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# HOUSE COMMITTEE REPORT

(9)  
Date Referred: March 25, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/14/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 266(L&C)

CS FOR SENATE BILL NO. 266(L&C) DIRECT-ENTRY MIDWIVES/BD & PRACTICES

"An Act extending the termination date of the Board of Certified Direct-Entry Midwives."

- RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  a new title  
 have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)  
 fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_  zero fiscal note(s) Commerce 3/16/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<del>Scott Dyer</del>	X	<del>Scott Dyer</del>		X	
Betty Davis	X	Larry L. Han		X	
Wendy Smith	X	Paula		X	
Tom Briel	X				
Con Blund	X				

  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

No. 2

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: CSSB 266 (LEC)

(S) Publ. Date: 3-16-94

Revision Date: 3/15/94 Dept. Affected: Commerce & Economic Dev.  
 Title: An Act extending the termination BRU: Occupational Licensing  
date of the board of Certified Direct Entry Component: Operations  
 Sponsor: Senator Leman  
 Requestor: Senate Labor & Commerce Comm. COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ None

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

The provision in the original bill directing the board to adopt regulations addressing certain scope of practice by certified direct-entry midwives has been deleted in the committee substitute. Accordingly, the original one-time cost to promulgate the regulations has subsequently been reduced to zero.

Prepared by: Josh Fink, Committee Aide  
 Division: Senate Labor & Commerce Committee

Phone: 465-3810  
 Date: 3/15/94

Approved by Commissioner: the Chairman: Tim Kelly  
 Agency: \_\_\_\_\_

Date: 3/15/94

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Alaska State Legislature  
 House of Representatives  
 COMMITTEE ON HEALTH, EDUCATION  
 AND SOCIAL SERVICES

SUBJECT OF MEETING:  
 - BILLS HELD OVER -  
 SB2106: EXTENDING THE TERMINATION  
 DATE: DIRECT-ENTRY  
 MIDWIVES

DATE: 4/14/94

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Luz Kanne	Certified Direct-Entry Midwives	740 5th St Apt B	99801	463-3797	463-3797	Y	<input checked="" type="radio"/> N	SB 206
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

## H/HESS ROLL CALL FORM

BILL SB 266DATE 4/14/94TAPE 94-60NUMBER D60SUBJECT OF VOTE TO PASS SB 266 OUT OF COMMITTEE WITH  
INDIVIDUAL RECOMMENDATIONS

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>5</u>	<u>0</u>	<u>—</u>

BILL \_\_\_\_\_

DATE \_\_\_\_\_

TAPE 94-\_\_\_\_\_

NUMBER \_\_\_\_\_

SUBJECT OF VOTE \_\_\_\_\_

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Cynthia Toohey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Alaska State Legislature  
 House of Representatives  
 COMMITTEE ON HEALTH, EDUCATION  
 AND SOCIAL SERVICES

DATE: 4/6/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:  
 SB 160: MEMORIAL SCHOLARSHIP LOANS  
 → SB 266: DIRECT-ENTRY MIDWIVES BOARD; PRACTICE  
~~SB~~ **BILLS HELD OVER**  
 HB 521: JUDICIAL REVIEW: TEACHER TENURE DECISIONS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Ray Kinnel	Certified Direct-Entry	740 54th St Apt B Juneau, AK	99801	463-3797		(Y) N	SB 266
Terry Hines	Sen Taylor	State Capitol		6550 →		(Y) N	SB 160
D. Barron	Podiatrist	3030 Vintage		6743		Y N	SB 160 Available for Query
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

H/HESS ROLL CALL FORM

BILL \* SB 766 DATE 4/14/94  
TAPE 94-60 NUMBER D6D

SUBJECT OF VOTE TO PASS SB 766 OUT OF COMMITTEE WITH  
INDIVIDUAL RECOMMENDATIONS

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>5</u>	<u>0</u>	<u>  </u>

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BILL \_\_\_\_\_ DATE \_\_\_\_\_  
TAPE 94- \_\_\_\_\_ NUMBER \_\_\_\_\_  
SUBJECT OF VOTE \_\_\_\_\_

