

**HB**

**81**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
APR 23 2001  
SENATE FINANCE  
COMMITTEE

DATE: 4/17/01

FURTHER:

DATE TURNED IN TO OFFICE: 23 April 01

Finance Committee considered CS FOR HOUSE BILL NO. 81(FIN)

*DENTISTS/DENTAL HYGIENISTS & ASSISTANTS*

"An Act extending the termination date of the Board of Dental Examiners; relating to the Board of Dental Examiners and regulation of the practice of dentistry; and relating to dental hygienists and dental assistants."

and recommends:

- be replaced with S CS CS HB 81 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DC.ED	3/6/01		✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

**CS FOR HOUSE BILL NO. 81(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/26/01  
 Referred: Rules

Sponsor(s): REPRESENTATIVES FATE, Harris

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act extending the termination date of the Board of Dental Examiners; relating to  
 2 the Board of Dental Examiners and regulation of the practice of dentistry; and relating  
 3 to dental hygienists and dental assistants."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 08.03.010(c)(7) is amended to read:

6 (7) Board of Dental Examiners (AS 08.36.010) -- June 30, 2005  
 7 [2001];

8 \* **Sec. 2.** AS 08.32.110(a) is amended to read:

9 (a) The role of the dental hygienist is to assist members of the dental  
 10 profession in providing oral health care to the public. A person licensed to practice  
 11 the profession of dental hygiene in the state may

12 (1) remove calcareous deposits, accretions, and stains from the  
 13 exposed surfaces of the teeth beginning at the epithelial attachment by scaling and  
 14 polishing techniques;

- 1 (2) apply topical preventive [OR PROPHYLACTIC] agents;
- 2 (3) apply pit and fissure sealants;
- 3 (4) perform root planning and periodontal soft tissue curettage;
- 4 (5) perform other dental operations and services delegated by a
- 5 licensed dentist if the dental operations and services are not prohibited by (c) of this
- 6 section; and
- 7 (6) if certified by the board and under the direct or indirect supervision
- 8 of a licensed dentist, administer local anesthetic agents.

9 \* Sec. 3. AS 08.32.110(d) is amended to read:

10 (d) This section does not prohibit a dental assistant from applying topical  
11 preventive [OR PROPHYLACTIC] agents or pit and fissure sealants when those  
12 duties have been delegated to the assistant by a dentist licensed under AS 08.36 or by  
13 a dentist exempt from licensure under AS 08.36.350(a)(2).

14 \* Sec. 4. AS 08.36.010 is amended by adding a new subsection to read:

15 (b) When making appointments of dentists and dental hygienists under (a) of  
16 this section, the governor <sup>may</sup> ~~shall~~ consider licensed dentists who have been nominated by  
17 the Alaska Dental Society and licensed dental hygienists who have been nominated by  
18 the Alaska State Dental Hygienists' Association.

19 \* Sec. 5. AS 08.36.075(d) is amended to read:

20 (d) The board shall require that inspection of dental radiological equipment  
21 occur once within every five calendar years and require that records concerning the  
22 inspection be provided to the board by the owner or lessee of the equipment and kept  
23 on file where the equipment is located. The board shall, upon application by the  
24 owner or lessee of the dental radiological equipment, submission of evidence  
25 documenting compliance with the inspection standards of the board, and payment of a  
26 fee set by the board, issue to the owner or lessee an inspection seal indicating the date  
27 by which the dental radiological equipment must pass inspection again. The date on  
28 the inspection seal shall be December 31 of the fourth calendar year that occurs after  
29 the calendar year in which the inspection occurred. A dentist may not use, or allow a  
30 person under the dentist's supervision to use, dental radiological equipment in this  
31 state after the date on the most recent inspection seal. The board may authorize an

SENATE FINANCE COMMITTEE  
4/20/2001 COMMITTEE ACTION

Bill Number	HB 81		
Amendment	#1		
Motion	Adopt		
<u>Motion by</u>	Leman		
<u>Objection by</u>			
Removed			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Austerman			
Senator Green			
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u> passed			

1 or on the safety or well-being of patients;

2 (G) has not previously had a license to practice dentistry  
3 suspended for grounds similar to those specified under AS 08.36.115, revoke it,  
4 or voluntarily surrendered;

5 (H) has completed at least 42 hours of continuing education  
6 related to clinical dentistry in the three years preceding application for a  
7 license in this state; the continuing education must have been approved by the  
8 American Dental Association, the Academy of General Dentistry, or the  
9 appropriate specialty board;

10 (I) has not within the previous three years failed the clinical  
11 exam given by the Western Regional Examining Board;

12 (J) is not the subject of an adverse report from the National  
13 Practitioner Data Bank or the American Association of Dental Examiners  
14 Clearinghouse for Disciplinary Information that relates to criminal or  
15 fraudulent activity, negligent dental care, or malpractice;

16 (2) has passed, to the satisfaction of the board, a written examination  
17 that consists of the portion of the written examination given under AS 08.36.160(b)  
18 that pertains to the state's laws on the practice of dentistry; the board may not require a  
19 higher passing score for applicants under this section than the board requires for  
20 applicants under AS 08.36.110;

21 (3) is personally interviewed by the board for purposes of verifying  
22 credentials;

23 (4) pays all required fees;

24 (5) provides the board with an affidavit that the dentist is not an  
25 impaired practitioner;

26 (6) provides to the board an authorization for release of records in a  
27 form prescribed by the board.

