

ALASKA STATE LEGISLATURE

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August 18, 2011

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING
STATE MEDICAL BOARD

June 16, 2011

Audit Control Number
08-30059-11

This audit report determines the extent to which the State Medical Board (SMB) complaints are processed in a timely, efficient, and effective manner. It determines whether SMB disciplinary sanctions are applied consistently and are reported to the national data banks in accordance with state and federal laws. Additionally, the audit report determines whether the SMB executive administrator's decisions to initiate a complaint against a licensee for a license renewal application issue are reasonable.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

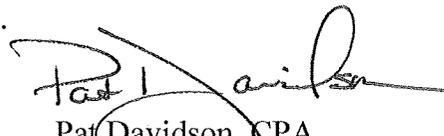

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (DCBPL); State Medical Board (SMB).

The objectives, scope, and methodology of this audit are as follows.

Objectives

Specific objectives of this audit were to:

1. Determine whether SMB complaints are processed in a timely, efficient, and effective manner.
2. Determine whether the SMB applies disciplinary sanctions consistently in both adjudicated and non-adjudicated cases.
3. Determine whether SMB disciplinary actions are reported to the Federation of State Medical Boards (FSMB) and the National Practitioners Data Bank (NPDB) as required by state and federal laws.
4. Determine whether the SMB executive administrator's decisions to initiate a complaint against a licensee for a license renewal application issue are reasonable.

Scope

This audit covers SMB actions and related DCBPL complaint processing activities from July 2006 through December 2010.

Methodology

To understand the SMB as well as the investigation and enforcement services DCBPL provides to the SMB, we examined:

- Title 8 of the Alaska Statutes as well as related regulations;
- The Administrative Procedures Act (AS 44.62);
- Alaska Statute 44.64 - Hearing Officers and Office of Administrative Hearings and related regulations;
- FY 10 SMB performance measures;
- SMB board minutes from FY 07 through October 2010;
- SMB Summary of Board Actions from FY 07 through January 2011;

- The DCBPL Investigative Unit and the SMB’s annual reports for FY 07 through FY 10;
- The Division of Legislative Audit’s 2002 and 2006 sunset audit reports on the SMB;¹
- Statutes and regulations for various medical regulatory agencies in other states;
- FSMB policies; and
- Federal laws and regulations related to the NPDB.

Additionally, we interviewed SMB members, the SMB executive administrator, DCBPL staff and management, and attorneys from the Office of Attorney General to understand the processes for complaints filed on licensees regulated by the SMB.

We examined DCBPL’s management and staff processes for implementing the new case management system and converting data from the old system. We acquired an understanding of the processes through discussions with the DCBPL Investigation Unit staff and management as well as DCCED’s Division of Administrative Services director and information technology manager. We also obtained and analyzed data from both the new and old case management systems.

We gained understanding of the processes for reporting to FSMB and the NPDB through interviews with DCBPL staff and management. We also interviewed the SMB executive administrator and DCBPL licensing unit staff to determine the procedures for renewal applications with affirmative answers to the professional conduct questions on the renewal forms.

Additional Field Work

We obtained a data extract from the new case management system. The extract included 859 cases that were selected by using the “*Date Investigator Assigned*” search between July 1, 2006, and December 1, 2010.² The data extract lacked information in a number of fields, including pertinent dates. After analyzing the data, we determined that there were approximately 680 cases in our audit period.

We categorized the 680 cases as being either non-adjudicated and adjudicated cases. The non-adjudicated cases were further divided as originating from either an internal complaint source or an external complaint source.³ From these categories, we selected a random sample of 35 cases: 25 non-adjudicated cases (15 from internal sources and 10 from external sources) and 10 adjudicated cases.

¹The report titles are the *Department of Community and Economic Development, State Medical Board, August 15, 2002*, Audit Control Number 08-20017-02 and the *Department of Commerce, Community, and Economic Development, State Medical Board, October 3, 2006*, Audit Control Number 08-20046-06.

²We searched for “*Date Investigator Assigned*” because the fields for “*date received*” (complaint) and “*date open*” (investigation phase) were not complete.

³Complaints from the SMB executive administrator, a SMB board member, or the Department of Commerce, Community, and Economic Development’s Licensing Unit were classified as internal sources, while complaints from any other source were classified as external. Internal sources may include complaints initially reported to the SMB executive administrator from external sources.

To assess the timeliness of the process from intake of the complaint through litigation, we contacted FSMB to ascertain if any other member state boards had processing timelines. We reviewed the statutes of the few states with timelines. The Washington state statutory timeline standards⁴ were selected to provide a comparison to DCBPL's timeliness in processing SMB complaints.

We obtained hardcopy files of the sample cases and determined the pertinent dates to calculate the appropriate timelines and other data pertinent to the audit objectives. We analyzed investigators' case file notes to understand each complaint's progression through DCBPL's complaint processing. We also interviewed DCBPL staff regarding the cases and discussed certain cases with DCBPL's chief investigator. We analyzed case file documents to determine the extent of SMB board members and assistant attorney generals' involvement.