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Cynthia Toohey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>  </u>	<u>  </u>	<u>  </u>



# SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Ste 540, Anchorage AK 99501 258-8189

Session: State Capitol, Juneau AK 99801 465-2095

## MEMORANDUM

TO: Representative Cynthia Toohey, Co-Chairman  
Representative Con Bunde, Co-Chairman  
House Health, Education and Social Services Committee

FROM: Senator Loren Lemman  
Sponsor

DATE: March 28, 1994

RE: SB 266 - Extending the termination date of Board of Certified Direct-Entry  
Midwives

\*\*\*\*\*

Please schedule at your earliest convenience a hearing on SB 266 which extends the Board of Certified Direct-Entry Midwives.

This measure passed the Senate unanimously. The Division of Legislative Audit concluded in its review that the board should continue. According to the audit, the CDE midwives have shown their ability to oversee licensure, and to monitor their profession.

There is a zero fiscal note from the Division of Occupational Licensing for the CS SB 266 (L&C), the version that passed the Senate.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 24, 1994

*Ms. Kaye Kanne, Chair  
Board of Certified Direct-Entry Midwives  
P.O. Box 200  
Talkeetna, AK 99676*

*Dear Ms. Kanne:*

*Thank you for bringing to my attention Senate Bill 266 which will extend the Board of Certified Direct-Entry Midwives to 1998. I support the opportunity for Alaskans to choose midwifery services and am supportive of the extension of the Board of Certified Direct-Entry Midwives.*

*As you know, this bill will also remove from statute a list of certain procedures that licensed midwives cannot perform. You are correct that this list was created before there was a professional midwifery board with the responsibility of regulating the profession. The bill will allow such prohibitions to be handled under regulations adopted through the board, as is done with other professions. I agree the authority of the board to promulgate regulations in an appropriate and timely manner alleviates the need to have this long, detailed list in statute. In fact, promulgating regulations to implement statute is one of the duties of the Board of Certified Direct-Entry Midwives. The bill will maintain the definition of midwifery in statute. I agree these provisions will bring the statutes for midwifery into line with other professional boards, and I am supportive of them.*

*Thank you for your dedicated service to Alaska as chair and a member of the Board of Certified Direct-Entry Midwives.*

*With best regards.*

*Sincerely,*

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel  
Governor

cc: *Kristie Leaf, Director of Boards and Commissions  
Raga Elim, Legislative Liaison*

# Editorial



More than twenty years ago, I founded a midwifery service that provides a type of maternity care that is still unique in the United States. It is singular for several reasons: 1) instead of being designed by men, it was designed by women to fit women's needs as we perceived them. 2) we put midwives in charge of all normal births. 3) we made sure that we had enough midwives. 4) we kept costs to our clients low. 5) we attained a cesarean section rate of 1.7 percent, low by today's rate.

Now that the United States is in the process of trying to put into place long overdue health care reform, our experience at the Farm Midwifery Center seems especially relevant. After all, we have been able to produce very good results in maternal-infant care on a shoestring budget by fully utilizing midwives within the context of community.

While we do hear more often about midwives in the media, most discussions dealing with midwifery seem still to look at midwives as "alternative practitioners." Turf and territoriality, habitual ways of thinking, and anxiety about the ability to make profit seem to dominate the discussions reported in the media. As yet, there has been little or no attempt to articulate what maternity care in the United States might be like if we had the same ratio of midwives to population that most European countries have — countries that have lower maternity costs, better outcomes and lower cesarean rates. To look at just one example, if we in the United States had the same ratio of midwives to population that Britain has, we would have about

125,000 midwives instead of the estimated 6,000 we now have.

Let's expand on the vision of what maternal-infant care might look like in a system based upon the midwife as protector of normal birth. While we do that, let's keep in mind the outcomes achieved at the Farm Midwifery Center, where 96 percent of all births for mothers entering care at the Center were carried through by the midwives who were the entry point for each pregnant woman's care. Let us also remember that in the countries with the best childbirth outcomes, more than 70 percent of all babies are born with a midwife, not a physician present in the room.

