

ALASKA LEGISLATURE COMMITTEE FILES

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SB 457 - SB 466

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PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Physical Therapy Board to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the State Physical Therapy Board should be reestablished. The law now specifies that the Board will terminate June 30, 1986, and have one year from that date to conclude its affairs.

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

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

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ORGANIZATION AND FUNCTION

The State Physical Therapy Board was established by the 1974 Legislature. This regulatory board consists of five persons; three physical therapists, one medical doctor, and one public member appointed by the Governor. Board members serve staggered terms of four years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help to the Board.

The Board sets the minimum standards to practice in Alaska by:

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

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REPORT CONCLUSION

Policy Issues

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

Report Conclusion

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

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

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FINDING AND RECOMMENDATION

Recommendation No. 1

The Board of Physical Therapy should support the amendment or repeal of statutes that regulate supervision of physical therapists by other medical professionals.

The current statutes that regulate the supervision of physical therapists unduly restrict the public's access to physical therapy services. Alaska Statutes 08.84.120(8) and 08.84.160 allow the practice of physical therapy only under the supervision of licensed medical doctors, osteopaths, dentists, and podiatrists.

The Board should consider supporting an amendment to the current statutes that would allow physical therapists to practice under the direction and supervision of other health care professionals, such as chiropractors. In an April 1984 letter to the president of the Alaska Chiropractic Society, the Department of Law stated that they felt the exclusion of licensed chiropractors from the professionals listed in AS 08.84.120(8) and AS 08.84.160 was "... legally questionable on both antitrust and constitutional grounds." Additionally, exclusions written into the current law could result in increased health care costs to patients of chiropractors requiring physical therapy.

Rather than proposing amending the current statutes to allow greater public access to physical therapy services, the Board should also consider if the public may be better served by repeal. Repeal of the statutes would allow physical therapists to practice more autonomously, therefore greatly increasing the public's access to their services, most likely at a reduced cost. Nationally, the trend has been to ease restrictions of, and increase the access to, physical therapy services. Seven states allow therapists to practice independently, while 27 states allow physical therapy evaluation without referral from other health care professionals.

If the current statutes are repealed or amended as suggested, the public will have more access to physical therapy services at a reduced cost. We believe public protection will not be diminished by improving the availability of physical therapy services and the legal questionability of the statutes would be eliminated. In order to discharge its mandate to recommend statutory changes which are generally of benefit to the public interest, the Board should consider these options; then pursue and support appropriate modifications to their statutes.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

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

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board has established regulations governing its duties and licensure requirements.
 - B. The Board has enforced the laws for issuing licenses in a uniform and consistent manner.
 - C. The Board has held meetings and administered examinations in accordance with its statutory requirements.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The Board's budget was reduced from \$5,200 in FY 84 to \$1,700 in FY 85. This resulted in fewer FY 85 board meetings (see Appendix C).
 - B. The Board receives administrative services support from the Division of Occupational Licensing.
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. Statutory changes were made to allow qualified foreign-trained physical therapists to practice in Alaska.
- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
 - A. The Board publicizes its meetings through public notices placed in Anchorage, Fairbanks, and Juneau newspapers. In order to facilitate public attendance, past meetings have been held at each of these locations.

- B. The Board has sent a "public notice" poster describing the Board's purpose to physical therapy departments statewide.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Board announces proposed regulation changes or additions in newspapers according to the Administrative Procedures Act.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. The Office of the Ombudsman and the Attorney General's Office has no outstanding consumer complaints regarding the State Physical Therapy Board.
- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.
- A. We found no instances where the Board had licensed unqualified practitioners.
- B. There are 169 physical therapists and 11 physical therapist assistants licensed in Alaska.
- VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.
- A. No complaints have been filed with the Office of Equal Employment Opportunity regarding the State Physical Therapy Board.
- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Finding and Recommendation.

APPENDIXES

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APPENDIX A

STATE PHYSICAL THERAPY BOARD
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1985
(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	\$8,129
Expenditures (Note 3)	<u>3,417</u>
Excess of Revenues over Expenditures	<u>\$4,712</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Examination Fee	\$ 50	With application form
Reexamination Fee	50	At least 40 days prior to the examination
Licensure by Credential Fee	50	With application form
Renewal Fee	200	Quadrennially
Temporary Permit Fee	20	With application form
Initial Application Fee	50	With application form
Late Fee Fine	10	With late payment
Bad Check Charge	10	With valid payment

Note 1

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

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average for the revenues collected in FY 82 through FY 85 in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures consist of direct costs resulting from Board activities. These include miscellaneous contractual, travel and per diem costs incurred by Board members and the Board's licensing examiner. This amount does not include the indirect administrative expenditures of the Division of Occupational Licensing such as employee salaries nor the expenditures made by other departments such as the Department of Law, which assist the boards and the Division.

APPENDIX B

STATE PHYSICAL THERAPY BOARD
EXAMINATION STATISTICS

Number of Examinations Given in Fiscal Years 1983-1985

<u>Fiscal Year</u>	<u>Passes</u>	<u>Fails</u>	<u>Total</u>
1983	5	1	6
1984	3	0	3
1985	2	0	2

APPENDIX C

STATE PHYSICAL THERAPY BOARD
ADMINISTRATIVE STATISTICS
September 23, 1985

Licensed Physical Therapists	169
Licensed Physical Therapy Assistants	11
<u>Board Meetings in Fiscal Years 1983-1985</u>	
1983	3
1984	3
1985	2

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

December 23, 1985

RECEIVED
DEC 24 1985

LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your preliminary audit report for the State Physical Therapy Board.

We concur with the report that the State Physical Therapy Board is necessary to protect the public's health, safety and welfare, and submit that the board has operated in the best interest of the public. We, therefore, support the reestablishment of the board.

Thank you once again for the opportunity to comment on the preliminary report.

Sincerely,


Loren H. Lounsbury
Commissioner

LHL/mst3049m
120985a

February 8, 1986

Hal W. Egbert, L.P.T.
Chairman, Alaska Practice Without
Referral Task Force

Bettye M. Fahrenkamp, Senator
Chairman, Senate HESS Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

*Danny Check
this out.
+ review audit
while you're at it!*

Dear Senator Fahrenkamp,

I am writing to you in regard to Alaska physical therapy, and the need to revise our Alaska Physical Therapy practice act to repeal statutes that regulate supervision of physical therapists by other medical professionals.

You may be familiar with the recent performance report submitted by Gerald L. Wilkerson, CPA, who is a legislative auditor working for the Legislative Audit Division. This report was done to determine whether or not our Alaska Physical Therapy Board should continue and how to make it work better. In addition to recommending to re-establish the Physical Therapy Board an item of weakness and/or conflict was discovered. The following is part of the performance audit report: (Appendix A)

"...In an April 1984 letter to the president of the Alaska Chiropractic Society, the Department of Law stated that they felt the exclusion of licensed chiropractors from the professionals listed in AS 08.84.120(8) and AS 08.84.160 was "...legally questionable on both antitrust and constitutional grounds." Additionally, exclusions written into the current law could result in increased health care costs to patients of chiropractors requiring physical therapy.

Rather than proposing amending the current statutes to allow greater public access to physical therapy services, the Board should also consider if the public may be better served by repeal. Repeal of the statutes would allow physical therapists to practice more autonomously, therefore greatly increasing the public's access to their services, most likely at a reduced cost. Nationally, the trend has been to ease restrictions of, and increase the access to, physical therapy services. Seven states allow physical therapists to practice independently, while 27 states allow physical therapy evaluation without referral from other health care professionals.

If the current statutes are repealed or amended as suggested, the public will have more access to physical therapy services at a reduced cost. We believe public protection will not be

diminished by improving the availability of physical therapy services and the legal questionability of the statutes would be eliminated. In order to discharge its mandate to recommend statutory changes which are generally of benefit to the public interest, the Board should consider these options; then pursue and support appropriate modifications to their statutes."

Having spoken to the three physical therapists on the Board today, I can report to you that Meryl Young from Fairbanks, Gail Dudley from Anchorage, and Susan Thompson from Soldotna all support the repeal of statutes that regulate supervision of physical therapists by other medical professionals.

As you know, the Alaska Physical Therapy Association has voted that we need to pursue gaining autonomous practice abilities. Reasons that support this desire are listed in Appendix B. We agree strongly with the Legislative Audit report and intend to ask for a change of our statutes on 2/13/86 in a hearing held by the Alaska House HESS committee at 4:30PM.

We have polled all 180 Alaska licensed physical therapists and as of this date have received 71 responses to the question: "Do you support Practice Without Referral for therapists in Alaska?" Sixty-two physical therapists are for the proposed statute change. Eight therapists are against; one therapist is neutral. Nine physical therapists responded from Fairbanks with eight being for and one was neutral. At present 88% of the responses are supporting this proposed practice act change.

