

**HB**

**124**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 6, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/2/95

The FINANCE Committee considered:

HB 124

HOUSE BILL NO. 124

BOARD OF NURSING HOME ADMINISTRATORS

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

recommends it be replaced with the following committee substitute CS HB 124 (Fin)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) LED 6  
~~DPB~~ 3/1/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Bob Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin	X			
<i>Paul Parnell</i>	Parnell	X			
<i>Vic Kohring</i>	Kohring	X			
<i>Ben Grusserdorf</i>	Grusserdorf			X	
<i>Mike Navarre</i>	Navarre			X	
<i>Tom Brown</i>	Brown			X	
<i>Pat Kelly</i>	Kelly	X			
<i>Paul Theriault</i>	Theriault			X	
<i>Michael Foster</i>	Foster	X			

CO  
 CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*  
 Hanley Foster

# FISCAL NOTE

No. 1  
 Bill Version: CSHB 124  
 (H) Publish Date: 3/6/95

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

Revision Date: February 22, 1995 Department: Commerce and Economic Development  
 Title: Extending the termination date of the BRU: Occupational Licensing  
 Board of Nursing Home Administrators:.... Component: Operations  
 Sponsor: Representative Toohy  
 Requestor: Representative Toohy COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	5.7	5.7	5.7	5.7	5.7	5.7
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	2.5	2.5	2.5	2.5	2.5	2.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	1.9	14.5	1.9	14.5	1.9	14.5
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	8.2	8.2	8.2	8.2	8.2	8.2
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>	<b>8.2</b>

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSHB 124 proposes to eliminate the Board of Nursing Home Administrators and continue licensing by the department. Travel funds which allowed the board to meet have been eliminated. Licenses are presently due to expire on December 31, 1996; therefore, the revenue identified in the fiscal note assume that fees will be adjusted in FY 97 to equal costs.

Prepared by: Jennifer Strickler, Admin. Officer *[Signature]* Phone: 465-2144  
 Division: Occupational Licensing *[Signature]* Date: 2/22/95  
 Approved by Commissioner: William L. Hensley *[Signature]* Date: 3/3/95  
 Agency: Commerce and Economic Development

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Adopted

AMENDMENT 1

OFFERED IN THE HOUSE

TO: CSHB 124(HES)

- 1 Page 1, line 3, after " ; ":
- 2       Insert "clarifying the conditions under which a nursing home administrator license
- 3 may be denied;"
- 4 Page 4, after line 5:
- 5       Insert a new bill section to read:
- 6       "\* Sec. 5. AS 08.70.110 is amended by adding a new subsection to read:
- 7               (c) Notwithstanding other provisions of this chapter, the department may
- 8       refuse to issue a license to a person
- 9               (1) who attempts to secure the license through deceit, fraud, or
- 10       intentional misrepresentation; or
- 11               (2) for a reason for which it may impose disciplinary sanctions under
- 12       AS 08.70.155."
- 13       Renumber the following bill sections accordingly.



Official Business

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

State Capitol  
Juneau, AK 99801-1182

DISTRICT 13

### MEMORANDUM.

**TO:** Representative Toohey  
**FROM:** Benjamin Brown, <sup>LEG.</sup> Legislative Aide  
**IN RE:** sectional analysis of CSHB 124 (HESS)  
**DATE:** 1 March 1995

A summary, by section, of the proposed HESS Committee Substitute for House Bill 124 follows. It ought to be noted that a sectional summary of a bill is not to be considered generally as an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

**Section 1** adds nursing home administrators to the list of professions to whom Chapter 1 of Title 8 of Alaska Statutes ('Centralized Licensing') applies.

**Section 2** is a technical amendment that recognizes that the Board of Nursing Home Administrators is no longer involved in licensing and regulation.

**Section 3** transfers the duties and powers of the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 050 of Chapter 70 of Title 8 so they refer instead to the Department.

**Section 4** transfers the legal licensing authority of the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 110 of Chapter 70 of Title 8 so they refer instead to the Department.

*MEMORANDUM IN RE: sectional analysis of HB 124  
1 March '95, page two*

**Section 5** transfers legal authority to give examinations to applicants for license as nursing home administrators from the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 120 of Chapter 70 of Title 8 so they refer instead to the Department.