In a country with enough midwives, every pregnant mother could get her maternity care from the first prenatal visit onwards from a team of three or four midwives. It is not a difficult task to train midwives to know which women need to be referred to care with an obstetrician. Because midwives are less expensive to educate than obstetricians, we would already have saved many health care dollars. Educating a direct-entry midwife typically costs between \$3,000 and \$15,000, compared to \$130,000 and \$200,000 to educate one obstetrician-gynecologist.

Part of the high cost of maternity care in the United States is due to the very high number of pregnant women who receive little or no prenatal care. If these women had easy access to competent and caring midwives, it would be possible to greatly reduce the number of premature births. Some premature babies

in neonatal intensive care units run up care costs of more than \$1 million and their future health is not ensured by the mere fact of their survival. Often, they are handicapped or suffer ill health and thus require lots more money to survive.

The rate of cesarean section is 23.5 percent of all births in the United States — 20 percent in Canada. Nearly a million cesarean operations are performed each year, at least half of them unnecessarily — if we take into account standards of safety that are commonly accepted in other industrialized countries. The central idea of a new book just published in Britain (*Cesarean Birth in Britain* — see Book Reviews, page 45), is that the cesarean section rate in England, Wales and Scotland is too high at 12 percent and needs to be lowered, for reasons of maternal safety, as well as cost reduction. By making far greater use of midwives in the United States, we could certainly lower our cesarean section rate to the current British level.

Using the most conservative figures available, a vaginal birth in the United States costs a woman about \$3500 less than a cesarean section. *If we reduce our cesarean rate to 12 percent, we save almost \$2 billion every year!*

If we really want to lower health care costs in the United States to the levels of other industrialized countries, we must bring back midwifery.



# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

October 29, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF CERTIFIED DIRECT-ENTRY MIDWIVES

October 29, 1993

Audit Control Number

08-1416-94

The objective of the audit was to determine whether the Board of Certified Direct-Entry Midwives (the board) should continue its existence. Currently Alaska Statute 08.03.010 has the board scheduled for termination on June 30, 1994. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved on June 30, 1995. We recommend that the legislature extend the board's termination date to June 30, 1998.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

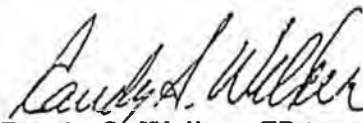
  
Randy S. Welker, CPA  
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology .....	1
Organization and Function .....	3
Report Conclusions .....	5
Findings and Recommendations .....	7
Analysis of Public Need .....	11
Appendix A: Application, License, and Other Fees .....	15
Agency Response:	
Department of Commerce and Economic Development .....	17

## OBJECTIVES. SCOPE. AND METHODOLOGY

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 Certified Direct-Entry Midwives (the board) to determine if it should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of the oversight process in determining whether this board should be reestablished. The law currently specifies that the board will terminate on June 30, 1994 and will have one year from that date to conclude its affairs.

The major areas of our examination were board proceedings, licensing, complaint, and affirmative action functions of the board. During the course of our examination, we reviewed, tested, and evaluated the following:

1. Applicable statutes and proposed regulations.
2. Tests of files and documents of licensees.
3. Interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing.
4. Minutes of board meetings, annual reports, and budget documents.
5. Complaints filed with the Division of Occupational Licensing, Equal Employment Opportunity Office, Human Rights Commission, the Ombudsman's Office closed case files, and the Department of Law.
6. Discussions with board members.

## ORGANIZATION AND FUNCTION

Chapter 130, SLA 1992 established the Board of Certified Direct-Entry Midwives (the board) effective June 26, 1992. While there was no intent statement attached to the legislation, the prime sponsor of the bill testified during committee meetings as to his intention in sponsoring the bill. He said the bill was intended to protect the health and safety of the public by separating midwives who choose to take training and become licensed from those who choose not to meet the stricter qualifications. According to the sponsor, insurance companies cover midwife services only if they are properly licensed and certified. He said a board is needed to *"develop strict regulations and monitor professional practice by peer review and education. Certified, licensed, high-quality care would be available to Alaskans who either prefer home births or are denied financial or geographic access to physicians' care."* The sponsor also identified midwife care as one way to reduce health care cost and thus health insurance premiums.

