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23 March 1984

Honorable Joe L. Hayes
SPEAKER OF THE HOUSE
of Representatives
Pouch V
Juneau , Alaska 99811

Dear Joe,

Many thanks for your letter of March 17. It is gratifying to me to know that you , Representative Cowdery, and Senator Eliason are taking a hard look at what is happening regarding implementation of Alaska's Controlled Substance Act and particularly AS 17.. of that Act.

The Board of Pharmacy was handed the ball by the Legislature, along with funding to hire an Executive Secretary and Investigator. Unfortunately these titles were not included as specific wording in the law , although these positions were repeatedly mentioned when the legislation was being considered and passed.

Board requests for an Executive Secretary , have repeatedly been ignored by the Governor, the Commissioner of Commerce , and the Director of Occupational Licensing (DOL). I believe all of them have a misconception of the intent , the importance , and the timely implementation of the Law.

Federal statistics, on file with the Alaska Department of Law , show that controlled substance from the legitimate industry account for some 60 % of deaths of patients brought to hospital emergency rooms with drug related problems (nation wide). Statistics also show , over 60% of drug related problems of patients being treated in hospital emergency rooms, come from drugs from the legitimate industry. These drugs are obtained by armed robbery, by after hour breakins, by prescriptions from unscrupulous practitioners, by forgery of prescriptions, or by sale by unscrupulous pharmacists.....but all from the legitimate industry.

The federal Drug Enforcement Administration (DEA) and state and local drug enforcement units have their hands full dealing with the "street traffic" illegitimate entrance of and use of controlled substances in all states . They rely on state laws, such as Alaska's AS 17.30 to deal with the legitimate industry. Most states effectively do this through their Boards of Pharmacy. No big bureaucracy is needed . Wyoming does it quietly, and cost effectively with one Executive Secretary and one Investigator, Under the direction of its Board of Pharmacy. Alaska would do well to emulate this program and the Board planned just that.

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23 March 1984

Honorable Joe L. Hayes
page 2.

You and Representative Cowdery and Senator Eliason all have documented evidence of the valient effort by the Board of Pharmacy to carry out the intent of the Legislature. I will not repeat all of that here, but it is important for you to know that I did spend many long hours drafting bothproposed regulations and job qualifications and a job description for the Executive Secretary. The later may be of value to you when you propose legislation to mandate creation of the position.

Again thanks for your letter , your interest , and your help in drafting and passing legislation that will clarify legislative intent . If I can be of assistance in this effort , please call me.

Since the Governor removed me from the Board, and refused to reappoint the member from Sitka and has indicated that he will not reappoint the present experienced Secretary of the Board, the Board will be down to one professional and one lay member with any real experience . The new inexperienced Board will desperately need the Executive Secretary .

Sincerely,

Eldon R. Ulmer, R.Ph

Copy: ✓ Representative John Cowdery
Senator Dick Eliason
Charles Rush , R.PH. Secretary Board of Pharmacy

Handwritten notes and signatures at the bottom of the page, including a signature that appears to be 'John' and some illegible text.

A PERFORMANCE REPORT
ON THE
BOARD OF PHARMACY

July 1, 1980 to February 28, 1983

Audit Control Number

08-1114-51-83-R

Commissioner, Department of
Commerce and Economic Development

Richard A. Lyon

Deputy Commissioners, Department of
Commerce and Economic Development

Vincent O'Reilly
Terry Elder

Members of the Board of Pharmacy

Chairman
Secretary
Member
Member
Member
Member
Member

Eldon Ulmer
Margaret Soden
Susan Roberts
Robert Sni^g
James McCircle
Charles Rush
Sidney Fry

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 17, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset), the attached report is submitted
for your review.

A PERFORMANCE REPORT ON THE BOARD OF PHARMACY

July 1, 1980 to February 28, 1983



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Pharmacy for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Pharmacy should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Pharmacy is a regulatory board with seven members; two public members having no direct financial interest in the health care industry, and five professional members with three years practical experience and licensed in Alaska. Whenever possible, each judicial district should be represented by a Board member.