**Section 6** transfers legal authority to issue provisional licenses to nursing home administrators from the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 130 of Chapter 70 of Title 8 so they refer instead to the Department.

**Section 7** transfers legal authority to impose disciplinary sanctions on certain nursing home administrators from the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 155 of Chapter 70 of Title 8 so they refer instead to the Department.

**Sections 8 and 9** change references to the Board of Nursing Home Administrators in the definitions of "license" and "licensee," respectively, in Section 180 of Chapter 70 of Title 8 so they refer instead to the Department of Commerce.

**Section 10** substitutes the Department of Commerce's activity in licensing and regulating nursing home administrators, for the entity of the Board of Nursing Home Administrators, in the list of boards, commission, and officers to whom the administrative adjudication provisions of the Administrative Procedures Act (AS 44.62.330 - 44.62.630) apply.

**Section 11** repeals sections or subsections of Title 8 that establish, govern, apply to, or otherwise refer to the Board of Nursing Home Administrators, effectively eliminating the Board.

**Section 12** continues in effect all regulations of the Board of Nursing Home Administrators and allows regulatory references to the Board to be considered as references to the Department of Commerce instead; allows continuance of litigation, hearings, investigations, licenses, contract, rights, liabilities, and obligations existing under laws amended or repealed by the bill; and, transfers the records, equipment, and other property of the Board to the Department.

**Section 13** provides for an immediate effective date.

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

March 8, 1995

Representative Mark Hanley, Co-Chair  
Representative Richard Foster, Co-Chair  
Finance Committee  
House of Representative  
Alaska State Legislature  
Juneau, AK 99801

Re: Support, CSHB 124  
Nursing Home Administrator Board

Dear Representative Hanley & Representative Foster:

ASHNHA, representing community hospitals and nursing homes from across Alaska support CSHB 124, allowing the sunseting of the Nursing Home Administrator Licensing Board and transferring the administrator licensing responsibilities to the Division of Occupational Licensing.

The state must license nursing home administrators to remain eligible to participate in the Medicaid program. The Division of Occupational Licensing may administer that function along with the handling of disciplinary proceedings.

Having a board is an option. Nursing home administrators met here in Juneau last month and agreed the board really wasn't necessary to provide the license exam and/or safeguard the public.

There are national exams utilized for licensure and the DHSS Division on Licensing and Certification and the Senior Services Ombudsman monitor closely the quality of care in Alaska's long term care facilities.

Sincerely,



Harlan R. Knudson  
President/CEO

eligibility determination for Medicaid) or immediately thereafter (e.g., at the time of notice of eligibility).

(2) The agency, no less frequently than annually, must also provide written notice of the availability of WIC benefits, including the location and telephone number of the local WIC agency or instructions for obtaining further information about the WIC program, to all Medicaid recipients (including those found to be presumptively eligible) who are under age 5 or who are women who might be pregnant, postpartum, or breastfeeding as described in paragraphs (c)(2) (i) through (iv) of this section.

(3) The agency must effectively inform those individuals who are blind or deaf or who cannot read or understand the English language.

(57 FR 23103, June 24, 1992)

#### Subpart N—State Programs for Licensing Nursing Home Administrators

##### § 431.700 Basis and purpose.

This subpart implements sections 1903(a)(29) and 1908 of the Act which require that the State plan include a State program for licensing nursing home administrators.

##### § 431.701 Definitions.

Unless otherwise indicated, the following definitions apply for purposes of this subpart:

*Agency* means the State agency responsible for licensing individual practitioners under the State's healing arts licensing act.

*Board* means an appointed State board established to carry out a State program for licensing administrators of nursing homes, in a State that does not have a healing arts licensing act or an agency as defined in this section.

*Licensed* means certified by a State agency or board as meeting all of the requirements for a licensed nursing home administrator specified in this subpart.

*Nursing home* means any institution, facility, or distinct part of a hospital that is licensed or formally recognized as meeting nursing home standards established under State law, or that is

determined under § 431.704 to be included under the requirements of this subpart. The term does not include—

(a) A Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.; or

(b) A distinct part of a hospital, if the hospital meets the definition in § 440.10 or § 440.140 of this subchapter, and the distinct part is not licensed separately or formally approved as a nursing home by the State even though it is designated or certified as a skilled nursing facility.

