completed licensing database records.

9:39:49 AM

Ms. Curtis read recommendation 5 on page 30 of the audit report:

> DCCED's commissioner should allocate sufficient resources to ensure the CSPD requirements are enforced.

Ms. Curtis explained that related cases were not being investigated due to a lack of resources.

9:40:02 AM

Ms. Curtis continued to management's response to the recommendations, which began on page 46 of the report. She relayed that the DCCED commissioner [Julie Anderson] generally agreed with the report conclusions. The commissioner reported that corrective action had been taken in response to the audit, such as providing training, instituting additional procedures to address licensing deficiencies, adding two additional grant funded positions to the PDMP, and approving a new investigative position to oversee enforcement of the CSPD requirements.

The response from the chair of the Board of Pharmacy [Justin Ruffridge, PharmD] was found on page 51. He came to the same conclusions as the commissioner.

9:40:58 AM

Representative Edgmon asked why the legislative auditor was recommending a six-year extension. He referenced page 23 of the audit report:

> The board explained in the 2021 legislative report that it was not possible to quantify the reduction of inappropriate use or prescription of controlled

substances because the CSPD does not contain or relate prosecutorial data regarding diversion cases and is not informed when an individual, whether a patient or provider, has avoided inappropriate use or prescribing.

Representative Edgmon indicated the issue had been discussed during deliberations of SB 76 [Legislation passed in 2016 regarding real estate licensees for licensee relationships]. He relayed that the discussion had been controversial due to concerns about privacy and overreach. He offered his perspective that the six-year extension seemed incongruent with previous legislation.

9:42:26 AM

Ms. Curtis responded that in the 2021, the auditors "came down fairly hard" on the board and recommended an extension of only four years. At that point, new laws had been introduced to fix issues associated with the database. She opined that there were poor laws in place, such as monthly reporting requirements, voluntary compliance, and an ineffective database. As the opioid crisis progressed, the legislature made attempts to correct the issues. She wanted to recognize the great strides the board had made after previous prescriber report cards and board reports were released.

Ms. Curtis commented that page 23 of the audit listed performance measures that could not have been realized within the parameters of the law at the time. She did not factor in the inability to meet the performance standards because the standards were impossible to meet. She had considered whether the board was placed in the right department due to the focus of the licensing and the regulation of the board. She researched what other states had done in similar situations and had found it was common to implement these requirements at the board level within DCCED. The six-year extension recognized the strides that had been made by the board. She noted that the board needed additional recognition and support, particularly considering the resource and hiring restraints of the last few years.

9:45:28 AM

Representative Edgmon agreed and noted that the department had been reduced by 78 percent since 2015. He added that this issue was readdressed in 2016 and again in 2017 and suggested shortening extension to around three years. He thought there was a need for statutory change. He did not want to overcomplicate the process and acknowledged that the board had been tasked with a significant amount work and responsibility. The database played a significant role and he supposed that it had not been utilized enough. He noted that was due to "political landmines" regarding reporting requirements and data access.

9:46:56 AM

Representative LeBon asked Ms. Curtis about the audit frequency. He wondered whether there would be a follow-up audit.

Ms. Curtis indicated that the auditors would reevaluate the need for an additional audit the year before the termination date. The extension date given by the legislature would determine the timeframe for the next audit.

Representative LeBon asked whether it would be appropriate to shorten the extension timeframe given the findings of the audit.

Ms. Curtis indicated that none of the recommendations factored into her reduced extension decision. The role of the board was constantly evolving, and she did not want to wait eight years to reassess the situation. She pointed out that all five recommendations were administrative in nature and were easily manageable. Some of the recommendations were resource issues, which was the responsibly of the legislature. She stated that the amount of time the legislature wanted to wait to send her "back in" was a policy call.

9:48:36 AM

Representative Carpenter noted that Ms. Curtis spoke of potential statutory change. He wondered whether the board had made any recommendations for statutory changes.

Ms. Curtis responded that the board had helped individual legislators propose changes to the database. She thought

there were some existing bills regarding proposed improvements to the database.

Representative Carpenter suggested that it would be wise for the committee to request a summary of recommended statutory changes.

Co-Chair Merrick thought the bill sponsor could work on the issue.

9:50:03 AM

Representative Wool understood that pharmacists and doctors were the users of the PDMP. He wondered if the medical board had similar issues related to the PDMP.