The Board regulates five types of licenses; pharmacists, retail pharmacies, wholesale pharmacies, hospital pharmacies and drug rooms. The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling pharmacy practices.
3. Revoking, annulling or suspending licenses in accordance with the Administrative Procedures Act when a person has violated pharmacy statutes or regulations.

Applicants for registration as a pharmacist are required to pass the National Association of the Boards of Pharmacy Licensing Examination (NABPLEX), and a jurisprudence exam covering Alaska pharmacy law and the Federal Controlled Substance Act.

Pharmacists licensed to practice in another state who apply for licensure in Alaska, can be licensed by credentials, except for those applicants from California or Louisiana. These two states require applicants to pass a state exam, not the national exam. Consequently, these applicants must take the national exam when applying in Alaska.

The Board may also issue temporary or emergency permits. Temporary permits allow qualified applicants to practice until the Board can formally license them; emergency permits allow pharmacists licensed in another state to practice in Alaska in an emergency. Both permits are limited in their duration and application.

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REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Pharmacy should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Pharmacy should allow the Division of Occupational Licensing (OL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

The Secretary of the Board receives license fees and applications, keeps applicant files, sends notification of exam results, and issues temporary permits. Each of these responsibilities has been assigned by the Legislature to the Department of Commerce and Economic Development, Division of Occupational Licensing. The above situation exists because the previous Secretary believed he could be more efficient in maintaining the files and processing the applications. We disagree.

The Division of Occupational Licensing is able to provide continuous, uninterrupted service while Board membership changes causing address changes and file transfers.

Additionally, the Secretary of the Board may not be equipped with the space or security needed to maintain confidentiality of files and to safeguard State assets. Furthermore, applicants become confused about where to send their documents.

Noncompliance with AS 08.01.050 is the major cause of the following problems:

- A. In seven of ten files reviewed for proper permanent licensure, we were unable to assure ourselves the applicant had passed the jurisprudence exam.
- B. In two of the files, we were unable to verify the applicants had satisfied the internship requirement. The Board reviewed these files and was unable to satisfy us that the requirements had been met. One file was missing documentation and the other file had documentation we considered insufficient in relation to that required of other applicants. Most applicants were required to have certified copies of hours worked from supervising pharmacists. In this case, documentation consisted of an internship permit issued by the Board with no evidence any hours had been worked.
- C. Temporary permits are being issued by individual Board members without complete documentation on file in DOL. This procedure has resulted in inconsistent issuances of temporary permits. Furthermore, it allows for the possibility of unqualified individuals being licensed.

Prior to the February 1983 Board meeting, we reviewed each application for permanent licensure scheduled for Board consideration. Each applicant had already been issued a temporary permit. In five of eleven cases, there was insufficient documentation in the applicant's file to show that all requirements for temporary licensure had been met.

By the time of the February 1983 meeting, all necessary documentation to support issuance of temporary permits, except for a jurisprudence exam, had either been received by OL or brought to the meeting by the Secretary of the Board. With the additional documentation, we determined that no temporary permit had been issued to an unqualified applicant. However, the possibility exists for a person to be improperly licensed for a short time.

The Board should ensure all documentation is sent directly to OL. When the file is complete, a member of the Board can either issue the permit or direct OL to issue the permit. This procedure will ensure that all necessary documentation is on file at OL before issuance of temporary permits.

- D. Alaska Statute 08.80.157 requires proof that an applicant for a retail or wholesale pharmacy license has the land, facilities and equipment necessary to carry on business. Also, that the applicant be free of any conviction of a federal or state drug offense and free of any addiction.

We reviewed seven pharmacy files and none of the files contained sufficient documentation to issue a license. We discussed our finding with the Board and determined it was not their policy to include this documentation. They knew who had the facilities and relied on a telephone call from the Drug Enforcement Administration to satisfy the conviction requirement.

We believe the Board should adopt a policy to document satisfaction of the licensing requirements. The procedures need not be elaborate, but should supply sufficient proof that the applicant complies with law.