### Membership on board

Per Alaska Statute (AS) 08.65.010, the board is composed of five members (see inset at right). Membership consists of two direct-entry midwives certified in Alaska, one physician who has an obstetrical practice or has specialized training in obstetrics and is licensed by the State Medical Board in Alaska, one certified nurse midwife licensed by the

#### Members of Board of Certified Direct-Entry Midwives

Kaye Kanne, Certified Direct-Entry Midwife, Chairperson  
Dr. Peggy A. Downing, Physician, Secretary  
Paula Korn, Certified Nurse Midwife  
Pam Weaver, Certified Direct-Entry Midwife  
Sydney Flint, Public Member

Board of Nursing in Alaska, and one public member. The members are appointed by the governor subject to confirmation by the legislature in joint session. Once appointed, the members serve staggered terms of four years and until a successor is appointed and qualified.

### Duties of the board

The board responsibilities per AS 08.65.030 include:

1. Examining applicants and issuing certificates to those applicants it finds qualified;
2. Adopting regulations establishing certification and certificate renewal requirements;
3. Issuing permits to apprentice direct-entry midwives;
4. Holding hearings and ordering the disciplinary sanction of a person who violates statute or regulations regarding direct-entry midwives;

5. Supplying forms for applications, licenses, permits, certificates, and other papers and records;
6. Reporting annually to the governor and the Department of Commerce and Economic Development (DCED) on the board's proceedings during the year;
7. Approving curricula and adopting standards for basic education, training, and apprentice programs; and
8. Approving education, training, and apprentice programs that meet the requirements of statute and the board, and denying, revoking, or suspending approval of programs that fail to meet the requirements.

#### Duties of DCED

DCED provides administrative and investigatory assistance to the board. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, DCED may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which DCED has authority. DCED can issue an order that the person stop the practice, bring an action in superior court to enjoin the act, examine the books and records of a person, and issue subpoenas for the attendance of witnesses and records.

## REPORT CONCLUSIONS

In accordance with Alaska Statute 08.03.010, the Board of Certified Direct-Entry Midwives (the board) is presently scheduled for termination on June 30, 1994. The board has one year in which to conclude its affairs if the legislature does not enact legislation for the continuance of the board. We recommend the board be reestablished. The board is providing the service of protecting the public's health and safety by addressing licensing, training, and continuing education requirements for people practicing as direct-entry midwives.

Prior to the creation of the board, the Department of Health and Social Services (DHSS) had the responsibility for registering lay midwives, which was the terminology used at that time for direct-entry midwives. DHSS was to work with a Lay Midwives Working Group to develop regulations for the registration, training and education requirements, and disciplinary measures for lay midwives. The regulations proposed by the Lay Midwives Working Group were to be presented by DHSS to the legislature by the tenth day of the Second Session of the Fourteenth Legislature. DHSS missed the reporting date to the legislature. Lay midwives practicing in Alaska on May 24, 1985 was allowed to continue practicing until the regulations were adopted. Six years later, due to lack of consensus between the Lay Midwives Working Group and staff at DHSS, regulations had still not been adopted and midwives were practicing without the benefit of regulations. In addition, DHSS never did develop a register of lay midwives.

Advantages associated with the creation of the board have been that there is a means to make people practicing midwifery aware of the level of experience and education expected of them. Also, by having a board, individuals in the midwifery practice can now be held accountable to a standard of care if they practice dangerous medicine.

Elimination of the board would likely result in the same lack of oversight that existed prior to the creation of the board in 1992. Although relatively new, the board has displayed its ability to conduct its business in a professional, competent, and efficient manner.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should extend the termination date of the Board of Certified Direct-Entry Midwives (the board) to June 30, 1998.