*Nursing home administrator* means any person who is in charge of the general administration of a nursing home whether or not the person—

(a) Has an ownership interest in the home; or

(b) Shares his functions and duties with one or more other persons.

##### § 431.702 State plan requirement.

A State plan must provide that the State has a program for licensing administrators of nursing homes that meets the requirements of §§ 431.703 through 431.723 of this subpart.

##### § 431.703 Licensing requirement.

The State licensing program must provide that only nursing homes supervised by an administrator licensed in accordance with the requirements of this subpart may operate in the State.

##### § 431.704 Nursing homes designated by other terms.

If a State licensing law does not use the term "nursing home," the HCFA Administrator will determine the term or terms equivalent to "nursing home" for purposes of applying the requirements of this subpart. To obtain this determination, the Medicaid agency must submit to the Regional Medicaid Director copies of current State laws that define institutional health care facilities for licensing purposes.

##### § 431.706 Licensing authority.

(a) The State licensing program must provide for licensing of nursing home administrators by—

(1) The agency designated under the healing arts act of the State; or

(2) A State licensing board.

b) The State agency or board must perform the functions and duties specified in §§ 431.707 through 431.713 and the board must meet the membership requirements specified in § 431.706 of this subpart.

#### § 431.706 Composition of licensing board.

(a) The board must be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients. However—

(1) A majority of the board members may not be representative of a single profession or category of institution; and

(2) Members not representative of institutions may not have a direct financial interest in any nursing home.

(b) For purposes of this section, nursing home administrators are considered representatives of institutions.

#### § 431.707 Standards.

(a) The agency or board must develop, impose, and enforce standards that must be met by individuals in order to be licensed as a nursing home administrator.

(b) The standards must be designed to insure that nursing home administrators are—

- (1) Of good character;
- (2) Otherwise suitable; and
- (3) Qualified to serve because of training or experience in institutional administration.

#### § 431.708 Procedures for applying standards.

The agency or board must develop and apply appropriate procedures and techniques, including examinations and investigations, for determining if a person meets the licensing standards.

#### § 431.709 Issuance and revocation of license.

Except as provided in § 431.714 of this subpart, the agency or board must—

(a) Issue licenses to persons who meet the agency's or board's standards; and

(b) Revoke or suspend a license if the agency or board determines that the person holding the license substantially fails to meet the standards.

#### § 431.710 Provisional licenses.

To fill a position of nursing home administrator that unexpectedly becomes vacant, the agency or board may issue one provisional license, for a single period not to exceed 6 months. The license may be issued to a person who does not meet all of the licensing requirements established under § 431.707 but who—

(a) Is of good character and otherwise suitable; and

(b) Meets any other standards established for provisional licensure by the agency or board.

#### § 431.711 Compliance with standards.

The agency or board must establish and carry out procedures to insure that licensed administrators comply with the standards in this subpart when they serve as nursing home administrators.

#### § 431.712 Failure to comply with standards.

The agency or board must investigate and act on all complaints it receives of violations of standards.

#### § 431.713 Continuing study and investigation.

The agency or board must conduct a continuing study of nursing homes and administrators within the State to improve—

- (a) Licensing standards; and
- (b) The procedures and methods for enforcing the standards.

#### § 431.714 Waivers.

The agency or board may waive any standards developed under § 431.707 of this subpart for any person who has served in the capacity of a nursing home administrator during all of the 3 calendar years immediately preceding the calendar year in which the State first meets the requirements in this subpart.

#### § 431.715 Federal financial participation.

No FFP is available in expenditures by the licensing board for establishing and maintaining standards for the licensing of nursing home administrators.