28 \* **Sec. 8.** AS 08.36 is amended by adding a new section to read:

29 **Sec. 08.36.317. Civil fine authority.** Notwithstanding AS 08.01.075(a), in a  
30 disciplinary action, the board may impose a civil fine not to exceed \$25,000 for each  
31 violation of this chapter or of a regulation adopted under this chapter.

1 \* Sec. 9. AS 08.36.360 is amended to read:

2 Sec. 08.36.360. Practice of dentistry defined. A person engages in the  
3 practice of dentistry who

4 (1) performs or holds out to the public as being able to perform dental  
5 operations;

6 (2) diagnoses, treats, operates on, corrects, attempts to correct, or  
7 prescribes for [,] a disease, lesion, pain, injury, deficiency, deformity, or physical  
8 condition, malocclusion or malposition of the human teeth, alveolar process, gingiva,  
9 maxilla, mandible, or adjacent tissues;

10 (3) performs or attempts to perform an operation incident to the  
11 replacement of teeth;

12 (4) furnishes, supplies, constructs, reproduces, or repairs dentures,  
13 bridges, appliances or other structures to be used and worn as substitutes for natural  
14 teeth, except on prescription of a duly licensed and registered dentist and by the use of  
15 impressions or casts made by a duly licensed and registered dentist;

16 (5) uses the words "dentist" or "dental surgeon" or the letters "D.D.S."  
17 or "D.M.D." or other letter or title that represents the dentist as engaging in the  
18 practice of dentistry;

19 (6) extracts or attempts to extract human teeth;

20 (7) exercises control over professional dental matters or the operation  
21 of dental equipment in a facility where the acts and things described in this section are  
22 performed or done;

23 (8) evaluates, diagnoses, treats, or performs preventive procedures  
24 relating to diseases, disorders, or conditions of the oral cavity, maxillofacial area,  
25 or adjacent and associated structures, a dentist whose practice includes the  
26 services described in this paragraph may only perform the services if they are  
27 within the scope of the dentist's education, training, and experience and in accord  
28 with the generally recognized ethical precepts of the dental profession; nothing in  
29 this paragraph requires a person licensed under AS 08.64 to be licensed under  
30 this chapter.

SENATE FINANCE COMMITTEE  
2000 COMMITTEE ACTION

4/20

Bill Number	HB 81		
Amendment	#2		
Motion	Adopt		
<u>Motion by</u>	Leman		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Green			
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Senator Austerman			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	passed		

# Alaska State Legislature

REPRESENTATIVE  
HUGH "BUD" FATE

Mailing Address

119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 452-4448  
Fax: (907) 456-3346



## House Of Representatives

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976  
Fax: (907) 465-3883

House District 33

CS for House Bill 81

"An Act extending the termination date of the Board of Dental Examiners; relating to the Board of Dental Examiners and regulation of the practice of dental hygienists and dental assistants."

SPONSOR: Representative Hugh Fate

### SPONSOR STATEMENT:

Under Title 8 of the Alaska Statutes the Board of Dental Examiners will terminate June 30, 2001. A report released by the Legislative Budget and Audit Committee recommended that the Legislature extend the board's date to June 30, 2005. This is the main focus of House Bill 81. The regulation and licensing of qualified dentists and hygienists benefits the public's safety and welfare. The Board contributes to safe guarding the public interests by ensuring competence and integrity of dentists and dental hygienists. As a retired dentist I believe the Board provides an invaluable service and should continue to do so.

House Bill 81 also addresses some issues of concern to the Dental Board of Examiners and the Alaska Dental Society. House Bill 81 attempts to clear up some duplicate and confusing language, reduce paperwork, expand the definition of dentistry, address dental testing and equivalency options, board appointments, and increase the allowable civil fine penalty that the Board can impose.

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**Sectional Analysis House Bill 81, Board of Dental Examiners**

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**Section 1. AS 08.03.010(c)(7)**

Page 1 Line 6

Extends the termination date from June 30, 2001 to June 30, 2005.

**Section 2 AS 08.03.110(a)(2)**

Page 2 Line 1

Removes OR PROPHYLACTIC. Prophylactic is duplicate language to preventative. It is covered under preventative agent. Prophylactic is also confusing language because it is similar to other dental terms like prophylaxis.

