

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Marital and Family Therapy, November 1, 2004.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Marital and Family Therapy (BMFT). As required by state law, the legislative committees of reference are to consider this report when determining whether to extend the termination date for BMFT. Currently under AS 08.03.010(c)(11), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BMFT will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the termination date for BMFT, we also analyzed the operating costs and other factors related to the operations of the board. Various nonfinancial factors were considered in order to assess the advisability of consolidating BMFT with other behavioral health boards, along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

BMFT should be consolidated with the Board of Professional Counselors

In our opinion, BMFT should not be reestablished by the legislature. Rather, we recommend the licensing of qualified professionals be continued through consolidation with the Board of Professional Counselors (BPC). Our recommendation is based upon the following factors:

1. Number of BMFT licensees has significantly declined.
2. Some BMFT licensees hold licenses with other boards.
3. Scope of practice and educational requirements are similar for therapists and counselors.
4. Survey results show mixed reactions to consolidating boards.
5. BMFT is in a chronic-deficit position.
6. Combination of these two professions under a single board is the most common regulatory model.

The new consolidated board should be established for four years.

In our opinion, the termination date for the consolidated board covering marital and family therapists, along with professional counselors, should be established for June 30, 2009. Both boards have been actively working in the public's interest by promoting the competence of individuals who hold themselves out to the public as marital and family therapists or professional counselors.

BMFT has testified in favor of statutory changes and adopted regulatory changes that made therapists more accountable to their clients and the general public. The board has also substantially curtailed its operating costs, in an attempt to minimize its current negative balance position.

Alaska Statute 08.03.010(c)(11) requires BMFT to be terminated on June 30, 2005. If the legislature takes no action, under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature combine BMFT with BPC and the consolidated board's termination date be set at June 30, 2009.

If the legislature elects not to consolidate the board, we recommend the Board of Marital and Family Therapy be extended to June 30, 2010.

FINDINGS AND RECOMMENDATIONS

1. The Board of Marital and Family Therapy and Board of Professional Counselors should be combined into a single oversight and licensing board.
2. The Division of Occupational Licensing (OccLic), in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

At the end of FY 04, BMFT had an operating deficit of more than \$75,000. Based on expenditures and revenues to date, we project that it is likely BMFT will, again, be in a deficit at the end of FY 05.

BMFT has reduced its direct operating costs to less than \$10,000 in FY 04 compared to more than the \$20,000 incurred for both FY 03 and FY 02.

3. The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

November 15, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF MARITAL AND FAMILY THERAPY

November 1, 2004

Audit Control Number

08-20032-05

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, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(11), the Board of Marital and Family Therapy is scheduled to terminate on June 30, 2005.

We recommend that the legislature consolidate the Board of Marital and Family Therapy with the Board of Professional Counselors and establish the new board's termination date to June 30, 2009. If the legislature chooses to keep the Board of Marital and Family Therapy intact, we recommend the board be extended to June 30, 2010.

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

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Marital and Family Therapy (BMFT). As required by state law, the legislative committees of reference are to consider this report when determining whether to extend the termination date for BMFT. Currently under AS 08.03.010(c)(11), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BMFT will have one year to conclude its administrative operations.

Objectives

The four central, interrelated objectives of our report are:

1. To determine if the termination date of BMFT should be extended.
2. To determine if BMFT is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed marital and family therapists.
4. To analyze possible cost savings and other factors in order to determine if there is merit in the consolidation of BMFT with three other behavioral-health related boards.

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

Scope and Methodology

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

Our audit reviewed the operations and activities of the Board of Marital and Family Therapy for the period spanning FY 01 through FY 04. The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documentation of licensees.
3. Minutes of board meetings and Division of Occupational Licensing correspondence files.

4. Annual reports issued by the Board of Marital and Family Therapy.
5. Case files involving complaint investigations related to professionals licensed by, and applicants seeking licensure from BMFT.
6. Direct and indirect costs charged to the board in recent years, in order to assess the possibility of achieving significant cost savings through a merger of behavioral health related licensing boards.

We interviewed various staff of the Division of Occupational Licensing, including both licensing staff and investigators.

