

# 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, State Medical Board, October 3, 2006.

### 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 Medical Board (board). As required by state law, the legislative committees of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010 (c)(12) states that the board will terminate on June 30, 2007, and will have one year from that date to conclude its administrative operations.

### REPORT CONCLUSIONS

In our opinion, the termination date for the State Medical Board should be extended. The regulation and licensing of qualified physicians and other health care professionals is essential to protecting the public's health, safety, and welfare. State health care consumers rely on the diligence of the board and staff to promote the provision of quality health care.

The board serves this public interest by establishing minimum educational and work experience requirements that individuals must meet to become licensed physicians, osteopaths, podiatrists, paramedics and physician assistants. The board further serves this public interest by investigating complaints against licensed professionals and taking disciplinary licensing action when appropriate. The board has satisfactorily carried out its responsibilities in a manner consistent with statutes, good administrative practice, and the public interest.

Alaska Statute 08.03.010(c)(12) requires that the State Medical Board be terminated on June 30, 2007. 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, 2013.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The board should update regulatory language to reflect current license-by-examination practices.

Current license by examination practices are not in accordance with regulatory language. Regulation 12 AAC 40.020(a) reads “[T]he written examination is administered twice yearly in Alaska ... .” However, candidates may sit for the computerized examination up to three times within a 12-month period. The State Medical Board has contracted with the Federation of State Medical Boards (FSMB) to administer the computerized examination. Candidates schedule testing directly with FSMB and may test at any time throughout the year at an approved testing center.

Due to other pressing matters, updating the regulatory language has not been a priority of the board. Outdated regulatory language is misleading to readers seeking information regarding licensing procedures in the State of Alaska. As such, 12 AAC 40.020(a) should be updated to reflect current examination practices.

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November 3, 2006

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 MEDICAL BOARD  
SUNSET REVIEW

October 3, 2006

Audit Control Number

08-20046-06

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)(12), the State Medical Board is scheduled to terminate on June 30, 2007. The board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the State Medical Board should be extended. We recommend that the legislature extend the termination date of the board to June 30, 2013.

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

Handwritten signature of Pat Davidson in black ink.

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 Medical 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)(12) requires the board to terminate on June 30, 2007. 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 physicians, osteopaths, podiatrists, paramedics and physician assistants.

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, 2003, 2004, 2005, and 2006. 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 physicians, osteopaths, podiatrists, paramedics, and physician assistants.
- 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

Alaska Statute 08.64.010 establishes the State Medical Board (board). The board consists of five licensed physicians “*residing in as many separate geographical areas of the state as possible,*” a licensed physician assistant, and two public members who are to have “*no direct financial interest in the health care industry.*”

The board regulates the following groups of professionals engaged in medical practice in Alaska: physicians, osteopaths, podiatrists, paramedics, and physician assistants.

Most licensing requirements are established by statute. However, for unique circumstances, the statutes permit the board to waive some requirements and replace them with special conditions, imposed by the board, for issuing special licenses.

These special licenses include those issued by endorsement, and those permitting temporary practice for up to six months, or until the board meets to consider the application, whichever comes first.

The board also issues a temporary *locum tenens* permit which is valid for 120 consecutive days, but not more than 240 days in any two-year period.

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

### **State Medical Board**

(As of June 30, 2006)

David M. Head, MD, Chair

Robert A. Breffeilh, MD

John T. Duddy, MD

G. Bert Flaming, MD

Edward A. Hall, Physician Assistant

Nancy Puckett, Public Member

Michael J. Tauriainen, Public Member

Kevin M. Tomera, MD

The division provides administrative and investigative assistance to the State Medical 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, with the concurrence of the board, 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 act on its own initiative, or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged in, 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 State Medical Board (board) is operating in the public's best interest and should continue to regulate occupations within the purview of the board.<sup>1</sup> 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 medical professionals.

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 medical professionals are licensed in the State of Alaska.

As discussed more fully in the Analysis of Public Need section of this letter, investigations are open for significantly longer periods of time when compared to the prior audit. Several factors such as staff turnover among investigators and the establishment of a panel review process for standard-of-care cases have contributed to lengthier investigative periods. However, prompt investigations of complaints regarding medical professionals are essential to public health and welfare.

Alaska Statute 08.03.010(c)(12) requires the State Medical Board be terminated on June 30, 2007. 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 by six years, until June 30, 2013.

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<sup>1</sup> Occupations regulated by the State Medical Board include physicians, osteopaths, podiatrists, paramedics, and physician assistants.

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## FINDING AND RECOMMENDATION

### Recommendation No. 1

The board should update regulatory language to reflect current license-by-examination practices.

Current license by examination practices are not in accordance with regulatory language. Regulation 12 AAC 40.020(a) reads “[T]he written examination is administered twice yearly in Alaska ... .” However, candidates may sit for the computerized examination up to three times within a 12-month period. The State Medical Board has contracted with the Federation of State Medical Boards (FSMB) to administer the computerized examination. Candidates schedule testing directly with FSMB and may test at any time throughout the year at an approved testing center.

Due to other pressing matters, updating the regulatory language has not been a priority of the board. Outdated regulatory language is misleading to readers seeking information regarding licensing procedures in the State of Alaska. As such, 12 AAC 40.020(a) should be updated to reflect current examination practices.

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## **A ANALYSIS OF PUBLIC NEED D**

The following analyses of State Medical 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 State Medical Board, through regulation of the licensure of medical professionals, has provided the public with qualified professionals in the field of medicine. To promote continued competence, all licensees must provide proof of continuing education for license renewal and each licensee is subject to a continuing education audit.

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 and held required meetings.

***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. No changes to statutes governing the medical board were made during the review period. The board did, however, support passage of Ch 40, SLA 2005, Sec. 2 (AS 09.55.549) which limits liability on malpractice claims.

***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 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 submitted annual reports for FY 03 through FY 06 in a timely manner. Additionally, the board has a financial surplus at the end of FY 06. See Exhibit 1 for details.

**Exhibit 1**

<b>State Medical Board</b>				
<b>Schedule of License Revenues and Board Expenditures</b>				
<b>FY 03 - FY 06</b>				
<b>(Unaudited)</b>				
	<b>FY 06</b>	<b>FY 05</b>	<b>FY 04</b>	<b>FY 03</b>
Revenue	\$405,691	\$1,818,123	\$331,850	\$1,630,349
Direct Expenses				
Personal Services	416,838	416,568	446,749	429,996
Travel	32,060	30,658	30,934	38,269
Contractual	275,050	214,586	146,593	282,043
Supplies	4,435	6,489	4,361	5,354
Equipment	-	-	-	120
Total Direct Expenses	<u>728,383</u>	<u>668,301</u>	<u>628,637</u>	<u>755,782</u>
Indirect Expense	<u>170,600</u>	<u>161,019</u>	<u>146,809</u>	<u>140,633</u>
Total Expenses	<u>898,983</u>	<u>829,320</u>	<u>775,446</u>	<u>896,415</u>
Annual Surplus (Deficit)	<u>(493,292)</u>	<u>988,803</u>	<u>(443,596)</u>	<u>733,934</u>
Beginning Cumulative Surplus (Deficit)	<u>1,087,979</u>	<u>99,176</u>	<u>542,434</u>	<u>(191,500)</u>
Unallocated Administrative Indirect Revenue	<u>-</u>	<u>-</u>	<u>338</u>	<u>-</u>
Ending Cumulative Surplus (Deficit)	<u>\$ 594,687</u>	<u>\$1,087,979</u>	<u>\$ 99,176</u>	<u>\$ 542,434</u>

The Division of Corporations, Business, and Professional Licensing (division), with input from the board, sets fees based on a two-year cycle, with the majority of the revenue collected in odd-numbered fiscal years. Based upon the financial data presented in Exhibit 1, licensing fees may need to be decreased during the next licensing period.

For multiple licensing periods, revenues have steadily risen while expenditures have remained relatively stable. These two factors combined with an increase in the number of

licensees, present the likelihood that the cumulative surplus will continue to grow in future years. Given this likely scenario, the division and the board should closely review licensing fees to ensure occupational fees are sufficiently set to avoid an operational surplus.

***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 State of Alaska’s 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 2002 through June 2006, the division opened 337 investigative cases related to individuals either seeking licensure or licensed by the State Medical Board.

Approximately 43% of the cases involved complaints made by patients or other individuals of the public. Another 30% were initiated by occupational licensing staff. Board actions taken during the audit period included, but were not limited to those identified in Exhibit 2.

**Exhibit 2**

<b>Discipline or Other Actions</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>Total</b>
Audit Compliance	-0-	2	-0-	3	5
Education	-0-	-0-	1	-0-	1
Fine	11	14	12	14	51
Limited License <sup>2</sup>	-0-	3	-0-	4	7
Probation	5	3	1	2	11
Reprimand	6	15	8	12	41
Revocation	-0-	3	1	-0-	4
Suspension	<u>3</u>	<u>2</u>	<u>4</u>	<u>2</u>	<u>11</u>
<b>Total</b>	25	42	27	37	131

The types of complaints filed included, but were not limited to:

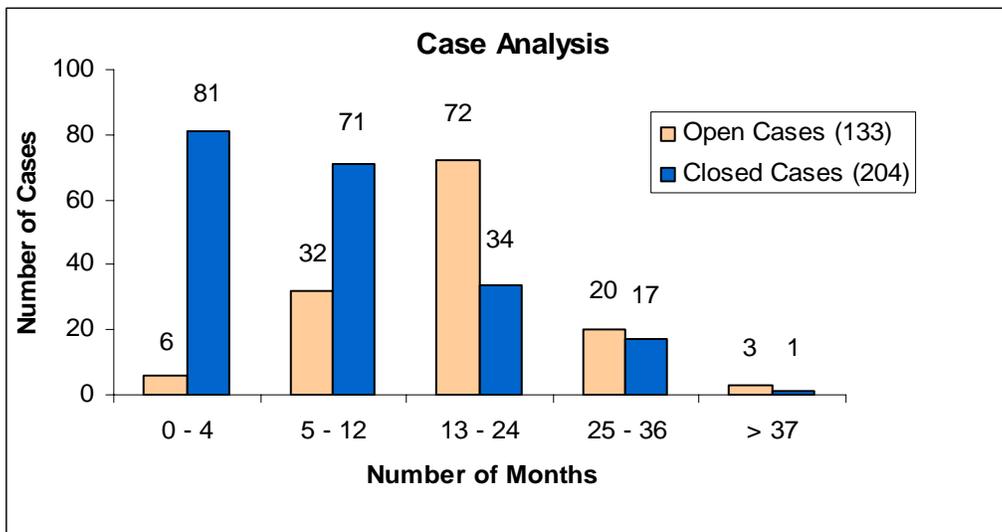
- Prescriptive practice (77)
- Negligence (71)
- Other (22)
- License application problem (20)

<sup>2</sup> License limitations may be self-imposed and, therefore, do not necessarily reflect board imposed restrictions.

- Continuing education requirements (17)
- Sexual misconduct (15)
- Falsified application (14)
- Incompetence (13)
- Patient/client abuse (15)
- Action in another state (12)
- Unlicensed practice (12)

Two hundred four (204) of the 337 investigative cases had closed as of June 30, 2006; 133 remained open. The cases are graphically depicted below.

**Exhibit 3**



During the review period, investigative cases remained open for longer periods of time when compared to the prior sunset audit. While the number of investigations that opened and closed did not change significantly between the prior and current audit periods,<sup>3</sup> the length of time, or the age, of investigative cases open at the end of FY 06 was substantially different.

In the prior audit, 121 or 29% of cases remained open at the end of the review period. Of those cases, 74% had opened within the prior four months; the remaining 26% were open for a period of time exceeding four months.

The 133 open investigations at the end of FY 06 shows only 5% were opened in the prior four months; the remaining 95% were open for periods of time exceeding four months.

<sup>3</sup> In the prior audit, 413 investigative cases were opened. Two hundred ninety-two (292) closed within the audit period; 121 remained open. Comparatively, in the current period 337 investigative cases were opened. Two hundred four (204) closed within the audit period; 133 remained open.

Further, 71% were open for longer than one year.<sup>4</sup>

Several factors likely contributed to the lengthy investigations in the current audit period. Specifically, multiple ongoing high profile cases which may involve litigation, implementation of a panel review process<sup>5</sup> for standard-of-care cases<sup>6</sup>, high employee turnover, and investigator training have slowed case processing times. Individually, these factors may not have significantly slowed the investigative process; however, collectively, their impact is notable.

We have reviewed the nature and extent of complaints filed involving medical professionals. The division, in conjunction with the board, prioritized complaints in a reasonable manner. We have concern with the increase in the number of investigations that are staying open for longer periods of time. We believe the division should report to the board regarding the length of investigations to help ensure the complaints are being investigated in an efficient and timely manner.

No complaints or investigations specifically involving the actions and activities of the State Medical 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.***

The application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Exhibit 4 below, summarized new licenses and permits issued by the board for FY 03 through FY 06 as well as the current number of license and permit holders at the end of FY 06.

**Exhibit 4**

License or Permit Type	New Licenses and Permits Issued (exclusive of renewals)				Current Number of Licensees (as of June 30, 2006)
	FY 03	FY 04	FY 05	FY 06	
Physicians	235	192	237	212	2,604
Osteopaths	16	16	23	22	205
Podiatrists	1	1	2	1	21
Paramedics	36	35	42	48	334
Physician Assistants	24	34	45	37	<u>361</u>
<b>Total</b>					3,525

<sup>4</sup> Typically in high-profile cases numerous complaints are filed against an individual. At the end of the audit period, there were more than 59 open cases related to two physicians; 43 cases have been open longer than one year.

<sup>5</sup> The two-member panel review is composed of medical professionals serving on the board. Panel members are rotated monthly.

<sup>6</sup> Standard-of-care is defined as the level of care, skill, and treatment which is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers under similar circumstances.

Continuing medical 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. In FY 03, the continuing medical education requirement increased from 17 to 25 hours for licensing periods beginning after January 1, 2005.

Each applicant is required to satisfy the requirements for licensing. Meeting minutes reflect that the board considers each application and verifies 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. Each time the board has denied an applicant a license, the reason has been based on requirements set out in statute and regulation. The reasons for denials are stated in writing and the applicant is always informed of their rights, and the process to contest or appeal any denial of licensure.

***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.***

Regulatory revision to 12 AAC 40.020(a) is necessary to clarify the current exam process. The regulation states the "...written examination administered twice yearly in Alaska..." does not reflect the current practice. The board has contracted with the Federation of State Medical Boards (FSMB) to administer the computerized United States Medical Licensing Examination which is available year-round at specific test sites. See Recommendation No. 1.

The board continues to be active in recommending regulatory changes, in order to better service the interest of both the public and the profession.

***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:

- Continue to provide timely, complete processing of all applications submitted to the board for licensure.
- Respond promptly, objectively, and decisively to all complaints.
- Act upon disciplinary matters swiftly and in accordance with the law after obtaining complete and detailed investigation reports and advice from the Assistant Attorneys General.

- Review, draft and pursue regulatory changes in order to more clearly define existing law and to establish clear, concise requirements for applicants and practitioners.
- Maintain a presence in national organizations important to the function of the medical board.
- Send one voting delegate, one other board member, and the board's administrator to the annual FSMB conference.

The board establishes and meets its operational objectives annually.

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

The board is tasked with licensing physicians, osteopaths, podiatrists, physician assistants, and intensive care paramedics. Our review of the interactions among the State Medical Board, the Alaska State Medical Association, the American Medical Association, and other national organizations showed no overlap of duties. Licensees are not required to be members of any professional organization.

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DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Corporations, Business and Professional Licensing

*Sarah Palin, Governor*  
*William C. Noll, Commissioner*  
*Rick Urion, Director*

December 8, 2006

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LEGISLATIVE AUDIT

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

Dear Ms. Davidson,

RE: Sunset Review Audit, State Medical Board

Dear Ms. Davidson:

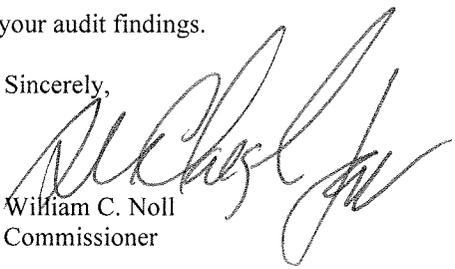
Thank you for the opportunity to comment on your preliminary audit findings concerning the Alaska State Medical Board. The department concurs with your findings and fully supports extension of the State Medical Board to June 30, 2013.

As mentioned in the earlier Management Letter No. 1, the department will encourage and assist the Board to comply with your Recommendation No. 1 to update its regulation 12 AAC 40.020(a) reflecting the current practice of computerized examinations offered by the Federation of State Medical Boards (FSMB).

We also appreciate your comments in paragraph 1 on page 13 recognizing that several factors contribute toward lengthy investigations. We also want to clarify that several of the investigative cases which appear to be "open" have already completed the investigation stage and remain open because of litigation. We feel it is important to note the distinction of these open cases. The Investigations Unit has no control over cases once it enters the litigation process.

Again, we appreciate the opportunity to comment on your audit findings.

Sincerely,

  
William C. Noll  
Commissioner

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DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Corporations, Business and Professional Licensing

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LEGISLATIVE AUDIT

Frank H. Murkowski, Governor  
William C. Noll, Commissioner  
Rick Urion, Director

**Alaska State Medical Board**

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907/269-8196 - Fax

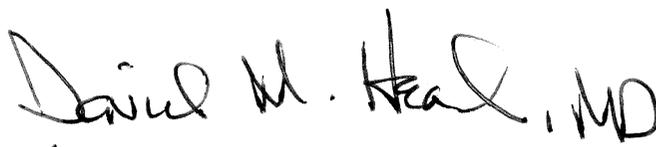
November 3, 2006

Regina M. Vose, In-Charge Auditor  
Legislative Budget and Audit Committee  
Post Office Box 113300  
Juneau AK 99811-3300

Ms. Vose, thank you for your letter of October 9, 2006 in which you present your findings from the sunset audit for the Alaska State Medical Board.

We noted in the report that it is your recommendation that the board pursue a change regarding the administration of the physician qualification examination, regulation, 12 AAC 40.020(a). Since the Alaska board licenses very few physicians by examination, less than five percent of our applicants per year, the revision of this particular regulation has not been a high priority for the board. We do agree that it needs to be updated to conform with current practices and have initiated the process to do so.

Thank you, Ms. Vose, for your review of the medical board and we appreciate your comments.

  
David M. Head, MD  
Chair, Alaska State Medical Board

xc: Richard Urion, Division Director  
Division of Corporations, Business, and Professional Licensing

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