

SB

247

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247</subject><comm>HFIN26</comm></target>

ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON



ALASKA
STATE CAPITOL
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CSSB 247 (L&C) – Extend Board of Pharmacists

Version 26-LS1405/R, February 24, 2010

STAFF: Tim Benintendi, 465-4989

SPONSOR STATEMENT

This bill would extend the termination date of the Board of Pharmacy until June 30, 2018.

According to the legislative audit for this panel, there were no issues discovered adversely affecting the public, but auditors commented that the Administration needs to improve support for this board and make more timely appointments.

The Committee Substitute changed the bill in one way. As drafted, the original had the extension date as 2015, which was different from the recommendation in the audit. In S.L&C, we changed SB 247 to conform to their report.

No opposition has surfaced to this bill or the Committee Substitute.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 247(L&C)
(S) Publish Date: 3/24/10

Identifier (file name): SB247CS(L&C)-CED-CBPL-3-22-10 Dept. Affected: DCCED
Title: Extending Board of Pharmacy RDU: Corp. Bus. & Prof Licensing (117)
Component: Corp. Bus. & Prof Licensing
Sponsor: Senator Olson
Requester: Senate Finance Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required		Information				
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services	0.0	98.1	98.1	98.1	98.1	98.1	98.1
Travel	0.0	10.4	10.4	10.4	10.4	10.4	10.4
Contractual	0.0	21.7	21.7	21.7	21.7	21.7	21.7
Supplies	0.0	0.1	0.1	0.1	0.1	0.1	0.1
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	130.3	130.3	130.3	130.3	130.3	130.3

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other: RSS (1156)	0.0	130.3	130.3	130.3	130.3	130.3	130.3
TOTAL	0.0	130.3	130.3	130.3	130.3	130.3	130.3

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

CSSB 247(L&C) extends the Board of Pharmacy to June 30, 2018. In accordance with AS 08.03.020 funding extends one year following the termination date allowing the Board to conclude its affairs. The FY2011 funding is included in the Operating Budget request and costs shown are an average of direct costs for a biennial licensing period.

Travel expenses represent transportation and per diem for the 7 member board and 2 staff to meet at least 3 times each year in accordance with AS 08.80.060.

The program is required to cover costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Division Operations Manager
Division: Corporations, Business & Professional Licensing
Approved by: Emil Notti, Commissioner
Commerce, Community, and Economic Development

Phone (907) 465-2144
Date/Time 03/22/2010 2:00PM
Date 3/22/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

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Requester: Senate Finance Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	0.0	98.1	98.1	98.1	98.1	98.1	98.1	98.1
Travel	0.0	10.4	10.4	10.4	10.4	10.4	10.4	10.4
Contractual	0.0	21.7	21.7	21.7	21.7	21.7	21.7	21.7
Supplies	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	130.3	130.3	130.3	130.3	130.3	130.3	130.3

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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TOTAL	0.0	130.3	130.3	130.3	130.3	130.3	130.3	130.3

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

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

CSSB 247(L&C) extends the Board of Pharmacy to June 30, 2018. In accordance with AS 08.03.020 funding extends one year following the termination date allowing the Board to conclude its affairs. The FY2011 funding is included in the Operating Budget request and costs shown are an average of direct costs for a biennial licensing period.

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Prepared by: Jennifer Strickler, Division Operations Manager
Division: Corporations, Business & Professional Licensing
Approved by: Emil Notti, Commissioner
Commerce, Community, and Economic Development

Phone (907) 465-2144
Date/Time 03/22/2010 2:00PM
Date 3/22/2010



Division of Legislative Audit

Report Digest #08-20065-10



* Requires Acrobat Reader



SUMMARY OF: A Sunset Review on the Department of Commerce, Community, and Economic Development (DCCED), Board of Pharmacy (BOP), November 12, 2009

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of BOP. The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BOP's termination date should be extended. Currently under AS 08.03.010(c)(15), BOP is scheduled to terminate on June 30, 2010. If the legislature does not extend the board's termination date, BOP will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

The termination date for BOP should be extended until June 30, 2018. The board is safeguarding the public interest by ensuring the competence of individuals who present themselves to the public as pharmacists, pharmacist interns, and pharmacist technicians through licensing and regulatory requirements. The board also has an integral role in the regulation of pharmacies, drug rooms, and wholesale distributors and should continue to regulate those entities.