There are now 9 states that allow practice without referral and ⁽²⁸⁾ 29 other states that permit evaluation without referral. These states are listed in Appendix C. In all of these states, there has been no negative situations reported as a result of the statute changes in their states. A letter from our major malpractice underwriter also supports this "no problem" result of permitting more autonomous practice (see Appendix D).

As Chairman of an eight therapist state-wide "Practice Without Referral" Task Force, I have met with Dr. Dave McGuire, President of the Alaska AMA Society and Dr. Myron Schweigert, President of the Alaska Chiropractic Society and discussed this issue and asked for feedback from their Societies. Dr. McGuire was neutral and thought there would be some opposition from general practitioners

and a few orthopods. He wished us good luck in our endeavor. He did not encourage further discussions with his officers. Dr. Schweigert and his executive officers were pleased to see they would not be excluded from referring patients to physical therapists but withheld outright endorsement pending final language of the bill.

Senator Fahrenkamp, I know you were initially receptive to permitting physical therapists to treat patients without a physician's referral. This change will satisfy the recommendation made by the Legislative Audit Performance report. It will be good for the State of Alaska. It will allow more timely care and remove major problems in delivering care to school children needing physical therapy. Eight therapists commenting on the bottom of their poll form were very strongly recommending this change because of their experiences working in the school districts.

Even though there have been no consumer problems or complaints in states with more autonomous practice and the fact that the Alaska Legislative Audit foresees no problems from this statute change we would still recommend to the physical therapy Board to add more regulation changes(see Appendix E).

We hope that you will support this proposal and can meet with you or furnish you with additional information at your request. Meryl Young has offered to discuss this issue with you at your request.

Sincerely yours,

Hal W. Egbert, LPT

Hal W. Egbert, Chairman

Alaska Physical Therapy Practice Without
Referral

S.R. Box 1483

Eagle River, Ak. 99577

Home phone 694-4512

Work phone 265-9249

Fairbanks Chiropractic Clinic
728 GAFFNEY ROAD
FAIRBANKS, ALASKA 99701

Handwritten signature

DR. CHARLES A. RUBLEE
CHIROPRACTIC PHYSICIAN

called 4/10/86

10 April 1986

Ms. Bettye Fahrenkamp
Health, Education and Social
Services Committee
Pouch 'V'
Juneau, Alaska 99811

Dear Honorable Fahrenkamp:

I am writing you in reference to Senate Bill 457, which deals with the physical therapists in the State of Alaska. It is my understanding that this bill provides for physical therapists to be able to treat patients in the State of Alaska without being under the supervision of a Medical Doctor. I realize that in seven or eight other states they do have this particular privilege, but it would be my feeling that if enacted this would be detrimental to the citizens of our State.

I think one thing in particular must be considered before a physical therapist is allowed to become a primary health provider and that is the educational requirements for physical therapists. I think physical therapists in this State and Nationally are looked upon as para-professionals and are not educated in the manner in which is conducive to their making decisions relating to the patient's overall health. I think they are what the name implies, "physical therapists". I understand after talking to one of the people who represent the medical society in Fairbanks, that there is a possibility these 'physical therapists' will not be allowed to get third party reimbursement, unless they have the approval of a Medical Doctor on the case, which I think is fine. That would seem to me like a mechanism to dissuade them from treating patients on their own in third party cases.

From my own perspective, as being a Chiropractor in this State for nearly 10 years, I know there are some licensed physical therapists currently trying to manipulate patients, even though manipulation in most cases is not even a required course in their particular school, which most of the physical therapy schools are two years in duration. Most of the physical therapists are learning how to manipulate the spine during weekend seminars, and I certainly do not think it is in the public's best interest to let a person with minimal education in manipulation use those techniques on patients - do you? As I understand it, there is also a recommendation to the Senate that if a physical therapist is found to have treated a patient when he should have referred, then that physical therapist is apt to get his license revoked. I would also like to make a strong recommendation that physical therapists not be allowed to manipulate the spine in any way, unless they have been through four years of Chiropractic College. I think this would be in the best interest of the patients, the insurance industry and the public-at-large. If there were limitations put on the physical therapists, they should also include a definite limitation on any type of dispensing of drugs, as I feel that physical therapists have a very minimal background in that area as well.

Ms. Bettye Fahrenkamp
10 April 1986
Page 2

I would also encourage the Bill to be changed in Section 08.84.160 "For practice of licensed physical therapist" be amended to include them being able to get a prescription from Chiropractors as well as "Medicine, Osteopathy, Dentistry or Podiatry. I understand they have fought this in the past tooth and nail, because of not wanting to jeopardize their economic status with the Medical Doctors, but I assure you that times are changing and this would have little or no effect on that. I would also like for something to be put into the Bill that would enable Chiropractors, who have felt that physical therapists have manipulated patients, be able to put charges against that physical therapist to have his/her license revoked.

I realize that some of these suggestions would require major changes of this Bill, but I sincerely hope you will consider these changes.

Thank you for your time and consideration.

Sincerely,



C. A. Rublee, D. C.

CAR/jmr

Appendix D

MAGINNIS AND ASSOCIATES

DONALD F. LANG
PRESIDENT

PROFESSIONAL INSURANCE ADMINISTRATORS

March 14, 1985

Mr. Harvey Shapira
Rancho Physical Therapists
820 Rancho Lane
Suite 860
Las Vegas, Nevada 89106

Dear Mr. Shapira:

Our firm as a major insurer in the physical therapy area has been monitoring claims in those jurisdictions where practice without referral is allowed. As of this writing, we have no evidence that practice without referral has had a negative impact on professional liability claims handled by our office. We have not seen any significant increases in claims in such situations.

A number of states have allowed practice without referral for some time. It would be normal from an underwriter's approach to expect that when the therapist is practicing independent of the physician, claim experience should be less favorable than that where a physician is involved. As this is not the case at the present time, I can only suggest to you that the professional therapist utilizes every viable tool available to him to provide his patient with the best care possible. I would suggest that in those areas where practice without referral has been allowed, the truth of the matter is that the professional therapist counsels with the physician should there be any question whatever as to what might be proper in the handling of the patient. The less professional therapist is going to be more subject to losses with or without the restriction of requiring physician referral.

Serving our clients professionally for over 30 years

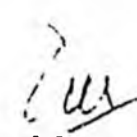
Dear Mr. Shapria:

March 14, 1985

We will continue to monitor our therapy program and should we notice any significant change, you may be assured that we will be in contact with your national office in Alexandria.

I hope this communication will be of help to you.

Sincerely,


Donald F. Lang

DFL/cc

CC: Mr. Skip Calvert ✓
Associate Executive Director -
Administration
and
Mr. Robert A. Teckemeyer
Deputy Executive Director
AMERICAN PHYSICAL THERAPY ASSOCIATION

Appendix E

The Alaska Chapter of the American Physical Therapy Association, Inc., (APTA) is a regional chapter of the voluntary, non-profit national organization for physical therapists. One of our main purposes is to foster the development and improvement of physical therapy service and physical therapy education through the coordinated action of physical therapists, allied professional groups, citizens, agencies, and schools, to the end that the physical therapy needs of the people will be met. One important function of the Chapter is to develop, oversee, and maintain those high standards that a therapist must attain, to serve the public. Our objective is to promote interest in and understanding of physical therapy in Alaska and, towards this end, to comment upon and propose legislation which affects the practice of physical therapy.

The Alaska Chapter of the American Physical Therapy Association, Inc., with unanimous approval of the Executive Committee, wishes physical therapists to practice independently; that is, without physician referral as is now required.

The proposed amendments are presented after a careful review of the needs of both the public sector and the physical therapy profession. We feel that Alaskan physical therapists would be able to provide additional and better service to the public, and still maintain our current high standards of service.

We believe that adoption of these changes will result in professional growth for physical therapists in Alaska and corresponding increase in quality and availability of services to Alaskans. Your careful consideration of our proposal, and your support for its enactment into law, would be appreciated. If we may answer any questions, or provide you with any further information, please do not hesitate to contact Hal Egbert (_____ home or 279-6661 work). Thank you for your attention.

Patricia McAdoo, LPT
President, Alaska Chapter
American Physical Therapy Association

The American Physical Therapy Association, which represents over 35,000 physical therapists, has declared after a significant period of study and deliberation that it is ethical for physical therapists to practice without a physician's referral in a jurisdiction in which it is legal to do so. Elimination of the requirement of referral allows individuals who might not otherwise be able to afford a physician's fee to be treated directly by a qualified physical therapist. Thus, we believe that the amendments we propose will result in decreased health care costs to the public, with no decrease in the quality of care. Research performed by the United States Army and the United States Public Health Service, both of which already utilize therapists in this independent capacity, has demonstrated the effectiveness and cost-efficient nature of using physical therapists as initial health care providers.