**Section 3 AS 08.03.110(d)**

Page 2 Line 11

Same reason. [Prophylactic was taken out of both locations because the Department of Law said if one went, they both had to.]

**Section 4 AS 08.36.010**

Page 2 Line 15-18

Adds wording that says, the Governor, when making appointments, will consider licensed dentists nominated by the Alaska Dental Society and licensed dental hygienists nominated by the Dental Hygienists' Association.

**Section 5 AS 08.36.075(d)**

Pg. 2 Line 31 & Pg. 1-9

Allows a board authorized inspector to determine whether the owner or lessee of dental radiological equipment is in compliance with the inspection standards of the board, collect the appropriate fee and remit the fee to the board, and issue an inspection seal. The inspector will then remit the paperwork to the board and whether a seal was issued or not.

**Section 6 AS 08.36.160(e)**

Page 3 Lines 11-17

Makes a passing score on a clinical exam given by the Central Regional Dental Testing Service, Inc. an acceptable alternative to the Western Regional Examining Board examination as long as the exam was passed after January 1, 2001.

**Section 7 AS 08.36.234(a)**

Page 3 Line 28

Requires that the dentist be currently licensed in another state, with the same requirements as Alaska, in order avoid re-examination to practice in Alaska.

Page 3 Lines 29-30

Language that states a dentist could have taken a dental exam in one state and be practicing in another, and as long as the state the they are licensed in has equivalent requirements to Alaska, the dentist can practice in Alaska. (The dentist doesn't have to be licensed and practicing in the same state in order for them to practice in Alaska, if it has equivalent requirements.)

**Section 8 AS 08.36.317**

Page 5 Line 29-31

Increases the allowable civil fine from \$5,000 to \$25,000 per violation.

**Section 9 08.36.360**

Page 6 Lines 23-30

Expands the current definition of Dentistry to include the American Dental Association's definition of dentistry which allows a dentist to evaluate, diagnose, treat, or perform preventive procedures relating to diseases, disorders, or conditions of the oral cavity, maxillofacial area, or adjacent and associated structures.



**ALASKA STATE LEGISLATURE**  
**SENATOR RANDY PHILLIPS**  
Senate District L

**Senate Labor & Commerce Committee**

Session (Jan-May)  
State Capitol, Rm 103  
Juneau, AK 99801  
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(907) 465-4979 Fax  
Toll Free Anchorage Area  
800-478-4950

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P.O. Box 142  
Eagle River, AK 99577  
(907) 694-4949  
(907) 694-4948 Fax

April 12, 2001

Letter of Intent for HB81  
DENTISTS/DENTAL HYGIENISTS & ASSISTANTS

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It is the intent of the Legislature that the size of fines typically imposed for minor, noncompliance infractions remain unaffected by the enactment of HB81.

It is the intent of the Legislature that the size of fines typically imposed for serious and consequential violations of ethical and professional misconduct be increased.

## Proposed Legislative Changes 2001

Inserted words [Deleted words]

### 1<sup>st</sup> Bill - Dentists and Dental Hygienists (statutes and regulations)

1. (Pg. 5) AS 08.32.110 (a)(2) & (d) Delete the words or prophylactic from both sections to read as follows:
  - (2) apply topical preventive [~~or prophylactic~~] agents;
  - (d) This section does not prohibit a dental assistant from applying topical preventive [~~or prophylactic~~] agents or pit and fissure sealants when those duties have been delegated to the assistant by a dentist licensed under AS 08336.350(a)(2).
  
2. (Pg. 8) AS 08.36.010. Creation and membership of board. Inserting phrases to read as follows:
  - There is created the Board of Dental Examiners consisting of nine members. Six members shall be licensed dentists who are nominated by the Alaska Dental Society and have been engaged in the practice of dentistry in the state for five years immediately preceding appointment, two members shall be dental hygienists licensed under AS 08.32 who are nominated by the Alaska State Dental Hygiene Association and have been engaged in the practice of dental hygiene in the state for five years immediately preceding appointment, and one member shall be a public member.
  
3. (Pg. 8) AS 08.36.030 Election of officers. Inserting the phrase to read as follows:
  - The board shall elect a president who is a licensed dentist and a secretary from among its members, each to serve for a term not to exceed two years.
  
4. (Pg. 11) AS 0836.075(d) Dental radiological equipment Insert the words or board approved inspector to read as follows:
  - (d) ... and kept on file where the equipment is located. The board or board approved inspector shall, upon application by the owner or lessee of the dental radiological equipment, submission of evidence ...
  