We conducted a survey of occupational licensees of the four behavioral health boards. Survey responses varied from 50 to 62 percent, specifically:

<u>Behavioral Health Boards</u>	<u>Licensees</u>	<u>Responses</u>	<u>Percent Response</u>
Board of Marital and Family Therapy	94	58	62%
Board of Professional Counselors	300	150	50%
Board of Psychologists and Psychological Associates	205	128	62%
Board of Social Work Examiners	347	187	54%

ORGANIZATION AND FUNCTION

The Board of Marital and Family Therapy was established under the provisions of Title 8, Chapter 63 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Three members must be licensed marital and family therapists. The statutes require that two members of the general public also sit on the board.

The board regulates licensed marital and family therapists in the State. It sets education, training, and work experience standards necessary for an individual to be licensed as a marital and family therapist or a marital and family associate.

Alaska statute defines the practice of marital and family therapy as the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for marital and family therapy. This covers all disorders, whether cognitive, affective, or behavioral, within the context of human relationships, particularly the marital and family system.

The board's duties include:

1. Examining and issuing licenses to qualified applicants,
2. Developing written guidelines to ensure licensing requirements are not unreasonably burdensome and the issuance of licenses is not unreasonably withheld or delayed,
3. Holding hearings in order to impose disciplinary sanctions on persons who violate the statutes or regulations related to the licensure of marital and family therapists,
4. Adopt regulations necessary to enforce the statutes relating to the Board of Marital and Family Therapy, and
5. Adopt a code of ethical practice for marital and family therapy.

A marital and family therapy applicant may be licensed by passing an examination given by the board, or by what is termed "credentials." In order to be licensed by credentials, an applicant must provide proof of licensure by another authority, such as a state, that has equal or more stringent licensing requirements than the State of Alaska.

In order to become licensed by examination, an applicant must have an advance degree in marital and family therapy or allied mental health field from a regionally accredited

Board of Marital and Family Therapy
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(as of June 30, 2004)

<u>Therapist</u>

Larry Holman, Chair Vivian Finlay Bill Platte

<u>Public Member</u>

Ann Swift Vacant

educational institution approved by the board for which the person completed substantially equivalent course work¹ in the following: (1) marital and family therapy, (2) marital and family studies, (3) human development, (4) professional studies or professional ethics and law, (5) research, and (6) supervised clinical practice; meet specific experience requirements;² and pass a written examination. The examination is a national examination developed jointly by the Association of Marital and Family Therapy Regulatory Board and Professional Examination Service. The test is administered by the Division of Occupational Licensing.

Department of Commerce, Community, and Economic Development, Division of Occupational Licensing (OccLic)

The Department of Commerce, Community, and Economic Development, OccLic, provides administrative and investigative assistance to the Board of Marital and Family Therapy. 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 08.01.087 empowers the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. OccLic may:

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

¹ AS 08.63.100(b) permits the substitution of post-degree courses or practice, as approved by the board, by a person whose master or doctorate degree in marital and family therapy or allied health field whose course of study did not include all the course or clinical practice requirements of AS 08.63.100(a)(3)(B).

² The following practical experience is required in addition to obtaining a degree in accordance with the requirements of AS 08.63.100(a)(3)(B):

- Practiced marital and family therapy within three years of the person's application, including 1,500 hours of direct clinical contact with couples and families.
- Has been supervised in the clinical contact for at least 200 hours, including 100 hours of individual supervision and 100 hours of group supervision approved by the board.
- Has received training related to domestic violence.

BACKGROUND INFORMATION

In 2002, while considering the bill (HB 343) that would extend the termination date of the Board of Professional Counselors, the House Labor and Commerce Committee developed a letter of intent. The letter stated:

It is the intent of the House Labor and Commerce Committee that the operations and regulatory oversight responsibilities of the following professional licensing boards be combined into one board:

- 1. Board of Professional Counselors*
- 2. Board of Marital and Family Therapy*
- 3. Board of Psychologist and Psychological Associate Examiners*
- 4. Board of Social Work Examiners*

To help ensure an effective transition, the four boards are to work cooperatively to develop an appropriate proposed statute for this new combined board.