The board has been given the responsibilities in statute to adopt regulations establishing certification and certificate renewal requirements and examine applicants and issue certificates to those applicants it finds qualified. The regulation and licensing of qualified direct-entry midwives is necessary to protect the public's health, safety, and welfare.

Since being appointed in July 1992, the board has expended considerable effort in developing regulations and in reviewing applications for licensure. The regulations approved by the board are currently being reviewed by the Department of Law. As of the end of FY 93, the board had licensed 11 individuals and approved two apprentice permits.

The board's membership has been dedicated and responsible to its mission; its representation has been well balanced in serving its purpose. The board has displayed a strong desire to enhance the public perception of the direct-entry midwifery profession by maintaining high, but not restrictive, standards.

### Recommendation No. 2

The Division of Occupational Licensing (OL) should, in conjunction with the Equal Employment Opportunity Office (EEO), review the Direct-Entry Midwife licensure application forms used by OL to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The direct-entry midwife application requires a photograph of the candidate and states that answers to height, weight, sex, and eye and hair color questions are optional, but are requested for identification purposes. EEO within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on sex, height, weight, and hair and eye color, even if that information is optional. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The direct-entry midwife application form used by OL should be reviewed with EEO to make sure that a photograph is pertinent to the licensure of direct-entry midwives candidates. OL indicated that one of the reasons photographs are required is to prevent fraud when a licensee moves from one state to another. If a photograph is considered necessary for identification, to prevent fraud or for other reasons, it should be separated from the application prior to review of the application for licensure. If a photograph is not necessary,

the request for one should be removed from the application.

Recommendation No. 3

OL should continue their efforts to provide adequate public notice of board meetings.

OL has not consistently provided adequate public notice of board meetings. Alaska Statute 08.01.050 requires the department to publish notice of examinations and meetings. Alaska Statute 41.62.310 requires reasonable notice for all meetings required to be open. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. The Attorney General (AG) has defined adequate public notice as three business days prior to the meeting and, when possible, ten days. OL's public notice policies are even more restrictive in that they require public notice at least two weeks prior to a scheduled meeting and one week prior to an unscheduled teleconference. OL did not provide adequate public notice for one of the teleconferences held by the Board of Certified Direct-Entry Midwives under AG guidelines. In addition, OL would not have provided adequate public notice for two teleconferences and one scheduled board meeting under their own guidelines.

OL has a large volume of public notices and the division's public notice process is very labor intensive. OL is in the process of initiating a system to automate the public notices. OL should continue their efforts to automate the public notice process in order to ensure adequate public notice.

Recommendation No. 4

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

For example, the licensing examiner is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

Recommendation No. 5

OL should develop and implement written policies and procedures for timely reporting of any board members' potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act, as does Law. Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition, division personnel have indicated that there is some confusion as to what should be reported. While staff at Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute (AS) 44.66 050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

*The extent to which the board, commission, or program has operated in the public interest.*

The Board of Certified Direct-Entry Midwives (the board) has made a good effort at operating in the public interest. The board has spent a considerable amount of time in developing regulations for basic education, training, and apprentice programs and establishing certification and certificate renewal requirements. The regulations developed by the board are currently under review by Department of Law (Law).

The board has licensed applicants it found qualified into the profession based on transitional regulations that are still under review by Law. It has not been necessary for the board to hold any hearings or issue disciplinary sanctions to date. The required annual report was submitted to the governor and the Department of Commerce and Economic Development (DCED) on the board's proceedings for FY 93.

*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.*

As of yet, the board has not been impeded because of existing statutes, procedures, or practices. However, during their review, the Department of Law questioned whether the board has authority to develop regulations regarding the administration of medications since statutes did not specifically mention this responsibility. The board felt that this authority had been granted by the legislature and was included in the definition statute, AS 08.65.190. The statute says that the practice of midwifery includes "*the execution of emergency measures in the absence of medical assistance, as specified in regulations adopted by the board*" (Emphasis added.)