Ms. Curtis responded that the auditors were in the process of starting to work on the medical board. The auditors had recently completed work on the Alaska Board of Examiners in Optometry and had significant problems discovering whether individuals had registered for the CSPD. It could not even be tested due to problems with the DCBPL licensing database. The auditors performed a deep investigation and found many applicants that were in the licensing database that were not in the CSPD, and many applicants who were in the CSPD but not in the licensing database due to lapsed licenses. The contractor who ran the CSPD was responsible for discovering problems of this nature, but that oversight had not been occurring. She reiterated that a similarly thorough investigation would be performed for the medical board. She highlighted that boards were not typically enthusiastic to engage in investigations and that it was typically a self-policing system. She explained it was not coming from "the ground up, but more the top down." She was certain that the boards would have input regarding suggested changes.

Representative Carpenter appreciated Ms. Curtis' feedback. He suggested that if the database was considered a tool to assist against the opioid epidemic, but the board was not appropriately managing that tool, perhaps it should not be managed by the board. He speculated that the DCCED might have been a more appropriate entity to entrust with managing the database due to increased accountability, budgets, and supervision. He asked whether the administration might make a similar recommendation.

Ms. Curtis had come to the same conclusion in terms of the most appropriate entity to house the database. The database had not been effective as anticipated.

Representative Carpenter commented that if a tool that intended to solve the opioid epidemic was not being utilized, it was a failure and needed to be reassessed. He suggested that extending the board another two years or six years would not solve the problem.

Ms. Curtis explained it was the reason for the six-year recommendation. The board was succeeding in registering people and providing licenses, but success in managing the CPSD was an entirely different situation. She opined that each administration over the past 10 years had not appropriately dealt with the issue.

Co-Chair Merrick noted Ms. Chambers with DCBPL was nodding her head.

Representative Wool commented that there may be other issues preventing the success of the boards that dealt with the PDMP and CSPD. He thought there were also issues regarding software integration with databases. He reminded the committee of Representative LeBon's earlier question about online sales and suggested that individuals who made illegal online sales of drugs were likely not in the database. He remarked that illegal sales contributed significantly to the opioid overdose problem.

9:55:56 AM

SARA CHAMBERS, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, appreciated the discussion from the auditor's team. She agreed that the issue was difficult because there were so many independent governors of the system. The board did not answer to the departments or the administration, but to the legislature. The board was a group of volunteers that spent personal and free time dedicated to working on board issues. She explained that DCBPL helped facilitate board conversations and helped guide agenda items. There was also a meeting of the chairs of all boards and a second meeting of just the PDMP chairs to help facilitate conversation. The meetings happened twice a month on a Tuesday at 4:30 p.m., which she relayed was difficult timing because everyone was tired.

For several years, there had been discussions within DCCED with the boards and with the Department of Health and Social Services (DHSS) surrounding suggestions for statutory change. She thanked Representative Josephson for introducing legislation based on her recommendations. There had been conversations in other committees that recognized a need to revisit the PDMP because some of the laws were setting the program up with expectations it could not meet.

9:59:12 AM

Ms. Chambers suggested there needed to be a reframing of the PDMP from the legislature. She was involved in the committee hearings mentioned earlier by Representative Edgmon and recalled that the PDMP was not intended to be used to crack down on doctors, nurses, optometrists, dentists, and veterinarians. It was not intended to be a heavy-handed enforcement tool, but to be an educational tool. It was meant to provide accountability so that prescribers could learn more about the opioid epidemic. She explained that it enabled prescribers to compare their prescribing habits with those of other prescribers and with patient histories. If there was a significant difference, it enabled prescribers to determine whether there was a legitimate reason for the difference. The PDMP needed to be utilized in the way the law was written in order to elicit the results desired by the legislature.

Ms. Chambers provided an example. She opined that there needed to be an increased ability to communicate with other databases within the state. There were tools within DHSS that would help link other data with PDMP data. She emphasized that it was illegal under the current law for DCCED to share with DHSS data that linked prescribing data with overdose deaths. She suggested that that connection be made legal in order to elicit the legislature's desired outcomes.

Ms. Chambers explained that cases were often brought to the medical board regarding medical and office assistants who would access the PDMP to prepare the computer display for the physician. This was illegal because medical assistants cannot access the PDMP, even though it was legal for them to view the same medical information through paper records. Medical assistants were often asked by physicians to access the PDMP without knowing it was illegal. She wondered whether punishing the assistants and physicians was where

the state wanted to spend its limited resources. She wanted to paint some of her frustrations with the PDMP, but emphasized that she believed in the PDMP and in the boards. The system had the potential to be a good tool.

10:03:14 AM
AT EASE

10:03:37 AM
RECONVENED

Representative Josephson asked about the last point regarding medical assistants. He recalled working with former Alaska State Senator Cathy Giessel on a bill that created a new category for medical assistants in order to delegate some database authority to the assistants.