Today's physical therapists are well qualified, by both education and clinical training, to evaluate a patient's condition, assess his/her physical therapy needs and, if appropriate, safely and effectively treat the patient. The physical therapist is also well qualified to recognize when a patient demonstrates conditions, signs, and symptoms that should be evaluated by another health care professional before physical therapy is instituted, and knows when to refer patients to other professionals for consultation.

Different types of treatment possible for patient care are rapidly expanding due to advances in all aspects of medicine. Physical therapy meets this need by emphasizing recognition of signs and symptoms of medical problems. The physical therapist assesses a problem and then makes a decision as to whether or not treatment will be beneficial based on this training. It is important to realize that with this knowledge the physical therapist determines which patients can benefit from physical therapy treatment and which should see another medical specialist.

Six states (California, Arizona, Nebraska, Maryland, Massachusetts, West Virginia) and the United States Army already permit independent practice. Twenty-one other states allow initial evaluation without referral. In reviewing the bills of the six states, it was felt that Arizona's statute most closely meets the needs of Alaska, and it has been used as the model in our proposed legislation.

To our knowledge, there has been no problem in those states where similar legislation has been enacted. As it is now, referring practitioners often rely very heavily upon the physical therapist's evaluation and judgement in determining the most appropriate treatment for the patient. We do not desire to exclude physician contact or physician referrals, but we feel that physical therapists, as professionals, should be able to and are fully qualified to function independently as well.

In order to strengthen our commitment to safe, high quality care, we feel that it is appropriate to add into our Practice Act the additions proposed as Section 03.24.129 (11) and (12). This section offers additional protection to the public, and is an appropriate means to regulate the profession to ensure a high standard of care is maintained.

PHYSICAL THERAPIST EDUCATION/LICENSURE:

The basic education of a physical therapist includes eight semester hours of gross human anatomy with total human cadaver dissection, five semester hours of systems physiology, three semester hours of neuroscience which includes neuro-anatomy with human brain dissection, four semester hours of patho-physiology, and three semester hours of functional anatomy which includes pathokinesiology. In addition to these basic science courses, the student receives extensive education in the clinical sciences. The professional program is 26 months in length which includes six months of rotating internships in facilities which offer orthopedic, neurological and long term care physical therapy. Prior to admittance to the professional program a student must complete 67 semester hours of pre-requisite college work which includes chemistry, physics, microbiology, college algebra and trigonometry, psychology, humanities, social sciences and the fine arts. The student graduates from a physical therapy education program with approximately 163 semester hours. A comprehensive professional examination must be taken and passed before a physical therapist can be licensed to practice.

PROPOSED PRACTICE ACT CHANGES:

Sec. 08.84.120

Refusal, revocation and suspension of license.
The board may refuse to license an applicant,
may refuse to renew the license of a person,
and may suspend or revoke the license of a person
who

- (1) same
- (2) same
- (3) same
- (4) same
- (5) same
- (6) same
- (7) same
- (8) has treated or attempted to treat ailments of human beings otherwise than by physical therapy, or has attempted to practice independent of the prescription and direction of a person licensed to practice medicine, osteopathy, dentistry, or podiatry.

Delete

2/13/86

(ADD)

to Board
in reqs.
to Board
in reqs

(ADD)

- (9) same
- (10) same
- (11) FAILS TO REFER A PATIENT TO ANOTHER QUALIFIED PROFESSIONAL A PATIENT WHOSE CONDITION IS BEYOND THE TRAINING OR ABILITY OF THE PHYSICAL THERAPIST.
- (12) DEMONSTRATES ANY CONDUCT OR PRACTICE CONTRARY TO RECOGNIZED STANDARDS OF ETHICS OF THE PHYSICAL THERAPY PROFESSION OR ANY CONDUCT OR PRACTICE WHICH DOES OR MIGHT CONSTITUTE A DANGER TO THE HEALTH, WELFARE, OR SAFETY OF THE PATIENT OR THE PUBLIC, OR ANY CONDUCT, PRACTICE OR CONDITION WHICH DOES OR MIGHT IMPAIR THE ABILITY SAFELY AND SKILLFULLY TO PRACTICE PHYSICAL THERAPY.

Sec. 08.84.160

Delete

2/13/86

Practice of licensed physical therapist.
A person licensed under this chapter may not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person licensed to practice medicine, dentistry, osteopathy, or podiatry. This chapter does not authorize any person to practice medicine, dentistry, osteopathy, chiropractic, or other method of healing.

(ADD)

To board
in reqs

THERAPISTS TREATING PATIENTS WITHOUT A PRESCRIPTION OF A PERSON LICENSED TO PRACTICE MEDICINE, DENTISTRY, OSTEOPATHY, OR PODIATRY MUST COMPLY WITH THE REGULATIONS SET BY THE STATE PHYSICAL THERAPY BOARD. (THERAPISTS INTENDING TO TREAT PATIENTS WITHOUT PRACTITIONERS REFERRAL MUST SEND A LETTER OF INTENTION ALONG WITH THEIR RESUME TO THE BOARD)

Sec. 08.84.160

(ADD)

THERAPISTS ARE ALLOWED TO SCREEN ANY PERSON OR SUPERVISE PREVENTATIVE HEALTH PROGRAMS WITHOUT PRACTITIONER REFERRAL.

Sec. 08.84.185

ADD to board
on reg.

(ADD)

Limits or conditions on license; discipline.

(a) In addition to action under AS 08.84.180, upon finding that by reason of demonstrated problems of confidence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by speciality, procedure or facility, require additional education or training, or revoke or suspend a registration. FAILING TO REFER TO ANOTHER QUALIFIED PROFESSIONAL A PATIENT WHOSE CONDITION IS BEYOND THE TRAINING OR ABILITY OF THE PHYSICAL THERAPIST WILL REQUIRE THE BOARD TO SUSPEND THAT THERAPIST'S PRIVILEGE TO TREAT PATIENTS WITHOUT REFERRAL.

Introduced: 2/12/86
Referred: Labor & Commerce,
Health, Education & Social Services
and Finance

1 IN THE HOUSE

BY MARROU

2 HOUSE BILL NO. 564

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the State Physical Therapy Board;
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.03.010(c)(8) is amended to read:

10 (8) State Physical Therapy Board (AS 08.84.010) -- June 30,
11 1987 [1986].

12 * Sec. 2. AS 08.84.120 is amended to read:

13 Sec. 08.84.120. REFUSAL, REVOCATION, AND SUSPENSION OF LICENSE.
14 The board may refuse to license an applicant, may refuse to renew the
15 license of a person, and may suspend or revoke the license of a person
16 who

17 (1) uses drugs or intoxicating liquors in any manner which
18 affects the person's practice of physical therapy;

19 (2) [REPEALED

20 (3)] has been convicted of violating a state or federal
21 narcotic law and has not been rehabilitated to the satisfaction of the
22 board;

23 (3) [(4)] has been convicted of a felony and has not been
24 rehabilitated to the satisfaction of the board;

25 (4) [(5)] is guilty, in the judgment of the board, of gross
26 negligence in the person's practice as a physical therapist;

27 (5) [(6)] has obtained or attempted to obtain a license by
28 fraud or material misrepresentation;

29 (6) [(7)] has been declared mentally ill by a court and has

1 not thereafter been lawfully declared sane;

2 (7) [(8)] has treated or attempted to treat ailments of
3 human beings otherwise than by physical therapy [, OR HAS ATTEMPTED TO
4 PRACTICE INDEPENDENT OF THE PRESCRIPTION AND DIRECTION OF A PERSON
5 LICENSED TO PRACTICE MEDICINE, OSTEOPATHY, DENTISTRY OR PODIATRY];

6 (8) [(9)] as a physical therapy assistant, has attempted to
7 practice physical therapy which has not been initiated, supervised,
8 and terminated by a licensed physical therapist;

9 (9) [(10)] has been held liable for malpractice in a civil
10 action.

11 * Sec. 3. AS 08.84.160 is repealed.

12 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).

Alaska State Legislature

SB 457

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



P. O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3634
(907) 465-3782

Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, February 20, 1986

DATE: February 18, 1986

On Thursday, February 20, from 1:30-3:30 pm in the Beltz Room the Senate Committee on Health, Education and Social Services will conduct ~~sub~~ ~~it~~ ~~reviews~~ on the ~~Physical Therapy Board~~ and the ~~Pharmacy Board~~.