FINDINGS AND RECOMMENDATIONS

1. BOP should approve collaborative protocols in accordance with regulation.
2. DCCED's professional licensing administrative officer should improve administrative support.
3. BOP and staff within the Office of the Governor should work together to increase the pool of qualified applicants available for board appointments to ensure full representation.



* Requires Acrobat Reader



ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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December 4, 2009

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Pharmacy (BOP) and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT BOARD OF PHARMACY

November 12, 2009

Audit Control Number
08-20065-10

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)(15), BOP is scheduled to terminate on June 30, 2010. If the legislature does not extend the termination date, the board has one year in which to conclude its administrative operations. We recommend that the legislature extend the board's termination date to June 30, 2018.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

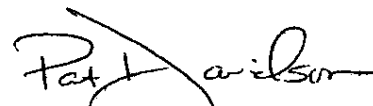

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Pharmacy (BOP) to determine if there is a demonstrated public need for its continued existence, if it has been operating in an efficient and effective manner, and if its activities are duplicated by other private or governmental entities.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BOP's termination date should be extended. Currently under AS 08.03.010(c)(15), the board will terminate on June 30, 2010. If the legislature does not extend the board's termination date, BOP will have one year to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the board's termination date should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed pharmacists, pharmacy technicians, pharmacy interns, pharmacies, drug rooms and wholesale drug distributors.

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

Scope and Methodology

The major areas of our review were board proceedings, licensing, complaint investigations, and duplication of efforts for FY 05 through FY 09. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing of pharmacists, pharmacy technicians, pharmacy interns, pharmacies, drug rooms, and wholesale drug distributors. Statutes and regulations were reviewed to identify board duties and responsibilities and board member composition and qualifications. We also identified additions, deletions, and changes to BOP statutes and regulations
- Files and documentation related to individuals licensed as pharmacists or pharmacy technicians and organizations licensed as pharmacies, drug rooms or wholesale drug distributors. Licensing documentation was reviewed to ensure people/organizations were

licensed in accordance with regulations. We also reviewed documentation to evaluate compliance with continuing education requirements.

- Board meeting minutes, budget documents, and annual reports related to or issued by BOP to gain an understanding of board proceedings and activities.
- Public notice documentation to ascertain whether public notice for BOP meetings and proposed regulation changes were published as required by statute.
- Financial records related to BOP revenues and expenditures to identify BOP's surplus or deficit for each fiscal year.
- Complaints regarding individuals or organizations licensed by BOP to gain an understanding of the nature of complaints and timeliness of the investigative process. Complaints filed with the following organizations were reviewed: the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing; the Human Rights Commission; the Office of the Ombudsman; the Office of Victims' Rights; and the Federal Equal Employment Opportunity Commission.

Additionally, we conducted interviews with staff within the Division of Corporations, Business, and Professional Licensing; BOP board members; and Department of Law attorneys.

ORGANIZATION AND FUNCTION

The Board of Pharmacy (BOP) was established for the purpose of controlling and regulating the practice of pharmacy in Alaska. Alaska Statute 08.80.005 states that effective control and regulation of the practice of pharmacy is necessary to promote, preserve, and protect the public's health, safety, and welfare.

Board Membership

BOP is composed of seven members. State law requires five board positions be licensed pharmacists actively engaged in the practice of pharmacy in the State for a period of three years immediately preceding their appointment. The remaining two positions are to be filled by individuals from the general public. Statute prohibits these public members from having a direct financial interest in the health care industry.