5. (Pg. 13) AS 08.36.160(e) Contents of examination. Insert the words or the Central Regional Dental Testing Service, Inc. and delete the words [~~, provided the examination was taken on or after January 1, 1987~~] to read as follows:
  - (e) A passing score on a clinical examination given by the Western Regional Examining Board or the Central Regional Dental Testing Service, Inc. within the five years preceding licensure application

under this chapter constitutes a passing score on a clinical examination required under this chapter[, provided the examination was taken on or after January 1, 1987].

6. (Pg. 14) AS 08.36.234(a)(1)(B) Licensure by credentials. The following changes to read as follows:
  - (a)(1)(B) has passed clinical and written examinations required for licensure in another state, territory, or region of the United States and is [has been] licensed to practice dentistry in a [that] state, territory, or region in which the dentist is licensed must have licensing requirements at least generally equivalent to those ...
  
7. (Pg. 21) AS 08.36.360 Practice of dentistry defined. Add section (8) & (9) to read as follows:
  - (8) evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.
  - (9) serves as a third-party reviewer for any dentally related treatments.

### 2<sup>nd</sup> Bill – Chapter 01. Centralized Licensing.

8. (Pg. 45) AS 08.01.075(a)(8) Disciplinary powers of the board. To read as follows:
  - (8) impose a civil fine not to exceed [\$5,000] \$25,000 per incident.
  - (9) Recover associated costs from a licensee found in violation to include but not limited to expert witnesses, attorney fees, court costs board and department costs.

### 3<sup>rd</sup> Bill - Insurance Add language to the effect:

9. A payment by a third-party payer to a provider in accordance with \*\*\*\* shall be considered final one year after payment was made. After that date, both of the following apply:
  - The amount of the overpayment is not subject to adjustment, except in the case of fraud by the provider.
  - The third-party payer shall not deduct any overpayment made to the provider from any other payment it owes the provider.

Dental Statute Changes

The Board of Dental Examiners would like the legislature to make the following dental statute changes during the consideration of board sunset extension.

- 1) Replace the current definition of the practice of dentistry with the American Dental Association definition.
- 2) Increase the maximum fine for violation of the dental statutes. The board believes the current \$5,000 maximum fine is not sufficient incentive to stop transgressions.
- 3) Delete the term "prophylactic" from AS 08.32.110(d) in order to make it clear that dental assistants cannot perform teeth cleaning. Cleaning has always been an exclusive hygienist function, but the current wording may mislead the public.
- 4) Amend AS 08.36.160(e) so the board may accept the Central Regional Dental Testing Service exam as well as the current Western Regional Examining Board exam.
- 5) Amend AS 08.36.234(a)(1)(B) by changing "has been licensed" to "is licensed." The effect of this change would be to require applicants for licensure by credentials to hold a current license in another state, territory or region of the United States.

Thank you for considering our comments.

Sincerely,



Catherine Reardon, director

From: Dave Eichler <eichler@mosquionet.com>

Sat 11:03 AM

Subject:

To: Senator\_Jerry\_Ward@Legis.state.ak.us

01 \* Sec. 9. AS 08.36 is amended by adding a new section to read:

02                   Sec. 08.36.317. Civil fine authority. Notwithstanding AS  
03                   08.01.075(a), in a  
04                   disciplinary action, the board may impose a civil fine not to  
05                   exceed \$25,000 for each  
06                   violation of this chapter or of a regulation adopted under this  
07                   chapter.

Dear Jerry:

I am requesting your help on this. The above section has been amended to raise that statutory fine for the dental board from \$5000 to \$25000. The argument is that \$5000 is not enough to discourage violations from "rich" dentists and does not cover the costs of investigations.

I object on constitutional grounds. The board is supposed to provide all oversight of investigations but in reality the commissioner and his administrator hire the investigator, who initiates investigations, and basically tells the board to rubber stamp all his actions. If the board objects they are told that the AG's office will not back them up. The AG also can use the board as a tool for his own ends. They can enter my office without a warrant or without cause and shut me or anyone else down. \$25000 is way more than is necessary for rule infractions. If a crime has taken place then that should be prosecuted under criminal code. That is the real job of the AG.

If the board or commissioner testifies, ask them how an investigation is conducted, if the complaint is reviewed by the board and then action is initiated or is the board acting as a rubber stamp for all the commissions activity.

The bill will be heard in labor and commerce on Tue Apr 10 at 1:30

Thanks  
Dave Eichler



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- preventive[1,noun]  Go
- preventive[2,adjective]

Main Entry: <sup>1</sup>pre·ven·tive  
 Pronunciation: - 'ven-tiv  
 Function: *noun*  
 Date: circa 1639  
 : something that prevents; *especially* : something used to prevent disease

Dictio

Thesa

Get to  
"preve  
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## Alaska Division of Legislative Audit

### Audit Digest #08-20002-01

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\* Requires Acrobat Reader 

SUMMARY OF: A Special Report on the Department of Community and Economic Development, Board of Dental Examiners, Sunset Review November 12, 2000.