# Audit Report



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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
BOARD OF NURSING HOME  
ADMINISTRATORS

September 30, 1993

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Audit Control Number:

08-1417-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

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Randy S. Welker, CPA  
Legislative Auditor  
Merle R. Jensen, CPA  
Deputy Legislative Auditor

P.O. Box 113300  
Juneau, Alaska 99811-3300

(907) 465-3830, Juneau  
(907) 561-1445, Anchorage  
(907) 465-2247, Juneau FAX

# 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

September 30, 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 NURSING HOME ADMINISTRATORS

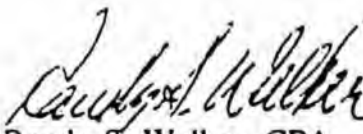
September 30, 1993

Audit Control Number

08-1417-94

The objective of the audit was to determine whether the Board of Nursing Home Administrators should continue its existence. Alaska Statute 08.03.010(18) has scheduled the board 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 at June 30, 1995. We recommend that the legislature allow the board to terminate and assign the Division of Occupational Licensing with sole responsibility for licensing nursing home administrators.

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

  
Randy S. Welker, CPA  
Legislative Auditor

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## 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 Nursing Home Administrators (BNHA) to determine whether it should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of the legislative 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.

During the course of our examination, we reviewed and evaluated the following:

1. Applicable sections of state and federal statutes and regulations.
2. Interviews with Department of Commerce and Economic Development, Division of Occupational Licensing (OL) personnel.
3. Interviews with U.S. Department of Health and Human Services, Health Care Financing Administration personnel.
4. Interviews with Alaska Department of Health and Social Services personnel.
5. Minutes of board meetings.
6. The director of OL's correspondence files.
7. The BNHA licensing examiner's correspondence files.
8. The BNHA licensing files.
9. Investigation and litigation files.
10. Office of the Ombudsman closed case file.
11. Prior year audit work papers and audit reports.
12. Other documents as deemed pertinent.

## ORGANIZATION AND FUNCTION

The Board of Nursing Home Administrators was created by the Alaska legislature in 1975 in response to federal law requiring states to license nursing home administrators in order for nursing homes in the state to receive Medicaid assistance from the federal government. The board (see inset at right) consists of three members. By statute, the members are one nursing home administrator licensed and practicing in the state, one registered nurse having no direct financial interest in any nursing home, and one person from the general public.

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### **BOARD OF NURSING HOME ADMINISTRATORS**

**Gary Sheridan, Nursing Home Administrator**  
**Kathy S. Lockhart, Registered Nurse**  
**Rose Palmquist, Public Member**

---

Alaska Statute (08.70) defines the board's authority, purpose, and scope of work. The primary duty performed by the board is the licensing of qualified applicants. The board is assisted in its duties by Division of Occupational Licensing (OL) personnel. OL processes applications, maintains licensing files, answers board-related correspondence, and provides administrative support to the board. In addition, OL investigates any complaints involving nursing home administrators.

## REPORT CONCLUSION

In accordance with AS 08.03.010(18), the Board of Nursing Home Administrators (BNHA) is presently scheduled for termination on June 30, 1994. Alaska Statute 08.03.020 provides BNHA one year in which to conclude its affairs if the legislature does not enact legislation for the continuance of the board. We recommend that BNHA be allowed to terminate for the following reasons. First, the board has been inactive for much of its existence. This inactivity is evidenced by the lack of board meetings held, statutorily required annual reports which have not been issued, and statutes and regulations which are out-of-date when compared with current licensing practices. Second, the U.S. Department of Health and Human Services has communicated to us that it is unnecessary for the State to have a board in order to license nursing home administrators. As there is currently a federal requirement that the state license nursing home administrators in order for nursing homes to receive federal Medicaid receipts, a mechanism for licensing nursing home administrators is necessary. Consequently, we recommend that the Division of Occupational Licensing license nursing home administrators based on legislative criteria until it is determined that there is no longer a federal requirement to license nursing home administrators (see Recommendation No. 1).

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Pending the Department of Law interpretation regarding federal requirements, the legislature should allow the BNHA to terminate on June 30, 1994. Consistent with federal requirements, the legislature should amend statutes to assign OL the responsibility for licensing nursing home administrators.

a. The existence of BNHA is not required for the public's protection.