Board Duties

In general, the board regulates admission into the practice of pharmacy, establishes and enforces competency by ensuring compliance with professional standards, and adopts regulations. Enforcement includes assisting in the investigation of potential violations and suspending or revoking licenses when determined necessary.

The board licenses pharmacists, retail facilities, wholesale distributors, drug rooms, institutional facilities, and out-of-state facilities. It also issues permits to individuals to act as pharmacy interns, and pharmacy technicians.

Pharmacist applicants are required to pass a National Association of Boards of Pharmacy licensing examination. Additionally, applicants must pass a jurisprudence examination covering Alaska pharmacy law and the Federal Controlled Substance Act. Applicants who are licensed to practice pharmacy in another state may be awarded an Alaska license to practice, based on their credentials, as long as they have passed the national examination.

Board of Pharmacy Members as of June 30, 2009

Registered Pharmacists

Mary Mundell, Chairman
Richard Holm
Dirk White
Steve Johnson
Christopher Kim

Public Members

Leah Handley
Public Vacancy

The Department of Commerce, Community, and Economic Development's, Division of Corporations, Business, and Professional Licensing

The Division of Corporations, Business, and Professional Licensing staff provide administrative support to BOP. Division staff process applications, maintain licensing files, answer board-related correspondence, and provide general administrative support to the board. Additionally, division staff investigates complaints involving the practice of pharmacy.

REPORT CONCLUSIONS

The termination date for the Board of Pharmacy (BOP) should be extended until June 30, 2018. The board is safeguarding the public interest by ensuring the competence of individuals who present themselves to the public as pharmacists, pharmacist interns, and pharmacist technicians through licensing and regulatory requirements. The board also has an integral role in the regulation of pharmacies, drug rooms,¹ and wholesale distributors and should continue to regulate those entities.

Alaska Statute 08.03.010(c)(15) requires BOP to terminate on June 30, 2010. If the termination date is not extended, AS 08.03.020 gives the board a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2018, the maximum allowed per statute.

¹The term *drug room* refers to an institutional facility that does not maintain a pharmacy but prepares and administers prescription drugs from bulk supplies for patients receiving treatment within the facility.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Pharmacy (BOP) should approve collaborative protocols in accordance with regulation.

Collaborative protocols are cooperative practice agreements in which practitioners authorize pharmacists to administer or dispense drugs in accordance with a written protocol. The agreements specify a time period in which the protocol is in effect, the types of drugs that pharmacists may administer or dispense, and a plan for practitioners to review the decisions made by pharmacists during the period of agreement. Regulations specify the requirements to be included in the cooperative practice agreements.

Of the five collaborative protocols reviewed, one protocol, with a one year period, was approved by BOP for a two year period. Furthermore, three requests for collaborative protocol were approved by the board even though the associated written agreements did not fully comply with regulation.

According to 12 AAC 52.240(b)(3), a written protocol must include the time period during which the protocol will be in effect, not to exceed two years. To facilitate tracking and monitoring of the agreements, the board's policy is to approve protocols for a two year period, regardless of the time period specified in the agreement. This practice may lead to a licensee performing a protocol without practitioner oversight. The practitioner may consider the agreement terminated at the date specified in the agreement, while the pharmacy could continue administering or dispensing drugs for the full two year period.

Furthermore, 12 AAC 52.240(b) specifies that cooperative practice agreements must include specific information including (1) a plan for the physician to review the decisions made by the pharmacist at least once every three months, and (2) a plan for providing to the physician patient records created under the agreement. The Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business, and Professional Licensing's staff do not require written agreements to include these two regulatory requirements as long as the application itself indicates that the requirements are satisfied. Without requiring written plans in accordance with regulation, BOP is not providing adequate review and oversight.