#### PURPOSE OF THE REPORT

In accordance with the intent of Title 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dental Examiners. Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the oversight process to determine whether the termination date of the board should be extended. Currently, AS 08.03.010(c)(7) requires the board to terminate on June 30, 2001. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its affairs.

#### REPORT CONCLUSIONS

In our opinion, the Board of Dental Examiners is operating in an efficient and effective manner and should continue to regulate dentists and dental hygienists. We believe the board contributes to the safeguarding of the public interest, by ensuring the competence and integrity of those who hold themselves out to the public as dentists and dental hygienists.

The board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve the effectiveness of the board and ensure that dentist and dental hygienists are licensed in the State of Alaska.

Alaska Statute 08.03.010(c)(7) requires the Board of Dental Examiners be terminated on June 30, 2001. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2005.

#### ISSUES NEEDING FURTHER STUDY

Government auditing standards recommend that audit agencies report on issues that are noted during the course of an audit, but due to circumstances are not necessarily addressed with additional audit fieldwork. The standards state the auditor should "refer significant issues needing further audit work" to the appropriate entities, so the issues can be addressed through audit review at some other time.

Investigating and "making a case" against licensed professionals is difficult. Complaints often involve whether a certain procedure or practice was appropriate and consistent with competent care or lawful, ethical practice. Assessing compliance with such care or practice standards often involves having both the Division of Occupational Licensing and the Department of Law consult with other practitioners regarding

professional procedural norms. Such consultation takes time. We recognize the value in proceeding cautiously in order to make the best case possible, our concern is that the public may unduly be put at risk due to delays often involved with such an approach.

In that context, we suggest that further study is needed to determine if investigations are being carried out by the Division of Occupational Licensing with support from the Department of Law, in a timely manner. This issue is not solely related to the Board of Dental Examiners as the Division of Occupational Licensing must prioritize and allocate its resources across all boards and licensing functions. However, we are concerned about the length of time an investigation (including legal support) of a single dentist is taking given the serious nature of the complaints.

A separate review could assess the overall investigative efforts of the Division of Occupational Licensing and the related legal assistance provided by the Department of Law. This assessment will determine if the various boards are receiving the support necessary to enforce professional standards and requirements and ensure adequate public protection.

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\* Requires Acrobat Reader 

November 27, 2000

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 COMMUNITY  
AND ECONOMIC DEVELOPMENT  
BOARD OF DENTAL EXAMINERS  
SUNSET REVIEW

November 12, 2000

Audit Control Number  
08-20002-01

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(7), the Board of Dental Examiners is scheduled to terminate on June 30, 2001. The board would be allowed one year in which to conclude its administrative affairs.

In our opinion, the termination date for Board of Dental Examiners should be extended. The regulation and licensure of dental professionals contributes to the protection of the public's welfare. We recommend the legislature extend the termination date of the Board of Dental Examiners to June 30, 2005.

This sunset review 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 set out on page one of this report.

Pat Davidson, CPA  
Legislative Auditor

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Department of Community and Economic Development .....	13

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the board of Dental Examiners. Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the oversight process to determine whether the termination date of the board should be extended. Currently, AS 08.03.010(c)(7) requires the board to terminate on June 30, 2001. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its affairs.

### Objectives

There are two central, interrelated, objectives of our report. They are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public's interest and determine if the board has exercised general control over licensed dentists.<sup>1</sup>

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

### Scope and Methodology

Another auditor at our direction and supervision conducted a majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

Our audit reviewed the operations and activities of the Board of Dental Examiners for the period of FY 98 through FY 00.

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

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<sup>1</sup>AS 08.36.070(a) states that the board shall:

- (1) Provide for the examination of applicants and issue licenses to those qualified;
- (2) Register licensed dentists and hygienists who are in good standing;
- (3) Affiliate with the American Association of Dental Examiners;
- (4) Hold hearings and order disciplinary sanction of a person who violates this chapter, AS 08.32, or a regulation of the board;
- (5) Adopt regulations ensuring that renewal of registration is contingent upon proof of continued professional competence;
- (6) Enforce the provisions of this chapter and AS 08.32 and adopt or amend the regulations necessary to make the provisions of this chapter and AS 08.32 effective; and
- (7) Require, as a condition of a license or license renewal by the board current certification in cardiopulmonary resuscitation techniques.

1. Applicable statutes and regulations.
2. Compliance with statutes and regulations related to the licensing of dentists and dental hygienists. Our evaluation addressed considerations of license applications, testing of candidates, and continuing education necessary for an individual to maintain their license in good standing.
3. Minutes of meetings of the Board of Dental Examiners.
4. Annual reports issued by the Board of Dental Examiners.
5. Complaints filed with the Department of Community and Economic Development, Division of Occupational Licensing, Office of the Ombudsman, Department of Labor and Workforce Development, Alaska Commission on Human Rights, and Equal Employment Opportunity Commission.
6. Reading and correspondence files maintained with the Department of Community and Economic Development, Division of Occupational Licensing.
7. Interviews with employees of the Department of Community and Economic Development, Division of Occupational Licensing.
8. Other documents deemed pertinent.