Public protection can be provided by other state agency licensing and certification procedures. The Alaska Department of Health and Social Services (DHSS), Division of Medical Assistance, Health Facilities, Licensing and Certification, certifies nursing homes for the U.S. Department of Health and Human Services (USDHHS). As described by DHSS personnel, the certification process is a comprehensive review. Approximately four hundred items are evaluated when a team of health facility workers certifies a facility. The teams consist of approximately three to five people and most of the team members are registered nurses. Areas covered under the certification review include: Nursing Services, Physician Services, Medications, Rehabilitation Services, Dental Services, Pharmacy Services, Infection Control, Physical Environment, Administration, Quality of Care, Resident Rights, and Quality of Life.

According to DHSS personnel, the governing body of the nursing home is responsible for the operations of the facility. The nursing home administrator is hired by the governing body and is ultimately responsible for all aspects of the nursing home facility on a day-to-day basis. During certification reviews the nursing home administrator is evaluated to ensure that the care given is in accordance with professional standards and principles.

The administrator is responsible for the competency of his or her staff and all facets of the operation of the facility. When there are serious problems in a nursing home, such as concerns over nursing, the nursing home administrator is cited as well as the nursing section. The nursing home administrator is ultimately responsible for any problem in the facility. DHSS has the authority to require that problems noted during certification reviews be corrected and can order the facility closed for lack of compliance with mandated corrections.

In addition to the monitoring done by DHSS, screening of nursing home administrators is undertaken during their initial hiring by the governing body of the nursing home.

- b. We have noted deficiencies in the performance of the board in prior audits and we continue to observe similar problems.

BNHA is currently required to meet annually. BNHA did not meet in three of the last five fiscal years. The last board meetings were held in FY 90 and FY 92. The most recent sunset reviews (FY 86 and FY 90) of BNHA also noted that the board did not fulfill its statutory requirements to meet. Prior to 1986, BNHA had a five member board which was required to meet semiannually. Changes were made to the board's statutes in 1986 to reduce board membership to three and require annual board meetings. It was thought a smaller board that was required to meet less often would be adequate to accomplish its statutory requirements. However, as can be seen by a continued disinterest in meeting, these changes have not served to increase board compliance with state laws.

The board is also required by law to prepare and submit annual reports to the governor and legislature. Board of Nursing Home Administrators' annual reports were available for FY 90 and FY 93; but were not prepared for FY 91 and FY 92.

While these deficiencies are attributable to the inactivity of BNHA, we feel no purpose would be served by recommending increased board activity. Statutory requirements of the board have already been reduced to allow the board to meet these requirements. In spite of this, the board has consistently had difficulties in meeting its statutory requirement to meet and carry out the objectives of licensing nursing home administrators.

- c. Federal law does not require a state board to license nursing home administrators.

The predominate rationale presented to us for having the board to license nursing home administrators is to meet federal requirements. United States Code, Title 42, § 1396a(29) requires a state to license nursing home administrators in order for that state to receive Medicaid assistance from the federal government. Thus, to receive Medicaid funding, a nursing home must be administered by a licensed nursing home administrator. However, public law has repealed this section, effective when the Secretary of USDHHS promulgates standards regarding the qualifications of facility home administrators. To date the regulations regarding qualifications of nursing facility administrators are in draft form. USDHHS has no estimate as to when these regulations will be issued in final form.

Our understanding of the federal Medicaid requirement concerning the licensing of nursing home administrators is that state licensing of nursing home administrators is required in the manner outlined in state statutes and regulations. The information that we received from representatives of the USDHHS, Health Care Financing Administration for Region X, is that until the effective repeal date of U.S. Code, Title 42, § 1396a(29), there is a requirement that the State license nursing home administrators. However, the State may license nursing home administrators without the benefit of a board. Furthermore, as soon as the Secretary of the USDHHS

promulgates standards regarding the qualifications of nursing facility administrators. their opinion is that the licensing of nursing home administrators will become a state prerogative.

In our opinion, the primary function the board has provided is approving applicants to sit for the examination. We believe that OL can adequately administer the licensing of nursing home administrators based on statutory requirements until there is no longer a federal requirement to license nursing home administrators. Therefore, we recommend that OL actively work with the Department of Law, Department of Health and Social Services, and USDHHS to resolve this issue.

If the legislature chooses to continue the board, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the board.