We recommend the board approve collaborative protocols for the time period specified in the agreement, not to exceed two years. We further recommend that BOP review and approve only those collaborative protocols that include a written plan with all of the elements required by regulation.

Recommendation No. 2

The division's professional licensing administrative officer should improve administrative support.

Unqualified staff and a lack of documented procedures led to several deficiencies in division administrative support. Specifically:

- FY 06, FY 07, and FY 08 annual reports contained errors in license statistics.
- Three of 13 board meetings were not published on the State's online public notice system.
- Indirect costs for the division were treated inconsistently between fiscal years.
- Hearing fees were inconsistently treated as indirect versus direct costs between fiscal years.
- Fines of \$5,500, recorded in FY 08, were incorrectly reported as BOP revenue.

The division is responsible for performing various administrative tasks to support board activities. Per AS 08.01.050, duties include collecting and recording fees; maintaining records and files; compiling and maintaining a current register of licensees; arranging for printing and advertising; and providing inspection, enforcement, and investigative services to occupational boards. DCCED is also responsible for annually reviewing fee levels of the occupational boards to determine whether the regulatory costs of the occupation are approximately equal to fee collections related to that occupation. BOP is required by AS 08.01.070 to submit, before the end of the fiscal year, an annual performance report to the department stating the board's accomplishments, activities, and needs. The division's policy is to produce a single annual report incorporating both board and division information requirements.

The deficiencies in administrative support were caused by a key administrative staff member that was unqualified and untrained for the position. This was further exacerbated by a lack of accounting and reporting procedures. Turnover in staff positions caused the oversight in posting public notices.

Inadequate administrative support hampers BOP's ability to fulfill its responsibilities and may provide policymakers with misleading information. We recommend that the division's professional licensing administrative officer improve administrative support.

Recommendation No. 3

BOP and staff within the Office of the Governor should work together to increase the pool of qualified applicants available for board appointments to ensure full representation.

BOP board appointments did not fully comply with state law. One public member board position was vacant for a total of 17 months from FY 07 through FY 08. Furthermore, one of the public board members had a direct financial interest in the health care industry. Alaska Statute 08.80.010 requires the board to consist of five professional members and two public members. Public board members are prohibited from having a direct financial interest in the health care industry.

Public members are intended to provide a consumer perspective. This perspective enhances consumer protection which is the basis of regulation. The extended absence of the public seat may prevent the board from conducting business with the appropriate public input and perspective.

A lack of qualified applicants led to the board vacancy. At the time of this review, staff within the Governor's office were unaware that one of the BOP public board members had a financial interest in the healthcare industry. The member has since resigned and the position is currently vacant.

We recommend BOP and staff within the Office of the Governor work together to increase the pool of qualified applicants available for board appointments to ensure full representation.

A ANALYSIS OF PUBLIC NEED D

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive but to address those areas we were able to cover within the scope of our review.

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

The board has served the public through licensing qualified applicants, drafting new regulations, imposing disciplinary sanctions when necessary, and publishing a newsletter to apprise licensees of new regulatory requirements and pertinent issues.

A prescription drug database program, authorized by legislation in 2008, is intended to serve the public by helping curb the State's controlled substance abuse problem as well as deterring insurance and Medicaid fraud. The program also gives assurance to doctors that they are not prescribing contradicting medications to patients with more than one doctor. The program has been slow to move forward due to a lack of funding. However, a federal grant for approximately \$400,000 was awarded in September 2009, and the Department of Commerce, Community, and Economic Development (DCCED) has started the procurement process.

Persons served by pharmacies operated by certain Native health organizations are not being fully protected by state licensing laws. Currently, there are three such unlicensed pharmacies that consider themselves exempt from state licensing requirements. The Board of Pharmacy (BOP) disagreed with their position and requested legal advice from the Department of Law in 2003. Department of Law attorneys met with the board, but no legal opinion was issued and the pharmacies remain unlicensed.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

As discussed in Recommendation No. 3, BOP board appointments did not fully comply with state law. BOP and staff within the Office of the Governor should work together to increase the pool of qualified applicants available for board appointments to ensure full representation.