Of the 35 cases examined, 21 had a license action or proposed action for discipline. To assess the consistency of disciplinary sanctions, we compared the sanctions in the final board order or the proposed disciplinary actions of the reviewing board member to SMB informal disciplinary guidelines. We also obtained listings of 80 prior cases with the same or related violation type and analyzed those cases to ascertain whether or not the case circumstances were similar to those of the sample case. If the circumstances were similar in nature, we compared the sanctions of those cases to those of the sample case for consistency in disciplinary sanctions.

Of the 21 cases, 18 cases had reportable SMB license actions. We assessed whether the disciplinary action or other actions in the SMB final orders were reported to the FSMB and the NPDB in accordance with state and federal law and regulations.

We selected 25 of 168 renewal applications to determine if the SMB executive administrator's decision concerning whether or not to initiate a complaint was reasonable. We examined documents from the licensing file and the investigation file, as appropriate.

Additionally, we interviewed management at the: Arizona Medical Board; Arizona Board of Osteopathic Examiners in Medicine and Surgery; Idaho State Board of Medicine; Nevada State Board of Medical Examiners; Oregon Medical Board; and Washington state Medical Quality Assurance Commission. The purpose of these interviews were (1) to determine each board's statutory and regulatory requirements for reporting disciplinary and other board actions to FSMB and the NPDB; and (2) to determine each board's disciplinary sanctions imposed for errors or omissions of information provided by the applicant on initial and renewal applications for licensure.

⁴Revised Code of Washington 18.130 and Washington Administrative Codes 246-14.

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ORGANIZATION AND FUNCTION

Alaska Statute 08.64.010 establishes the State Medical Board (SMB). The SMB 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.*” (See Exhibit 1.)

Board Duties

In general, the SMB regulates admission into the practice of medicine and establishes and enforces competency by ensuring compliance with professional standards and adopting regulations. The SMB regulates physicians, osteopaths, podiatrists, paramedics, and physician assistants engaged in medical practices in Alaska.

Most licensing requirements are established by statute. However, in unique circumstances, statutes permit the SMB to issue special licenses in which some requirements are waived and replaced with specific conditions established by the board.

These special licenses include those issued by credentials; permitting temporary practice for up to six months; and issued as courtesy licenses for limited purposes and duration of 90 days or one year, depending on circumstances. The SMB also issues a temporary *locum tenens* permit which is valid for 90 consecutive days, but not more than 240 days in any two-year period.

Based on an approved consent agreement⁵ (CA) or after a hearing, the board may impose disciplinary sanctions on persons who violate the statutes, regulations, or SMB orders.

The SMB keeps the public informed of pertinent information through the SMB website which includes board guidelines, policies, and opinions; information about board members; meeting agendas, minutes, and schedules; board news; board actions; and statutes and regulations applicable to the SMB.

Exhibit 1

State Medical Board As of June 30, 2011

Jean Tsigonis, M.D., Chair

John S. Cullen, M.D.

Edward A. Hall, Physician Assistant

Kathleen M. Millar, Public Member

David A. Miller, M.D.

David J. Powers, M.D.

William W. Resinger, M.D.

Michael J. Tauriainen, Public Member

⁵A CA is a signed agreement between the licensee and DCCED’s commissioner in which the licensee agrees to the facts of the case and to the proposed decision and disciplinary sanctions. The SMB must review the CA and may reject or adopt it through a board order issued during a public meeting.

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

DCBPL provides administrative and investigative assistance to the SMB. 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 SMB, 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.

BACKGROUND INFORMATION

The Department of Commerce, Community, and Economic Development (DCCED); Division of Corporation, Business and Professional Licensing's (DCBPL) Investigation Unit staff provides the State Medical Board (SMB) with enforcement and investigative services. Alaska Statute 08.01.087 empowers DCBPL with the authority to act on its own initiative or in response to a complaint. DCBPL may:

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

DCBPL's four phases for processing SMB complaints are:

1. Intake;
2. Complaint;
3. Investigation; and
4. Litigation.

Each phase is discussed in detail below.

Intake Phase

The intake phase starts when the Investigative Unit is first contacted by a complainant. Complaints may be filed by the public, a licensed associate, a board member, the SMB executive administrator,⁶ or medical vendors. Complainants may contact the unit in person, by email, or phone.⁷

Furthermore, a hospital that revokes, suspends, conditions, restricts, or refuses to grant hospital privileges to or imposes a consultation requirement on a person who is licensed by the SMB to practice medicine or osteopathy in the State must report to the SMB the name of the licensee and the reasons for such actions within seven business days. Alaska Statute 08.64.336(b)-(c) mandates that upon receipt of a report, the SMB must have the matter investigated.

Investigators try to respond and make contact with complainants within seven days. Once contacted, an investigator ensures the complainant has a complaint packet including medical releases to complete, sign, and return to DCBPL.