Such a proposed statute should be designed to accomplish the intent of the committee to combine the operations of the boards while meeting the individual regulatory and oversight responsibilities of each current separate licensing board. If the boards involved would like to propose alternative combinations of how to combine the four boards, they are encouraged to also draft alternative proposed statutes.

Jointly, the chair of each board is to report on their progress in both January 2003 and 2004.

This intent, generated by the 22nd Legislature was modified by a letter, co-signed by the chairs of the House and Senate Labor and Commerce Committees of the 23rd Legislature. The letter discharged the boards from planning and reporting on their progress as required in the original statement of intent.

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REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the termination date for the Board of Marital and Family Therapy (BMFT), we also analyzed the operating costs and other factors related to the operations of the board. Various nonfinancial factors were considered in order to assess the advisability of consolidating BMFT with other behavioral health boards, along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

BMFT should be consolidated with the Board of Professional Counselors

In our opinion, BMFT should not be reestablished by the legislature. Rather, we recommend the licensing of qualified professionals be continued through consolidation with the Board of Professional Counselors (BPC). Our recommendation is based upon the following factors:

1. Number of BMFT licensees has significantly declined. The number of professionals licensed by the board is steadily declining. Currently, there is less than half the number of licensees than the board had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BMFT licensees hold licenses with other boards. Almost 15 percent of BMFT licensees hold dual licenses under another behavioral health licensing board. Most of these are as licensed counselors under BPC.
3. Scope of practice and educational requirements are similar for therapists and counselors. As defined in state law, the areas of practice for the professionals regulated by the two boards are similar. Both professionals are defined as engaging in diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature. Both are charged with making diagnoses to treat such disorders whether cognitive, affective, or behavioral.

Educational requirements for licensing as a marital and family therapist or as professional counselor are similar. BMFT licensees are required to have more specialized systemic training for group and family counseling.

4. Survey results show mixed reactions to consolidating boards. We conducted a survey of licensees for all the behavioral health boards. One of the questions addressed the issue of combining the boards. *“The State is considering consolidating some of the mental health boards. (Psychologists and Psychological Associate Examiners, Marital and Family Therapy, Professional Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective.”*

Nine (16%) of the marital and family therapy licensees responding either did not answer or indicated that the boards should be kept separate. Forty-nine (84%) indicated some combination of the boards would be effective. A combination of all four boards was chosen most often.

The survey results from professional counselors were different. Forty-seven (31%) of the professional counselors responding either did not answer or indicated that the boards should be kept separate. One hundred and three (69%) indicated some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

5. BMFT is in a chronic deficit position. The board has operated in a cumulative deficit position for the past four years (See schedule on page 18 of this report). In order to reduce the deficit and be in compliance with state law,³ fees would have to be increased by more than \$300 per licensee.

Such an increase would put licensing fees above \$1,000 for the two-year renewal period. Like many other boards, BMFT licensees believe their current licensing fees are too high. Over 90 percent of therapists responding to our survey either disagreed or strongly disagreed with the statement that their “*licensing fees were reasonable.*”

6. Combination of these two professions under a single board is the most common regulatory model. Professions covered by boards listed in the 2002 legislative intent are regulated by other states through different groupings of oversight boards. The number of boards used in regulating the professions varies from one to four. In the 33 states that utilize either two or three regulatory boards – 28 group the oversight of professional counselors and marital/family therapists together.

The new consolidated board should be established for four years.

In our opinion, the termination date for the consolidated board covering marital and family therapists, along with professional counselors, should be established for June 30, 2009. Both boards have been actively working in the public’s interest by promoting the competence of individuals who hold themselves out to the public as marital and family therapists or professional counselors.

BMFT has testified in favor of statutory changes and adopted regulatory changes that made therapists more accountable to their clients and the general public. The board has also substantially curtailed its operating costs, in an attempt to minimize its current negative balance position.

³ As discussed further in the Analysis of Public Need section, AS 08.01.065(c) requires the license fees for each profession be set at a level that will cover the operating costs of regulating the relevant profession.

Alaska Statute 08.03.010(c)(11) requires BMFT to be terminated on June 30, 2005. If the legislature takes no action, under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature combine BMFT with BPC and the consolidated board's termination date be set at June 30, 2009.