Several deficiencies were noted in administrative support to the board by staff within DCCED's Division of Corporations, Business, and Professional Licensing. Inadequate notice of board meetings, incorrect licensing statistics in annual reports, and inaccurate and inconsistent recording of expenditures and revenues are discussed in Recommendation No. 2.

BOP revenues come from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BOP receiving most of its revenues during the renewal year. We reviewed the division's internal records to identify BOP revenues and expenditures. The table below presents the board's revenues and expenditures for FY 04 through FY 09.

Under AS 08.01.065(c), DCCED must "establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." BOP reviews and provides feedback on changes in fees proposed by the division. Licensing fees were increased in FY 04 and again in FY 06. Given that BOP appears to have a growing surplus, the division should consider a reduction of fees for the next license renewal cycle.

State of Alaska Board of Pharmacy Schedule of License Revenues and Board Expenditures FY 04 - FY 09 (Unaudited)						
	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Revenue	\$ 261,300	\$ 98,900	\$ 472,600	\$ 158,400	\$ 573,500	\$ 186,840
Direct Expenses						
Personal Services	73,400	68,400	70,000	78,400	83,900	113,196
Travel	12,800	8,800	9,200	7,900	7,200	13,472
Contractual	34,500	27,800	46,000	8,300	17,600	25,562
Supplies	100	200	-0-	100	-0-	205
Equipment	-0-	-0-	-0-	-0-	-0-	-0-
Total Direct Expenses	120,800	105,200	125,200	94,700	108,700	152,435
Indirect Expenses	104,000	117,500	94,700	148,800	140,500	140,254
Total Expenses	224,800	222,700	219,900	243,500	249,200	292,689
Annual Surplus (Deficit)	36,500	(123,800)	252,700	(85,100)	324,300	(105,849)
Beginning Cumulative Surplus (Deficit)	(65,100)	(28,600)	(152,400)	100,300	15,200	339,500
Ending Cumulative Surplus (Deficit)	\$ (28,600)	\$ (152,400)	\$ 100,300	\$ 15,200	\$ 339,500	\$ 233,651

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

BOP actively supported statutory changes by testifying at legislative committee hearings. One of the most significant statutory changes was the passage of SB 196 which established the controlled substance prescription database. This bill mandates participation by pharmacists in a prescription drug database program and is designed to curb the abuse of controlled substances as well as insurance and Medicaid fraud.

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 service, economy of service, and availability of service that it has provided.

BOP encouraged public participation by setting aside time at each board meeting for public comment. Notices of board meetings were published in the *Anchorage Daily News*. However, from FY 05 through FY 09, three of 13 board meetings were not posted on the State's online public notification system (discussed in Recommendation No. 2). Notices of regulation changes were posted to the online notification system with adequate time for response.

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

The board consistently encouraged public participation when proposing regulation changes. Notice of proposed regulation changes were posted on the State's online public notice system and in the *Anchorage Daily News*. Detailed instructions for submitting public comment were included in the posting. The board reviewed and considered public comment before adopting new regulations. We noted 10 instances of interested persons providing public comment from the period FY 04 through FY 09.

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 victims' rights or the office of the ombudsman have been processed and resolved.

During the period of May 25, 2004 through March 3, 2009, 103 complaints were received and 112 cases were opened related to BOP licensees or applicants.

Status of Complaints		Status of Cases	
Complaint closed and case opened	29	Licensing action	29
Determined not in violation	29	Non-violation or insufficient evidence	36
Sent advisement letter	18	Advisement letter or compliance	28
Compliance	1	Still open	19
Still open	26		112
	<u>103</u>		

In general, complaints and cases were investigated in a reasonable and appropriate manner. Of the three complaints and 15 cases reviewed, one complaint and two cases were not investigated in a timely manner. All three untimely investigations were assigned a low priority by investigative staff. We also noted three cases that were not closed timely even though investigative work was complete.