## ORGANIZATION AND FUNCTION

The Board of Dental Examiners was established in 1955, through Alaska Statute 08.36.010. The powers of the board include:

1. Examining and issuing licenses to qualified applicants.
2. Hold hearings and order the disciplinary sanction of an individual who violates relevant portions of the state statutes or regulations.
3. Adopting regulations ensuring that renewal of registration is contingent upon proof of continued professional competence by a licensed dentist or licensed dental hygienist.
4. Provide the department with the requirements for proof of continued professional competence.
5. Issuing permits or certificates to licensed dentists and licensed dental hygienists who meet the standards determined by the board for specific procedures that require specific education and training.

Board of Dental Examiners  
As of November 1, 2000

Professional Members

Rena L. Anderson, RDH Hygienist  
James R. Arneson, D.D.S. Dentist  
Mary Ann Cerney Hygienist  
James A. Clark, D.M.D. Dentist  
Raymond L. Lang, D.D.S. Dentist  
David G. Logan, D.D.S. Dentist  
Michael P. Moriarty, DDS Dentist  
1 Dentist position vacant

Public Member

James B. Blasingame Public Member

The board is responsible for safeguarding the public interest by ensuring the competence and integrity of those who hold themselves out to the public as dentists and dental hygienists. The board evaluates the qualifications of candidates, administers examinations, issues certificates and licenses to practice, promulgates rules of professional conduct, and takes disciplinary action.

### Department of Community and Economic Development, Division of Occupational Licensing

The Department of Community and Economic Development, Division of Occupational Licensing provides administrative and investigative assistance to the Board of Dental Examiners. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065, mandates the Department of Community and Economic Development, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees,

permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person engaged or is about to engage in a prohibited professional practice.
2. Bring an action in Superior Court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

## REPORT CONCLUSIONS

In our opinion, the Board of Dental Examiners is operating in an efficient and effective manner and should continue to regulate dentists and dental hygienists. We believe the board contributes to the safeguarding of the public interest, by ensuring the competence and integrity of those who hold themselves out to the public as dentists and dental hygienists.

The board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve the effectiveness of the board and ensure that dentists and dental hygienists are licensed in the State of Alaska.

Alaska Statute 08.03.010(c)(7) requires the Board of Dental Examiners be terminated on June 30, 2001. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2005.

## ANALYSIS OF PUBLIC NEED

The following analysis of the Board of Dental Examiners (board) activities relates to the public need factors defined in the "sunset" review law, 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.

***Determine the extent to which the board, commission, or agency has operated in the public interest.***

The board, through regulation of the licensure of dentists and dental hygienists, has provided the public with qualified professionals in the dental industry. The profession has continuing education requirements that require specific hours of patient contact or patient care related courses. The board requires that all persons licensed by the board display their license in the open for the public to see.

The board licenses applicants in two ways, by examination and by credentials. Licensure by credentials requires the applicant demonstrate their previous work history qualifies them for licensure. Prior audits have noted that licensure by this means has been rather difficult. The board adopted or revised regulations concerning licensure by credentials; governing education requirements; enforced the laws for issuing licenses in a uniform manner; and held meetings and administered examinations in accordance with statutory requirements.

In 1998, legislation was adopted that allows dentists and dental hygienists to be licensed to administer nitrous oxide. Previously, only dentists could administer nitrous oxide to a patient.

The board has been active in providing information to the public, professional and state societies and associations. A member of the board attends every association meeting to act as an ambassador to the association. This allows the board to maintain constant updates on state association issues and concerns as well as providing an efficient means of communicating change in state statutes, regulations and licensing requirements.

Annual reports for fiscal years ended June 30, 1997, 1998, and 1999 were submitted in a timely manner to the Division of Occupational Licensing.

***Determine the extent to which the operations of the board 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.***

In reviewing and evaluating the activities of the board, we consider board activities for the last three complete fiscal years – FY 98, FY 99, and FY 00. During the earlier part of this review period, the Office of the Governor left the public member seat vacant for an extended amount of time. The board met five times between September 1997 and May 1998 with a

vacancy on the board set aside for a non-licensed public member. In late May 1998, a public member was appointed, and the individual has attended 11 of the 12 meetings held since that time.

We believe that it is critical that the public member seat on the board be filled. One of the primary ways the legislature can provide greater assurance that professional licensing boards are acting in the public interest is to place non-licensed citizens on the boards. Accordingly, when this seat is left vacant, or the individual does not regularly attend, this aspect of public protection is diminished.