Ms. Chambers reported there had been a bill that would have created a license for medical assistants, but there was concern within the medical community that prevented the bill from going forward. There was legislation that allowed physicians to delegate certain responsibilities to unlicensed staff, but it did not include PDMP because it was in statute that a person must be licensed on order to view the database.

10:04:56 AM

Representative LeBon asked if the volunteers on the pharmacy board risked any potential personal liability as an outcome of their decisions.

Ms. Chambers responded that the state provided immunity for board members acting in good faith. Board members were protected unless they acted egregiously outside of the norm. She noted that licensing boards had received discipline all the way up to the United States Supreme Court for failing to act in good faith, and there were many models that provided examples of offensive actions. She highlighted that this sort of disciplinary action had thankfully not needed to take place in Alaska.

10:06:10 AM

Representative LeBon relayed that banks in Alaska were examined by both the state and Federal Deposit Insurance Corporation (FDIC) and were expected to hire an independent

auditor to perform an audit prior to an examination. The audit provided information to the examiners on the ways in which the bank was functioning and was paid for by the financial institution. Ms. Curtis had mentioned that there was about $800 thousand that had been designated for paying various licensing dues and business operation expenses. He wondered if it would be unusual for a board to use some of those funds to hire an independent auditor or accounting firm to help the board comply with the expectations of the audit.

Ms. Chambers responded that DCCED looked to the legislature and the legislative audit process to act as the audit. She saw that there could be an opportunity for a board to hire a consultant to help with audit recommendations.

10:08:01 AM

Representative LeBon thought the profession should be collectively thinking about the potential liability of members of the board. He suggested that there be an independent auditor to confirm that expectations had been met prior to the state audit.

10:08:38 AM

Representative Wool commented that there had been a bill to license medical assistants to allow them to enter data into the PDMP partially because if the assistants did something wrong, the license could be revoked to punish them. He shared that he opposed the licensure because it would be another barrier to entry to a profession and there were many licenses already. He had also heard from physicians that they did not get into the profession to simply enter data, and that data entry was a waste of a physician's skills. He wondered if there were people leaving the pharmacy profession due to the perceived waste of skills. He didn't know whether the board was having issues at the audit level prior to the PDMP implementation and asked if most of the issues surrounded the database. He suggested that everyone had concluded that the database needed work. He asked about the source of the drugs people were overdosing on, and whether the drugs had been prescribed or were illicit drugs. He asked if the board had been considered good operators prior to the implementation of the PDMP.

Ms. Curtis answered that the last sunset audit received a four-year extension, and she couldn't recall the extension timeline prior to that. The changes made in 2017 and 2018 helped address the extent to which the licensee had to enter data into the PDMP. She thought that there had been some changes regarding delegating the task to medical assistants, and that prior legislation had already addressed this issue. She offered to follow-up on the information and send a memo to committee members to clarify. The PDMP was highly federally funded, and there was consideration of whether the database belonged under the jurisdiction of DCCED or DHSS. Another consideration was to what degree did the state want to contribute monies to the program.

10:12:23 AM

Ms. Chambers commented that PDMP data entry could be a delegated task, but it could only be delegated to a licensed individual. The original conversation centered around registered nurses (RN) and licensed nurse practitioners (LPN), but that model had been changed as there were fewer LPNs and more unlicensed medical assistants. The law needed to address where the resources were practically occurring.

Representative Wool stated that pharmacy technicians and veterinary technicians were licensed and were legally able to enter information into the database. He thought that might be addressed in another manner.

Representative Edgmon shared that it seemed there were two different discussions occurring, one of which was to extend the termination date of the Board of Pharmacy. He asked for verification that the board's primary duty did not pertain to overseeing the PDMP.

Ms. Chambers agreed.

Representative Edgmon asked what percentage of time the board spent on the database versus its other duties.

Ms. Chambers asked for clarification on whether he was referring to the volunteered time itself or the staff support.

Representative Edgmon shared his understanding that the database required a need for increased staff time. He noted the board had many other responsibilities in addition to the database and wondered whether the effort may be a little displaced in some respects.

Ms. Chambers agreed that some of the findings regarding the Board of Pharmacy and the other boards mentioned in the audit related to policy decisions that the boards themselves had to make. Some of the findings regarded staff ability to perform daily licensing functions. She deferred to the Board of Pharmacy's chair regarding the amount of time that was spent on the database.

10:16:02 AM

Representative Edgmon requested to hear from the chair. He stated that the conversation about the database could continue for a long time. He remarked that the board needed to continue.