Since the medications listed in regulation can only be administered by a direct-entry midwife as part of emergency measures, the board felt they were within the realm of their authority. Midwives have stated they cannot practice safely without the ability to administer certain medications during emergency situations. If Law determines the board does not currently have the authority to adopt regulations governing the administration of medications, then a statute change will be needed to specifically grant the board this regulatory authority.

*The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.*

The board has not recommended any statutory changes; however, the board recommended in its FY 93 annual report that the legislature continue the board.

*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 that it has provided.*

The location, date and time of board meetings are published in newspapers around the State so that interested public members can attend the meetings. However, we found that for one teleconference adequate public notice was not given (see Recommendation No. 3). The Attorney General's Office defines adequate public notice as advertising at least three days, excluding weekends and holidays, and ten days when possible, prior to a meeting. The board has been responsive to public participants by setting a public comment time period during board meetings.

*The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.*

The board encouraged public participation in the making of its regulations and decisions. Proposed regulations were made available for public comment. Responses received from the public did not require the board to make any changes to the regulations. Some responses were in support of the regulations as written, while other concerns had already been addressed in statute. After the public comment period had closed, the board forwarded the proposed regulations to Law for their review.

While the proposed regulations were still being reviewed at Law, two interested people came forward and asked the board to reopen regulation 12 AAC 14.210 (c)(1). This regulation stated,

*As part of the supervised clinical experiences required in (b) of this section, an applicant must have provided continuous care to at least 20 clients. "Continuous care" means, for the same client, the applicant (1) performed at least eight prenatal visits.*

The two people said eight prenatal visits was extremely difficult to attain. After much discussion, the board agreed their concern for continuous care would not be seriously impacted if the regulation were changed to six prenatal visits to at least 20 clients. The board unanimously voted to change the proposed regulation. The board is going to withdraw this regulation from Law's review and advertise the proposed change for 30 days so that they can receive additional public comment.

*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.*

There have not been any public complaints regarding midwives filed with the Office of the Ombudsman since the inception of the board. There had been two complaints filed with the Office of the Ombudsman when the Department of Health and Social Services had the responsibility for overseeing the profession.

There have not been any ethics complaints against board members filed with Law. No board decisions have been appealed to the Division of Occupational Licensing (OL) hearing officers.

OL investigated five cases regarding the midwife profession. Some cases were in regards to individuals not licensed; other cases were instigated by DCED based on an applicant's response to certain items on their application. At the end of FY 93, investigation was still ongoing for four of these cases.

*The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.*

As of the end of FY 93, the board licensed 11 individuals and issued two apprentice permits. We reviewed these application files and also the files of those people whose applications were denied. We found no errors in OL's licensing procedures. In addition, we believe that the licensing criteria established by the board is reasonable and appropriate.

*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.*

We found no evidence that the board was not complying with state personnel practices, including affirmative action, in qualifying applicants. Each time the board has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. However, the certified direct-entry midwife application requests information questioned by EEO (see Recommendation No. 2).

*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 the factors enumerated in this subsection.*

Please refer to the previous section, Findings and Recommendations.

**APPENDIX A**  
**Department of Commerce and Economic Development**  
**Board of Certified Direct-Entry Midwives**  
**Application, License, and Other Fees<sup>1</sup>**

**Application and Other Fees<sup>2</sup>**

Type of Fee	Amount
Application	\$50
Examination fee	100

**License Fees**

License Category	Initial and Biennial Renewal Fee <sup>3</sup>
Direct-Entry Midwife Certification	\$350
Apprentice Direct-Entry Midwife Permit	150

<sup>1</sup>The licensing fees charged by the Division of Occupational Licensing for the Board of Certified Direct-Entry Midwives are set out in the Alaska Administrative Code at § 12 AAC 02.145. The fees for this new licensing board became effective January 22, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

<sup>2</sup>The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include: duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

<sup>3</sup>The biennial renewal period for the Board of Certified Direct-Entry Midwives is December 31, 1994.