We recommend the Board ensure that all files, applications, fees and exam results are sent directly to OL. Also, that temporary permits are only issued after all documentation has been received by OL.

Recommendation No. 2

The Board of Pharmacy should reevaluate its regulations governing continuing education.

The following requirements of continuing education should be reviewed.

- A. Regulations require nonacademic programs to have an examination or another method of assuring satisfactory completion of the program before continuing education credit will be given. The Board allowed continuing education credit to be given to an individual when the nonacademic requirement had not been met. The reason given for allowing these credits was that the regulations were too stringent.

If the Board believes its regulations to be arbitrary or unreasonable, those regulations should be changed before accepting nonregulation continuing education credits. Compliance with existing regulations will ensure that all licensees are treated equally and consistently until changes can be made.

- B. The Board has described four instances when they will excuse a licensee from continued competency requirements. These causes are chronic illness, retirement, military service, or hardships as individually determined by the Board.

In our opinion, it is more reasonable to require individuals who have been chronically ill, retired or in the military to demonstrate their continued competency, than those who have not interrupted their practice. We also understand that those persons who have been chronically ill should not be penalized for their illness.

However, the Board has the ability, under the hardship clause, to determine each case individually. They should evaluate the changes in the profession and develop a plan for the individual that would allow him or her to practice while fulfilling the continuing education requirements. This would fulfill the Board's primary purpose to protect the public while not unduly penalizing the professional.

Recommendation No. 3

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

Alaska Statute 08.01.050(19) places the responsibility for

performing investigations with the Division; Alaska Statute 08.01.070 assigns to the Board the requesting authority. However, AS 08.80.030(3) also gives the Board the authority to conduct investigations. This conflict has caused friction between the Division and the Board.

The Board is concerned that the Division is not informing them of complaints or investigations concerning pharmacy, while the Division is concerned that the Board not become involved in the investigation to such an extent as to prejudice the case. Also, the Board must remain impartial in case they become involved in any disciplinary action against the licensee.

Legislation is necessary to clarify the responsibilities of the Board and the Division so both will be confident they are properly performing their statutory duties.

Recommendation No. 4

The Office of the Governor should ensure that Board members are properly appointed.

In July of 1980, the Legislature limited the number of consecutive terms a Board member could serve to two and reduced the term from five years to four. The intent of AS 08.80.020 as amended, was to make service on the Board accessible to more individuals in the profession.

In discussions with Legislative Affairs' attorneys, it became clear that the intent of the Legislature was to include service prior to July, 1980, in determining the limitation. Three members of the Board of Pharmacy have served longer than is allowed when prior service is applied.

One member has served for sixteen years as of March 31, 1983, thirteen of these years prior to July, 1980. This same member was reappointed after the effective date of AS-08.80.020. At the end of his present term, he will have served nineteen years. Two other members will have served twelve and ten years at the end of their present terms on March 31, 1984 and March 31, 1985, respectively.

Additionally, three members of the Board appointed after the effective date of the legislation, have been appointed for five year terms instead of four.

We recommend the Office of the Governor ensure that Board members are appointed in accordance with statute.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the board, commission or program has operated in the public interest.
 - A. The Board has held public meetings three times a year.
 - B. The Board administers the pharmacy test yearly.
 - C. The Board has passed regulations concerning dangerous drugs, continuing education as proof of continued competency, false or misleading advertisement of drugs, and prepackaging of drugs in hospital drug rooms.
 - D. The Board was instrumental in passage of the Controlled Substance Act and the Marijuana Therapeutic Research Program.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The Board adopted continuing education regulations that may be too stringent. The Board is reconsidering these regulations (see Recommendation No. 2).
- III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. The Board actively supported passage of the Controlled Substance Act; it became effective January 1, 1983.
 - B. The Board succeeded in having various obsolete or vague statutory requirements repealed which provided for smoother operation of the Board.