⁶The SMB executive administrator's complaints are a result of her reviewing initial or renewal applications with positive responses to the professional conduct questions on the application.

⁷As of June 16, 2011, the web complaint mechanism was not functioning.

When an investigator receives the completed complaint packet, the complaint is reviewed to assess whether the SMB has jurisdiction over the issue and whether it is a concern that potentially violates laws or regulations. If not, the chief investigator approves closing the complaint. If complaint issues are under SMB authority, the complaint progresses to the complaint phase.

Complaint Phase

Complaint phase and investigation phase functions are not typical. The complaint phase encompasses most of the investigative work that is usually included in the investigation phase. This atypical process is mostly for medical standards of care complaints.

The complaint phase begins with the determination that the submitted complaint is under SMB authority. A case is then opened in DCBPL's database, and a case number is automatically assigned. In the complaint phase, investigators gather evidence to corroborate the complaint. Corroborating evidence may consist of interviews, statements, medical records, and other documents.

All complaints concerning medical standards of care are assigned to a two board-member panel that reviews the gathered evidence to determine whether the case should become an investigation. The panel may ask that an expert be involved. In such situations, the panel considers the gathered evidence as well as the expert's report to determine if the case should proceed to an investigation. Moving a medical standard of care case to investigation only occurs when panel members decide that a likely violation has occurred. If not moved forward to the investigation phase, the complaint is closed.

Complaints not involving medical standards of care may be reviewed by a board member to assist the investigator in determining whether or not a violation has likely occurred.

Investigation Phase

As discussed above, for a complaint to move to the investigative phase, the investigator, along with one or more board members, made a determination that the respondent likely violated the law or regulations. Therefore, the focus of the investigation phase is to determine the extent of the violation by obtaining additional corroborating evidence, and to assess the appropriate level of discipline to propose to the SMB.

Evidence is generally reviewed by a board member to ensure proposed action to resolve the case is appropriate. The reviewing board member may require the investigator to obtain additional evidence or, if sufficient evidence is gathered, recommend the investigator pursue a consent agreement (CA)⁵ with the respondent. Where appropriate, CA's are used to avoid the additional use of time and resources associated with litigation. Additionally, it is a more amicable solution than litigation.

If the respondent refuses the terms of a CA, the investigator requests that an assistant attorney general (AAG) review the evidence to determine if it is legally sufficient for adjudication. The investigator may obtain additional evidence at the AAG's direction. If the AAG concludes that the evidence is not legally sufficient, an accusation is not filed and the case is referred back to DCBPL for either closure or an advisement letter to the respondent. The AAG prepares an accusation for DCBPL to file if the evidence is legally sufficient. However, the AAG may again attempt to settle the case with a CA prior to the filing of an accusation.

Litigation Phase

The litigation phase begins with DCCED's commissioner filing an accusation with the SMB. After an accusation is filed, a respondent has 15 days from the accusation receipt date to file a notice of defense. If the respondent requests a hearing, an AAG is assigned to the case to represent DCCED, and the Office of Administrative Hearings (OAH) is notified that a hearing was requested. Alaska Statute 44.64.060(d) mandates that an OAH administrative law judge (ALJ) must conduct a hearing and issue a proposed decision within 120 days from the notice of defense receipt date. The SMB has 45 days to adopt or amend the proposed decision or to require additional proceedings.⁸

SMB Actions in Cases

Complaints concerning medical standards of care are reviewed during the complaint phase by a two board-member panel. Complaints related to issues other than medical standards of care may be reviewed by one board member in the complaint phase. Prior to reviews, board members are asked if they have any conflicts of interest. If the SMB member does have a conflict, the investigator will request that different board member to perform the review.

During the investigation phase, the SMB member who reviewed the case in the complaint phase assists the investigator in determining the severity of the violation. Additionally, the board member advises the investigator on which appropriate disciplinary actions to seek. A board member who reviews and provides advice during the investigation phase recuses himself or herself from voting on the board order imposing the disciplinary sanctions.

The SMB relies on the investigator or the ALJ to research the consistency of disciplinary sanctions included in the CA and in the proposed OAH decision. Additionally, board members utilize SMB informal disciplinary guidelines to assist them with ensuring consistency.

⁸Alaska Statute 44.64.060(e)(2) states that after the ALJ issues a proposed decision, the SMB may return the case to the ALJ to present additional evidence or findings, or for other specific proceedings. The ALJ must complete the additional work and return the revised proposed decision to the SMB within 45 days after the date the original decision was returned to OAH.

All CAs between a respondent and the DCCED commissioner must be approved by the SMB through the issuance of a board order adopting the CA. If a hearing is conducted for a case, the proposed decision issued by the OAH ALJ must be adopted by an SMB order. A respondent has 30-days from the order date to file an appeal with the Alaska Superior Court.

Statutory Timelines

DCBPL does not have statutory or regulatory timelines for the intake, complaint or investigation phases. As discussed above, there are statutory timelines for OAH hearings, its proposed decisions, and the SMB's adoption of final orders in adjudicated cases.