#### Recommendation No. 2

##### BNHA should revise the BNHA regulations to reflect current licensing practices.

The National Association of Boards of Nursing Home Administrators (NAB), in cooperation with the Professional Examination Service, prepares a nursing home administrator examination. The passage of this examination is one of the requirements for licensure as a nursing home administrator in Alaska. The NAB notified OL in a letter dated June 16, 1989, of changes to the examination which should be addressed by state boards of nursing home administrators.

a. The national examination will be given on certain days throughout the year.

The NAB testing dates are the second Thursdays of January, April, July, and October. The new testing dates became effective January 1, 1992; however, NAB urged states to follow the new dates wherever possible by January 1, 1990. However, 12 AAC 46.030(c) states that the examination is offered semiannually in May and November. The national organization exempted the State of Alaska from complying with the national testing dates and allowed the examination to be given May 21, 1993. NAB has stated that this is the last time that they will accommodate the State and the State must comply with the new testing dates in the future. States may offer the examination less than four times a year, but the date of the examination must be on the second Thursdays of January, April, July, and October. According to OL staff, the examination will be given in Alaska on the second Thursdays of July and October.

As noted previously, the regulations continue to state that the examination is offered in May and November. Since the application deadline for taking the examination is thirty days prior to the examination, nursing home administrator candidates intending to take the November examination in reliance on current regulations could be prevented from taking the examination.

b. The NAB will be revising how it scores the national examination.

Recently, OL has received from NAB two scores for each candidate taking the nursing home administrator examination. One score is a percentage score also referred to as a raw score. For example, someone answering 113 of the 150 questions on the examination correct, would receive a percentage score of 75%. Another score (referred to as a scale<sup>1</sup> score) is also provided. The regulations have not yet been revised and are silent as to whether a raw score or scale score is accepted as a passing grade. The NAB recommended that the state board adopt as its passing score the scale score. Although the board, at its November 13, 1989 meeting, discussed the need to define the scoring methodology used, the regulations have not been revised to define the scoring methodology used.

The scoring methodology issue arose for two candidates taking the Spring 1991 nursing home administrator examination. These candidates appealed the decision that they had failed the examination. The Board of Nursing Home Administrators reviewed their decision and denied the license application based on a raw score of less than 75%. Both candidates appealed the board's decision. The case went before a hearing officer. The hearing officer's decision was that

*the State may choose to adopt only a raw or scaled score as its standard, but that should be done after public notice and through the regulation process. Until then, a passing score of 75% on either the raw or scaled score should be accepted as meeting the requirement of 12 AAC 46.020(c)(1).*

The Board of Nursing Home Administrators accepted the hearing officer's decision on October 22, 1991. Since the date of the adoption of the decision, the board has had the opportunity to take action on this matter but has not yet revised their regulations.

Candidates should be able to rely on the accuracy of the information in the regulations for the given occupation they are pursuing. Inaccurate or inadequate information in the regulations could potentially be relied on by the occupational licensing candidate to his or her detriment.

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<sup>1</sup>Scaling is a statistical process used by NAB to provide comparability in examination results over a period of time.

### Recommendation No. 3

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for that occupation (AS 08.01.065(c)). Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not associated with the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

In their September 1993, *Occupational Licensing Fee-Setting Policy Assessment* report OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project ... DCED has recently indicated that, for the determination

of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of October 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

#### Recommendation No. 4

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review the BNHA licensure application form to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The nursing home administrator application requires a photograph of the candidate. EEO within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on sex, height, weight, and hair and eye color. 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 nursing home administrator application form used by OL should be reviewed with EEO to make sure that a photograph is pertinent to the licensure of nursing home administrator 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. 5

If BNHA remains in existence, OL should continue their efforts to provide adequate public notice of their board meetings.

Alaska Statute 08.01.050 requires the department to publish notice of examinations and meetings. Alaska Statute 44.62.310 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 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.

BNHA did not meet in FY 93. A BNHA board meeting and a teleconference meeting were held in FY 92. Adequate public notice was given for the board meeting, with one exception. There was no evidence that the public notice was published in one of the three Alaskan cities cited in OL's policies and procedures governing public notice. The teleconference meeting was published in two newspapers in less than a week prior to the teleconference.

