

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, State Physical Therapy and Occupational Therapy Board, September 17, 2005.

PURPOSE OF THE REPORT

In accordance with 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). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for the board. Currently under AS 08.03.010(c)(16), the board will terminate on June 30, 2006. If the legislature does not extend the termination date for the board, it will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the State Physical Therapy and Occupational Therapy 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.

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 that the Office of the Governor recruit candidates and make board appointments in a timely manner.

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.

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	3
Report Conclusions.....	5
Findings and Recommendations.....	7
Analysis of Public Need	9
Agency Responses:	
Office of the Governor	15
Department of Commerce, Community, and Economic Development.....	17
State Physical Therapy and Occupational Therapy Board.....	19
Legislative Auditor’s Additional Comments.....	21

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.

(Intentionally left blank)

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.

(Intentionally left blank)

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><u>\$ 1,277</u></u>	<u><u>\$ 58,666</u></u>	<u><u>\$ 3,484</u></u>	<u><u>\$ 61,617</u></u>	<u><u>\$ 11,701</u></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	229
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

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

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,

A handwritten signature in cursive script that reads "Susan Fischetti".

Susan Fischetti
Director, Boards & Commissions

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

(Intentionally left blank)



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

(Intentionally left blank)

November 20, 2005

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

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

(Intentionally left blank)

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,

Pat Davidson
Legislative Auditor

(Intentionally left blank)