Consistency of SMB Disciplinary Sanctions

Alaska Statute 08.64.331(f) states:

The board shall be consistent in the application of disciplinary sanctions. A significant departure from earlier decisions of the board involving similar situations must be explained in finding of fact or orders made by the board.

According to an Alaska Superior Court decision,⁹ the above statute applies only to adjudicated cases for which findings of facts in the case are documented in the OAH proposed order.

National Disciplinary Reporting

The Federation of State Medical Boards (FSMB) is a nonprofit association of 70 medical and osteopathic state boards. It maintains a repository of board action and licensure data on United States (U.S.) physicians that contains thousands of disciplinary actions against physicians dating back to the 1960s. FSMB does not require state medical boards to report disciplinary board actions; state medical boards voluntarily report such actions to FSMB. However, certain state medical boards may be required by their respective state statutes and regulations to report disciplinary board actions to FSMB.

Alaska Statute 08.64.335 requires the SMB to report license or permit refusals, suspensions, surrenders, and disciplinary sanctions under AS 08.64.331 to FSMB. The SMB is also required to report license application withdrawals per 12 AAC 40.986 and abandoned license applications per 12 AAC 40.987.

FSMB does not have a process for a licensee to dispute any information that a state medical board has submitted regarding the licensee. If licensees wish to dispute any reported disciplinary board action, they must contact the state medical board that reported the action. The state medical board, after assessing information from the licensee, decides whether or not to revise the report.

⁹*Hawthorn v. State of Alaska Board of Nursing*, Case No. 3AN-04-10154 CI.

The Health Care Quality Improvement Act of 1986 authorized the U.S. Department of Health and Human Services (DHHS) to establish the National Practitioners Data Bank (NPDB) to collect and release certain information relating to the professional competence and conduct of physicians, dentists, and other health care practitioners. Federal regulations require state boards of medical examiners to report to the NPDB any action based on reasons relating to a physician's professional competence or conduct.¹⁰ Such actions include:

- License revocations, suspensions, or restrictions;
- License censure, reprimand, or probation; and
- License surrender.

Boards must report the information within 30 days following a board action.¹¹

A licensee has 60 days from the postmark of the copy of the report DHHS sent to them to dispute the accuracy of the report.¹² The licensee must (1) inform DHHS and the state board, in writing, of the disagreement; (2) request simultaneously that the disputed information be entered into a disputed status and be reported to inquirers as being in a disputed status; and (3) attempt to enter into discussion with the state board to resolve the dispute.

If the state board revises the originally submitted information, DHHS notifies all entities to which original reports were sent of the revision. If the state board does not revise the information originally submitted, DHHS will, upon request, review the written information submitted by both the licensee and state board. After review, DHHS will conclude that the information is either accurate or inaccurate. If DHHS concludes that the information is accurate, it will include, within the licensee's report, a brief statement by the licensee describing the disagreement and an explanation of the decision that it is accurate. If DHHS concludes that the information is incorrect, it will send corrected information to previous inquirers of the original report in its data bank.

Renewal Application Reviews

Renewal applications for SMB regulated licenses are submitted to DCBPL's Licensing Unit. One of the Licensing Unit's responsibilities is to track applications which have an affirmative answer to one of the 13 professional conduct questions posed on renewal forms. These questions are posed to highlight any instances where further documentation, board review, or investigations may be needed to deem the applicant fit for continued licensure.

After all appropriate and sufficient information is obtained from the applicant, the license is renewed. After the license is renewed, the renewal application with 'yes' answers is sent to the SMB executive administrator for review and possible follow-up. The newly hired

¹⁰Section 60.8 of 45 Code of Federal Regulations (CFR), Subtitle A, Subpart A.

¹¹Section 60.5 of 45 CFR Subtitle A, Subpart B.

¹²Section 60.14 of 45 CFR Subtitle A, Subpart C.

executive administrator had never performed these types of application reviews. Therefore, the SMB contracted a medical professional to assist the executive administrator in analyzing 2011 renewal applications with ‘yes’ answers.

Based upon the SMB executive administrator’s analysis, a determination is made whether or not the information submitted by the licensee and any additional documents obtained by the Licensing Unit sufficiently addresses the matter. If the issue is sufficiently addressed, the application is returned to the Licensing Unit for filing. However, if the documentation does not fully address concerns, the matter is referred to the Investigative Unit as a complaint. Complaints do not automatically turn into an investigation. The Investigative Unit will assess the issues and determine whether or not to open an investigation.