***Determine the extent to which the board has recommended statutory changes that are generally of benefit to the public interest.***

The board supported legislation that was passed in 1998 that redefined, and expanded to a limited extent, the requirements for licensure by examination and credentials.

The board also supported a bill amending state law, subsequently adopted by the legislature, to allow dentists to continue practice even though they were unable to qualify for the necessary certification in cardio-pulmonary resuscitation (CPR) training. The legislation permitted dentists to continue practice, even without CPR certification, as long as they made sure an individual with the requisite CPR training was on the premises of the dental practice.

***Determine 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 services, economy of service, and availability of services that it has provided.***

The location, date, and time of upcoming board meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News*, the *Fairbanks Daily News-Miner* and the *Juneau Empire*.

The board's meeting agenda sets aside time for the board to take public comment. Minutes from the meetings reflect public participation throughout the meeting. Proposed regulations are often circulated to those affected by the proposed regulations through professional trade journals, public notice advertisement, or direct mail correspondence from the Division of Occupational Licensing.

***Determine the extent to which the board has encouraged public participation in the making of its regulations and decisions.***

Public notices of proposed regulations are published in major newspapers, as previously discussed. Meetings are adequately advertised and time set aside for public testimony.

Major proposed regulation changes were circulated throughout the professional community by either direct response mailing to the affected license holders, or providing the proposed

changes to the state associations for publication in member newsletters. Feedback resulted in changes to the proposed regulations addressing the profession's concerns.

*Determine 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.*

During the last three fiscal years (FY 98 – FY 00) the Division of Occupational Licensing has received or developed internally 49 complaints or investigations related to activities regulated by the Board of Dental Examiners. Of these 49, 8 have involved one licensed dentist. Of the remaining 41 complaints, the division has completed an investigation and resolved the case in 36 instances.

Of these 36, 24 were resolved without formal board action including 20 where the division determined there was no violation of professional or legal requirements. The remaining 4 were closed through the issuance of warning letters or through various other administrative procedures.

For the 12 complaints and related investigative actions brought before it, the board took the following actions:

1. issued two reprimands,
2. fined two licensees,
3. placed two licensees on probation,
4. suspended the licenses of three licensees, and
5. upheld administrative decisions that three applicants were not sufficiently qualified for licensure.

Much of the Division of Occupational Licensing's investigative efforts have involved numerous cases of a single licensed dentist. In the past three fiscal years, eight complaints have been made or developed involving the dentist. Even though two of these complaints have been closed, six complaints are still being investigated by Division of Occupational Licensing. As a result of these investigative activities, 42 patient files have been subpoenaed and are being analyzed by dental practice experts for evidence of inappropriate practice.

Complaints have originated from reports from other licensed dentists, the State's dental society, a pharmacist, and an on-site inspection conducted by the Division of Occupational Licensing. We are concerned about the length of time the State's investigate effort is taking while this dentist is still being allowed to practice – despite the repeated indications of shortcomings in his practice of dentistry.

As discussed in the Issue Needing Further Study section of this report, we suggest that a separate audit be conducted to review the Division of Occupational Licensing investigat

activities for this and other occupational boards – to evaluate the efficacy of the agency’s investigative efforts.

***Determine the extent to which the board regulates entry into an occupation or profession and whether it has presented qualified applicants to serve the public.***

Listed below is a summary of new licenses and permits issued by the board for the period under review.

New License and Permits Issued (Exclusive of Renewals)	FY 98	FY 99	FY 00	Total	Current as of June 30, 2000
Dentist	23	34	31	88	549
Dental Hygienist	17	24	41	82	482
Dental Specialist	4	7	6	17	90
Parenteral Sedation Permit	1	4	2	7	32
General Anesthetic Permit	2	-	1	3	18
Local Anesthetic Permit	16	16	39	71	376

Overall the application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Continuing education is required and adequately monitored by the board, to promote a high level of quality performance and to help ensure the integrity of the profession.

Each applicant is required to satisfy requirements for licensing. Board meeting minutes reflect that the board considers each applicant, interviews those applying by credentials, and verifies the licensing requirements are satisfied prior to issuing a license.

***Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board to its own activities and the area of activity or interest.***

The ombudsman received no complaints regarding the Division of Occupational Licensing. We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

***Determine the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the board to better serve the interest of the public and to comply with the factors enumerated in this subsection.***

The board continues to recognize the need to evaluate the Americans with Disabilities Act (ADA), to determine its impact on the profession. The board will consider whether any statutory or regulatory changes are needed to ensure compliance.

## ISSUES NEEDING FURTHER STUDY

Government auditing standards recommend that audit agencies report on issues that are noted during the course of an audit, but due to circumstances are not necessarily addressed with additional audit fieldwork. The standards state the auditor should "*refer significant issues needing further audit work*" to the appropriate entities, so the issues can be addressed through audit review at some other time.