AS 44.66.050 requires that before the termination or continuation of a board or commission, the legislative committee of reference hold a public hearing on the board. Not later than the 60th day of session, the committee must submit a report to the presiding officer with its recommendation for termination or continuation of the board, and may introduce a bill providing for continuation. AS 44.66.010 provides that upon termination each board continues in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. The Board of Pharmacy is currently in its "wind-up" period.

The State ~~Physical Therapy Board~~ was established in 1974 and consists of five members. The Board ~~regulates and licenses~~ ~~qualified physical therapists and investigates complaints to ensure~~ ~~that those licensed practice in a competent manner.~~ The ~~Legislative~~ ~~Audit report recommends that the board be reestablished but also~~ ~~recommends the repeal of statutes that require supervision of~~ ~~physical therapists by other medical professionals.~~ Current statute allows the practice of physical therapy only under the supervision of licensed medical doctors, osteopaths, dentists, and podiatrists.

COMMITTEE REPORT
SENATE

FURTHER:

2/26/86

Date 3-18-86

Mr. President

The Committee on HESS considered SB 457
relating to the State Physical Therapy Board; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 457 (HESS)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Joe Josephson

Edna McVies

Patricia Schubert *No Pass*

Chairman

Chairman recommendation _____

PHYSICAL THERAPIST EDUCATION/LICENSURE:

The basic education of a physical therapist includes eight semester hours of gross human anatomy with total human cadaver dissection, five semester hours of systems physiology, three semester hours of neuroscience which includes neuro-anatomy with human brain dissection, four semester hours of patho-physiology, and three semester hours of functional anatomy which includes pathokinesiology. In addition to these basic science courses, the student receives extensive education in the clinical sciences. The professional program is 26 months in length which includes six months of rotating internships in facilities which offer orthopedic, neurological and long term care physical therapy. Prior to admittance to the professional program a student must complete 67 semester hours of pre-requisite college work which includes chemistry, physics, microbiology, college algebra and trigonometry, psychology, humanities, social sciences and the fine arts. The student graduates from a physical therapy education program with approximately 163 semester hours. A comprehensive professional examination must be taken and passed before a physical therapist can be licensed to practice.

Roger Lang 364-3613

BACKGROUND AND JUSTIFICATION:

The American Physical Therapy Association, which represents over 35,000 physical therapists, has declared after a significant period of study and deliberation that it is ethical for physical therapists to practice without a physician's referral in a jurisdiction in which it is legal to do so. Elimination of the requirement of referral allows individuals who might not otherwise be able to afford a physician's fee to be treated directly by a qualified physical therapist. Thus, we believe that the amendments we propose will result in decreased health care costs to the public, with no decrease in the quality of care. Research performed by the United States Army and the United States Public Health Service, both of which already utilize therapists in this independent capacity, has demonstrated the effectiveness and cost-efficient nature of using physical therapists as initial health care providers.

Today's physical therapists are well qualified, by both education and clinical training, to evaluate a patient's condition, assess his/her physical therapy needs and, if appropriate, safely and effectively treat the patient. The physical therapist is also well qualified to recognize when a patient demonstrates conditions, signs, and symptoms that should be evaluated by another health care professional before physical therapy is instituted, and knows when to refer patients to other professionals for consultation.

Different types of treatment possible for patient care are rapidly expanding due to advances in all aspects of medicine. Physical therapy meets this need by emphasizing recognition of signs and symptoms of medical problems. The physical therapist assesses a problem and then makes a decision as to whether or not treatment will be beneficial based on this training. It is important to realize that with this knowledge the physical therapist determines which patients can benefit from physical therapy treatment and which should see another medical specialist.

Six states (California, Arizona, Nebraska, Maryland, Massachusetts, West Virginia) and the United States Army already permit independent practice. Twenty-one other states allow initial evaluation without referral. In reviewing the bills of the six states, it was felt that Arizona's statute most closely meets the needs of Alaska, and it has been used as the model in our proposed legislation.

To our knowledge, there has been no problem in those states where similar legislation has been enacted. As it is now, referring practitioners often rely very heavily upon the physical therapist's evaluation and judgement in determining the most appropriate treatment for the patient. We do not desire to exclude physician contact or physician referrals, but we feel that physical therapists, as professionals, should be able to and are fully qualified to function independently as well.

In order to strengthen our commitment to safe, high quality care, we feel that it is appropriate to add into our Practice Act the additions proposed as Section 08.84.120 (11) and (12). This section offers additional protection to the public, and is an appropriate means to regulate the profession to ensure a high standard of care is maintained.

The Alaska Chapter of the American Physical Therapy Association, Inc., (APTA) is a regional chapter of the voluntary, non-profit national organization for physical therapists. One of our main purposes is to foster the development and improvement of physical therapy service and physical therapy education through the coordinated action of physical therapists, allied professional groups, citizens, agencies, and schools to the end that the physical therapy needs of the people will be met. One important function of the Chapter is to develop, oversee, and maintain those high standards that a therapist must attain, to serve the public. Our objective is to promote interest in and understanding of physical therapy in Alaska and, towards this end, to comment upon and propose legislation which affects the practice of physical therapy.

The Alaska Chapter of the American Physical Therapy Association, Inc., with unanimous approval of the Executive Committee, wishes physical therapists to practice independently; that is, without physician referral as is now required.

The proposed amendments are presented after a careful review of the needs of both the public sector and the physical therapy profession. We feel that Alaskan physical therapists would be able to provide additional and better service to the public, and still maintain our current high standards of service.

We believe that adoption of these changes will result in professional growth for physical therapists in Alaska and corresponding increase in quality and availability of services to Alaskans. Your careful consideration of our proposal, and your support for its enactment into law, would be appreciated. If we may answer any questions, or provide you with any further information, please do not hesitate to contact Hal Egbert (_____ home or 279-6661 work). Thank you for your attention.

Patricia McAdoo, LPT
President, Alaska Chapter
American Physical Therapy Association

Avis Hayden

Alaska Treatment Center

272-0586

688-2452 (Home)

HAL Egbert

ALASKA NATIVE MEDICAL CENTER

265-9249

HOME 694-4512

Barbara Hayes

ATC 272-0586 s/t 359

Patricia (Pr.) McAfee

ALASKA NATIVE MEDICAL CENTER

265-9249

home 333-1378

MAR 27 1985

Fairbanks Clinic

1867 Airport Road • Fairbanks, Alaska 99701-4096 • (907) 452-1761

March 25, 1985

Senator Bettye Fahrenkamp
Pouch V
State Capital
Juneau AK 99811

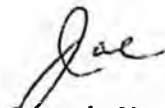
Dear Bettye:

Thank you for the letter that I received last Friday. You asked for my opinion in relation to the bill presently proposed before your committee. I have sought the counsel of some of my peers who deal with orthopedics and physical therapy directly. They all agree with me in relation to a professional attitude toward this type of medical practice.

It seems to be a matter of how far we want to allow the practice of medicine to be degraded. We are unanimously against the propositions in this bill. From what I hear, you do have at least one, and maybe two, groups of physiotherapists working in Juneau under another doctor's prescription or direct supervision. This has been done throughout the United States for quite some time now and the bill that we have at the present is not unique. However, I do understand that 36 states now either allow or have similar bills to allow the practice of physiotherapy without a prescription or direct supervision of a physician. As you well know, most everyone who is interested in medicine in one way or another would like to be a doctor. Unfortunately, the majority of them, except for M.D.'s are not trained in the whole body. Allowing the physiotherapists to practice without a prescription or under doctor's supervision would, I feel, and so do my associates, lead to further abuse in the practice of medicine. We have seen this happen of course in chiropractic and in many ways in clinical psychology and other health forms. So my feelings would be that the state medical association, the local medical societies, and the majority of the physicians in the state of Alaska would oppose this type of licensing. I realize that you will have a lot of pressures brought to bear by the physiotherapists themselves who wish to be independent of the physician. We have battled the same problem in optometry for quite a number of years here in the state and at the moment I do not know how the present law reads.

Thank you again for seeking my insight and I hope to see you very soon, something like maybe next Friday at the bridge table.

Sincerely,



Joseph M. Ribar, M.D.
Family Practice

JMR:ec

a division of
DENALI MEDICAL SERVICES
A Professional Corporation



January 10, 1986

Martha MacDermid
Alaska State Medical Association
4107 Laurel Street, Suite 1
Anchorage, Alaska 99508

Dear Martha:

Enclosed is information from the AMA on their Drug Abuse program. The Fairbanks Medical Association approved a resolution asking that the ASMA seek enrollment in this program for Alaska.

Also the association voted to place an ad in the physician section of the yellow pages of the phone directory referring people who needed 1) doctor referrals or 2) who wished to file complaints against physicians to call the ASMA number. We wish to know if the State association will approve this as we have no central number yet.

I have already indicated that members discussed the issue of independent practice for physical therapists. Our members wish to know IF the state approves this idea-many are against it here. If the idea is approved by the State association, we ask that the following stipulation be added:

- #
- 1) _____ years supervised work beyond college to prove proficiency
- 2) a letter from the physician (s) who supervised the therapist stating his/her qualifications

OK
OK
motion to oppose indep. prac. of phy. therapists.

Page 2

Martha MacDermid

3) a masters degree in physical therapy - *research ok*

4) CME to be done yearly - *ok*

containing medical ed.

Last night several more physicians indicated their concern over this issue. We did not revote, however.

I'm sorry I will miss the January meeting. I'll think of you while bathing in the ocean!

Yours,



Mary Wing

Call

→

956-5711

MCW/jma

enc

The Alaska Chapter of the American Physical Therapy Association, Inc., (APTA) is a regional chapter of the voluntary, non-profit national organization for physical therapists. One of our main purposes is to foster the development and improvement of physical therapy service and physical therapy education through the coordinated action of physical therapists, allied professional groups, citizens, agencies, and schools to the end that the physical therapy needs of the people will be met. One important function of the Chapter is to develop, oversee, and maintain those high standards that a therapist must attain, to serve the public. Our objective is to promote interest in and understanding of physical therapy in Alaska and, towards this end, to comment upon and propose legislation which affects the practice of physical therapy.

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We believe that adoption of these changes will result in professional growth for physical therapists in Alaska and corresponding increase in quality and availability of services to Alaskans. Your careful consideration of our proposal, and your support for its enactment into law, would be appreciated. If we may answer any questions, or provide you with any further information, please do not hesitate to contact Hal Egbert (_____ home or 279-6661 work). Thank you for your attention.

Patricia McAdoo, LPT
President, Alaska Chapter
American Physical Therapy Association

CONTACT PERSON
Shelley V. Kozel
451-6279 EKENHUS, Alaska

PHYSICAL THERAPIST EDUCATION/LICENSURE:

The basic education of a physical therapist includes eight semester hours of gross human anatomy with total human cadaver dissection, five semester hours of systems physiology, three semester hours of neuroscience which includes neuro-anatomy with human brain dissection, four semester hours of patho-physiology, and three semester hours of functional anatomy which includes pathokinesiology. In addition to these basic science courses, the student receives extensive education in the clinical sciences. The professional program is 26 months in length which includes six months of rotating internships in facilities which offer orthopedic, neurological and long term care physical therapy. Prior to admittance to the professional program a student must complete 67 semester hours of pre-requisite college work which includes chemistry, physics, microbiology, college algebra and trigonometry, psychology, humanities, social sciences and the fine arts. The student graduates from a physical therapy education program with approximately 163 semester hours. A comprehensive professional examination must be taken and passed before a physical therapist can be licensed to practice.

Practice Without Referral

Some questions: Why now? Why do physical therapists want or treat patients ^{needed to} without a referral? Why will people benefit from this proposed change in our practice act?

Some answers:

More timely care: People with acute pain and dysfunction could be managed earlier due to decreased time waiting for an appointment. People having a previously diagnosed dysfunction which requires long-term, intermittent physical therapy management would be spared time and money spent in securing a new referral.

Rural therapists having the problem of coordinating evaluations from practitioner and therapist, paperwork demands, local travel logistics would have the advantage of less restrictions on timely care.

Preventative care: Physical therapy training has increasingly through the years focused on preventative health care, emphasizing early therapeutic exercise, education and facilitation that is frequently self-managed once a program is initiated.

Accessible care: People would have the choice of obtaining physical therapy if they wished it. Practice without referral would allow people to obtain therapy before the dysfunction requires medical intervention.

Referred care: There will be a number of people seen by a physical therapist that will be referred to a medical practitioner for management. These patients will be receiving needed care that may otherwise not be delivered if they had selected a more accessible fitness center, chiropractor, etc., for their needs.

Youth care: Will allow screening of children, athletes and others who desire screening and therapeutic advice or treatment on either an existing dysfunction or for the prevention of dysfunction. At present, a physician's referral is needed for the above and for long-term management, an annual evaluation.

Safe care: The majority of States now allow evaluation without referral and there are many allowing treatment without referral. National APTA supports this trend. There has not been increasing mal-practice insurance for those therapists engaging in this practice. This is in every way, a positive change for both our profession and the consumers.

PROPOSED PRACTICE ACT CHANGES:

Sec. 08.84.120

Refusal, revocation and suspension of license.
The board may refuse to license an applicant, may refuse to renew the license of a person, and may suspend or revoke the license of a person who

- (1) same
- (2) same
- (3) same
- (4) same
- (5) same
- (6) same
- (7) same
- (8) has treated or attempted to treat ailments

Delete

of human beings otherwise than by physical therapy, or has attempted to practice independent of the prescription and direction of a person licensed to practice medicine, osteopathy, dentistry, or podiatry.

- (9) same
- (10) same

(ADD)

(11) FAILS TO REFER A PATIENT TO ANOTHER QUALIFIED PROFESSIONAL A PATIENT WHOSE CONDITION IS BEYOND THE TRAINING OR ABILITY OF THE PHYSICAL THERAPIST.

(ADD)

(12) DEMONSTRATES ANY CONDUCT OR PRACTICE CONTRARY TO RECOGNIZED STANDARDS OF ETHICS OF THE PHYSICAL THERAPY PROFESSION OR ANY CONDUCT OR PRACTICE WHICH DOES OR MIGHT CONSTITUTE A DANGER TO THE HEALTH, WELFARE, OR SAFETY OF THE PATIENT OR THE PUBLIC, OR ANY CONDUCT, PRACTICE OR CONDITION WHICH DOES OR MIGHT IMPAIR THE ABILITY SAFELY AND SKILLFULLY TO PRACTICE PHYSICAL THERAPY.

Sec. 08.84.160

Delete

Practice of licensed physical therapist.
A person licensed under this chapter may not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person licensed to practice medicine, dentistry, osteopathy, or podiatry. This chapter does not authorize any person to practice medicine, dentistry, osteopathy, chiropractic, or other method of healing.

THERAPISTS TREATING PATIENTS WITHOUT A PRESCRIPTION OF A PERSON LICENSED TO PRACTICE MEDICINE, DENTISTRY, OSTEOPATHY, OR PODIATRY MUST COMPLY WITH THE REGULATIONS SET BY THE STATE PHYSICAL THERAPY BOARD. (THERAPISTS INTENDING TO TREAT PATIENTS WITHOUT PRACTITIONERS REFERRAL MUST SEND A LETTER OF INTENTION ALONG WITH THEIR RESUME TO THE BOARD):

*CME
no competency & letters
of evaluator
quality assure per board*

(ADD)

*Competency
Education
Experience
Evaluation letters*

Sec. 08.84.160

(ADD)

THERAPISTS ARE ALLOWED TO SCREEN ANY PERSON
OR SUPERVISE PREVENTATIVE HEALTH PROGRAMS WITHOUT
PRACTITIONER REFERRAL.

Sec. 08.84.185

(ADD)

Limits or conditions on license; discipline.

(a) in addition to action under AS 08.84.180,
upon finding that by reason of demonstrated problems
of confidence, experience, education or health
the authority to practice physical therapy should
be limited or conditioned or the practitioner
disciplined, the board may reprimand, censure,
place on probation, restrict practice by speciality,
procedure or facility, require additional education
or training, or revoke or suspend a registration.
FAILING TO REFER TO ANOTHER QUALIFIED PROFESSIONAL
A PATIENT WHOSE CONDITION IS BEYOND THE TRAINING
OR ABILITY OF THE PHYSICAL THERAPIST WILL REQUIRE
THE BOARD TO SUSPEND THAT THERAPIST'S PRIVILEGE
TO TREAT PATIENTS WITHOUT REFERRAL.

BOARD: PHYSICAL THERAPY BOARD, STATE

TITLE: State Physical Therapy Board

DEPT.: Department of Commerce and Economic Development

AUTHORITY: AS 08.84.010

STATUS: 86/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two successive terms

TERM: 4 years

DESCRIPTION: 5 members appointed by Governor: , 1 licensed physician; 3 licensed physical therapists or 2 physical therapists and a physical therapy assistant; and 1 lay member with no direct financial interest in health care industry.

SPECIAL FACTS: May be removed for cause; annual report to Governor

FUNCTION: Issues licenses and permits, adopts regulations for physical therapists

COMPENSATION: Standard travel/per diem

MEETINGS: 3 times per year; 6 days maximum

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Box D, Juneau, AK 99811 - 465-2544

Physical Therapy Board

<u>MEMBER</u>	<u>APPT</u>	<u>REAPPT</u>	<u>TERM</u>
Gail E. Dudley 1605 Elmendorf Drive Anchorage 99504 Physical Therapist	85/11/12		86/09/01
Morris R. Horning, M.D. 2401 East 42 Ave, Ste 304 Anchorage 99508 Physician	80/12/18	84/09/15	88/09/01
E. "Budd" Simpson 1 Sealaska Plaza, Ste 301 Juneau 99801 Public	81/04/27	84/09/15	88/09/01
Susan J. Thompson 4449 Beaver Loop Kenai 99611 Physical Therapist - Chairman	85/11/12		89/09/01
Merle B. Young, Jr., RPT 2005 Bridgewater Drive Fairbanks 99701 Physical Therapist	84/11/30		88/09/01

Offered: 2/26/86
Referred: Labor & Commerce

Original sponsor: Health, Education and
Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 640 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the State Physical Therapy Board;

7

and providing for an effective date."

8

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

9

* Section 1. AS 08.03.010(c)(8) is amended to read:

10

(8) State Physical Therapy Board (AS 08.84.010) -- June 30,

11

1990 [1986].

12

* Sec. 2. AS 08.84.120 is repealed and reenacted to read:

13

Sec. 08.84.120. REFUSAL, REVOCATION, AND SUSPENSION OF LICENSE.

14

(a) The board may refuse to license an applicant, may refuse to renew

15

the license of a person, and may suspend or revoke the license of a

16

person who

17

(1) has obtained or attempted to obtain a license by fraud

18

or material misrepresentation;

19

(2) uses drugs or alcohol in a manner that affects the

20

person's ability to practice physical therapy competently and safely;

21

(3) has been convicted of a state or federal felony or

22

other crime that affects the person's ability to practice competently

23

and safely;

24

(4) is guilty, in the judgment of the board, of gross

25

negligence or malpractice or has engaged in conduct contrary to the

26

recognized standards of ethics of the physical therapy profession;

27

(5) has continued to practice physical therapy after becom-

28

ing unfit due to physical or mental disability;

29

(6) has failed to refer a patient to another qualified

1 professional when the patient's condition is beyond the training or
2 ability of the physical therapist; or

3 (7) as a physical therapy assistant, has attempted to
4 practice physical therapy that has not been initiated, supervised, and
5 terminated by a licensed physical therapist.

6 (b) The refusal or suspension of a license may be modified or
7 rescinded if the person has been rehabilitated to the satisfaction of
8 the board.

9 * Sec. 3. AS 08.84.130 is amended to read:

10 Sec. 08.84.130. FALSE CLAIM OF LICENSE FORBIDDEN. (a) A person
11 not licensed as a physical therapist, or whose license is suspended or
12 revoked, or whose license is lapsed, who uses in connection with the
13 person's name the words or letters "L.P.T.", "Licensed Physical Thera-
14 pist," or other letters, words, or insignia indicating or implying
15 that the person is a licensed physical therapist, or who in any way,
16 orally, or in writing, directly or by implication, holds out as a
17 licensed physical therapist is guilty of a class B misdemeanor.

18 (b) A person not licensed as a physical therapy assistant, or
19 whose license is suspended or revoked, or whose license is lapsed, who
20 in any way, orally, or in writing, directly or by implication, holds
21 out as a licensed physical therapy assistant is guilty of a class B
22 misdemeanor.

23 * Sec. 4. AS 08.84.140 is amended to read:

24 Sec. 08.84.140. PENALTY FOR FRAUD IN OBTAINING LICENSE. A
25 person who wilfully makes a false oath or affirmation or who obtains
26 or attempts to obtain a license by a fraudulent representation is
27 guilty of a class B misdemeanor.

28 * Sec. 5. AS 08.84.160 is amended to read:

29 Sec. 08.84.160. PRACTICE OF LICENSED PHYSICAL THERAPIST. [A

1 PERSON LICENSED UNDER THIS CHAPTER MAY NOT TREAT HUMAN AILMENTS BY
2 PHYSICAL THERAPY OR OTHERWISE EXCEPT UNDER THE PRESCRIPTION AND DIREC-
3 TION OF A PERSON LICENSED TO PRACTICE MEDICINE, OSTEOPATHY, DENTISTRY
4 OR PODIATRY.] This chapter does not authorize any person to practice
5 medicine, osteopathy, chiropractic, or other method of healing.

6 * Sec. 6. AS 08.84.185(a) is amended to read:

7 (a) In addition to action under AS 08.84.180, upon a finding
8 that by reason of demonstrated problems of competence, experience,
9 education, or health the authority to practice physical therapy should
10 be limited or conditioned or the practitioner disciplined, the board
11 may reprimand, censure, place on probation, restrict practice by
12 specialty, procedure, or facility, require additional education or
13 training, or revoke or suspend a license [REGISTRATION].

14 * Sec. 7. AS 08.84.170 is repealed.

15 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
16 10.070(c).



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

10/31/89
Date

S B

4 6 6

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB466

Sponsor: HESS

Date referred to committee: 3/19/86

Synopsis completed:

Fiscal note:

Further referrals:

CONTACTS:

Royce 2300 (Revenue)

✓ Pat Shanrock, ABC Bd 227-8638

✓ Jerry Reinwand 586-8966

~~Jerry Sticker 2534 2194~~

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

A/ESS 4-1-86 1:35 pm

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

3/19/86

Date 4-1-86

Mr. President

The Committee on HESS considered SB 466

extending the termination date of the Alcoholic Beverage Control Board; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Joe Jacobson

William Pennington

Edna McVie

Carl Franklin

George F. ...

Chairman

Chairman recommendation

2
2

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No: SB 466
Title: Extending the Termination Date of the ABC Board

Sponsor: (S) HESS Committee
Requestor: _____
Date of Request: March 28, 1986

FISCAL DETAIL

Agency Affected: Revenue
BRU: _____

Components: Alcoholic Beverage Control Board

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	540.7	540.7	540.7	540.7	540.7
TRAVEL	-	51.9	51.9	51.9	51.9	51.9
CONTRACTUAL	-	79.7	79.7	71.7	71.7	71.7
SUPPLIES	-	7.6	7.6	7.6	7.6	7.6
EQUIPMENT	-	10.1	10.1	10.1	10.1	10.1
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	690.0	690.0	690.0	690.0	690.0
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	690.0	690.0	690.0	690.0	690.0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	11	11	11	11	11
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Prepared By: Patrick L. Sharrock
Division: Alcoholic Beverage Control Board
Approved by Commissioner: *Patrick L. Sharrock*
Agency: Department of Revenue

Phone: 277-8638
Date: March 28, 1986
Date: March 28, 1986

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STATE CAPITOL
JUNEAU, ALASKA 99811
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Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 1, 1986

DATE: March 28, 1986

On Tuesday, April 1, 1986 from 1:30-3:30 p.m. in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

SB 466 Extending the termination date of the Alcoholic Beverage Control Board

SB 466 would extend the Alcoholic Beverage Control (ABC) Board four years, as recommended in the August 1985 sunset audit. A copy of the audit recommendations and the Board's response is attached.

The ABC Board was established in 1959 to control the manufacture, barter, possession, and sale of alcoholic beverages in order to protect the public's health, safety, and welfare. The Board is under the Department of Revenue and employs an executive director who issues, renews, and revokes licenses. As of June 30, 1985, 1,679 licenses had been issued.

HB 485 Relating to the powers and duties of guardians

HB 485 would amend AS 13.26.150(e) to specify that guardians may accept a medical decision to withhold life-saving medical procedures from their wards when those procedures would serve only to prolong the dying process. Guardians could not be held civilly liable for adhering to the provisions of the statute.

file SB ~~000~~
466

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

August 21, 1985

Audit Control Number

04-1223-86-R

Commissioner, Department
of Revenue

Mary A. Nordale

Deputy Commissioners,
Department of Revenue

Bruce M. Botelho
Milton B. Barker

Members of the
Alcoholic Beverage Control Board

Chairman
Member
Member
Member
Member

William K. Smith
E. L. Holloway
Jane C. Perkins
James McNamee
Jack Griffin

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

August 21, 1985

Members of the Legislative Budget
and Audit Committee:

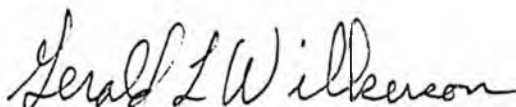
In accordance with the provisions of Title 24 of the Alaska
Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

August 21, 1985

Audit Control Number

04-1223-86-R



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

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PURPOSE OF THE REPORT

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (sunset legislation) an examination of the Alcoholic Beverage Control (ABC) Board was conducted to determine if the Board has been operating in an efficient and effective manner and if the Board should be reestablished.

As required by legislative intent, this report should be considered during the legislative oversight function in determining if the ABC Board should be reestablished. Per the 1984 amendment to AS 44.66.010(A)(1), the Board is scheduled to terminate on June 30, 1986.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Reports can best be described as "audit by exception."