The following are the topics covered by the renewal application questions and the disposition generally determined by the SMB executive administrator:

- Malpractice – If a licensee is a subject of a malpractice claim, no licensing action is taken by the board until a decision on the claim has been reached. The licensee is required to inform the board within 30 days of a claim decision. A referral may be made to the Investigation Unit if it appears the decision was not timely reported or there is a concern related to the licensee’s standards of care.
- Felonies and Misdemeanors – Typically, all felony convictions disclosed will be referred to the Investigative Unit for follow-up to ensure the applicant is still fit for licensure. Depending on the related charges, a misdemeanor conviction may be referred.
- Staff Privileges at Hospitals, Clinics, Etc. – All staff privileges that are denied, reduced, restricted, removed, or otherwise disciplined are typically referred to the Investigative Unit for additional review.
- Medical or Mental Health Issues – These items are commonly handled on a case by case basis, and may or may not be referred for additional follow-up based upon the details involved and the sufficiency of the documentation attached.
- Actions Taken by Any Jurisdiction (relating to an applicant’s professional licensure) – These items are typically referred to the Investigative Unit for additional follow-up.
- Other Pending Issues – Pending issues, such as complaints or allegations filed with a licensing authority, are noted; however, no action is taken by the SMB executive administrator. Licensees are required to notify the board when the decision is made on such matters.

REPORT CONCLUSIONS

Based on our audit, we determined:

- Complaints are not processed in a timely, efficient, and effective manner.
- The State Medical Board (SMB) disciplinary sanctions are consistently applied to both adjudicated and non-adjudicated cases.
- SMB disciplinary actions are not reported the Federation of State Medical Boards (FSMB) and the National Practitioners Data Bank (NPDB) in accordance with state and federal laws.
- Complaints initiated by the SMB executive administrator regarding license renewal application issues are reasonable.
- SMB disciplinary sanctions and reporting to FSMB and the NPDB are now similar to other states.

Detailed report conclusions are as follows.

Complaints are not processed in a timely, efficient, and effective manner.

- Complaints are not processed timely.

As discussed in Background Information, the Division of Corporations, Business and Professional Licensing (DCBPL) does not have statutory or regulatory timelines for the intake, complaint, or investigation phases. Therefore, the Washington state statutory timeline standards¹³ were used as an indicator of DCBPL’s timeliness in processing SMB complaints. As shown in Exhibit 2, the Investigation Unit’s processing of non-adjudicated cases and adjudicated cases exceeded the Washington state timeline standards of 331 days and 606 days, respectively.

Exhibit 2

| Complaint Resolution | | | |
|---|---------------------|--------------|---------------------------|
| Average Number of DCBPL Days Compared to Washington State Standards for Total Days | | | |
| <i>Resolution Type</i> | <i>No. of Cases</i> | <i>Total</i> | <i>WA State Standards</i> |
| <i>Non-adjudicated³ -</i> | | | |
| <i>Internal Sources</i> | 15 | 178 | 331 |
| <i>External Sources</i> | 10 | 523 | 331 |
| <i>Adjudicated -</i> | 10 | 908 | 606 |

- Complaint processing has inefficiencies.

The efficiency of a process can be measured as producing intended results with minimum waste of time, effort, or expense. Three of 35 cases analyzed lacked adequate follow-up

¹³The standards are mandated in the Revised Code of Washington 18.130 and in the Washington Administrative Codes 246–14.

for obtaining requested or subpoenaed documents, and another three of 35 cases were not properly reassigned to another investigator when necessary.

- Database problems increase inefficiencies.

In late FY 10, DCBPL implemented a new investigation tracking system. The migration of data from the existing system to the new database was problematic. Additionally, the data from the old database system had existing inaccuracies. An analysis of the available enforcement data indicated significant inaccuracies and lack of complete data. These deficiencies hinder efficient and effective management of the workload.

- Investigations are not consistently effective.

An effective process produces an intended result. DCBPL performance measures include the percentage of investigations that result in a disciplinary action when warranted. In FY 10, DCBPL reported 71% for this performance measure; its target was 100%.

Exhibit 3 shows that the percentage of cases included in the audit that resulted in a warranted disciplinary action. The complaints from external sources that went into the investigative phase did not result in any disciplinary actions.

Exhibit 3

| Percentage of SMB Cases with Disciplinary Actions | |
|--|------------------------|
| <i>Resolution Type</i> | <i>Case Percentage</i> |
| Non-adjudicated ³ - | |
| Internal Sources | 80% |
| External Sources | 0% |
| Adjudicated - | 90% |

As shown in Exhibit 2 (previous page), it takes an average of 523 days to resolve complaints from external sources. The amount of resources expended for these complaints without any board disciplinary action is ineffective. The processes involved in addressing these complaints need to be assessed by management to find ways to improve the effectiveness of cases progressing to resolution.

DCBPL’s SMB complaint process needs to improve in timeliness, efficiency, and effectiveness. (See Recommendation No. 1.)

SMB disciplinary sanctions are consistent.

SMB disciplinary sanctions imposed in the cases examined were applied in a consistent manner. The imposed sanctions appeared reasonable and consistent with both sanctions for prior cases with similar violations and with the SMB’s informal disciplinary guidelines.

Disciplinary actions not properly reported.

Four of 18 cases with SMB disciplinary actions were not reported to one or both national data banks, and most of those reported were not submitted within the 30-day timeframe. Additionally, a board order was reported to FSMB and the NPDB when not required under state and federal laws. (See Recommendation No. 2.)