There were no BOP complaints filed with the Office of Victim's Rights, the Human Rights Commission, or the Office of the Ombudsman. A summary of the complaints and cases by type is presented below:

Complaints by Type		Cases by Type	
License application issues	40	License application issues	39
Unlicensed practice	18	Continuing education	13
Drug diversion	10	Drug diversion	11
Violating regulations	6	Negligence	8
Substance abuse	5	Unlicensed practice	8
Negligence	4	Criminal action	6
Standards of care	3	Licensing action in another state	5
Licensing action in another state	3	Practicing beyond scope	4
Other	14	Violating regulations	3
	<u>103</u>	Violating professional ethics	3
		Other	12
			<u>112</u>

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

BOP is adequately regulating entry into the profession by licensing qualified applicants to serve the public. Continuing education is required and adequately monitored by the board to promote a high level of quality and ensure the integrity of the profession. Board meeting minutes reflect that BOP considers each applicant and verifies licensing requirements are satisfied prior to issuing a license.

During FY 08, BOP began to license remote pharmacies.² The table below summarizes licensing activity for the past six fiscal years.

Type of License	Newly Issued Licenses (Exclusive of Renewals)						Total Licensees at June 30, 2009
	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	
Pharmacist	61	53	58	58	71	89	846
Pharmacist – Temporary	1	0	2	1	0	0	0
Pharmacy Intern	83	68	77	99	122	141	265
Pharmacy Technician	215	243	278	315	324	372	1,240
Pharmacy	14	11	10	8	9	16	131
Drug Room	10	4	3	1	2	2	24
Wholesale Drug Distributor	1	1	8	1	2	3	25
Out of State Pharmacy	86	81	90	69	55	68	274
Remote Pharmacy	0	0	0	0	2	0	2
Total	471	461	526	552	587	691	2,807

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

We found no evidence that the board has not complied with state personnel practices, including affirmative action.

Determine 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.

BOP is responsible for the implementation of a controlled substance database. Little progress has been made on this project since it was enacted in 2008 because DCCED and the board were waiting for federal funding to become available. A federal grant was awarded in September 2009, and DCCED has moved forward with the procurement process. The implementation of the database will take the cooperative efforts of several state entities such as the Department of Administration, Enterprise Technology Services Division and the State Security Office to ensure confidential information is protected and used appropriately in accordance with state law. The public interest will be served by an expeditious and well planned implementation of the database.

BOP has encountered challenges in licensing all facilities that the board believes are subject to state licensing statutes. Specifically, certain pharmacies run by Native health organizations are not complying with state licensing statutes, citing federal exemption laws. Based on a 1992 opinion issued by the Department of Law, the board does not agree that Native health organizations are exempt and has sought clarification of their specific case from the

²A *remote pharmacy* is a facility that provides pharmacy services, including the storage and distribution of prescription drugs, drug regimen review, and patient counseling through a telepharmacy system.

Department of Law in the form of a legal opinion. Although the Department of Law has consulted with BOP, the department has not responded with a formal opinion. Other than requesting status updates from both DCCED and Department of Law, BOP has not taken further action.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

The board has effectively met its purpose and attained its objectives except in the area of approving collaborative protocols (discussed in Recommendation No. 1).

BOP's efficiency and effectiveness would be strengthened if it maintained a full board membership free of conflicts of interest (discussed in Recommendation No. 3). Furthermore, the board's effectiveness was somewhat limited by inadequate administrative support by DCCED staff (discussed in Recommendation No. 2).

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

National pharmacist organizations support BOP rather than duplicate its efforts. Additionally, we did not find evidence of other state or private agencies that duplicate the efforts of the board.