JUSTIN RUFFRIDGE, CHAIR, BOARD OF PHARMACY (via teleconference), indicated he had learned a significant amount through the audit process. He agreed with Representative Edgmon and stated that the board served a vital role in a wide variety of capacities such as public health, safety, and welfare. The last few years the board had worked diligently on regulations regarding the COVID-19 pandemic response. The board regulated new processes such as the continuation of therapy, which ensured that individuals had uninterrupted access to medication and released temporary and emergency licenses that expanded access to care.

Dr. Ruffridge shared that the board had spent some time considering the PDMP. The board usually had an update from staff regarding use of the database as well as issues that had arisen from other boards. He was happy to report that pharmacies and pharmacists utilized the PDMP at the highest level possible, and that the audit reflected that information. He met with the chairs of other boards and discussed PDMP issues for at least two hours twice a month. There were also quarterly meetings which included an hour of time dedicated to discussing the database. He stated that a small percentage of board time was spent on PDMP discussions. The board had many other responsibilities, such as managing disciplinary action, licensing, and

regulations. The board was also working on an ongoing regulation review project at the request of the administration that promoted right-touch regulations. He explained that the field of pharmacy had changed dramatically over the last ten years, and options such as robotics and tele-pharmacy were not yet reflected in regulations. The board was close to finishing other regulation projects and he expressed pride for the work that had been done to make regulations understandable, reasonable, and accessible.

Dr. Ruffridge recalled that Ms. Curtis mentioned that another area the board had focused on was its finances. There was a surplus in dollars put out by the audit that was mostly due to additional licensing categories. Since the audit, a more balanced budget had been put forward by the board that included proposed fee reductions across multiple license types. He highlighted that there was a shortage of pharmacists and pharmacist technicians across the state, and the new budget proposed reduced fees for pharmacy technicians specifically to address the shortage. He supported a six-year extension.

10:22:02 AM

Representative Edgmon appreciated the comment by Dr. Ruffridge. He asked if there was a mechanism that could be put in place to keep the legislature informed of the staffing needs for the database, or any potential need to pass new laws. Other states were also grappling with proper regulation of the database. He wanted assurance that the issues would be brought to the legislature.

Ms. Chambers responded that the board provided an annual report which supplied additional information and was an existing tool. She also suggested doing work in the interim to come up with creative changes where needed.

10:24:22 AM

Representative Carpenter opined that the sunset issue was a separate issue from the PDMP database. He was concerned about there being a lack a conversation in the following year about the same issue and wondered what would force the legislature to have the conversation. The problem was that no department seemed to have ownership over the database or the opioid crisis at large. Volunteers were responsible for

managing the database. He wondered if the legislature was willing to wait to bring forward new legislation to address the problem. He supported requiring an independent audit in addition to the financial audit and opposed the six-year extension. The extension seemed to be a way to force the legislature to have a conversation.

Ms. Curtis replied that the audit was a sunset audit and the criteria for sunset audits was in statute. If the legislative auditor performed a two-year extension, she would likely come to the same conclusions because there would not be enough time between audits to resolve issues noted in her report. The criteria for the sunset audit would not enable the action sought by Representative Carpenter. She thought a private audit that looked at best practices and possible statute changes might be a good idea. She suggested it would be better to wait to do another audit until some changes were made.

Representative Carpenter commented that he agreed and that it did not seem like a good use of time to perform another audit so soon. He suggested adding something to the bill that would ask the administration to take action to continue the conversation. There was diluted responsibility for the problem and a single department could not be held accountable. He thought the issue was not owned by anyone and proposed that someone should be made responsible for it to allow for more decision-making authority. He did not believe it was the legislature's responsibility to enforce.

10:30:29 AM

Representative LeBon read from the audit on page 1:

> The board was established for the Exhibit 1 purpose of controlling and regulating the practice of pharmacy in Alaska. According to AS 08.80.005, effective control and regulation is necessary to promote, preserve, and protect the public’s health, safety, and welfare.

Representative LeBon asked the Dr. Ruffridge whether the board had discussed utilizing an independent auditor or consultant to carry out the duties described in the audit.

Dr. Ruffridge indicated that although an external audit could be helpful, the board was already aware of the issues. He reminded the committee that many stakeholders

were involved and met twice a month for at least an hour. Stakeholders had many significant conversations about the best ways to use the PDMP to benefit both the citizens of Alaska as well as the board. Part of the problem uncovered by the audit was that the board was expected to measure the results of the PDMP, which was a nearly impossible standard for one board to satisfy on its own. He did not know which results in particular the board was intended to measure. He suggested that there be a stakeholder group meeting with interested legislators to discuss some of the larger PDMP system issues. He relayed that the Board of Pharmacy and other boards were ready to have that conversation. He believed that the best place for the PDMP to be housed was within the Board of Pharmacy because pharmacies and pharmacists were the highest engaged users of the database.

Representative LeBon agreed that the board had a huge job. He asked if DCCED was a good partner to the board.

Dr. Ruffridge responded that the department had done a great job despite frequently inadequate resources. The response from Ms. Chambers all the way down to PDMP staff was excellent. The board was asking one person to perform the duties of three or four people and employees often needed to work beyond their required hours.

10:36:16 AM

Representative Johnson suggested that either some additional resources should be considered or there should be a change to the effective date. She wanted more clarity before taking final action.

Co-Chair Merrick noted that the committee would be hearing public testimony in the following week.

10:38:13 AM

Representative Josephson recalled being involved in a meeting where several provider groups indicated that the groups' own bylaws requested that they complied with the PDMP, provided the necessary data, and ensured that patients were not "doctor shopping." However, it was not compulsory, and some groups did almost nothing. He wondered if it was true that there had been some provider groups that were vigilant while other groups were more relaxed.

10:39:13 AM

Ms. Curtis suggested there were some boards that had been slow to implement the new changes. There had been a grace period of a year to become accustomed to the new data requirements, and some boards had been slow to embrace the changes. She shared that the auditors did come down on these boards during the audit. She didn't recall a specific example.

10:40:06 AM

Representative Josephson asked whether there was a record of a board that suspended a license because of the database.

Ms. Curtis emphasized that enforcement had been relaxed. It was reported that more than 700 licensees had potentially not been compliant, and very little to no action was taken. She explained that this was due to lack of a disciplinary matrix, lack of resources, and lack of solid information. It was a new area and standard investigative procedures were not established. She emphasized that little had been done in the area of enforcement.

Representative Josephson argued that this made criticism of the role of the Board of Pharmacy difficult. It was not possible for the board to be the enforcer.

Ms. Chambers thought there were "multiple cooks in the kitchen" which had created confusion over authority and resource allocation. She relayed that 750 licensees had failed to comply with one of many requirements, which required examination by several investigators. However, many licensees had not violated a prescribing requirement and therefore did not pose an immediate health and safety risk. She exclaimed that a new investigator had been hired, but the position had been unfilled for a significant amount of time. This represented the legislature's past decision to qualify the database as an educational tool and not an enforcement tool; however, if every PDMP violation needed to be investigated, there needed to be an increase in resources and clarity from the legislature.

Co-Chair Merrick noted that Representative LeBon had an earlier question regarding obtaining prescriptions via mail.

10:44:20 AM

Representative LeBon asked Dr. Ruffridge to comment on prescriptions coming into the state through national or international sources.

Dr. Ruffridge responded that access to medication was a federal issue and not within his purview. He explained that the controlled substance statutory chapter required external pharmacies to be registered with the state and for pharmacy information to be entered into the PDMP. In addition, there was shared services access within the PDMP that allowed registered users to search other states' databases to prevent issues like doctor shopping. He explained that doctor shopping was not always a state issue or local issue, and it was important to build an external link into the database.

Representative LeBon asked whether individuals might utilize Canadian prescriptions to get around the link.

Dr. Ruffridge responded that there would be no way to access the Canadian database. An individual who traveled to Canada and received a prescription from a Canadian provider would only be able to fill the prescription in Canada. The reverse was also true, meaning that an individual could not get prescription written in Alaska and filled in Canada. He agreed that if an individual received and filled a prescription in Canada and requested the same medication in Alaska, the board would not have a way of knowing.

Co-Chair Merrick asked Ms. Chambers to review the fiscal note.

Ms. Chambers reviewed the fiscal note with the control code oegIR. She reminded members that a fiscal note for a board extension would look unusual because it anticipated that the board would sunset if HB 306 did not pass. The fiscal note added back the authority that the board would cease to have if the board was to sunset. It included a standard sunset board mechanism that expected the board to travel to four board meetings every year. The board had become more adept at teleconferencing, so that authority may or may not be spent. If the bill failed to pass and the board was to sunset, the sunset mechanism ensured that the licensing of pharmacists would continue under the department's purview.

She emphasized that the fiscal note mainly referred to required travel for board members to go to meetings.

Co-Chair Merrick thanked the testifiers for being in the committee. She reviewed the agenda for the afternoon.

HB 306 was HEARD and HELD in committee for further consideration.

#
ADJOURNMENT

10:49:56 AM

The meeting was adjourned at 10:49 a.m.