

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Dental Examiners, August 5, 2004.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dental Examiners (BDE). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for BDE. Currently under AS 08.03.010(c)(7) the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BDE will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Dental Examiners 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 dentists and dental hygienists.

The board has adopted regulatory changes and supported legislation that improved the board's oversight process and has promoted more effective regulation of licensed dentists and dental hygienists.

Alaska Statute 08.03.010(c)(7) requires the Board of Dental Examiners be terminated on June 30, 2005. If the legislature does not extend the termination date, the board will have a one-year "wrap-up" period to administratively conclude its operations. We recommend the legislature extend the termination date of the board until June 30, 2011.

Implementation of our recommendation would require the legislature to exercise some discretion permitted by state law. Alaska Statute 08.03.020(c) provides for the following:

*A board scheduled for termination ... may be continued or reestablished by the legislature for a period not to exceed four years **unless the board is continued or reestablished for a longer period** ... [emphasis added]*

Two factors influence our recommendation that the legislature extend the board to June 30, 2011. First, the board has operated effectively and in the public's interest over the past four years. Secondly, this extension would work towards smoothing out the number of boards and commissions that come under sunset in a particular year. Typically, there are four to six boards and/or commissions scheduled for a legislative sunset review; however, in 2005 there are 12 boards scheduled for sunset. Nonstandard extension dates will allow for a more even distribution of organizations going through the sunset process in any given year.

ANALYSIS OF PUBLIC NEED

The board licenses applicants in two ways, by examination and by credentials. Licensure by credentials requires that the applicant document their previous work history as a dentist or dental hygienist as basis for receiving a state license to practice. In prior reports we have expressed concerns that licensure by credential has been unnecessarily cumbersome and difficult. The board adopted new and revised old regulations related to licensure by credentials that have made this process less restrictive. Further, the board adopted new regulations that expanded continuing education requirements and provided for the issuance of licenses in a more uniform and consistent manner.

The Board of Dental Examiners supported passage of HB 81 by the 22nd Legislature (Chapter 24 SLA 01) which accomplished changes to several statutes related to dentistry. Two significant changes of particular benefit to the public included:

- the acceptance of passing scores of an exam administered by the Central Regional Dental Testing Service
- an increase in the civil fine penalty from \$5,000 to \$25,000 per violation

Previously, candidates could only qualify for licensure by an exam that was administered by the Western Regional Examining Board. The Central and Western regions agree the exams are comparable, and per legislative testimony there is statistical evidence to support the claim. Additionally, acceptance of another exam benefits the State by reducing barriers to entry for dentists from other states wishing to relocate here. The increase in the civil fine penalty parallels an increase that was also adopted for the Medical Board (included in separate legislation).

September 1, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF DENTAL EXAMINERS

August 5, 2004

Audit Control Number

08-20031-04

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(7), the Board of Dental Examiners is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations. We recommend that the legislature extend the board's termination date to June 30, 2011.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dental Examiners (BDE). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for BDE. Currently under AS 08.03.010(c)(7) the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BDE will have one year to conclude its administrative 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 dentists and dental hygienists.

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 relates 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 their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions for fiscal years ending June 30, 2001, 2002, and 2003. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing of dentists and dental hygienists.
- Minutes of meetings of the Board of Dental Examiners.

- Annual reports issued by the Board of Dental Examiners.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
- Reading and correspondence files maintained with the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
- Interviews with employees of the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
- Review of financial records related to the revenues generated and the operating costs incurred by BDE.
- Files related to applicants for, and holders of, licenses issued by BDE.

ORGANIZATION AND FUNCTION

The Board of Dental Examiners was established in 1955, through Alaska Statute 08.36.010. The board is made up of six licensed dentists, two licensed dental hygienists, and one public member. The dentists and dental hygienists must have been practicing in Alaska for the five years immediately preceding their appointment to the board. Alaska statute also requires that the public member not have direct financial interest in the occupation the board regulates. Board members are appointed by the governor and serve staggered terms for four years.

The powers of the board include:

- Examining and issuing licenses to qualified applicants.
- Hold hearings and order the disciplinary sanction of a person who violates this chapter, Alaska Statute 08.32, Alaska Statute 08.36 or a regulation of the Board.
- Adopting regulations ensuring that renewal of registration is contingent upon proof of continued professional competence by a licensed dentist or licensed dental hygienist.
- Provide the department with the requirements for proof of continued professional education.
- Issuing permits or certificates to licensed dentists and licensed dental hygienists who meet the standards determined by the board for specific procedures that require specific education and training.

Board of Dental Examiners
<i>(as of June 30, 2004)</i>
Robert E. Warren, Dentist, Chairman James B. Blasingame, Public Member Mary Ann Cerney, Dental Hygienist David L. Eichler, Dentist William Gerace, Dentist Keith L. Gottlieb, Dentist Rena L. Lehmann, Dental Hygienist Rebecca Neslund, Dentist Arne R. Pihl, Dentist

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

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

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

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Dental Examiners 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 dentists and dental hygienists.

The board has adopted regulatory changes and supported legislation that improved the board's oversight process and has promoted more effective regulation of licensed dentists and dental hygienists.

Alaska Statute 08.03.010(c)(7) requires the Board of Dental Examiners be terminated on June 30, 2005. If the legislature does not extend the termination date, the board will have a one-year "wrap-up" period to administratively conclude its operations. We recommend the legislature extend the termination date of the board until June 30, 2011.

Implementation of our recommendation would require the legislature to exercise some discretion permitted by state law. Alaska Statute 08.03.020(c) provides for the following:

*A board scheduled for termination ... may be continued or reestablished by the legislature for a period not to exceed four years **unless the board is continued or reestablished for a longer period** ... [emphasis added]*

Two factors influence our recommendation that the legislature extend the board to June 30, 2011. First, the board has operated effectively and in the public's interest over the past four years. Secondly, this extension would work towards smoothing out the number of boards and commissions that come under sunset in a particular year. Typically, there are four to six boards and/or commissions scheduled for a legislative sunset review; however, in 2005 there are 12 boards scheduled for sunset. Nonstandard extension dates will allow for a more even distribution of organizations going through the sunset process in any given year.

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A ANALYSIS OF PUBLIC NEED D

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

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

The board, through regulation of the licensure of dentists and dental hygienists, has provided the public with qualified professionals in the dental industry. The profession has adopted regulations related to continuing professional education to ensure licensees remain current in the field of dentistry and dental hygiene practice.

The board licenses applicants in two ways, by examination and by credentials. Licensure by credentials requires that the applicant document their previous work history as a dentist or dental hygienist as basis for receiving a state license to practice. In prior reports we have expressed concerns that licensure by credential has been unnecessarily cumbersome and difficult. The board adopted new and revised old regulations related to licensure by credentials that have made this process less restrictive. Further, the board adopted new regulations that expanded continuing education requirements and provided for the issuance of licenses in a more uniform and consistent manner.

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 pertaining to background checks and administration of anesthetic agents were amended, both of which benefit the public by: (1) promoting the integrity and competence of dentists and dental hygienists; and, (2) allowing more efficient access to licensure by prospective applicants. Specifically, regulations were amended allowing dental hygienists to become licensed to administer a local anesthetic on the basis of practical work experience alone.¹ Previously, only individuals who passed an examination were allowed to administer anesthetic agents. The board also instituted change to both dental and dental hygienist regulations relating to background investigations, making it less expensive and time intensive for new graduates entering the dental profession.²

¹ 12 AAC 28.320

² The new regulation also applies to those individuals who have not previously held a dental license in any jurisdiction before the 90 days immediately preceding the date of application for licensure.

Annual reports for fiscal years ended June 30, 2001, 2002, and 2003 were submitted in a timely manner to the Division of Occupational Licensing.

As reflected by the schedule below, the board renews licenses in the odd-numbered fiscal years. This is reflected in the fluctuation of board revenues between each fiscal year. Even though FY 04 revenues will be significantly less compared to that of the prior year, the board's surplus carryover will be sufficient to cover costs, given anticipated FY 04 expenditures. The table summarizes financial information for the board for fiscal years 2001, 2002, and 2003:

State of Alaska Board of Dental Examiners FY 01 - FY 03 Schedule of License Revenues and Board Expenditures (Unaudited)			
	<u>FY 03</u>	<u>FY 02</u>	<u>FY 01</u>
Revenue	\$ 375,100	\$ 158,200	\$ 357,300
Direct Expenses			
Personal Services	88,800	112,400	74,900
Travel	14,600	14,100	15,700
Contractual	37,600	154,300 ³	65,000
Supplies	200	300	100
Equipment	-	-	-
Total Expenses	141,200	281,100	155,600
Indirect Expense	50,700	53,000	45,500
Total Expenses	191,900	334,100	201,200
Annual Surplus (Deficit)	183,200	(175,900)	156,100
Beginning Cumulative Surplus (Deficit)	(128,500)	47,400	(108,700)
Ending Cumulative Surplus (Deficit)	\$ 54,700	\$ (128,500)	\$ 47,400

³ The increase in contractual expenses is attributable primarily to two significant disciplinary hearings.

The schedule indicates that licensing fees are adequate and are set in a manner consistent with AS 08.01.065(c), which requires that fees be set at a level so “*the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.*”

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

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 Dental Examiners supported passage of House Bill 81 of the 22nd Legislature (Chapter 24 SLA 01) which accomplished changes to several statutes related to dentistry. Two significant changes benefiting the public include:

- the acceptance of passing scores of an exam administered by the Central Regional Dental Testing Service (CRDTS)
- an increase in the civil fine penalty from \$5,000 to \$25,000 per violation

Previously, candidates could only qualify for licensure by an exam that was administered by the Western Regional Examining Board (WREB). The Central and Western regions agree the exams are comparable and, per legislative testimony, there is statistical evidence to support the claim. Additionally, acceptance of another exam benefits the State by reducing barriers to entry for dentists from other states wishing to relocate here. The increase in the civil penalty parallels an increase for the Medical Board (included in separate legislation).

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. Meetings are adequately advertised and time is set aside for public testimony.

Major proposed regulation changes were circulated throughout the professional community by either direct response mailing to the affected licensee holders or distributed to the state associations for publication in member newsletters. Feedback resulted in changes to the proposed regulations addressing the profession's concerns.

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 2004, the Division of Occupational Licensing opened 59 investigative cases related to individuals either seeking licensure or licensed by the Board of Dental Examiners. Of those cases, approximately 70 percent were generated by complaints from the public. As of June 2004, 14 cases remained open.

Of the 59 cases, 11 remained open longer than 120 days (19%). Three of the 11 complaints involved the same dentist – who, eventually, voluntarily surrendered his license during the subsequent disciplinary hearing. The remaining eight cases are made up of six complaints of negligence or incompetence and two generated by the board, concerning licensing requirements.

Five of the 11 cases (46%) had periods of apparent investigative inactivity of more than 90 days. According to the investigator, some of the cases were held open with little or no activity because of the need for the division to seek an “expert opinion” review of the case. Only two of the 11 cases were identified as high priority on the division's classification system. An evaluation of the investigative process is being reviewed in another audit report which reviews the State's overall sunset process.

No complaints or investigations specifically involving the actions and activities of the Board of Dental Examiners were received, or undertaken by, either the Office of the Ombudsman or the Office of Victim's Rights within the past three fiscal years.

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 instances has the board denied an applicant a license based on personal attributes.

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

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

New Licenses and Permits Issued (Exclusive of Renewals)	<u>FY01</u>	<u>FY02</u>	<u>FY03</u>	<u>Total</u>	Issued to <u>Date</u>
Dentist	23	25	27	75	516
Dental Hygienist	16	14	30	60	426
Dental Specialist	2	3	4	9	82
Parenteral Sedation Permit	3	2	1	6	33
General Anesthetic Permit	1	1	2	4	19
Local Anesthetic Permit	13	9	19	41	348

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

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

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.

The board has specified in annual reports a list of changes it would like made to statutes relating to dentists and dental hygienists. We believe these amendments reflect the desire of

the board to have the statutes updated to reflect current practice as to licensing and examination and would be consistent with better serving “*the interest of the public... .*”



DIVISION OF OCCUPATIONAL LICENSING

Frank H. Murkowski, Governor

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

Dear Ms. Davidson:

RE: Board of Dental Examiners –Preliminary Report

The Department concurs with the information provided in the Preliminary Audit Report. We support continuation of the Board of Dental Examiners.

Clarification is noted for page 8 (regarding renewal cycles for licensees). Dentist licenses are renewed December 31 of even numbered years and Dental Hygienist licenses are renewed on December 31 of odd numbered years. While the board conducts a renewal each December, it is accurate to note the Dental Hygienists renewal cycle brings in less revenue.

We appreciate the opportunity to comment.

Sincerely,

/s/

Rick Urion
Director

Cc: Edgar Blatchford
Commissioner

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August 15, 2004

Jim Griffin
Audit Manager
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau. AK 99811-3300

RECEIVED
AUG 23 2004
LEGISLATIVE AUDIT

Dear Mr. Griffin:

RE: Written response to Audit
Report findings/recommendations

Let me apologize for getting this response to you a little late. I was out of town when it arrived and am just now catching up with my correspondence.

First, let me say that I concur with the Committee's conclusions and with its recommendation to extend the Board of Dental Examiners until June 30, 2011. I agree that the Board has operated effectively in the public's interest for the past four years. Also, we feel that it is an excellent idea to extend the Board until 2011 and help relieve the current sunset logjam schedule. The Board has continued to provide the public with qualified professionals in the dental profession and insures their continued competency with regulated continuing professional education.

On behalf of the Board, I would like to express our appreciation for the support and expertise of our staff in Juneau with the Division of Occupational Licensing and also express our thanks for the hard work of the Budget and Audit Committee and the Division of Legislative Audit.

I would like to also emphasize the following important points.

1. Due to now recognizing both the Central Regional Testing Service (CRDTS) examinations and the examinations given by the Western Regional Examining Board (WREB), the Board has greatly increased (+54%) the number of candidates eligible to apply for dental and dental hygiene licenses in Alaska.
2. The Board has a few very "high profile", "high priority" cases of negligence and incompetence that, after investigation and accusation, have been assigned to a disciplinary hearing. We have been informed that the Division of Occupational Licensing has only one hearing officer for all of the occupations and boards. Therefore the hearings are being scheduled six to twelve months out. The Dental Board feels that this excessive delay in the administrative process puts the public at great risk, and might allow other patients to become harmed by these practitioners that are not conforming to the ethical and clinical standards of care.

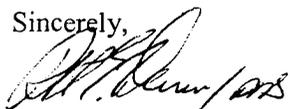
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3. The Board is frustrated that our legislative recommendations continue to be ignored. We currently have several statutes on the books that are either outdated or that do not apply today. The legislative changes that the Board has recommended would correct these inconsistencies.
4. In particular, the Board wishes to change the applicable statutes to allow for the issuance of temporary licenses. The Board feels this would help relieve some of the dental manpower shortages we see in rural Alaska. We get frequent requests from dentists and hygienists licensed elsewhere wishing to come to Alaska for a brief period and volunteer their services and practice in the bush. Currently our statutes do not allow for a temporary license. We feel strongly that having unlicensed high school graduates that are trained in a nonaccredited program in a foreign country (DHAT-dental health aid therapists) and then allowed to practice dentistry in rural Alaska is not the answer to solving Alaska's rural dental manpower needs. We are not convinced that the health and safety of our rural citizens will be best served by letting these unlicensed practitioners practice dentistry in the bush.
5. Lastly, the Board feels it should have the authority to levy fines that adequately cover the costs of its investigations and hearings. In 2002, \$154,300 (two to four times normal) was spent on contractual services with the Department of Law and expert witnesses to basically discipline one dentist that had multiple complaints filed against him. As stated in the Committee's report, the dentist eventually voluntarily surrendered his license, but the costs were not recouped and were therefore passed on to the other licensees in the state in the form of increased license renewal fees. The Dental Board does not feel that this is fair to the ethical and clinically competent practitioners of Alaska. By increasing the fine limits the costs of discipline can be passed on to those who violate of the law and are responsible for the enforcement costs incurred

This summarizes the Dental Board's on several issues. If you have any questions for me, please do not hesitate to call me at my office in Anchorage 907-274-7691.

Sincerely,



Robert E. Warren, DDS
Chairman

Cc: Rick Urion, Director
Division of Occupational Licensing