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Office of Governor Sean Parnell
STATE OF ALASKA

December 30, 2009

RECEIVED
DEC 30 2009
LEGISLATIVE AUDIT

Ms. Kristin Dolquist, CPA
Audit Manager
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Dolquist,

This letter is in response to your November 12, 2009 "CONFIDENTIAL" preliminary audit report on the Board of Pharmacy (BOP).

The Office of the Governor concurs with recommendation number three which states, "BOP and staff within the Office of the Governor should work together to increase the pool of qualified applicants available for board appointments to ensure full representation." Currently, the board has one vacant seat reserved for a public member, and we are currently recruiting applicants for this vacancy who have no financial interest in the health care industry. I am committed to assisting the Governor in making a timely appointment to allow the board to function productively.

With respect to the former public member who was found to have a direct financial relationship in the health care industry, I want to provide some information that completes your account of this situation in your November 18, 2009 letter. When the member was appointed, she was not working in the health care industry and was qualified for a public seat. Later, unbeknownst to our office, she was hired at Providence Alaska Medical System into a position that did not relate to the practice of pharmacy. It is our understanding that, after raising the issue with the board, she was told that her continued service on the board was appropriate. After several promotions and changes of job duties, she raised the issue with the board, and was told that she could continue to serve. When the eligibility of that member was questioned through the sunset audit process, it was our office's first notification that the member was an employee of Providence Alaska Medical System, and we contacted her to discuss the matter. Then, after conferring with the Department of Law, we concluded that she was ineligible to remain serving on the board, and after discussing this conclusion with the member, she promptly submitted her resignation.

If you need additional information, please contact me at 907-465-3934.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hooley".

Jason Hooley
Director
Boards and Commissions

cc: Michael Nizich, Chief of Staff, Office of the Governor



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Sean Parnell, Governor
Emil Notti, Commissioner

RECEIVED
1/7/2010

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, Alaska 99811-3300

Re: Preliminary Audit, Board of Pharmacy

Dear Ms. Davidson:

Thank you for the opportunity to comment on your Preliminary Audit findings concerning the Board of Pharmacy.

Recommendation No. 1

The Board of Pharmacy (BOP) should approve collaborative protocols in accordance with regulation.

The department will review its procedures and discuss concerns with the board to clarify the appropriate approval process for collaborative agreements.

Recommendation No. 2

The division's professional licensing administrative officer should improve administrative support.

As we have stated on many occasions, we could not agree more. The division has undergone a number of changes in key management positions and is now optimistic about improvements being made to its internal cost-accounting system and documentation of procedures.

Unfortunately, the current incumbents are also faced with clean up of the accounting inaccuracies created by former employees in recent past years. We are confident that progress is being made to clean up the inaccuracies and to reestablish credibility of the division's cost-accounting system. Procedures for accounting for revenues and expenditures and preparation of financial reports did exist before it went awry. Correcting past errors has been a priority since current and future financial analysis is dependent on using correct data.

Recommendation No. 3

BOP and staff within the Office of the Governor should work together to increase the pool of qualified applicants available for board appointments to ensure full representation.

The department agrees with the recommendation.

The department concurs with the extension of the BOP to June 30, 2018. Thank you for the opportunity to comment on your recommendations.

Sincerely,

Emil Notti
for
Emil Notti
Commissioner

P.O. Box 110800, Juneau, Alaska 99811-0800
Telephone: (907) 465-2500 Fax: (907) 465-5442 Text Telephone: (907) 465-5437
Email: questions@commerce.state.ak.us Website: <http://www.commerce.state.ak.us/>

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To: **Pat Davidson, Legislative Auditor**

From: **Mary D. Mundell, RPh, Chairperson Board of Pharmacy**

Re: **Extension of termination date for BOP to June 30, 2018**

Findings and Recommendations:

- 1) There is no disagreement with the finding that BOP should approve collaborative protocols in accordance with regulations and the BOP will continue to strive diligently to maintain standards with regards to collaborative practice protocols.
- 2) DCCED has been extremely helpful to the BOP in determining budgetary goals and setting fees accordingly. Therefore, it is very important for the administrative officer to improve in anyway any and all administrative support for the BOP. The BOP has been operating in the black due to our ability to anticipate future expenses and pay for all operating expenses. At this point the BOP feels it may be in the financial position to decrease fees for pharmacist, pharmacy interns, and pharmacy technician licenses after the next licensing period. This is due to excellent cooperation between the BOP and DCCED's administrative office.
- 3) Currently, the BOP is short one public member and has had to operate many times without a full compliment of members to the board. It is very difficult for the board to find a competent public member, thus the board must rely heavily on support from the Office of Governor to supply the BOP with qualified applicants so the BOP can maintain full representation.

As determined by the Legislative Auditor, the BOP will be pursuing the completion of the Drug Monitoring Program since the board has received the financial grant from the Federal Government. To date, the BOP has already interviewed all vendors currently available to help implement the program. The BOP is offering to work with a few volunteer pharmacies particularly those pharmacies located in very rural communities to establish the program and determine any flaws and have them worked out before requiring full statewide operation.

The Drug Monitoring Program will be a vital tool to determine waste or fraud and will be a valuable resource that will maintain compliance with Medicare/Medicaid, CMS fraud, waste and abuse requirements.

Also determined by the Legislative Auditor, the BOP wishes to work closely with the Attorney General's office to determine licensure requirements by pharmacies run by Native health organizations.

To date, the BOP works diligently to maintain the highest standards for the profession of pharmacy so the profession delivers the finest in pharmaceutical health care that is necessary to promote, preserve, and protect the health, safety, and welfare of all persons in the State of Alaska.

Therefore, it is respectfully requested of the Alaska State Legislature to extend the termination date for the Board of Pharmacy until June 30, 2018.

Regards,

Mary D. Mundell

Mary D. Mundell RPh
Chairperson
Board of Pharmacy
1751 E. Gardner Way, Suite G
Wasilla, AK. 99654

Date: 12/4/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 248(L&C)
(S) Publish Date: 3/24/10

Identifier (file name): SB248CS(L&C)-CED-CBPL-3-23-10 Dept. Affected: Commerce
Title: Extend Board of Marital & Family Therapy RDU: Corp, Bus, & Prof Licensing (117)
Component: Corp, Bus, & Prof Licensing
Sponsor: Senator Olson
Requester: Senate Labor and Commerce Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	0.0	16.0	16.0	16.0	16.0	16.0	16.0	0.0
Travel	0.0	5.6	5.6	5.6	5.6	5.6	5.6	0.0
Contractual	0.0	1.2	1.2	1.2	1.2	1.2	1.2	0.0
Supplies	0.0	0.4	0.4	0.4	0.4	0.4	0.4	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	23.2	23.2	23.2	23.2	23.2	23.2	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other: RSS (1156)	0.0	23.2	23.2	23.2	23.2	23.2	23.2	0.0
TOTAL	0.0	23.2	23.2	23.2	23.2	23.2	23.2	0.0

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

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

CSSB 248(L&C) extends the Board of Marital and Family Therapy to June 30, 2014. In accordance with AS 08.03.020 funding extends one year following the termination date allowing the Board to conclude its affairs. The FY2011 funding is included in the Operating Budget request and costs shown are an average of direct costs for a biennial licensing period.

Travel expenses represent transportation and per diem for the 5 member board and 1 staff to meet at least 2 times each year in accordance with AS 08.63.030.

The program is required to cover costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Division Operations Manager
Division: Corporations, Business & Professional Licensing
Approved by: Emil Notti, Commissioner
Commerce, Community, and Economic Development

Phone (907) 465-2144
Date/Time 03/23/2010 11:30AM
Date 3/23/2010