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. 6

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 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. 7

OL should develop and implement written policies and procedures for reporting 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 1991, no reports were submitted to Law. 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 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.*

We have determined that a public need for the Board of Nursing Home Administrators (BNHA) has not been demonstrated. Public protection is provided by State licensing and certification of nursing homes in the State. The State Department of Health and Social Services (DHSS) certifies nursing homes for the U.S. Department of Health and Human Services (USDHHS). As described by DHSS personnel, the certification process is a comprehensive review. According to DHSS personnel, the governing body of the nursing home is responsible for the operations of the facility. The nursing home administrator is hired by the governing body and is ultimately responsible for all aspects of the nursing home facility on a day-to-day basis. In addition to the monitoring done by DHSS, screening of nursing home administrators is undertaken during their initial hiring by the governing body of the nursing home (see Recommendation No. 1).

*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.*

BNHA is currently required by state law to meet annually. BNHA did not meet in three of the last five fiscal years. The last board meetings were held in FY 90 and FY 92 (see Recommendation No. 1).

The board is also required by law to prepare and submit annual reports to the governor and legislature. The BNHA annual reports are available for FY 90 and FY 93; but were not prepared for FY 91 and FY 92 (see Recommendation No. 1).

*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 pursued revising their statutes during FY 90 through FY 93. We are not aware that the board has any current plans to revise their statutes.

*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.*

One of the methods for the public to report to a board is by providing a public comment time period at board meetings. As noted previously, the board did not meet in FY 93 (see Recommendation No. 1). A board meeting and a teleconference meeting were held in FY 92. Adequate public notice was given for the board meeting, with one exception. There was no evidence that the public notice was published in one of the three Alaskan cities cited in OL's policies and procedures governing public notice. The teleconference meeting was only published in two newspapers and one newspaper did not publish the teleconference meeting three business days prior to the meeting. According to an Attorney General Memorandum, this is the minimum acceptable time for advertising meetings (see Recommendation No. 5).

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

See preceding paragraph. We believe that the board has not encouraged public participation. The board has not met on a regular basis to make decisions on board-related matters and has not pursued revision of their regulations (see Recommendation Nos. 1 and 2). These are both areas in which public participation can be obtained in the board's decision-making process.

*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.*

The Division of Occupational Licensing received one complaint about the professional competence of a nursing home administrator during FY 91 through FY 93. Based upon review of this case, OL is adequately handling complaints filed against nursing home administrators.

The Office of the Ombudsman had one closed case file during this same period. This case related to the untimely receipt of test scores from the national testing agency. Recent test scores have been sent to OL in a timely manner.

*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 June 30, 1993, there were 79 State of Alaska licensed nursing home administrators. During FY 93, eleven nursing home administrators were licensed by the board. During our testing, we found no instances where BNHA had licensed unqualified applicants.

*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.*

The nursing home administrator application requires information questioned by the Equal Employment Opportunity Office (see Recommendation No. 4).

*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.

APPENDICES

## APPENDIX A

Department of Commerce and Economic Development  
Board of Nursing Home Administrators  
Schedule of Revenues Compared with Expenditures  
(Unaudited)  
(Note 1)

Revenues (Note 2)	\$2,800
Expenditures (Note 3)	<u>8,653</u>
Excess of Expenditures over Revenues (Note 3)	<u>\$(5,853)</u>

### Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for fee determination. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

### Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Licenses are renewed biennially. Because of the renewals, revenues vary substantially year to year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

### Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 3 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

**Appendix B**  
**Department of Commerce and Economic Development**  
**Board of Nursing Home Administrators**  
**Application, License, and Other Fees<sup>1</sup>**

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

Type of Fee	Amount
Application	\$50
Examination	125
Provisional License	50

**License Fees**

License Category	Initial and Biennial Renewal Fee <sup>3</sup>
Nursing Home Administrator	\$200

<sup>1</sup>The licensing fees charged by the Division of Occupational Licensing for the Board of Nursing Home Administrators are set out in the Alaska Administrative Code at § 12 AAC 02.290. The last fee change for this board was effective May 28, 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 Nursing Home Administrators is December 31, 1994.