Complaints initiated by the SMB executive administrator are reasonable.

The SMB executive administrator's decisions as to whether or not to initiate a complaint related to a license renewal application with the Investigation Unit were reasonable. Issues potentially subject to imposition of a sanction under AS 08.64.326 were properly referred to the Investigative Unit as a complaint for further review.

SMB disciplinary sanctions and reporting to FSMB and the NPDB are now similar to other states.

Sanctions for License Application Errors or Omissions

Six other state medical boards¹⁴ were contacted to determine the sanctions they impose on licensees for errors and omissions related to information on an initial or renewal application. The SMB is the only medical board among the seven boards with specific written sanction guidelines for this type of matter.¹⁵ Prior to October 2010, Alaska was the only state with a standard sanction that was reported to FSMB and the NPDB if they determined an application had an error or omission. On October 29, 2010, the SMB adopted a sanction guideline to impose an administrative fine that is not reportable to FSMB or the NPDB for errors or omissions that are a technical violation not related to the delivery of health care. This change made SMB disciplinary sanctions more commensurate with the other states surveyed.

FSMB and NPDB Reporting

The same six state medical boards were surveyed regarding their reporting to FSMB and the NPDB. The Washington state Medical Quality Assurance Commission is required by law to report sanctions/board actions to FSMB. The other five medical boards voluntarily report board actions to FSMB as members of the organization.

None of the other medical boards contacted are required to report abandoned license applications or license application withdrawals to the FSMB like the SMB,¹⁶ with one exception. The Oregon state medical board reports license application withdrawals when the applicant/licensee has an existing disciplinary record in the NPDB. In the last four years, the

¹⁴The Washington state Medical Quality Assurance Commission, and the Arizona (two medical boards), Idaho, Oregon, and Nevada state medical boards were contacted.

¹⁵The written sanctions are compiled in the SMB's informal disciplinary guidelines.

¹⁶ 12 AAC 40.986-987.

SMB reported to FSMB approximately 170 actions which included 24 application withdrawals and no application abandonments.

Similar to the SMB, all the medical boards contacted report license denials, suspensions, revocations, surrenders, reprimands, restrictions, and probations to FSMB. Additionally, the Idaho State Medical Board reports to FSMB administrative fines assessed for non-compliance with the Idaho Patient Freedom of Information Act filing requirements.

SMB reporting practices to the NPDB are similar to those of the other state medical boards as they all follow the *NPDB Guidebook* for reporting adverse license actions.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Business and Professional Licensing’s (DCBPL) director should implement improvements over complaint processing.

The DCBPL Investigation Unit’s State Medical Board (SMB) complaint processing is untimely, has inefficiencies, and, in some cases, is ineffective.

- Complaints are not processed timely.

As shown below in Exhibit 4, complaints from internal sources were processed and investigated within an average of 178 days – well below Washington state’s standard of 331 days. However, the 523 day average for processing and investigating complaints from external sources exceeded Washington state’s standard. Adjudicated cases examined also exceeded Washington’s standard of 606 days.

Exhibit 4

| Average Number of DCBPL Days by Phase Compared to Washington State Standards for Total Days | | | | | | |
|--|---------------------|------------------|----------------------|-------------------|--------------|---------------------------|
| <i>Resolution Type</i> | <i>No. of Cases</i> | <i>Complaint</i> | <i>Investigation</i> | <i>Litigation</i> | <i>Total</i> | <i>WA State Standards</i> |
| Non-adjudicated³- | | | | | | |
| Internal Sources | 15 | 72 | 106 | -0- | 178 | 331 |
| External Sources | 10 | 313 | 210 | -0- | 523 | 331 |
| Adjudicated - | 10 | 79 | 708 | 121 | 908 | 606 |

The complaints from external sources remained in the complaint phase for a significantly higher number of days than those from internal sources. As discussed in Background Information, investigators obtain a significant portion of corroborating evidence during the complaint phase. Therefore, whether or not a law or regulation has been violated is determined at the end of the complaint phase. The investigation phase’s function is to determine the extent of the violation and the appropriate sanctions to be imposed by the SMB.

Externally referred cases have lingered in the complaint phase partially due to the distinction between the complaint and investigation phases which was implemented in 2005. At that time, other state medical board investigative units had already made this distinction in their processes. This is especially important with medical standards of care complaints. Investigators are careful when converting a complaint into an investigation to ensure there is adequate support that a violation has occurred. Moving a complaint to the investigative phase without adequate support of a violation is a disservice to respondents.

Internally referred cases are generally moved into the investigation phase after there is a strong indication a violation has occurred, and in several adjudicated cases, the complaints were so egregious their complaint phase was short. However, the complaint phase for the externally referred cases took about four times longer than the cases in the other categories.

Untimely processing of complaints is a disservice to public safety and the licensees. DCBPL's director should establish regulations and seek statutory changes if necessary to implement processing complaints.

- Complaint processing has inefficiencies.