If the legislature elects not to combine the board, we recommend the Board of Marital and Family Therapy be extended to June 30, 2010.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Marital and Family Therapy (BMFT) and Board of Professional Counselors (BPC) should be combined into a single oversight and licensing board.

BMFT and BPC should be combined into a single regulatory board. We make this recommendation based on our review of the cost analysis, the comparison with licensing requirements in other states, and survey results from licensees of various behavioral health boards. Our recommendation is based on the following factors and analysis:

1. Number of BMFT licensees has significantly declined since its inception. The number of professionals licensed by the board is steadily declining. There is, currently, less than half the number of licensees than the board had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BMFT licensees hold licenses with other boards. Almost 15 percent of BMFT licensees hold dual licenses under another behavioral health licensing board. Most of these are as licensed counselors under BPC.
3. Practice, as defined in law, is similar between therapists and counselors. As defined in state law, the areas of practice for both boards are similar. The practice of marital and family therapy is defined as:

*the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for marital and family therapy. [emphasis added].” The therapist must be able to “**diagnosis and treat such disorders whether cognitive, affective, or behavioral, within the context of human relationships, particularly marital and family systems** [emphasis added].⁴*

The practice of professional counseling is defined in state law as:

*the application of principles, methods, or procedures of the counseling profession to **diagnose or treat**, other than through the use of projective testing or individually administered intelligence tests, **mental and emotional disorders that are referenced in the standard diagnostic nomenclature** for individual, group, and organizational therapy. [emphasis added]⁵*

⁴ Definition of practice of marital family practice is from AS 08.63.900(5).

⁵ Definition of practice of professional counseling is from AS 08.29.490(1).

As with marital and family therapist, professional counselors are to “*diagnosis and treat such disorders, whether cognitive, affective, or behavioral, within the context of human relationships and systems.* [emphasis added].”

Both professions are charged with the diagnosis and treatment of mental and emotional disorders, whether the disorders can be categorized as cognitive, affective, or behavioral.

4. Educational requirements for the two licenses are similar. Degree requirements for licensing as BMFT therapists and licensing as BPC counselors are virtually identical. BMFT requires applicants to have more specialized systemic training for group and family counseling; however, this distinction does not appear to be overly critical to the basis of practice between these two professions.
5. BMFT is in a chronic-deficit position. The board has operated in a cumulative deficit position for the past four years (See schedule on page 18). In order to reduce the deficit and be in compliance with state law,⁶ fees would have to be increased by more than \$300 per licensee.

Such an increase would put licensing fees above \$1,000 for every two-year renewal period. Like many other boards, BMFT licensees believe their current licensing fees are too high. Over 90 percent of therapists responding to our survey either disagreed or strongly disagreed with the statement that their “*licensing fees were reasonable.*”

Our analysis of costs did not indicate there would be any significant reduction in board operating costs. In recent years both boards have carefully controlled expenses, especially those associated with holding board meetings – the cost most susceptible to savings through consolidation. Nevertheless, we believe that merging the two boards will have a positive effect on keeping down the cost pressure on therapist licensing fees – which hold out some prospect for possibly being reduced in the future.

6. Survey results show mixed reactions to consolidating boards. We conducted a survey of licensees for all the behavioral health boards. One of the questions addressed the issue of combining the boards. “*The State is considering consolidating some of the mental health boards. (Psychologists and Psychological Associate Examiners, Marital and Family Therapy, Professional Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective.*”

Nine (16%) of the marital and family therapy licensees responding either did not answer or indicated that the boards should be kept separate. Forty-nine (84%) indicated some combination of the boards would be effective. A combination of all four boards was chosen most often.

⁶ As discussed further in the Analysis of Public Need section, AS 08.01.065(c) requires the license fees for each occupation be set at a level that will cover the operating costs of regulating the relevant occupation.