STATE OF ALASKA  
WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER  
November 29, 1993

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LEGISLATIVE AUDIT

Mr. Randy Welker  
Legislative Auditor  
Legislative Budget & Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811

Dear Mr. Welker:

This is written in response to the Audit Division's (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Certified Direct-Entry Midwives (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

The Legislature should extend the termination date of the Board of Certified Direct-Entry Midwives (the board) to June 30, 1998.

The Department concurs that the Board should be continued until June 30, 1998.

Response to Recommendation No. 2

The Division of Occupational Licensing (OL) should, in conjunction with the Equal Employment Office (EEO), review the Direct-Entry Midwife licensure application to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The Department has been working toward updating all of its licensing applications with emphasis toward the Americans with Disabilities Act and also EEO concerns. Because of the many considerations involved in revising our applications and the number of professions affected, the Department is not rushing through this project to satisfy immediate concerns, but rather making a concerted effort to give this review the quality of thoroughness it deserves.

EEO's concerns that it may be difficult to prove that discrimination was not a factor in the denial of licensure (because the board had been provided a picture of an applicant) may be unnecessary. Specifically, license denials must be based

upon a provision in the board's statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints. Further, your suggestion of separating the photo from an application prior to board review is questionable since licensing applications are public documents and we believe it would be inappropriate for division staff to withhold public information from the board.

Response to Recommendation No. 3

OL should continue their efforts to provide adequate public notice of board meetings.

The Department partly concurs with Audit regarding the public notice of board meetings. It is true that the public notice policy is labor intensive and the Department has been diligently trying to streamline this process to meet our obligation to public notice while at the same time developing a public notice procedure that is fiscally responsible. It is true that one teleconference was public noticed two days before an event (the teleconference occurred on October 13, 1993 and the public notice appeared October 11, 1993) however, this type of notice is not the norm and the Department maintains it is responsible in its public notice procedure. Further, events such as the need for immediate discipline proceedings may make it impossible to "adequately" public notice an event. An exception is provided in statute for such a situation albeit we still attempt to provide some notice, if possible.

We take exception that the Audit has cited an Attorney General Opinion written in December, 1992 to the Department of Education in response to that department's request for public notice clarification. This Department was not carbon copied on that opinion and, therefore, not privy to that legal advice. This Department has relied on its own internal policies and our AAG's advice for adequate public notice. The Department will continue to comply with the public notice requirements as defined by our AAG.

Response to Recommendation No. 4

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

The Department concurs with Recommendation No. 4. A rewrite of AS 08.01 makes numerous revisions including amendments to the statutes cited in this recommendation. The rewrite includes revisions which make drafting minutes a Department responsibility. It also provides for annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

The Department strongly disagrees that the annual report authority should be amended to make annual report submission a Department responsibility. We recognize that Division staff are instrumental in assisting boards when completing reports. Staff provide statistical and clerical assistance, however, this report must be reflective of the board's position on various matters involving the profession regulated including legislative and regulatory needs, budget requests, and upcoming goals. These are areas which the board is solely responsible for developing.

Response to Recommendation No. 5

OL should develop and implement written policies and procedures for timely reporting of any board members' potential violations of the Executive Branch Ethics Act to the Department of Law (Law).


The Department agrees and will comply with this recommendation. A written procedure developed by staff will be limited to include directives for staff follow-up at each meeting with collection of ethic reports as well as clarifying dates which quarterly reports must be compiled and forwarded to the Attorney General's Office. We concur that staff is responsible for the timely submission to the Department of Law. This is the limit of responsibility recognized on behalf of the Department.

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCED staff expertise. Consequently, the Department disagrees with the statement in the text of recommendation no. 5 which states "Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act . . . ."

The Department has asked for a written directive from the Department of Law, in layman's terms, which clarifies these matters. Any forthcoming directives from the Department of Law will be distributed to board members.

Thank you for this opportunity to respond. If my department can assist you in any other way please let me know.

Sincerely,

  
Paul Fuhs  
Commissioner

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cc: Karl Luck, Director, Division of Occupational Licensing