WALTER J. HICKEL, GOVERNOR

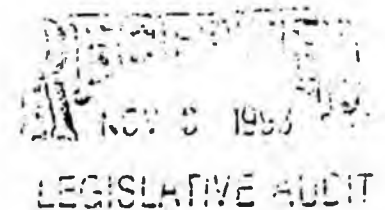
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500  
FAX: (907) 463-3841

November 29, 1993

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 Nursing Home Administrators (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 allow the Board of Nursing Home Administrators (BNHA) to terminate and the Division of Occupational Licensing (OL) should assume sole responsibility for the licensing of nursing home administrators.

The Department concurs with this recommendation providing federal regulations support such action. The Department remains cautious inasmuch as the loss of medicaid is at risk if the auditor's understanding is flawed. We strongly recommend that the Department of Law review this course of action before a change is made. The Division of Occupational Licensing cannot "assume" the responsibility for licensing Nursing Home Administrators. The ability to license this profession must be specifically authorized by amending AS 08.01 and AS 08.70.

Response to Recommendation No. 2

The Division of Occupational Licensing should revise the BNHA regulations to reflect current licensing practices.

The Division is aware of the need to amend the regulations regarding examination dates and the passing score requirement. However, the board has the regulatory authority and the department cannot proceed without board action. Should the board be terminated the division will assume action for this.

Response to Recommendation No. 3

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

During 1993, the division accomplished fee revisions for all program areas to reflect program expenses. The calculations were based upon all available data regarding direct and indirect program costs.

Concerns were voiced by various boards regarding their fee increases/program costs. Based on these concerns, the department requested an independent review by OMB of the procedures used in calculating expenses by the Office of Management and Budget. The OMB audit was completed early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators and hearing officers has been implemented effective July 1, 1993 by the division.

OMB audit recommended a cap on incremental fee increases of no more than 10-25 percent per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. OMB budget reviewers placed an even more restrictive cap of seven percent on the license fee this fiscal year. Unpredictable and unforeseen program expenses occur due to investigations, litigation and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the board's abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable" limit for fee increase adjustments under the OMB recommendations and in accordance with 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as economic hardships for licensees who may wish to renew their licenses, etc. The division will make requests for additional spending allocation to LB&A to alleviate these harsh consequences, but failing favorable consideration must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system. It is a real possibility that data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff at the end of the fiscal year. Since appropriate division staff was not consulted regarding specific financial information, the division cannot agree with this finding until both audit and division staffs have had the opportunity to discuss this matter.

The recommendation of estimating time spent by certain job classes of employees stated in the OMB fee-setting policy assessment audit was implemented on July 1, 1993; and at the start of FY 94, the division prepared an FY 94 budget allocation for each licensing program.

In conclusion, DCED has attempted to work with the OMB auditor regarding this issue, but we have been informed that the audit is over and no more time will be allocated to this issue.

Recommendation No. 4

OL should, in conjunction with the Equal Employment Office (EEO), review the BNHA 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. If the NHAB is terminated and the division becomes the licensing authority the recommended procedure of separating the photo from the application becomes more absurd.

Response to Recommendation No. 5

If BNHA remains in existence, OL should continue their efforts to provide adequate public notice of their 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.

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. That opinion was written after the meetings cited by Audit in this report. This Department has relied on its own internal policies and our AAG's advice for adequate public notice. The APA does not require public notice in three major

newspapers, only our internal procedures. The public notice for the September, 1991 board meeting was sent to three major newspapers; however, the Anchorage Times, for reasons unknown, did not publish the notice. We have no control of their unwillingness to publish according to our time requirements. Second, the teleconference referenced was noticed, timely, in two newspapers. That teleconference occurred on October 22, 1991 and notice appeared October 17 and 18, 1991.

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. The Department will continue to comply with the public notice requirement as defined by our AAG.

#### Response to Recommendation No. 6

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

The Department concurs with Recommendation No. 6. 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. 7

OL should develop and implement written policies and procedures for reporting 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.

Mr. Randy Welker

-5-

November 29, 1993

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. 7 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 Funs  
Commissioner

PF/JW/dgl5295D  
112993b

cc: Karl Luck, Director, Division of Occupational Licensing