Investigating and "making a case" against licensed professionals is difficult. Complaints often involve whether a certain procedure or practice was appropriate and consistent with competent care or lawful, ethical practice. Assessing compliance with such care or practice standards often involves having both the Division of Occupational Licensing and the Department of Law consult with other practitioners regarding professional procedural norms. Such consultation takes time. We recognize the value in proceeding cautiously in order to make the best case possible, our concern is that the public may unduly be put at risk due to delays often involved with such an approach.

In that context, we suggest that further study is needed to determine if investigations are being carried out, by the Division of Occupational Licensing with support from the Department of Law, in a timely manner. This issue is not solely related to the Board of Dental Examiners as the Division of Occupational Licensing must prioritize and allocate its resources across all boards and licensing functions. However, we are concerned about the length of time an investigation (including legal support) of a single dentist is taking given the serious nature of the complaints.

A separate review could assess the overall investigative efforts of the Division of Occupational Licensing and the related legal assistance provided by the Department of Law. This assessment will determine if the various boards are receiving the support necessary to enforce professional standards and requirements and ensure adequate public protection.

January 4, 2001

Pat Davidson, Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
PO Box 113300  
Juneau, AK 99811

Dear Ms. Davidson:

Thank you for the opportunity to comment on the Board of Dental Examiners preliminary audit. This response is being submitted on behalf of the Division of Occupational Licensing and the Board of Dental Examiners.

The division and the board are pleased that the auditors found the board is doing a satisfactory job and concur that the board should be extended.

Future Audit of Investigative Activities

The Division of Occupational Licensing and the Board of Dental Examiners ask the Legislative Budget and Audit Committee to reconsider the recommendation for a future audit of investigative activities.

In 1997, the Division of Legislative Audit conducted a comprehensive audit of Division of Occupational Licensing investigative activities (audit control number: 08-4556-97) and made no recommendations for change. In that process, auditors reviewed 141 investigative case files.

An additional audit of our investigative activities would occupy a significant amount of the investigative unit's time, time that could be spent on investigations.

If the Committee feels that an additional audit is warranted, please consider focusing more narrowly on dental investigations rather than on all professions. The audit recommendation appears to be based on concerns about a single ongoing dental investigation. The other five occupational licensing sunset audits conducted this interim did not raise concern about investigations.

### Dental Statute Changes

The Board of Dental Examiners would like the legislature to make the following dental statute changes during the consideration of board sunset extension.

- 1) Replace the current definition of the practice of dentistry with the American Dental Association definition.
- 2) Increase the maximum fine for violation of the dental statutes. The board believes the current \$5,000 maximum fine is not sufficient incentive to stop transgressions.
- 3) Delete the term "prophylactic" from AS 08.32.110(d) in order to make it clear that dental assistants cannot perform teeth cleaning. Cleaning has always been an exclusive hygienist function, but the current wording may mislead the public.
- 4) Amend AS 08.36.160(e) so the board may accept the Central Regional Dental Testing Service exam as well as the current Western Regional Examining Board exam.
- 5) Amend AS 08.36.234(a)(1)(B) by changing "has been licensed" to "is licensed." The effect of this change would be to require applicants for licensure by credentials to hold a current license in another state, territory or region of the United States.

Thank you for considering our comments.

Sincerely,

Catherine Reardon, director



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2 entries found for **prophylactic**.

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prophylactic[1,adjective]

prophylactic[2,noun]

Main Entry: <sup>1</sup>pro·phy·lac·tic

Pronunciation: "prO-f&- 'lak-tik also "prä-

Function: *adjective*

Etymology: Greek *prophylaktikos*, from *prophylassein* to be on guard, from *pro-* before + *phylassein* to guard, from *phylak-*, *phylax* guard

Date: 1574

1 : guarding from or preventing disease

2 : tending to prevent or ward off : **PREVENTIVE**

- *pro·phy·lac·ti·cal·ly* /-ti-k(&-)l/ *adverb*

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# SENATE COMMITTEE REPORT

DATE: 3/29/01

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4-12-01

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 81(FIN)

*EXTENDING BOARD OF DENTAL EXAMINERS*

"An Act extending the termination date of the Board of Dental Examiners; relating to the Board of Dental Examiners and regulation of the practice of dentistry; and relating to dental hygienists and dental assistants."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by L & C Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DCED	3/6/01	\$		2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Bettye Davis</i>	X			
<i>Laura L. Hanson</i>	✓			
CHAIR: <i>Richard J. ...</i>	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

HB 81 - DENTISTS/DENTAL HYGIENISTS & ASSISTANTS

NAME: Catherine Rowdon Subject/Bill No: HB 81  
Co./Dept./Title: Division Director <sup>Occupational</sup> Licensing Phone: 465-2538  
Address: DO 110806 Juleau Ave Zip: 99801

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions