

ALASKA LEGISLATURE COMMITTEE FILES, 2000-2001 80/2
11919 SENATE LABOR & COMMERCE

2. Reduce the number of board meetings held each year.

As discussed above, the board spends a large amount of time repeatedly discussing items outside of its purview, as authorized in statute, resulting in increased operational costs. Specific increased costs include: contractual costs for DOL expertise; personal services costs for Division of Corporations, Business and Professional Licensing (division) staff services; and board meeting costs.

AS 08.20.055 authorizes the board to regulate as "*necessary to effect the provisions of this chapter [Chapter 20. Chiropractors]....*" The board regulates its meetings via 12 AAC 16.020, which reads in part, "*the board will, in its discretion, meet at least twice each year....*" One stated objective of this board is to conduct a minimum of three board meetings each year. Meeting three times a year appears unnecessary given the limited topics discussed at meetings throughout the review period.

We recommend that the board improve its operational efficiency by ensuring meeting discussions are limited to topics within its purview and are of benefit to the public overall. Additionally, we recommend that the board decrease the number of meetings held each year from three to two, in an effort to reduce operational costs.

A ANALYSIS OF PUBLIC NEED D

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

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

The board, through its administration of the licensure of chiropractors, has endeavored to present competent professionals to the public. To promote continued competence, all licensees must provide proof of continuing education for license renewal and each licensee is subject to a full continuing education audit. Licensees are required to publicly display their licenses. This notifies the public that their practitioners have met the standards for the issuance and renewal of the licenses held. The board has issued licenses in a uniform manner, held required meetings, and administered examinations in accordance with statutory requirements.

Aside from licensing qualified applicants, the board has strayed from the "public need" criteria and has moved toward operating in the best interest of the profession. As discussed in Recommendation No. 1, the board has repeatedly discussed its desire to regulate independent medical examinations (IME) and to provide school sports physicals. Such matters appear to have little or no impact on the public, but rather are changes that promote the profession.

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

The board sets fees based on a two-year cycle, with the majority of the revenue collected in odd-numbered fiscal years. We reviewed the internal records maintained by the division for revenues and expenditures associated with the board. We did not audit this information, but present it for general information purposes.

From Exhibit 1 on the following page, it is evident revenues rose sharply when comparing FY 05 with FY 03. The increased revenues were the result of a 51% licensing fee increase that went into effect for the FY 05/FY 06 licensing period. The fee hike was precipitated by a substantial increase of both personal services and contractual expenses resulting from division staff turnover, an increase of investigative staff services, disciplinary casework, and the board repeatedly seeking Department of Law (DOL) advice relating to regulating IMEs.

Given the unpredictable nature of contractual expenses, it is likely the board will incur a substantial revenue deficit in FY 06. For this reason, the division and the board should closely monitor the financial position of the board at the end of the FY 05/FY 06 licensing period. This effort will ensure fees are appropriately set to avoid a recurring deficit in the next licensing period.

Exhibit 1 details board revenues and expenditures for FY 02 through FY 05.

Exhibit 1

State of Alaska Board of Chiropractic Examiners Schedule of License Revenues and Board Expenditures FY 02 - FY 05 (Unaudited)				
	FY 05	FY 04	FY 03	FY 02
Revenue	\$162,297	\$ 17,423	\$ 98,944	\$ 11,383
Direct Expenses				
Personal Services	49,575	47,717	43,028	26,394
Travel	8,518	5,959	10,011	8,588
Contractual	54,715	9,361	7,967	4,635
Supplies	188	114	277	37
Equipment	0	0	0	0
Total Direct Expenses	<u>112,996</u>	<u>63,151</u>	<u>61,283</u>	<u>39,654</u>
Indirect Expense	<u>12,938</u>	<u>11,680</u>	<u>11,462</u>	<u>9,225</u>
Total Expenses	<u>125,934</u>	<u>74,831</u>	<u>72,745</u>	<u>48,879</u>
Annual Surplus (Deficit)	<u>36,363</u>	<u>(57,408)</u>	<u>26,199</u>	<u>(37,496)</u>
Beginning Cumulative Surplus (Deficit)	<u>(36,995)</u>	<u>20,413</u>	<u>(5,786)</u>	<u>31,710</u>
Unallocated Administrative Indirect Revenue	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Ending Cumulative Surplus (Deficit)	<u>\$ (632)</u>	<u>\$ (36,995)</u>	<u>\$ 20,413</u>	<u>\$ (5,786)</u>

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

The Board of Chiropractic Examiners supported passage of Chapter 39, SLA 2002, which provides for licensure by credentials. No other statutory changes occurred during the review period.

The board did, however, develop both statutory and regulatory language to allow for the performance of independent medical examinations. On several occasions, DOL informed the board that it does not have statutory authority to regulate IMEs and suggested it approach the Alaska Chiropractic Society or find a sponsor for the proposed statutory addition.

Regulatory changes adopted by the board included:

- Issuance of a courtesy license.
- Increase in the number of independent study¹ continuing education hours.

The number of continuing education hours that could be obtained via independent study was increased from one-quarter to one-third of the total continuing education hours required for license renewal. The courtesy license allows chiropractors licensed outside of Alaska to practice on individuals who are in Alaska for special events such as, but not limited to, Special Olympics and Arctic Winter Games.

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

The locations, dates, and times of upcoming board meetings and proposed changes in regulations were published in the *Anchorage Daily News*, as well as posted on the board's website. Adequate time was provided for interested individuals to plan to attend or to submit written comment for review.

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

Public notices of proposed regulations are published in the *Anchorage Daily News* and the Alaska Online Public Notice System. The board meeting minutes show that unlimited time was allotted for the scheduled public comment period. All proposed regulation changes are subject to the public participation process.

¹ Independent study programs must be approved by the board.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

We have reviewed the nature and extent of complaints filed involving chiropractic examiners. The division, in conjunction with the board, took appropriate investigative action, prioritized complaints in a reasonable manner, and proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

For the period July 2001 through May 2005, the division opened 35 investigative cases related to individuals either seeking licensure or licensed by the Board of Chiropractic Examiners.

The types of complaints filed included:

- Unlicensed practice (6)
- Negligence (5)
- Incompetence (5)
- Violation of ethics (4)
- Fraud/Misrepresentation (3)
- License application problems (3)
- Application problems (2)
- Sexual misconduct (2)
- Drug diversion (2)
- Other (3)

Approximately 51% of the cases were filed by clients; 26% by division staff; 20% by licensed associates; and the remaining 8% by other government agencies.

The 35 cases were open for an average of 521 days. At May 2005, six cases remained open, four of which exceeded a period of 120 days. Of the six open cases, two have since closed, two were referred for legal analysis, one resulted in a board hearing, and one remains unresolved due to inability to contact the respondent.²

No complaints or investigations specifically involving the actions and activities of the Board of Chiropractic Examiners were received or undertaken by either the Office of the Ombudsman or the Office of Victims' Rights within the audit period.

² The respondent in this case has not renewed their license and has closed their business; the division has been unsuccessful at contacting the individual.

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

We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action, in qualifying applicants. In no instance has the board denied an applicant a license based on personal attributes.

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

Exhibit 2 is a summary of new licenses and permits issued by the board for FY 02 through FY 05.

Exhibit 2

New Licenses and Permits Issued (exclusive of renewals)	FY 02	FY 03	FY 04	FY 05	Current Licenses (as of June 30, 2005)
Chiropractor	16	9	13	22	228
Locum Tenens ³	0	0	0	2	2
Temporary	6	4	1	5	1
Courtesy	0	0	0	0	0
Retired	0	0	0	2	2
Inactive	9	8	1	13	13

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

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

The Board of Chiropractic Examiners should ensure board meeting discussions are limited to topics within its purview and are of benefit to the public overall. By limiting discussions, the board could reduce the number of meetings held each year from three to two, thereby reducing operational costs.

³ A temporary permit is issued to a locum tenens, a chiropractor substituting for another chiropractor licensed in the state. It is valid for 60 days.

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

Our review of the interactions among the Board of Chiropractic Examiners, the National Board of Chiropractic Examiners, the Alaska Chiropractic Society, and the Council on Chiropractic Education did not reveal activities duplicated by two or more organizations. The national associations offer continuing education courses; however, they do not require members to submit continuing education credits to maintain their membership. Both the national and state organizations thoroughly investigate complaints regarding their members. The state association occasionally works with the Board of Chiropractic Examiners to change statutes and regulations; however, the two organizations don't necessarily coordinate efforts to eliminate duplication of activities.

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

Broad objectives identified by the board included:

- Conduct a minimum of three board meetings per year.
- Monitor and appoint a peer review committee.
- Update jurisprudence examination as needed.
- Continue to work with the Federation of Chiropractic Licensing Boards (FCLB) on the national licensee database.
- Continue affiliation with FCLB and the National Board of Chiropractic Examiners (NBCE) Send a board representative to the annual and district meetings and to the national NCBE Part IV examination.
- Review chiropractic statutes and regulations for necessary changes.
- Address the requirements for school and sports physicals.
- Assess and evaluate standards for independent medical examinations.
- Pursue statutory authority for regulation of independent medical examinations.

Evidence suggests the board establishes and meets most of its operational objectives annually. The board has had difficulty finding candidates to fill peer review committee positions due to the volunteer nature of the positions. It is questionable whether some of the stated objectives are prudent to the purpose of the board overall, given the advice received from DOL staff with regard to school sports physicals and independent medical evaluations.



RECEIVED
NOV 25 2005
LEGISLATIVE AUDIT

OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

November 22, 2005

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

Dear Ms. Davidson,

Thank you for the opportunity to respond to your Preliminary Audit concerning the Board of Chiropractic Examiners Sunset Audit.

Please consider the following comments to your findings and recommendations.

Recommendation No. 1

The Board of Chiropractic Examiners (board) should improve the efficiency of its operations by ensuring board meeting discussions are limited to topics within its purview and are of benefit to the public overall.

1. Limit agenda discussion items; exclude topics outside of chiropractic examiners' jurisdiction.

We concur with the audit findings that significant resources have been spent on the topics identified without appropriate statutory authority. The department will work with the Board to either seek the appropriate statutory changes or to limit further discussions on those topics.

2. Reduce the number of board meetings held each year.

The department concurs that meetings should be held to the absolute minimum whenever possible; and that face to face meetings should be planned only when activities can be justified by a full agenda. Teleconferences are an inexpensive method to conduct minor issues as needed throughout the year.

There is one correction we would like to note on page 9, paragraph #4 that begins "The board sets fees based on a two-year cycle ...". That should be corrected to read: "The division sets fees". The division does consult with the Board regarding fee adjustments, however, AS 08.01.065 assigns responsibility of fee-setting to the division.

Again, thank you for the opportunity to respond.

Sincerely,



Richard K. Urion
Director of Corporations, Business and Professional
Licensing
for
William C. Noll
Commissioner



Northern Chiropractic

Gregory M. Culbert, D.C., DABCO

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NOV 21 2005

LEGISLATIVE AUDIT

November 17, 2005

Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
Attn: Pat Davidson, Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300

RE: Chiropractic Board Sunset Audit

Dear Ms. Davidson:

I am in receipt of your November 4, 2005, letter regarding your audit of the Board of Chiropractic Examiners (board) and its impending sunset. Thank you for recommending to the legislature to extend the board's termination date until June 30, 2014. I feel, after reviewing your letter, that certain issues should be further discussed, including the board's reasoning for its actions regarding independent medical examinations, sports physicals, and meeting more than two times per year.

You feel that the board spends an inordinate amount of time in its meetings regarding issues of independent medical examinations and school sports physicals. Since I have been a board member and attended meetings beginning May 24, 2002, less than five hours total has been designated to these particular subjects at board meetings. While much time has been spent by board members reviewing this information on their own time, relatively little time (when compared to other discussion items) has been designated to these subjects. These issues however, as you are aware, have definitely been a source of contention with the state board and the attorney general's office.

I cannot express enough that these issues are addressed more to benefit the public than they are to benefit the profession. Our problems with independent medical examinations is primarily due to public safety matters. Public safety is involved when a doctor from out of state is able to make an opinion regarding the

necessity of care for a patient. The board is supposed to maintain public safety by being sure of a chiropractor's competency via performance and chiropractic core methodology, sec. 08.20.055 (2). It is the board's belief that chiropractors practicing in the state are required to uphold the same standards, whether they are treating a patient or performing independent medical examinations. This, however, has been a problem. The board feels it has a responsibility to rein in rogue doctors to hold them to the same standards of care of the treating physician.

When interpreting the statutes and its existing regulations, we feel that the board is responsible for the practice of chiropractic in this state. We have asked for a written opinion on IMEs numerous times from the attorney general's office. Instead, we only get verbal opinions and a bill for their activities. To date, my understanding is we have still not received anything in writing from the attorney general's office regarding this issue. As we have not received anything in writing, this is an issue that was repeatedly brought up at meetings; however, as is noted in more recent agendas, this particular issue has not been a major discussion topic. Ultimately, I believe that the board expects the same accountability or responsibility that a treating chiropractor must have extended to those chiropractors performing independent medical examinations. The attorney general's office verbally feels that actual regulation of the practice of independent medical examinations must be done in a statutory manner and through the local chiropractic association. When reviewing core methodology and definitions of chiropractic care in regulations, it is the board's opinion that this should be able to be done via regulation, as it is an action performed by a chiropractor and not a separate profession.

We did not receive the majority of the information regarding the Attorney General's opinion of independent medical examinations until we had an actual meeting with Ms. Gayle Horetski, Assistant Attorney General, September 17, 2004, in Juneau. Her reasoning is that actual regulation of independent medical examinations did not fall under statute. Her opinion was that independent medical examinations performed by a chiropractor is actually an act of a different and unregulated profession. Our impression is that if a chiropractor is performing chiropractic, they should fall under the same laws as a treating chiropractor. It is difficult to explain the Attorney General's opinion to a person whose injury was dismissed by an independent medical examination; that there is no recourse for the patient is maddening, and makes the idea of a board regulating the profession of chiropractic seemingly impotent in this particular manner.

If chiropractors are not allowed to regulate chiropractors performing independent medical examinations, then who is? This is a public health concern and needs to be addressed.

Again, I feel it is difficult for patients, as well as other chiropractors, to understand that someone can be performing and giving chiropractic opinions without having

any sort of responsibility to their opinion, as they would have if they were actually treating the patient.

The school sports physical question is a problem, too. The 1991 opinion you refer to is also interesting. In that particular opinion, the reasoning that chiropractors cannot perform school physicals is partially based on the opinion that chiropractors are not considered physicians. In our board meeting September 17, 2004, with Ms. Horetski, she said that according to statute chiropractors *are* considered physicians. The quandary is further enhanced when one considers the fact that nurse practitioners and physician's assistants are allowed to perform these examinations but chiropractors are not, even though chiropractors have received training to perform these while in chiropractic school. The question arises because the act of performing school sports physicals is not specifically spelled out in statute. It does not, however, say that they *cannot* be performed by chiropractors either. Performing school physicals is generally done as a favor to our patients and certainly not done to enhance or benefit the chiropractic profession.

The board has talked about this in past meetings because chiropractors have continually asked the board about this. We have asked for answers to these questions in writing from the attorney general's office regarding the fact that we are considered physicians via statute; however, we have not yet received anything in writing.

Finally, addressing the issue of meeting just two times per year, this would cause problems. In 2004, we had three scheduled meetings. One of our meetings, unfortunately, was canceled by Director Rick Urion. When we combined that canceled meeting in with another meeting, the resulting meeting was extremely difficult. This meeting started at 8:00 in the morning; we had to work through our lunch hour and did not finish until after 5:00 when we had to leave to catch our plane out of Juneau. All of the issues of the meeting were not adequately addressed; and while the meeting was attempted to be organized, it became relatively chaotic in trying to complete all the scheduled items.

The actual cost of board meetings is quite minimal for the information that is gained when we are actually able to meet face to face. Our current licensing dues are \$730 each for over 200 licensed chiropractors in the state. The meeting we will have October 14, 2005, will cost the profession a little over \$1,000. Every time the board meets, each board member loses a full day's worth of work. We still have to pay for the overhead of our practices, costing each of us well over \$1,000 just to attend. The members of the chiropractic board feel that the meeting, however, is well worth it, even though our personal costs to attend far outweigh the cost of the state to provide these meetings, which is in turn passed on to our licensees.

Page 4

Having three meetings a year makes up less than 10 percent of the cost of our licensing fees. The information gained and the board's ability to be pro-active and to be able to actively address problems in a timely manner is well worth it. For example, the October 14, 2005, meeting was going to be canceled by our division director. If this occurred, we as a board would not have been able to discuss what to do with four licensees that we found out did not receive their continuing education for the current licensing period. This means that it would be well over a year before we were able to address this particular problem and act on it. In the meantime, these licensees are still practicing, and we, as a board, could not adequately maintain public safety by addressing this problem. (I was informed recently that these practitioners were all able to comply after the fact for their CE via 12 AAC 16.340(c). This is still, however, a concern and discussion on disciplinary sanctions needs to be done).

As you are aware, the board is held to strict rules and we cannot talk amongst ourselves about board business outside of a formal board meeting. Going at times more than six months between meetings is not acting in the best interest of the public.

At our last board meeting in Juneau, we discussed with Ms. Jenny Strickler our licensing fees. It was found that the bulk of the contractual work was due to investigational and disciplinary case work fees. Our current investigator, Ms. Margaret McQuaid, has been doing an exceptional job in trying to wrap up several old cases. It was explained to us that a large percentage of the cost for contractual work will be reduced in the future, as many of these open cases have since been closed. Unfortunately, the actual breakdown of costs towards the attorney general's review of independent medical evaluations or school physicals was not available. You insinuate it was a significant amount, however, we have yet to receive this information in writing. We also don't know how much of the fee hike was due to division staff turnover.

In summary, again, thank you for recommending the legislature continue the Board of Chiropractic through 2014. We truly are, as a board, working to appropriately safeguard the public by promoting the competency and integrity of chiropractors in the State of Alaska. I am hoping some of the reasons I gave you regarding our concern as a board with school physicals and independent medical examinations appropriately addressed your concerns.

If you have any questions, please feel free to contact me at (907) 696-4878.

Sincerely,



Gregory M. Culbert, DC, DABCO
President, Board of Chiropractic Examiners
Jr

Northern Chiropractic
11723 Old Glenn Hwy.
Eagle River, AK 99577
(907) 696-4878

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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legaudit@legis.state.ak.us

November 25, 2005

Members of the Legislative Budget
and Audit Committee

We have reviewed the responses to our preliminary audit report on the Department of Commerce, Community, and Economic Development, Board of Chiropractic Examiners.

In its response the Department of Commerce, Community and Economic Development correctly points out that it is the Division of Corporations, Professional and Business Licensing, and not the board, that sets the fees. We acknowledge that correction.

Sincerely,

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson
Legislative Auditor

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/30/06

FURTHER: Finance

Date of 5-Day Notice: _____
 in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 253

SB 253 EXTEND BOARD OF CHIROPRACTIC EXAMINERS

An Act extending the termination date for the Board of Chiropractic Examiners; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
<input type="checkbox"/> Same Title
<input type="checkbox"/> New Title
SCS House Bill:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Ben Stevens</i>	✓			
<i>Ralph Stevens</i>	✓			
CHAIR: <i>O'Brien</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 253
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Extend Board of Chiropractic Examiners RDU Corp. Bus & Prof Licensing (117)
 Component Corp. Bus & Prof Licensing
 Sponsor Rules by Request of LB&A
 Requester Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services		49.6	49.6	49.6	49.6	49.6
Travel		8.5	8.5	8.5	8.5	8.5
Contractual		54.7	54.7	54.7	54.7	54.7
Supplies		0.2	0.2	0.2	0.2	0.2
Equipment		0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	113.0	113.0	113.0	113.0	113.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	113.0	113.0	113.0	113.0	113.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	0.0	113.0	113.0	113.0	113.0	113.0
TOTAL	0.0	113.0	113.0	113.0	113.0	113.0

Estimate of any current year (FY2006) cost: 113.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the Board of Chiropractic Examiners to June 30, 2014. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2007 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct cost included in the FY 2007 budget. New funds are not required to implement this bill.

Prepared by: Katherine Mason, Administrative Manager Phone (907) 465-2572
 Division: Corporations, Business and Professional Licensing Date/Time 2/13/06 5:37 PM
 Approved by: William C. Noll, Commissioner Date 2/13/2006
 Agency: Commerce, Community, and Economic Development

Alaska State Legislature

SENATOR
GENE THERRIAULT
Chair



SESSION ADDRESS
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4797
Fax: (907) 465-3884

Legislative Budget and Audit Committee

SPONSOR STATEMENT

SB 253

“An Act extending the termination date for the Board of Chiropractic Examiners; and providing for an effective date”

This legislation stems from recommendations contained in the Legislative Audit Report entitled “Department of Commerce, Community, and Economic Development, Board of Chiropractic Examiners”, dated September 26, 2005.

Legislative Audit concluded that the Board of Chiropractic Examiners (Board) is operating in the public’s best interest and should continue to regulate chiropractors. The Board safeguards the public interest by promoting the competence and integrity of those who practice in this field and continues to improve its effectiveness and ensure chiropractors are licensed in the State of Alaska. Accordingly, SB 253 extends the sunset date of the Board to June 30, 2014 for an eight-year extension.

This audit was conducted under revisions made last session to the sunset process. The standard sunset period for occupational boards and non-occupational boards was changed from “not to exceed four years” to “not to exceed eight years”. Additionally, to better measure operational performance, two new criteria were added to statute that must be considered in the course of a sunset review by the auditors:

- The extent to which the board, commission, or agency has effectively attained its objectives and the efficiency with which it has operated.
- The extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

INTERIM ADDRESS

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SB

254

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/30/06

FURTHER: Finance

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 254

SB 254 EXTEND PT & OCCUPATIONAL THERAPY BOARD

"An Act extending the termination date for the State Physical Therapy and Occupational Therapy Board; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do Pass	Do NOT Pass	No Rec	AMEND
<i>Don Higgins</i>	✓			
<i>Ralph Decker</i>	✓			
CHAIR: <i>OBunde</i>	✓			

Audit Report

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
STATE PHYSICAL THERAPY
AND OCCUPATIONAL THERAPY BOARD
SUNSET AUDIT

September 17, 2005



Audit Control Number:

03-20043-05

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site <http://www.legaudit.state.ak.us>

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DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA
Legislative Auditor

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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September 17, 2005

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
STATE PHYSICAL THERAPY AND
OCCUPATIONAL THERAPY BOARD

September 17, 2005

Audit Control Number

08-20043-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, or program subject to the sunset review process. Currently under AS 08.03.010(c)(16), the State Physical Therapy and Occupational Therapy Board is scheduled to terminate on June 30, 2006. The board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the State Physical Therapy and Occupational Therapy Board should be extended. We recommend that the legislature extend the termination date of the board to June 30, 2014.

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

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA

Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Physical Therapy and Occupational Therapy Board (board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(16) requires the board to terminate on June 30, 2006. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed optometrists.

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

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, and complaint investigation and resolution functions for fiscal years ending June 30, 2002, 2003, 2004, and 2005. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulation related to the licensing of physical therapists and occupational therapists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain their license in good standing.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by, the board.
- Files related to applicants for, and holders of, licenses issued by the board.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Corporations, Professional and Business Licensing (division).
- Interviews with employees of the division.
- Reading and correspondence files maintained with the division.

ORGANIZATION AND FUNCTION

The State Physical Therapy Board was established in 1974. In 1987, its scope and authority was expanded to include the licensing and oversight of practitioners of occupational therapy. Accordingly, the board was renamed the State Physical Therapy and Occupational Therapy Board (board).

The current board is composed of seven members: one physician, three physical therapists, two occupational therapists, and one public member. Alaska Statute requires a physician to be a member of the board; however, this seat has been vacant since March 2004.

Board members are appointed by the governor to serve four-year terms. Alaska Statute requires that the public member of the board have no direct financial interest in the healthcare industry.

Physical Therapy and Occupational Therapy Board (As of June 2, 2005)

Dee Berline, Occupational Therapist, Chair

Joanne Boehme, Occupational Therapist

Alec Kay, Physical Therapist

Jay McDiarmid, Physical Therapist

Mary Ann Paul, Physical Therapist

Gary Burleson, Public Member

Vacant, Physician

Board Duties and Powers

Alaska Statute 08.84.010 establishes the powers of the board. They include:

1. Examining qualified applicants.
2. Suspending, revoking, or refusing to issue or renew a license.
3. Issuing licenses to physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants who meet standards of education and training determined to be necessary by the board.

Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business and Professional Licensing (division)

The division provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates that DCCED adopt regulations to establish the amount and manner of payment of fees for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the division with the authority to conduct an investigation on its own initiative or in response to a complaint.

REPORT CONCLUSIONS

In our opinion, the State Physical Therapy and Occupational Therapy Board (board) is operating in the public's best interest and should continue to regulate physical and occupational therapists. The board is safeguarding the public interest by promoting the competence and integrity of those who hold themselves out to the public as qualified and competent physical therapists, occupational therapists, physical therapy assistants, and occupational therapy assistants.

The board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve its effectiveness and ensure that physical therapists, occupational therapists, physical therapy assistants, and occupational therapy assistants are licensed in the State of Alaska.

Alaska Statute 08.03.010(c)(16) requires that the State Physical Therapy and Occupational Therapy Board be terminated on June 30, 2006. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date until June 30, 2014.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Office of the Governor should recruit candidates and make appointments to the board in a timely manner.

Board appointments are not filled timely due to a lack of candidates. AS 08.01.020 requires that board appointments be made by the governor. The statute does not specify a time period for filling board vacancies; however, six months is a reasonable time period to appoint a board member following a term expiration date or board vacancy.

Since January 2004, three of seven board members have served beyond their appointed terms; another seat has remained vacant for an extended period of time. Currently, one board seat has remained vacant for 17 months. In another instance, a board member has continued to serve 17 months beyond the maximum two successive terms allowed by statute. Additionally, two other board members served 14 months beyond the termination date of their board terms before new appointments were made.

Failure to both fill board vacancies and replace outgoing board members hinders a board's operations, exceeds legal term limits, and creates an imposition on individuals to stay until a successor is appointed. We recommend the Office of the Governor recruit candidates and make board appointments in a timely manner.

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A ANALYSIS OF PUBLIC NEED D

The following analyses of State Physical Therapy and Occupational Therapy Board (board) activities relate to the public-need factors defined in the sunset review law at AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The board, through its administration of the licensure of physical therapists, occupational therapists, physical therapy assistants, and occupational therapy assistants, has endeavored to present competent professionals to the public. To promote continued competence, all licensees must provide proof of continuing education for license renewal and each licensee is subject to a full continuing education audit. Licensees are required to publicly display their licenses. This notifies the public that their practitioners have met the standards for the issuance and renewal of the licenses held.

The board adopted or revised regulations regarding professional conduct and ethical standards, professional licensure, and educational requirements. The board has issued licenses in a uniform manner, held required meetings, and administered examinations in accordance with statutory requirements.

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

Regulations were adopted requiring the supervision of aides by physical therapists. These regulations require that the physical therapist provide continual supervision of, and direction to, the aide when the aide is performing patient-related duties. Regulations were also updated to allow foreign-trained therapists the option of taking the Speaking Proficiency English Assessment Kit examination or the Test of Spoken English examination to determine their proficiency in the English language.

The board has been active in providing information to the public and to professional and state societies and associations. A member of the board attends the state association meetings to act as a liaison to the association.

The board submitted annual reports for FY 01 through FY 04 in a timely manner.

Exhibit 1 details board revenues and expenditures for FY 01 through FY 05.

Exhibit 1

State Physical Therapy and Occupational Therapy Board Schedule of License Revenues and Board Expenditures FY 01 - FY 05 (Unaudited)					
	FY 05	FY 04	FY 03	FY 02	FY 01
Revenue	<u>\$ 36,333</u>	<u>\$140,753</u>	<u>\$ 27,476</u>	<u>\$129,312</u>	<u>\$ 29,700</u>
Direct Expenses					
Personal Services	37,808	32,688	32,704	32,788	31,878
Travel	5,633	5,234	6,884	7,856	8,816
Contractual	2,380	5,083	5,607	6,337	6,337
Supplies	30	71	76	30	34
Equipment	0	0	0	0	0
Total Direct Expenses	<u>45,851</u>	<u>43,076</u>	<u>45,271</u>	<u>47,011</u>	<u>47,065</u>
Indirect Expense	<u>47,871</u>	<u>42,495</u>	<u>40,338</u>	<u>32,385</u>	<u>25,529</u>
Total Expenses	<u>93,722</u>	<u>85,571</u>	<u>85,609</u>	<u>79,396</u>	<u>72,594</u>
Annual Surplus (Deficit)	<u>(57,389)</u>	<u>55,182</u>	<u>(58,133)</u>	<u>49,916</u>	<u>(42,894)</u>
Beginning Cumulative Surplus (Deficit)	58,666	3,484	61,617	11,701	54,595
Unallocated Administrative Indirect Revenue	0	0	0	0	0
Ending Cumulative Surplus (Deficit)	<u>\$ 1,277</u>	<u>\$ 58,666</u>	<u>\$ 3,484</u>	<u>\$ 61,617</u>	<u>\$ 11,701</u>

The Division of Corporations, Professional and Business Licensing (division) sets fees based on a two-year cycle, with the majority of the revenue collected in even-numbered fiscal years. Based upon the financial data presented in Exhibit 1, licensing fees seem appropriately set at this time.

From Exhibit 1, it is evident revenues have risen steadily, albeit slowly, over the past five years. The steady increase in revenues is supported by a slow but gradual increase in the number of licensees during the audit period, FY 01 through FY 05. During the same time

period, indirect expenses increased sharply when compared with licensing revenues. If this trend continues, the board will likely incur a deficit in future years. Given this likely scenario, the division and the board should closely review licensing fees to ensure occupational fees are set sufficiently high to avoid an operational deficit.

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

During the review period, the board continually reviewed statutes and regulations for necessary changes. The board did not make recommendations for statutory changes, and there were no statutory changes during FY 01 through FY 05.

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

The locations, dates, and times of upcoming board meetings and proposed changes in regulations were published in the *Anchorage Daily News*, as well as posted on the board's website. Adequate time was provided for interested individuals to plan to attend or to submit written comment for review.

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

Public notices of proposed regulations are published in the *Anchorage Daily News* and the Alaska Online Public Notice System. The board meeting minutes show that unlimited time was allotted for the scheduled public comment period. All proposed regulation changes are subject to the public participation process.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period July 2001 through May 2005, the division opened 17 investigative cases related to individuals either seeking licensure or licensed by the State Physical Therapy and Occupational Therapy Board.

The types of complaints filed included:

- Continuing education requirements (5)
- Violation of ethics (4)
- Unlicensed practice (3)
- License application problems (2)
- Criminal conviction/action (2)
- Sexual misconduct (1)

Approximately 71% of the cases were filed by division staff; 24% were filed by clients; the remaining 5% were filed by licensed associates.

Fourteen, or 82%, of the cases closed in a reasonable period of time. Only three cases remained open for a period greater than 120 days. Two of the three cases related to meeting continuing education requirements; the remaining case related to a license application problem. The three cases were closed within the audit review period, FY 02 through FY 05.

We have reviewed the nature and extent of complaints filed involving physical and occupational therapists as well as physical and occupational therapy assistants. The division, in conjunction with the board, took appropriate investigative action, prioritized complaints in a reasonable manner, and proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

No complaints or investigations specifically involving the actions and activities of the State Physical Therapy and Occupational Therapy Board were received, or undertaken, by either the Office of the Ombudsman or the Office of Victims' Rights within the past four fiscal years.

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

Exhibit 2 on the following page is a summary of new licenses and permits issued by the board for FY 02 through FY 05.

Exhibit 2

New Licenses and Permits Issued (exclusive of renewals)	FY 02	FY 03	FY 04	FY 05	Current Licenses (as of June 30, 2005)
Physical Therapists	57	48	45	53	508
Physical Therapy Assistants	11	5	5	11	56
Occupational Therapists	20	18	19	38	22
Occupational Therapy Assistants	2	3	2	4	13
Temporary Permits	48	25	44	28	0
Limited Permits	12	13	20	28	0

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

Each applicant is required to satisfy the requirements for licensing. Board meeting minutes reflect that the board considers each application and verifies that the licensing requirements are satisfied prior to issuing a license.

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

We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action, in qualifying applicants. In no instance has the board denied an applicant a license based on personal attributes.

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

The Office of the Governor and the State Physical Therapy and Occupational Therapy Board should recruit prospective board members on a continual basis to minimize the time lapsed between term expirations and new appointments. (See Recommendation No. 1)

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

Broad objectives identified by the board included:

- Hold two meetings per year.
- Update jurisprudence questionnaire as needed.
- Send a member to the Federation of State Boards of Physical Therapy annual conference.
- Send a member to the National Board for Certification in Occupational Therapy annual workshop.
- Inform state associations of activities of the board; increase public and professional awareness of board functions.
- Encourage physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants to apply for board positions.
- Review statutes and regulations for necessary changes.

Evidence suggests the board establishes and meets its operational objectives annually. The board has had little success in encouraging candidates to seek board positions due to the volunteer nature of the positions.

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

Our review of the interactions among the State Physical Therapy and Occupational Therapy Board, the American Physical Therapy Association, the Alaska Physical Therapy Association, the American Occupational Therapy Association, and the Alaska Occupational Therapy Association did not reveal activities duplicated by two or more organizations. The national associations offer continuing education courses; however, they do not require members to submit continuing education credits to maintain their membership.



FRANK H. MURKOWSKI
GOVERNOR

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RECEIVED

OCT 05 2005

LEGISLATIVE AUDIT

September 28, 2005

Ms. Pat Davidson
Legislative Auditor
Legislative Audit Division
PO Box 113300
Juneau AK 99811-3300

Dear Ms. Davidson:

This letter is in response to your agency's September 12, 2005 management letter regarding the State Physical Therapy and Occupational Therapy Board sunset audit.

Recommendation No. 1

The Office of the Governor should recruit candidates and make appointments to the board in a timely manner.

The Office of the Governor concurs with this recommendation although it should be noted that it is difficult to find persons who wish to serve on this Board. There is currently one vacant seat and a recommendation for that seat is before the governor.

If you need additional information, please contact me at 465-3876.

Sincerely,

Susan Fischetti
Director, Boards & Commissions

cc: Regina Vose, In-charge Auditor
Linda Perez, Administrative Director

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OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

RECEIVED
NOV 25 2005
LEGISLATIVE AUDIT

November 22, 2005

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

Dear Ms. Davidson,

Thank you for the opportunity to respond to your Preliminary Audit Report concerning the State Physical Therapy and Occupational Therapy Board Sunset Audit.

The department concurs with the audit findings. We are fortunate that individuals who have served on the Board beyond their termination date have continued their service until replaced.

Again, thank you for the opportunity to respond.

Sincerely,

Richard K. Urion
Director of Corporations, Business and Professional
Licensing
for
William C. Noll
Commissioner

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November 20, 2005

Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
NOV 24 2005
LEGISLATIVE AUDIT

Attn: Pat Davidson

Re: State Physical and Occupational Therapy Board, Sunset Audit, September 17, 2005


We have received the confidential preliminary audit report on the State Physical Therapy and Occupational Therapy Board, Sunset Audit, dated September 17, 2005. There is only one recommendation in the report and it is as follows: The Office of the Governor should recruit candidates and make appointments to the board in a timely manner.

We are in agreement with this recommendation and note that there continues to be one board member who has served 19 months past her appointment term. We would concur with the recommendation that these seats need to be filled in a timely manner. Retaining an appointee beyond their term exceeds legal term limits, creates an imposition on the individual and hinders the board's operations, especially when a seat is left vacant.

We have no recommended implementation and/or schedule completion date as this recommendation appears to be directed to the Office of the Governor.

Please note in your report, on page -3- "Organization and Function", Dee Berline is listed incorrectly as the chair of the board.

Sincerely,


Mary Ann Paul
State PT and OT Board Chair

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

November 20, 2005

Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

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NOV 24 2005
LEGISLATIVE AUDIT

Attn: Pat Davidson

Re: State Physical and Occupational Therapy Board, Sunset Audit, September 17, 2005

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We are in agreement with this recommendation and note that there continues to be one board member who has served 19 months past her appointment term. We would concur with the recommendation that these seats need to be filled in a timely manner. Retaining an appointee beyond their term exceeds legal term limits, creates an imposition on the individual and hinders the board's operations, especially when a seat is left vacant.

We have no recommended implementation and/or schedule completion date as this recommendation appears to be directed to the Office of the Governor.

Please note in your report, on page -3- 'Organization and Function', Dee Berline is listed incorrectly as the chair of the board.

Sincerely,



Mary Ann Paul
State PT and OT Board Chair

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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November 25, 2005

Members of the Legislative Budget
and Audit Committee

We have reviewed the responses to our preliminary audit report on the Department of Commerce, Community, and Economic Development, State Physical Therapy and Occupational Therapy Board. In its response, the Board indicates that Ms. Berline is incorrectly identified as the chair of the board.

The Organization and Function section of the audit report details the official board members at June 2, 2005. While Ms. Paul was acting as the chair of the board at that time, her official appointment to the position was not until October 4, 2005. We acknowledge the apparent discrepancy; however, Ms. Berline was the chair of the board at June 2, 2005.

Sincerely,

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson
Legislative Auditor

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FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 254
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Extend PT & Occupational Therapy Board RDU Corp. Bus & Prof Licensing (117)
 Component Corp. Bus & Prof Licensing
 Sponsor Rules by Request of LB&A
 Requester Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	37.8	37.8	37.8	37.8	37.8
Travel	0.0	5.6	5.6	5.6	5.6	5.6
Contractual	0.0	2.4	2.4	2.4	2.4	2.4
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	45.8	45.8	45.8	45.8	45.8

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (1156)	0.0	45.8	45.8	45.8	45.8	45.8
------------------------------------	------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	45.8	45.8	45.8	45.8	45.8
TOTAL	0.0	45.8	45.8	45.8	45.8	45.8

Estimate of any current year (FY2006) cost: 45.8
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the State Physical Therapy and Occupational Therapy Board to June 30, 2014. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2007 funding is included in the Operating budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2007 budget. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Chief Phone (907) 465-2144
 Division Corporations, Business and Professional Licensing Date/Time 2/16/06 12:53 PM
 Approved by: William C. Noll, Commissioner Date 2/16/06
 Agency Commerce, Community and Economic Development

Alaska State Legislature

SENATOR
GENE THERRIAULT
Chair



SESSION ADDRESS
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4797
Fax: (907) 465-3884

Legislative Budget and Audit Committee

SPONSOR STATEMENT SB 254

"An Act extending the termination date for the State Physical Therapy and Occupational Therapy Board; and providing for an effective date"

This legislation stems from recommendations contained in the Legislative Audit Report entitled "Department of Commerce, Community, and Economic Development, State Physical Therapy and Occupational Therapy Board Sunset Audit", dated September 17, 2005.

Legislative Audit concluded that the State Physical Therapy and Occupational Therapy Board (Board) is operating in the public's best interest and should continue to regulate physical and occupational therapists. The Board safeguards the public interest by promoting the competence and integrity of those who practice in this field and continues to improve its effectiveness and ensure therapists are licensed in the State of Alaska. Accordingly, SB 254 extends the sunset date of the Board to June 30, 2014 for an eight-year extension.

This audit was conducted under revisions made last session to the sunset process. The standard sunset period for occupational boards and non-occupational boards was changed from "not to exceed four years" to "not to exceed eight years". Additionally, to better measure operational performance, two new criteria were added to statute that must be considered in the course of a sunset review by the auditors:

- The extent to which the board, commission, or agency has effectively attained its objectives and the efficiency with which it has operated.
- The extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

INTERIM ADDRESS

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SB

255

Audit Report

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF EXAMINERS IN OPTOMETRY
SUNSET AUDIT

September 27, 2005



Audit Control Number:

08-20042-05

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

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September 27, 2005

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation) the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF EXAMINERS IN OPTOMETRY

September 27, 2005
Audit Control Number
08-20042-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, or program subject to the sunset review process. Currently under AS 08.03.010(c)(14), the Board of Examiners in Optometry is scheduled to terminate on June 30, 2006. The board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Examiners in Optometry should be extended. The regulation and licensure of optometrists contributes to the protection of the public's welfare. We recommend the legislature extend the termination date of the Board of Examiners in Optometry to June 30, 2014.

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

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation) we have reviewed the activities of the Board of Examiners in Optometry (BEO). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(14) requires the board to terminate on June 30, 2006. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed optometrists.

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

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, and complaint investigation and resolution functions for fiscal years ending June 30, 2002, 2003, 2004, and 2005. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain their optometry license in good standing.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by, BEO.
- Files related to applicants for, and holders of, licenses issued by BEO.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Corporations, Professional and Business Licensing (division).
- Interviews with employees of the division.
- Reading and correspondence files maintained with the division.

ORGANIZATION AND FUNCTION

Alaska Statute 08.72.010 establishes the Board of Examiners in Optometry (BEO). The board is composed of five members: four licensed optometrists who have been Alaska residents for at least three years and one public member. All appointments are made by the governor.

Alaska Statute (AS 08.72) defines the practice of optometry as the examination, diagnosis, and treatment of conditions of the human eyes and visual system, other than by use of laser, x-rays, surgery, or pharmaceutical agents.

Board Duties and Powers

The board regulates the practice of optometry. BEO sets the minimum standards to practice in Alaska by:

- Licensing optometrists through examination or credentials.
- Establishing, amending, or eliminating regulations that affect the standards of professional optometry practice.
- Taking disciplinary actions in accordance with the Administrative Procedure Act when a person has violated optometric statutes or regulations.

Board of Examiners in Optometry (As of September 26, 2005)

Jill Matheson, Optometrist, Chair

John Cobbett, Optometrist, Secretary

Jeffrey Gonnason, Optometrist

Thomas Carter, Public Member

Vacant, Optometrist

Applicants must be a high school graduate or equivalent, in addition to having graduated from a recognized college or school of optometry. Additionally, applicants must pass all parts of the National Board of Examiners in Optometry (NBEO) examination, the Treatment and Management of Ocular Disease (TMOD) examination, and the Alaska State Optometry Law examination. Licensed optometrists are required to obtain minimum amounts of continued education every year. Optometrists licensed in other states who wish to license by credentials must meet the requirements of AS 08.72.170 and regulation 12 AAC 48.020 prior to receiving Alaska licensure.

Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Professional and Business Licensing (division)

The division provides administrative and investigative assistance to BEO. Administrative assistance includes budgetary services; functions such as collecting fees, maintaining files,

and receiving and issuing application forms; and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates DCCED to adopt regulations establishing the amount and manner of payment for application fees, examination fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

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

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

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Examiners in Optometry (BEO) should be extended. The board is operating in the public interest by effectively regulating the individuals who hold themselves out to the public as licensed optometrists.

The regulation and licensing of qualified optometrists is necessary to protect the public's health, safety, and welfare. To that end, BEO assists in establishing educational and work experience standards for licensure. Such standards provide reasonable assurance that persons licensed as optometrists are qualified. Standards of practice are enforced through the active investigation of complaints and revocation or suspension of licenses when appropriate.

BEO has operated effectively and in the public's best interest over the past four years. It has adopted regulatory changes and supported legislation that improved its oversight process and promoted more effective regulation of licensed optometrists.

Chapter 58, SLA 2005, enacted on June 25, 2005, amended AS 08.03.020, Procedures governing termination, transition, and continuation. Among other changes, this amendment extends the continuation or reestablishment period of a board from four to eight years.

Alaska Statute 08.03.010(c)(14) requires that BEO be terminated on June 30, 2006. Under AS 08.03.020(a), the board has a one-year period to administratively conclude its operations. We recommend the legislature extend the board's termination date to June 30, 2014.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Business, and Professional Licensing (the division), in conjunction with the Board of Examiners in Optometry (BEO), should decrease licensing fees to eliminate the board's current and projected operating surplus.

Evidence shows the board is accumulating a growing surplus each year. At the end of FY 04 and FY 05, BEO had an operating surplus of \$13,541 and \$56,760, respectively.

Alaska Statute 08.01.065(c) requires that fees for an occupation be set to approximate the regulatory costs related to that occupation. Given the growing surplus, it is evident that BEO revenues have exceeded board costs for several years without the division and BEO recommending necessary licensing and other fee adjustments.

There has been a steady decrease in board costs since FY 02. Review of board expenditures for the period FY 02 through FY 05 shows travel and contractual costs have decreased each year since FY 02 and personal services costs are down following a spike occurring in FY 03. In general, total expenditures have decreased slightly each year since FY 02, while revenues have steadily increased each renewal year during this time period. See Exhibit 1, the financial schedule in the Analysis of Public Need section of this letter.

We recommend that the division and the board review licensing fees and regulatory costs to ensure BEO's fees are not unduly high and are set to meet the annual operating costs of the board.

Recommendation No. 2

The legislature should consider amending the optometry statutes to ensure they support license endorsements for diagnostic use of pharmaceutical agents.

The board could better serve the public if optometry statutes were broadened to allow the issuance of a pharmaceutical use (only) endorsement. This change would maintain and potentially increase the number of licensees available to provide optometric services. Additionally, if current optometric statutes are amended, BEO may issue pharmaceutical use (only) license endorsements without violating current law.

Currently, BEO issues pharmaceutical agent use (only) license endorsements under 12 AAC 48.021, which is not consistent with AS 08.72.175. Regulation 12 AAC 48.025, Pharmaceutical Agent Prescription and Use Endorsement, specifically authorizes the board to issue a TPA, or Therapeutic Pharmaceutical Agent endorsement. This endorsement

authorizes a licensee to prescribe and use pharmaceutical agents as specified by AS 08.72.175. Comparatively, regulation 12 AAC 48.021 authorizes the board to issue a license endorsement to use topically applied pharmaceutical agents for diagnostic examination purposes only. The endorsement, commonly referred to as a DPA, or Diagnostic Pharmaceutical Agent endorsement, is not authorized by statute.

The 1992 amendment to AS 08.72.175 expanded the license endorsement authority of the board from "use" to "prescribe and use," thereby causing regulation 12 AAC 48.021, Pharmaceutical Agent Use Endorsement, to become void. A discord between statute and regulation governing optometry endorsements is evident.

We recommend the legislature consider amending AS 08.72.175 to specifically authorize the board to issue a license endorsement allowing for use (only) of pharmaceutical agents in addition to the current prescribe-and-use authorization. Further, consideration should be given to the need for a grandfather clause to ensure the legality of DPA endorsements issued since the 1992 statute amendment.

ANALYSIS OF PUBLIC NEED

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

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

The Board of Examiners in Optometry (BEO), through regulation of the licensure of optometrists, has provided the public with qualified professionals in the field of optometry. The board has ensured continued public safety by supporting both statutory and regulatory changes relating to the exam process, licensure by credentials, and continuing education hours.

The board supported a statutory amendment relating to the requirement to submit a photograph of the applicant with an application for a new license. While not repealed, the statute was revised, specifying that *"the department may require the applicant to submit a photograph of the applicant for its files; however, the photograph may not be forwarded with the application to the board for review."* This change eliminates any possible bias that could occur if an applicant's photograph was forwarded with the application to the board.

The board supported legislation to ensure that statutory and regulatory licensing renewal requirements were congruent with one another. Chapter 16, SLA 2002, amended AS 08.72.181(d) to require licensees to obtain 24 hours of postgraduate continuing education (CE). This statutory change reduced the prior CE requirement of 48 hours, thereby providing consistency between statutory and regulatory requirements relating to CE hours.

The board continues to support a statutory change to AS 08.72.272 allowing for prescriptive use of systemic drugs in the treatment of ocular disease or emergency anaphylaxis. In 1988, optometry statutes were updated to allow qualified individuals to use diagnostic drugs. In 1992, a statutory amendment dropped oral medication authorization, thereby limiting licensees to prescribing only topical therapeutic drugs to treat eye diseases.

The board has maintained a reasonable meeting schedule, has consistently strived to make the licensing process more efficient, and has continued to license only qualified applicants.

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

The Board of Examiners in Optometry supported passage of Chapter 16, SLA 2002, which accomplished changes to several statutes related to optometry. Significant changes benefiting the public included:

- Acceptance of passing scores of an exam administered by the National Board of Examiners in Optometry (NBEO).
- Requiring a state jurisprudence exam.
- Elimination of the state practical exam for licensure by credentials.

Overall, the statutory changes allow qualified applicants a more streamlined licensure process in the State. The acceptance of a passing score on the national examination eliminates a duplication of effort that all applicants previously faced with the state practical examination. Requiring successful passage of a state jurisprudence exam ensures optometrists are knowledgeable of Alaska's laws governing optometry.

The board licenses applicants in two ways, by examination and by credentials. Licensure by credentials requires applicants to document their previous work history as the basis for receiving a state license to practice. Applicants under both licensing methods must also pass a written exam of the laws of Alaska governing optometry.

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

The establishment of a statute allowing for licensure by credentials has eliminated an unnecessary barrier for individuals licensed in other states wishing to practice in Alaska.

As shown in Exhibit 1 on the following page, most of BEO's revenues are from licensing and renewal fees. License renewals are conducted on a biennial basis in odd-numbered fiscal years. This creates a two-year cycle in board revenues, with most revenues collected in the renewal year. We reviewed the internal records maintained by the Division of Corporations, Professional and Business Licensing (division) for revenues and expenditures associated with BEO. We did not audit this information, but present it for general information purposes.

In FY 02, revenues were considerably lower than expected, \$362, for a nonrevenue-generating year. The division staff could not account for the reason for the low reported revenues. The records for BEO show only two persons were licensed that year and paid a total of \$1,150. It is unknown where the difference, \$788, was recorded.

There is a recurring cumulative surplus in nonrenewal years. The revenue generated in a renewal year must be sufficient to fund most of the board's costs for the subsequent nonrenewal year. FY 05 financial data show a significant surplus at year end. Exhibit 1 also details both a steady revenue increase in renewal years and a growing cumulative surplus. Therefore, we recommend the division and the board review the regulatory costs and licensing fees to ensure BEO licensing fees are reduced to eliminate the growing surplus. (See Recommendation No. 1)

Alaska Statute 08.01.065(c) requires "that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." As Exhibit 1 reflects, the board's growing cumulative surplus is in noncompliance with this statute.

Exhibit 1

State of Alaska Board of Examiners in Optometry Schedule of License Revenues and Board Expenditures FY 02 - FY 05 (Unaudited)				
	FY 05	FY 04	FY 03	FY 02
Revenue	<u>\$ 68,285</u>	<u>\$ 9,141</u>	<u>\$ 56,090</u>	<u>\$ 362</u>
Direct Expenses				
Personal Services	12,813	12,314	15,631	12,548
Travel	3,548	4,379	3,129	8,305
Contractual	1,718	1,460	3,729	4,502
Supplies	0	49	92	18
Equipment	0	0	0	0
Total Direct Expenses	<u>18,079</u>	<u>18,202</u>	<u>22,581</u>	<u>25,373</u>
Indirect Expense	<u>6,987</u>	<u>6,212</u>	<u>5,951</u>	<u>5,299</u>
Total Expenses	<u>25,066</u>	<u>24,414</u>	<u>28,532</u>	<u>30,672</u>
Annual Surplus (Deficit)	<u>43,219</u>	<u>(15,273)</u>	<u>27,558</u>	<u>(30,310)</u>
Beginning Cumulative Surplus (Deficit)	13,541	28,814	1,256	31,566
Unallocated Administrative Indirect Revenue	0	0	0	0
Ending Cumulative Surplus (Deficit)	<u>\$ 56,760</u>	<u>\$ 13,541</u>	<u>\$ 28,814</u>	<u>\$ 1,256</u>

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

The location, date, and time of upcoming board meetings and proposed changes in regulations were advertised in the *Anchorage Daily News*, as well as posted on BEO's website. Adequate time was provided for interested individuals to plan to attend or to submit written comment for review. The board's meeting agenda sets aside suitable time for public comment. Board minutes reflect public participation at various meetings and the board's review of public written comment.

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

Public notices of proposed regulations are published in the *Anchorage Daily News* and the Alaska Online Public Notice System. The board minutes document that unlimited time was allotted for the scheduled public comment period. Proposed regulation changes are circulated to those affected by the changes.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period July 2001 through May 2005, the division opened 11 investigative cases related to individuals either seeking licensure or licensed by BEO. The type of complaint varied and included unlicensed practice, fraud/misrepresentation, incompetence, criminal conviction, license application problems, and continuing education; no single type dominated the complaints. Approximately 45% of the cases were filed by division staff; another 36% were filed by clients.

The 11 cases were open for an average of 222 days. At May 2005, two of the 11 cases remained open, averaging 440 days open. One of the two cases involved a lapsed license. While the issue itself was resolved in a timely manner, the case was not administratively closed by division staff and thus is reported as an active case. There was no apparent reason for the delay of action on the part of investigative staff for the second case remaining open.

We have reviewed the nature and extent of complaints filed involving ophthalmists. The division, in conjunction with the board, took appropriate investigative action, prioritized complaints in a reasonable manner, and proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

No complaints or investigations specifically involving the actions and activities of BEO were received or undertaken by either the Office of the Ombudsman or the Office of Victims' Rights within the past three fiscal years.

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

Exhibit 2 is a summary of new licenses issued by BEO for the period under review.

Exhibit 2

New Optometrist Licenses Issued (exclusive of renewals)	FY 02	FY 03	FY 04	FY 05	Current Licenses (as of June 30, 2005)
No Endorsement	0	0	0	0	3
Therapeutic Endorsement	2	6	11	15	122
Diagnostic Endorsement	0	3	1	0	5

Optometry licensing requirements involve passing two national examinations and a state jurisprudence examination. The national exams are developed and graded by the National Board of Examiners in Optometry. Developed by BEO, the state exam tests each applicant's knowledge of state statutory and regulatory requirements pertaining to optometry. Licensure-by-credentials applicants must pass the state jurisprudence exam only.

Each applicant is required to satisfy requirements for licensing. Board meeting minutes reflect that BEO considers each applicant and verifies that the licensing requirements are met prior to issuing a license.

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

We did not find any evidence that the board was not complying with the State personnel practices, including affirmative action, in qualifying applicants. In no instance has the board denied an applicant a license based on personal attributes.

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

As discussed in Recommendation No. 2, BEO should support legislative changes to AS 08.72.175 to ensure that statutes and regulations pertaining to license endorsements are congruent with one another. Additionally, BEO should consider necessary regulatory changes to ensure required continuing education hours are consistent with any license endorsement changes.

As discussed in Recommendation No. 1, BEO should review its fee schedule and the costs of its regulatory operations. Currently, the board's revenues exceed its cost of regulatory operations. As required by AS 08.01.065(c), the division and the board must adjust licensing fees to bring BEO's revenues in line with the regulatory costs related to its operations.

Several optometric statutes are outdated, incongruent, or unclear, potentially hampering BEO's efforts to regulate the optometry profession. We noted several instances where optometry statutes were in need of revision, clarification, or elimination. Specifically, the following statutes need attention:

AS 08.72.181(d), Renewal of license. This statute specifies the number of continuing education hours necessary for license renewal. Such specificity should be removed from statute and left to the board to manage through the regulatory process.

AS 08.72.191(6), Fees. This portion of the statute, fees for branch office license and renewal, became obsolete with the repeal and rewrite of a portion of central licensing statute AS 08.01.065.

AS 08.72.060(c)(1), Miscellaneous powers and duties of the board. Currently, the statute reads in part, "*The board shall elect a president...*" It should be amended to read, "*The board shall elect a chair...*" to ensure the language is consistent with central licensing statute AS 08.01.020 (Board organization), which states in part, "*... the governor may designate the chair of a board...*"

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

Broad objectives identified by the board included:

- Develop and offer a new state law exam.

- Send a representative to the Association of Regulatory Boards of Optometry (ARBO) meeting annually.
- Show support or opposition, as appropriate, for certain legislation.
- Ensure licensees are informed of both statutory and regulatory changes, including new and amended language.
- Review statutes and regulations for necessary changes.

Evidence suggests BEO establishes and meets its operational objectives annually, with the exception of sending a representative to the ARBO meeting annually. The board did not send a representative to the ARBO meeting for the years FY 02 through FY 04.

The board has streamlined the licensing process by allowing for licensure by credentials and by accepting a passing score on the national optometry examination in lieu of passing a state practical examination.

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

Our review of the interactions among BEO, the American Optometric Association (AOA) and the Alaska Optometric Association (AKOA) did not reveal activities duplicated by two or more organizations. As discussed previously, the board took action eliminating duplicative efforts of the state BEO and the AOA by eliminating the state practical exam and accepting passing scores on the national exams.

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OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

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NOV 25 2005

LEGISLATIVE AUDIT

November 22, 2005

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

Dear Ms. Davidson,

Thank you for the opportunity to respond to your Preliminary Audit Report concerning the Board of Examiners in Optometry Sunset Audit.

Please consider the following comments to your findings and recommendations.

Recommendation No. 1

The Division of Corporations, Business and Professional Licensing (the division), in conjunction with the Board of Examiners in Optometry (BEO), should decrease licensing fees to eliminate the board's current and projected operating surplus.

We agree that fees will be reviewed for possible adjustments prior to its license renewal on December 31, 2006. However, the assumption that the FY05 year end operating surplus of \$56,760 should be the cause for a fee decrease is too preliminary. Fee reviews are based on the biennial licensing cycle prior to the license renewal period. Current BEO costs (FY06) will need to be included before any adjustments to the fees can be considered, especially since FY06 is a nonrenewal year. The Board normally ends nonrenewal years in a deficit situation because the primary source of revenue derives from new licensees in those years. BEO licenses are due for renewal on 12/31/06 (FY07). A financial review will be conducted prior to the license expiration and fees will be adjusted accordingly.

Recommendation No. 2

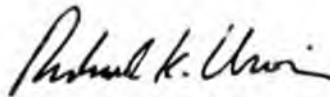
The legislature should consider amending the optometry statutes to ensure they support license endorsements for diagnostic use of pharmaceutical agents.

We concur that statutory amendments are needed to address pharmaceutical agent endorsements. We also support the need to ensure the legality of licensees with DPA endorsements (diagnostic pharmaceutical agent endorsement).

The Department also support the Board's desire to delete of the number of continuing education hours required in AS 08.72.181(d) and to grant authority to establish CE requirements by regulations, as is the practice with many other licensing programs. This will help to smooth transition in granting optometry licensees to prescribe and use therapeutic pharmaceutical agents as their normal scope of practice, and prohibit licensees who fail to meet CE requirements from attempting to practice at the status of a licensee with a DPA endorsement.

Consideration of these statutory changes during the sunset review process will enhance the practice of optometrists in Alaska.

Sincerely,



Richard K. Urion
Director of Corporations, Business and Professional
Licensing
for
William C. Noll
Commissioner



Alaska Vision Center, Inc.

JILL GEERING MATHESON, O.D.

September 15, 2005

Pat Davidson
Legislative Budget and Audit Committee
P O Box 113300
Juneau, AK 99811-3300

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LEGISLATIVE AUDIT

Re: Preliminary Audit Report Response
Board of Examiners in Optometry

Dear Ms. Davidson:

I have had the opportunity to read the Preliminary Audit Report. In response, I would like to restate the Board's desires, as there are some discrepancies between the report and the Board's actual wishes.

1. The Board agrees that extending the Board of Examiners to June 30, 2014 appears reasonable.
2. Regarding Recommendation #1 to lower fees: the BEO had briefly discussed at the last meeting that it would be seeking to lower licensing fees in light of the budget surplus. This surplus has been due to the decreased expense of giving an in-state board examination. The BEO will act on this at the next meeting on December 1, 2005.
3. Regarding Recommendation #2 to amend the optometry statutes to ensure they support diagnostic use of pharmaceutical agent endorsements: While it appears that regulation 12AAC 48.021 is not consistent with statute AS 08.72.175, it is not in the BEO's interest to change statute AS 08.72.175 to allow diagnostic use. The BEO has discussed at length a desire to go to one level of licensure, that is, to have all new licenses as of a specified date (we have discussed 2009) be at the prescribe and use (aka therapeutic) level. License renewals would not be eligible for "downgrading" to DPA or no endorsement. Current lower levels of licensure would be grandfathered as restricted licenses. Changing the said statute to include diagnostics would actually take us farther from our goal. The BEO will, however, look at ways to remove the inconsistency between the regulation and the statute while considering a way to provide for the legality of DPA endorsements issued since the 1992 statute amendment.
It appears the legislative audit agency is concerned that fewer optometrists will either choose to or be able to meet the requirements for TPA only licensure. While the agency is looking at this only from an economic standpoint, the BEO is looking at what is in the best interests of the patients. All optometrists since the early 1990's have been educated to be TPA licensed doctors. We are committed to using that education to protect the eye health and vision of all citizens, and a TPA licensed optometrist can provide a higher level of care. The very few numbers of DPA endorsed licenses and no endorsement licenses means that the economic impact to the state's coffers would be minimal.
4. Another BEO desire is to change 08.72.181 (d). The BEO discussed eliminating "of 24 Hours". The statute would then read "...submit to the board evidence of postgraduate continuing education instruction as prescribed by regulations of the

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Preliminary Audit Report Response
Board of Examiners in Optometry

board." This gives the BEO the ability to change the hours of continuing education without legislative approval as needs arise.

5. The BEO needs legislation to grant therapeutic prescriptive authority to applicants applying for license by credentials. We are hoping this can be accomplished with a regulation change.
6. Currently, there is nothing in the practice act authorizing the BEO to deny or put stipulations on new licenses by examination. Under AS 08.72.170(8), the BEO cannot grant a license if the applicant by credentials has had any disciplinary actions regardless of the level of severity, how long it has been since the action was taken, or if the licensee is currently under investigation in another state. Under License by Credentials and License by Examination, the BEO needs authority to either deny or put stipulations on a license for an applicant who currently has disciplinary action, had disciplinary action in the past, or who is being investigated at the time of application in another state. Our only legal possibility at this time is to grant the license if the applicant is by examination, or deny the license if the applicant is by credentials.
7. The BEO supports legislation to widen the scope of therapeutic prescriptive authority to include oral and systemic pharmaceutical agents for the treatment of ocular conditions. This would allow Alaska optometrists to practice at the same level as over 35 other states which leads to fewer referrals and decreased economic impact of eye health care in the state.

Please contact me if you have further questions.

Sincerely,



Jiff Geering Matheson, OD, Chair
Board of Examiners in Optometry

SENATE COMMITTEE REPORT

First Committee of Referral

30/06

FURTHER: Finance

5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

and Commerce Committee considered SENATE BILL NO. 255

SB 255 OPTOMETRY: EXTEND BD/ LIC. ENDORSEMENT

extending the termination date for the Board of Examiners in Optometry; amending the licensing
 provisions for optometrists; and providing for an effective date."

Comments:

replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do Not PASS	No REC	AMEND
<i>Betty Davis</i>	X			
<i>J. S. Ellis</i>	X			
<i>Allyne Wilkins</i>	✓			
<i>Ben Atkins</i>	✓			
CHAIR: <i>O. Bando</i>	✓			

Proposed amendment to SB 255

From: Rick Urion, Director
Division of Corporations, Business and Professional Licensing

SB 255, page 2, line 25, insert a new section 6 to read:

Sec. 6 AS 08.72.181(d) is amended to read:

(d) Before a license may be renewed, the licensee shall submit to the board evidence of [24 HOURS OF] postgraduate continuing education instruction as prescribed by regulations of the board. ~~The board may specify by regulation those circumstances under which the requirements of this subsection may be waived.~~

Renumber remaining bill sections.

*Page amendment to SB 255 - remove the
circumstances under which the requirements of this subsection may be waived*

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 255
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Optometry Extend Bd/Lic. Endorsement RDU Corp. Bus & Prof Licensing (117)
 Component Corp. Bus & Prof Licensing
 Sponsor Rules by Request of LB&A
 Requester Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services		12.8	12.8	12.8	12.8	12.8
Travel		3.5	3.5	3.5	3.5	3.5
Contractual		1.7	1.7	1.7	1.7	1.7
Supplies		0.0	0.0	0.0	0.0	0.0
Equipment		0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	18.0	18.0	18.0	18.0	18.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	18.0	18.0	18.0	18.0	18.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	18.0	18.0	18.0	18.0	18.0
TOTAL	0.0	18.0	18.0	18.0	18.0	18.0

Estimate of any current year (FY2006) cost: 18.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the Board of Examiners in Optometry to June 30, 2014. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2007 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2007 budget. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Chief Phone (907) 465-2144
 Division Corporations, Business and Professional Licensing Date/Time 2/10/06 4:28 PM
 Approved by: William C. Noll, Commissioner Date 2/10/06
 Agency Commerce, Community and Economic Development

Alaska State Legislature

SENATOR
GENE THERRIAULT
Chair



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Legislative Budget and Audit Committee SPONSOR STATEMENT SB 255

"An Act extending the termination date for the Board of Examiners in Optometry; amending the licensing endorsement provisions for optometrists; and providing for an effective date"

This legislation stems from recommendations contained in the Legislative Audit Report entitled "Department of Commerce, Community and Economic Development, Board of Examiners in Optometry Sunset Audit", dated Sept. 27, 2005.

Legislative Audit concluded that the Board of Examiners in Optometry (BEO) continues to serve a public need and is operating in the public interest. The regulation and licensing of qualified optometrists is necessary to protect the public's health, safety and welfare. Further, the BEO has operated effectively, adopted regulatory changes and supported legislation that improved its oversight process and promoted more effective regulation of licensed optometrists. Accordingly, SB 255 extends the sunset date for the BEO to June 30, 2014 for an eight-year extension.

Legislative Audit also recommended that the Legislature amend the optometry statutes to ensure they support current license endorsements for the diagnostic use of pharmaceutical agents. Currently, statutory language provides for a single endorsement for both prescribe and use. However, the BEO is issuing two types of endorsements. The first allows a practitioner to both prescribe and use pharmaceutical agents and the second type of endorsement allows a practitioner "use" only. Current law does not authorize the use only endorsement. SB 255 corrects this situation by adding a section authorizing a use only endorsement and also "grandfathers" in the practitioners that were given that endorsement over the years.

Finally, this audit was conducted under revisions made last session to the sunset process. The standard sunset period for occupational boards and non-occupational boards was changed from "not to exceed four years" to "not to exceed eight years". Additionally, to better measure operational performance, two new criteria were added to statute that must be considered in the course of a sunset review by the auditors:

- The extent to which the board, commission, or agency has effectively attained its objectives and the efficiency with which it has operated.
- The extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

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