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

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ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959 by Title 4 of the Alaska Statutes as a regulatory, quasi-judicial agency. The Board is vested with the powers, duties, and responsibilities for the control of alcoholic beverages, including the power to propose and adopt regulations and to hear appeals.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives and three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations developed by the Board. Although he is not a member of the Board, the director may cast a tie-breaking vote. Under the direction of the Board, the director may issue, renew, transfer, revoke or suspend licenses or permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification (see schedule of license types and fees in Appendix C). Fees are payable at the time of application. To renew an already existing liquor license, the application must be filed and the corresponding fees paid on or before February 28.

The availability of licenses throughout the State is determined by the population within designated areas. Effective June 6, 1985, one license may be issued for every 3,000 in population or fraction thereof. As of June 30, 1985, a total of 1,679 licenses had been issued (see Appendix B).

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. A brief description of the services provided by those functions follows.

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs six investigators - four operating from the Anchorage central office, one operating from the Fairbanks field office, and one operating from the Juneau field office. Services provided include:

- (1) surveillance and inspections of licensed premises,
- (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations,
- (3) public appearances relating to ABC laws and regulations, and
- (4) assisting the licensing staff in handling inquiries from the general public.

REPORT CONCLUSION

Policy Issues

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

Report Conclusions

Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession, and sale of alcoholic beverages in the State in order to protect the public's health, safety, and welfare. We believe that there is a demonstrated need for this control to continue to exist. In order to operate in a more efficient and effective manner, the following recommendations should be implemented.

1. The ABC Board should document the mitigating circumstances and reasons for not pursuing a suspension or revocation of a license.
2. Alaska Statute 04.11.510(c) should be amended to exclude Board participation in informal conferences.
3. The ABC Board should cease the current practice of terminating a license without cause and seek legal advice for clarification of its authority.
4. The ABC Board should improve documentation of its enforcement efforts.
5. The ABC Board should promulgate regulations for the creation of restaurant designation permits and the establishment of fees.
6. The ABC Board should strengthen controls over liquor license stock.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The ABC Board should document the mitigating circumstances and reasons for not pursuing a suspension or revocation of a license.

Alaska Statute 04.11.370 provides for the suspension or revocation of a license if one or more of the eleven items listed in the provisions exists. Some of the major items listed include: misrepresentation of a material fact on an application; failure of a licensee to correct defects which constitute violations of Title 4; use of the licensed premises as a resort for illegal possessors or users of narcotics, prostitutes, or pimps; and violation by a licensee of Title 4 or a regulation or ordinance adopted under Title 4.

As prosecutor in the adjudication process, the ABC Board's Director is responsible for filing an accusation against a licensee when the facts show that a violation applicable to AS 04.11.370 has occurred. An accusation is a written statement of charges setting out the acts or omissions with which the licensee is charged and specifies the statute which the licensee is alleged to have violated.

Supporting the accusation is evidence gathered by the ABC Board's investigative staff. Investigative activity includes premise inspections, undercover observations, inquiries of licensee's staff and customers, and a review of local police reports.

Once an accusation has been filed by the Director, the ABC Board members have the responsibility of hearing the case and imposing the penalty upon a determination of the licensee's guilt.

Our review of cases requiring Board action showed that most cases resulted in dismissal of the accusation after an informal conference was held with the licensee. In some cases, the dismissal included a stipulation prohibiting any reoccurrences.

It is the ABC Board's position that it is within their discretion to adopt stipulations with remedial actions rather than to impose suspensions and revocations. Although we recognize that stipulations are within the Board's discretion, the files seldom document the mitigating circumstances or provide an explanation of why the Board chose to dismiss the accusation. In all cases, the files should clearly document the reasons for the Board's actions.

Recommendation No. 2

The Legislature should consider amending Alaska Statute 04.11.510(c) to exclude Board participation in informal conferences.

If an accusation is filed by the Director, the licensee is given the option of requesting an informal conference. Per AS 04.11.510(c), the informal conference may be held with the Director or the Board. If not satisfied with the results of the conference, the licensee may request a formal hearing. The ABC Board may delegate full authority to preside over the case to a hearing officer, or it may hear the case with the hearing officer. If the case is heard by the hearing officer, the officer is required to submit a proposed decision to the Board. The Board has the option of adopting the proposed decision or rendering a different one. If the case is heard by the Board and a hearing officer, the Board renders its final decision upon completion of the hearing.

When hearing a case, the Board should be unbiased and impartial. Evidence presented by the Director (the prosecutor) and the licensee (the defendant) should be weighed equally. Only evidence and testimony presented during the hearing may be considered in reaching a final decision. The Board's participation in informal conferences, prior to a formal hearing, may have a negative effect on their independence. No guidelines have been established to address what type of evidence can be submitted or what rules of law should be adhered to in the conferences.

For the most part, informal conferences are held by the Board without counsel to advise them on matters of law. As noted in Recommendation No. 1, Board action to resolve most cases resulted from informal conferences. If a hearing is requested by the disgruntled licensee after an informal conference, the Board runs the risk of having developed a biased opinion prior to the hearing.

To ensure the Board's independence, informal conferences held on pending cases should be limited to the Director. Any stipulations made by the Director and the licensee should be submitted to the Board for review. Board review of the stipulations should include an evaluation of the fairness of the resolution and an analysis of whether the terms are in compliance with statutory requirements. Final Board action should be documented by a motion and vote of the Board at an open meeting.

In addition, all informal conferences should be recorded to document the matters discussed. A brief summary of the discussion and agreements made should be transcribed and maintained in the licensee's file.

Recommendation No. 3

The ABC Board should cease the current practice of terminating a license without cause and seek legal advice for clarification of its authority.

The ABC Board has established an informal policy of requiring a licensee to surrender an existing license upon the issuance of a new license of a different type. For example, the holder of a restaurant/eating place license would be required to surrender that license upon the issuance of a beverage dispensary license for the same premise. The Board's authority to enforce this policy is questionable.

The ABC Board is governed by Title 4 of the Alaska Statutes. Per AS 04.11.070 the Board has the authority to issue, renew, transfer, suspend, or revoke a license. Alaska Statutes 04.11.360 and 04.11.370 list the conditions under which the Board can deny a transfer or revoke a license. The conditions listed primarily address violations by the licensee, actions which are contrary to statute, and actions which are not in the best interest of the public.

Our review of the licenses surrendered per the Board's informal policy showed that none of the conditions listed in AS 04.11.360 and AS 04.11.370 existed. In addition, we found that the Board was inconsistent in its application of the policy. The requirement to surrender a license was only imposed if the existing license was originally issued to the holder by the ABC Board. If the existing license was acquired through a transfer (purchase) then, the licensee was allowed to retain the license or transfer it. In the former case, the licensee was deprived of the privilege to transfer the license whereas in the latter case he was not. Our review disclosed three cases in which the licensee was deprived of the transfer option.

Due to the passage of House Bill 34, the population limits for the issuance of licenses was increased from 1,500 to 3,000. As a result, the license quota for the issuance of new licenses has been capped for most areas in the State. The ownership and transferability of a license is more valuable now than ever before. We noted in our review that one of the three licenses was surrendered in November 1984 under protest. The licensees feel their rights of ownership should not be denied. Although the ABC Board has taken no action on the protest to date, we strongly recommend that the Board obtain an Attorney General's opinion prior to taking action on the matter.

Recommendation No. 4

The ABC Board should improve documentation of its enforcement efforts.

This recommendation was made in our prior audit. Primarily, we had found that the ABC Board did not maintain adequate documentation of its enforcement actions from inception to final resolution. In addition, documentation of actions resulting from informal conferences held with the licensee was not adequate. Although the ABC Board staff has made some improvements (especially the Enforcement Section) our current review disclosed the following additional problems:

1. Documentation of the Director's review of investigative reports is not adequate.

The Director is required to review all investigative reports generated by the enforcement staff. However, our review showed that 26 of 46 reports did not have documentation of Director review.

2. Documentation of administrative decisions made by the Director is not adequate.

Not all violations noted by the ABC Board staff are prepared for prosecution. The Director is responsible for making the ultimate decision. Factors considered by the Director include; type of violation, evidence gathered by enforcement staff, prior violations, and the intent of the licensee. Therefore, a violation by one licensee may result in the filing of an accusation whereas a violation by another licensee may not. Our review showed that no documentation is maintained by the Director to show cause for not pursuing a case. As a result, in our review of 35 cases, we found nine cases which were not pursued by the Director although the violation and evidence gathered by the enforcement staff appeared to warrant further action. For example, an investigative report was prepared noting over 140 instances of violence on a licensee's premises over approximately a three year period. The investigators recommended an accusation be filed to suspend or revoke the license. An accusation was not filed and the file did not contain an explanation of why the case was not pursued. Documentation of administrative decisions would ensure proper review and fair treatment of cases.

3. The administrative filing system needs improvement.

An administrative file is established if violations noted by the Enforcement Section require prosecution by the Director. The file contains documentation of actions arising from the Director and/or Board review.

If another action involving the same licensee arises, then a separate file is created. No system has been established to record a historical summary of administrative actions and penalties imposed by the Board per each licensee. Thus, vital information which could be utilized by the Director and the Board in the decision making process is not readily available. In addition, a historical summary could also be utilized by the enforcement staff when conducting routine inspections to identify potential problem areas and ensure compliance to requirements stipulated by the Board.

We encourage the ABC Board to continue its efforts in implementing procedures to resolve the problems noted in our prior audit.

Additionally, we recommend that the ABC Board develop procedures to resolve the problems noted above.

Recommendation No. 5

The ABC Board should promulgate regulations for the creation of restaurant designation permits and the establishment of fees.

Alaska Statute 04.16.049 requires Board designation of a premise as a restaurant in order to allow access by a minor for dining or employment purposes. Approval of the governing body having jurisdiction over the premise is also required, if access of a minor is allowed for employment purposes.

In an effort to comply with the above requirement, the ABC Board required the licensee to submit an application indicating the type of designation requested. Upon receipt of the application a notification is sent to the governing body requesting their review and approval. The governing body is given 30 days to respond. Once reviewed and approved by the Board a notification is sent to the applicant and a permit is issued. The licensee is required to post the designation permit next to the liquor license. The permit is valid for one calendar year. A licensee must reapply for the permit annually.

Due to the process stated above, the ABC Board has created a new class of permits called restaurant designation permits. However, no regulations have been developed to formally establish the classification. In addition, no application fees or permit fees have been assessed to cover the expenses associated with the processing and issuance of the permits. According to the ABC Board staff, processing of the permits is very time consuming. Approximately 250 applications per year were processed in 1983 and 1984. Over 300 applications have been processed since January 1985.

Alaska Statute 04.06.100 gives the Board the authority to adopt regulations relating to the creation of permits and the establishment of fees. We recommend that the ABC Board take the necessary actions to exercise this authority.

Recommendation No. 6

The ABC Board should strengthen controls over liquor license stock.

A control log is maintained by the ABC Board to monitor the issuance of licenses. However, we found that license documents utilized in the renewal of active licenses are recorded by group sequence. No record is maintained to identify to which licensee each license document was issued.

In addition, the control log does not denote which license documents have been voided because of Board denial or revocation of the license.

A good system of internal controls would enable one to determine the status and location of a license at any given point in time.

The ABC Board should review the control over the issuance of licenses and develop procedures to resolve deficiencies.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent of which the board, commission, or program has operated in the public interest.

Public protection gained through licensing to control the manufacture, possession, and sale of alcoholic beverages has been adequately provided by the ABC Board. However, operational efficiency and effectiveness should be improved. See Recommendations 1-6 of this report.

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

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, as noted in Recommendation No. 2, certain provisions should be amended for the elimination of potentially conflicting elements.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety, and welfare by the size of the enforcement staff which consists of one agent in Juneau; one in Fairbanks; and four, including a supervisory agent, in Anchorage. Including the supervisory agent, there are only six agents with inspection and enforcement responsibilities for 1,679 licensed premises.

The amendments to Title 4 by chapter 93, SLA 1985 will also have an effect on the ABC Board's operation. Population limits for the issuance of licenses were increased thereby resulting in a restructuring of license availability throughout the State. Additional filing requirements were also imposed on the Board. Due to the recent passage of the legislation, the overall impact of the changes could not be determined at this time.

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

The ABC Board was instrumental in promoting most of the changes adopted through chapter 93, SLA 1985. In addition, the ABC Board participated in the development of the 1980 revisions to the statutes.

- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The ABC Board has met an average of eleven times during 1984 and 1985. During each year they have met at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. Staff of the ABC Board are located in Anchorage, Juneau, and Fairbanks and are available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

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

As noted in IV above, the Board has provided an adequate forum for obtaining input from the public.

- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

As noted in past reviews the number of formal hearings continue to be few in number. However, the ABC Board has the authority to hold its own hearings on protests which it exercises as a part of its regularly scheduled meetings. Hearings in this manner have been accomplished in a timely manner since the Board meets at least ten times each year.

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

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no material exceptions. The Board has therefore presented qualified applicants to serve the public.

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

No discrepancies were noted in this area during our review of the ABC Board.

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

Please refer to I and II above and to the previous section, Findings and Recommendations.

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APPENDIXES

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APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1983, 1984 and 1985
(UNAUDITED)
(Note 1)

	<u>1983</u>	<u>1984</u>	<u>1985</u>
Revenue (See Schedule 1)	\$1,592,957	\$1,716,950	\$1,701,968
Expenditures	<u>(605,131)</u>	<u>(692,310)</u>	<u>(653,872)</u>
<u>Excess of Revenue</u> <u>Over Expenditures</u>	<u>\$ 987,826</u>	<u>\$1,024,640</u>	<u>\$1,048,096</u>

Schedule 1
Revenue Collected

<u>Types of License</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Liquor License Application	\$ 86,950	\$ 100,000	\$ 101,850
Pub	400	800	-0-
Beverage Dispensary	799,050	852,825	852,275
Club	41,200	43,750	44,900
Common Carrier	30,500	43,350	36,675
Restaurant	73,550	89,650	91,850
Retail Store	341,500	368,150	373,300
Wholesale General	146,700	141,350	139,100
Wholesale Malt Beverage	27,900	27,300	12,300
Miscellaneous (Note 2)	<u>45,207</u>	<u>49,775</u>	<u>49,718</u>
<u>Total</u>	<u>\$1,592,957</u>	<u>\$1,716,950</u>	<u>\$1,701,968</u>

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and, accordingly, we do not express an opinion on the ABC Board Revenue Compared with Expenditures nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's special events, and conditional contractor's permits.

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY TYPE
Fiscal Years 1983, 1984, and 1985

<u>Types of License</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Pub	1	1	1
Beverage Dispensary	645	645	648
Club	65	71	72
Common Carrier	94	124	129
Restaurant	223	270	292
Retail Store	448	473	492
Wholesale General	16	18	20
Wholesale Malt Beverage	8	8	9
Recreational-Site	<u>13</u>	<u>16</u>	<u>16</u>
<u>Total Licenses</u>	<u>1513</u>	<u>1626</u>	<u>1679</u>

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Application Fee	For each license application.	\$50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	\$1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	\$300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	\$600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	\$250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	\$500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	\$250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the license for a purchase to be received by the person making the solicitation.	\$750
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	\$100

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	\$1,000 First \$100,000 of sales plus \$500 - 10,000 on additional sales
Wholesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	\$200 First \$20,000 of sales plus \$300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	\$500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	\$1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	\$350 Per vehicle, boat, aircraft or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for consumption on designated areas at the site.	\$400
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	\$400

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Caterer	Authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, picnics, social gatherings, sporting events or similar affairs held off the holder's licensed premises.	\$50
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	\$50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	\$600

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STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

December 30, 1985

RECEIVED
DEC 30 1985

LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811-3300

Dear Mr. Wilkerson:

This letter is in response to your preliminary audit report on the performance of the Alcoholic Beverage Control Board dated August 21, 1985.

We fully agree with your conclusion "...there is a demonstrated need for this control to continue to exist." Following are our comments about your specific recommendations.

Recommendation No. 1

The ABC Board should document the mitigating circumstances and reasons for not pursuing a suspension or revocation of a license.

We agree. Since your remarks in your interim letter the board's staff has assured that concluding notes from informal conferences are reflected in all administrative proceeding files.

Recommendation No. 2

The Legislature should consider amending Alaska Statute 04.11.510(c) to exclude Board participation in formal conferences.

The issues raised in this recommendation are substantive ones and touch on some of the most controversial topics in administrative adjudication. Thus, while we may disagree with specific conclusions you have reached, we recognize that your position finds support among many in administrative law.

As you have noted, AS 04.11.510 permits an accused licensee to request an informal conference before the director or the board. If the licensee is not satisfied with the results of the conference, he/she may request a formal hearing before the board. You correctly note that when reviewing a case, the board should be unbiased and impartial.

This concern is a problematical one. While the United States Supreme Court has authorized board involvement at both the informal conference and adjudicatory stages of a dispute (Withrow v. Larkin, 421 U.S. 35 (1975)), the Alaska administrative practice has been much more circumspect. The board was heavily queried on this matter. I am