Non-adjudicated cases

Further analysis of the non-adjudicated cases examined determined the following issues contributed to the untimely resolutions.

- Licensees (respondents) delayed completing actions or providing requested information.
- Documents requested or subpoenaed from pharmacies, medical providers, or another state's medical board were not provided to DCBPL in a timely manner.
- One case was delayed by DCBPL Investigative Unit management due to the workload; however, the case was a lower priority level case.

Additionally, an investigator assigned to a 2010 complaint discovered two other cases for the same licensee were still open. These two cases were 2003 and 2004 complaints that had not been worked on since July 1, 2009 when the cases were to be reassigned to another investigator.

The reviewing board member determined there was insufficient evidence in the 2010 case to pursue it further. However, he expressed concerns about the licensee's actions in both of the older cases, but stated the delay in investigation of these matters prevented the SMB from pursuing a possible disciplinary action.

Adjudicated Cases

The analysis of the adjudicated cases determined the untimely resolutions in four of the 10 cases were partially due to additional complaints filed on the licensee during the investigation or litigation phases of the initial case. In another untimely case, there was a ten-month gap in investigation between an investigator terminating employment and the case being reassigned. These oversights may have been detected if management reports from the database system were available.

DCBPL's director should address the inefficiencies in obtaining evidentiary documents to process complaints and the management of the Investigation Unit's workload, including staff assignments.

- Database problems increase inefficiencies.

A detailed report of the new case management system's deficiencies was issued recently in *A Special Report on the Department of Commerce, Community, and Economic Development; Division of Corporations, Business and Professional Licensing; Select Occupational Licensing and Enforcement Issues, June 29, 2011*, Audit Control Number 08-30063-11. Specifically, the problems with the case management system add to the Investigation Unit's inefficiencies by not providing:

- Caseload reports, including assigned and unassigned cases.
- Accurate and complete data for investigators.
- All prior closed cases for reviewing disciplinary actions for consistency purposes.
- Consistent definitions and use of data fields.

DCBPL's director should address the case management system deficiencies.

- Investigations are not consistently effective.

As shown in Exhibit 4 (page 17), non-adjudicated cases from external sources average 313 days in the complaint phase – 241 days longer than complaints from internal sources. Additionally, a few of these cases progressed to the investigation phase for an average of an additional 210 days. However, in these cases it was determined that no SMB disciplinary action was warranted.

Processes for handling cases from external sources during the complaint phase should be assessed by DCBPL management to determine efficiencies that will reduce the number of days in this phase. Additionally, methodologies should be examined to ensure cases progressing to the investigation phase have sufficient corroborating evidence to determine a violation of law or regulation has likely occurred.

In summary, DCBPL's director should:

- Establish regulatory timelines for processing complaints.
- Address inefficiencies in obtaining evidentiary documents.
- Implement oversight of the Investigation Unit's workload, including staff assignments.
- Address the case management system deficiencies.
- Assess the processing of complaints from external sources.

Recommendation No. 2

DCBPL's director should implement procedures to ensure SMB disciplinary actions are reported in accordance with state and federal laws.

Eighteen of the 35 cases examined resulted in SMB disciplinary license actions that were required by state and federal laws to be reported to the Federation of State Medical Boards (FSMB) and the National Practitioners Data Bank (NPDB). Information obtained from the two national data banks and documentation maintained by the Investigation Unit were analyzed to determine if disciplinary actions were properly reported. Four cases were not reported to FSMB, and two of the four were not reported to the NPDB. Additionally, 10 of 12 cases were not reported to one or both data banks within 30 days of the SMB disciplinary action date.

Alaska Statute 08.64.335 states:

The board shall promptly report to the Federation of State Medical Boards for inclusion in the nation wide disciplinary data bank license and permit refusals under AS 08.64.240, actions taken by the board under AS 08.64.331, and License and permit suspensions or surrenders under AS 08.64.332 or 08.64.334.

Additional regulations and policy requirements include:

- Alaska regulations, 12 AAC 40.986-987 which require license application withdrawals and abandonments to be reported to FSMB.
- FSMB Public Policy Compendium 180.002 which encourages state medical boards to report board actions no later than 30 days after the action was taken.
- Federal regulations that require state medical boards to report to the NPDB any action based on reasons relating to a physician's professional competence or conduct.¹⁷ The boards must report the information within 30 days following the board's action.¹⁸

Employee turnover, no written procedures for reporting, and no oversight of the reporting process resulted in unreported SMB disciplinary actions and untimely report submissions. Non-reporting or untimely reporting of licensee disciplinary actions diminishes the public protection provided by the national data banks to restrict the ability of incompetent medical physicians to move from state to state without disclosure or discovery of the physician's damaging or incompetent performance.

¹⁷Section 60.8 of 45 Code of Federal Regulations, Subtitle A, Subpart A.

¹⁸Section 60.5 of 45 CFR Subtitle A, Subpart B.

DCBPL's director should require Investigation Unit management to document in writing the reporting procedures and provide for oversight of the process.