- IV. The extent to which the board, commission or agency 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 which it has provided.
- A. Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The Board does not actively solicit comments on its effectiveness.
- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Board announces proposed regulation changes or additions in newspapers according to the Administrative Procedures Act.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. We found no problems in this area.
- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.
- A. We found no instances where the Board had licensed unqualified practitioners.
- B. The Board has licensed 83 pharmacists in the last three years, all but eight were licensed by credentials.
- VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.
- A. Applications for licensure as a pharmacist require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with factors enumerated in this subsection.

Please refer to the recommendation section of this report.

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APPENDIX A

BOARD OF PHARMACY
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	\$42,763
Less: Expenditures (Note 3)	<u>46,166</u>
Excess of Expenditures Over Revenues	<u>\$ 3,403</u>

<u>Revenue Type</u>	<u>Amount</u>	<u>Collection Time</u>
Examination Fee	\$ 50	With application
Re-examination Fee	15	With application
Investigation Fee	25	With application
Pharmacist Fee	200	With license issuance
Pharmacist Renewal Fee	200	Every four years
Temporary License Fee	20	With permit issuance
Wholesale Drug Dealer Fee	200	With license issuance
Wholesale Drug Dealer Renewal Fee	200	Every four years
Retail Pharmacy Fee	200	With license renewal
Retail Pharmacy Renewal Fee	200	Every four years
Pharmacy Interim Fee	10	With license issuance
Emergency Permit Fee	10	With permit issuance
Hospital Pharmacy Fee	200	With license issuance
Hospital Pharmacy Renewal Fee	100	Every four years
Hospital Drug Room Fee	100	With license issuance
Hospital Drug Room Renewal Fee	100	Every four years
Nursing Home and Related Facility Fee	100	With license issuance
Nursing Home and Related Facility Renewal Fee	100	Every four years
License Amendments or Renewal Fee	10	When applicable

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

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DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

June 28, 1983

RECEIVED
JUL 06 1983

LEGISLATIVE
POST

Mr. Gerald Wilkerson, CPA
Legislative Auditor
Audit Division
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Board of Pharmacy -
Performance Report

Thank you for the opportunity to respond to the performance audit of the Board of Pharmacy and the Division of Occupational Licensing which is dated July 1, 1980 to February 28, 1983.

We concur with your evaluation that the Board of Pharmacy should continue to exist in interest of the public's health and safety. Your suggestions will be evaluated for implementation. Those determined to improve the efficiency and effectiveness of the division and the board will be strongly supported and recommended. We have reviewed each of your recommendations and will provide you with this agency's position if we do not agree.

RECOMMENDATION #1.

The board of Pharmacy should allow the Division of Occupational Licensing (DOL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

We concur in this recommendation, and cooperative efforts have recently improved. As mandated by legislation, and in the interest of efficiency, DOL is committed to assisting the Board of Pharmacy in all areas.

RECOMMENDATION #2.

The Board of Pharmacy should reevaluate its regulations governing continuing education.

June 28, 1983

This agency is continuing a review on requirement of continuing education by licensing agencies (boards). We do not agree that continued education ensures continued competency. As a licensing agency we determine that competency is the most important. Competency ensures the safety of the consumer. We also take the position that initial licensing is based on minimum qualifications; retesting on the entrance level may serve the purpose of ensuring continued competency. Continued education would, or should, be viewed as the professional association's responsibility to ensure knowledgeable professionals. This would also be in keeping with less government regulations and letting industry regulate itself.

RECOMMENDATION #3.

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

We concur with this recommendation. This agency has been working with the Legislative Code Revision Committee in rewriting Title 8. This would have deleted the fragmentation throughout Title 8 and the various chapters. This effort was resisted by the board as an effort to diminish its authority. We will seek to have legislation submitted to clarify the issue of conflict within the statutes.

RECOMMENDATION #4.

The Office of the Governor should ensure that board members are properly appointed.

We would assure the auditors this has been addressed by the Governor's Office and by the Department of Law.

Again, thank you for the opportunity to respond to your report. Please feel free to contact this agency or the Division of Occupational Licensing if additional information or clarification is needed. We assure, we determine your comments and findings to be fair and in the interest of Alaskan consumers and professional pharmacist.

Sincerely,



Richard A. Lyon
Commissioner

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