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Sean Parnell, Governor
Susan K. Bell, Commissioner

September 9, 2011

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LEGISLATIVE AUDIT

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

Re: Preliminary Report on Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (CBPL); State Medical Board (SMB)

Dear Ms. Davidson:

Thank you for the August 18, 2011 preliminary report regarding CBPL and the State Medical Board, covering the period from July 2006 through December 2010. I appreciate your review and the opportunity to respond to the recommendations.

First, it is important to note that a new CBPL Director was appointed June 28, 2010 and key division positions were restructured with new incumbents over the past year. Under this intensive top-down management effort, it quickly became apparent that a multitude of significant issues exist within the division. During this past year, the new CBPL team has triaged on critical areas and is continuing to work on a long-term strategy to correct historical practices and strengthen the division. The new CBPL management team is committed to correcting the long-standing issues and to ensure quality processes and information.

Second, department management is pleased that two of the four audit objectives were concluded as operating consistently and reasonably. Our comments on the recommendations related to the remaining two conclusions are noted below.

Recommendation No. 1

DCCED agrees that improvements over complaint processing need to be implemented by the CBPL director, and a number of actions are being taken to address the cited issues. First, an overall detailed management plan with role assignment and timelines is being developed to address the various issues identified over the past year by the new CBPL management team or Legislative Audit.

Second, Investigator responsibility was restructured to require that experienced senior Investigators have oversight for the proper handling of intakes, complaints, investigations, and hearings. This senior team is responsible to assess individual investigator caseload, adjust assignments or caseload, and induce additional accountability over the work product. The increased oversight should help prevent long periods of case inactivity and improve processing time. Further, the senior Investigator team is developing policy and procedures for case closure timelines, and updating a Desk Manual to ensure uniform and efficient case processing.

Third, a caseload standard is also under review to determine the optimum number of cases per Investigator. For FY11, 1,120 requests were received from the public or licensees for review of determination of jurisdiction or evidence of a statutory or regulatory violation. This averaged 70 cases per Investigator, whereas the preliminary optimum number is considered about 45. This situation warrants, and is receiving, further review.

Fourth, the database issues referenced in the preliminary report are part of a larger project to remediate the Investigations system. These system issues were previously identified by the department and in a recent Legislative Audit. To address this situation, CBPL has commenced discussions with the database vendor, is pursuing a project manager through the state IT task order system to oversee the remediation effort, and is designating a user team with a priority focus on this project.

Fifth, procurement of additional highly qualified Investigator resources is under consideration to oversee an intensive, consistent management effort to correct long-standing issues and ensure quality processes are in place.

Recommendation No. 2

We concur that CBPL's director should implement procedures to ensure SMB disciplinary actions are reported in accordance with state and federal laws. The new CBPL management is taking corrective actions on number of issues including:

- drafting policy and procedures specific to the reporting of disciplinary actions;
- cross-training of staff to alleviate dependency on one individual for reporting;
- working with the National Practitioner's Data Bank system to ensure proper procedures and security protocols are in place, and training of the state's system administrator.

In addition, CBPL is closely monitoring Federation of State Medical Boards (FSMB) information and clarifications that impact the state's licensing programs. Several states are seeking clarification on the FSMB guidelines, such as what it is that state Boards are expected to track and verify about applicants. For example, in May of 2010, the Texas Medical Board requested the Federation of State Medical Boards (FSMB) clarify for all boards the requirement for the reporting of withdrawn

applications, even if the application is withdrawn for reasons other than disciplinary actions or current investigation. CBPL intends to immediately act on any new information and clarifications issued by the FSMB on their guidelines. CBPL is committed to ensuring timely and appropriate reporting in accordance with state and federal laws.

Conclusion

In closing, I want to reiterate that the new CBPL management team is committed to implementing the needed improvements that will provide appropriate processes and quality information in support of the SMB.

Again, thank you for the opportunity to respond to the management letter recommendations. I want to note the department's appreciation for the professionalism of the audit team throughout this audit. If you have any additional questions please contact me at 465-2500.

Regards,

A handwritten signature in cursive script that reads "Susan K. Bell".

Susan K. Bell
Commissioner

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sean Parnell, Governor
Susan Bell, Commissioner
Don Habeger, Director

Division of Corporations, Business and Professional Licensing
Alaska State Medical Board

September 8, 2011

Pat Davidson, Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

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LEGISLATIVE AUDIT

Dear Ms. Davidson:

On behalf of the Alaska State Medical Board, I appreciate the opportunity to review the Special Report on the Department of Commerce, Community and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (DCBPL); State Medical Board, June 16, 2011.

I concur with the recommendations in the report and plan to have the full Board review the report at the regularly-scheduled meeting in October 2011. Following that review, the Board will provide direction to the Division regarding the audit findings and recommendations.

Thank you for your work on this review. Please let me know if you need anything further.

Sincerely,

Debra Staven

for Jean Tsigonis, MD
President
Alaska State Medical Board