The survey results from professional counselors were different. Forty-seven (31%) of the professional counselors responding either did not answer or indicated that the boards should be kept separate. One hundred and three (69%) indicated some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

7. Combination of these two professions under a single board is the most common regulatory model. For the professions covered by the boards listed in the 2002 legislative intent letter, or behavioral health boards, other states tend to group the oversight boards differently. States regulate the professions with between one and four boards. In the 33 states that utilize either two or three regulatory boards – 28 group the oversight of professional counselors and marital/family therapists together.
8. Related, but not same, professions on a board enhances public representation. A consolidated board would provide for more members on a regulatory board that are not members of the profession involved. Members of the related professions would essentially be quasi-public members. This helps to better accomplish a common policy objective of regulatory boards – members of the general public should be on boards to provide a nonprofessional perspective on regulation.

Public members are put on boards to provide representation of broader, consumer-oriented interests. This is to offset, to some extent, the possibility of professionals acting more in their commercial interests, at the expense of the public interest, in carrying the regulatory responsibilities of a given board. Although it is difficult to specify how such a board's actions would necessarily differ from that of the currently structured board, there is the prospect of bringing a wider public perspective to regulation of these professions.

When BPC was first established, there was discussion by some legislators about possibly placing the licensing and regulation of professional counselors under the already existing BMFT. After legislative committee discussions and questioning, it was decided to create a separate Board of Professional Counselors – in part because of concern that the one-time “start-up” costs involved in regulation should be borne entirely by counselors, rather than being made part of the costs paid by BMFT therapists. BPC is beyond this start-up phase, and in our view, given the factors discussed in the Reports Conclusions section and those listed above, we recommend the legislature consolidate the regulation of the two professions under one licensing board.

A consolidation of the BPC and BMFT will not consolidate the licensure of either profession. However, at some future time because of the similarity of education and practice a combined board may want to consider a single counseling license with an endorsement to practice a specialty – such as marital and family therapy.

Recommendation No. 2

The Division of Occupational Licensing, in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

At the end of FY 04, BMFT had an operating deficit of more than \$75,000. Based on expenditures and revenues to date, we project that it is likely BMFT will, again, be in a deficit at the end of FY 05. The major contributing factor to the deficit is that in the past board costs have exceeded license renewal fee revenues, without the board and Division of Occupational Licensing (OccLic) putting in place the necessary licensing and other fee adjustments. State law, at AS 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs related to that occupation.

BMFT has reduced its direct operating costs to less than \$10,000 in FY 04 compared to more than the \$20,000 incurred for both FY 03 and FY 02. Additionally, during this same period, the amount of indirect costs charged to the board has remained steady, because of the decrease in the number of BMFT licensees and an increase in the total number of licensees covered by OccLic.

A projection prepared by OccLic in FY 03, based on an estimated renewal of 80 licensees, indicated that renewal fees would have to be doubled to \$1,550 for BMFT being compliant with the self-financing requirements of state law. Since that estimate, BMFT has made progress in reducing its continuing deficit. However, without an increase to fees for BMFT licensees, the deficit will remain and it is likely the board will not be able to eliminate its deficit until FY 07 or beyond.

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

BMFT is made up of five members – two representatives from the general public and three licensed professionals. One public member seat was open for all of FY 03. The Office of the Governor made appointments of two new public members in August 2004, but one of the licensed professional seats is vacant; and, the term of another licensed member will expire in December 2004. In past years, the extended absence of public members on the board has hampered it from conducting business with appropriate public input and perspective.

Public members are an important, but often overlooked, part of occupational licensing boards. Technical expertise is provided by professional members while public members provide a consumer perspective. Consumer protection is the basis for regulation in the first place. While public board members are often initially inexperienced in the profession being regulated, they are on the board to represent the consumer and interests of the general

citizenry. Contributing to board decisions, such representation provides balance to a board to prevent undue bias toward the profession being regulated.

Accordingly, we recommend that BMFT and the Governor's office work to fill appointments to all seats on the board, with particular emphasis on public member seats, designed to represent the state's citizenry.

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A ANALYSIS OF PUBLIC NEED D

The following analysis of BMFT activities relates to the public need factors defined in the “sunset” review law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

BMFT has operated in the public interest by licensing only qualified individuals. The board has established licensing requirements and minimal practice standards that licensed Marital and Family Therapist are to adhere to in the course of practice.

BMFT has established regulations governing its duties and licensure requirements, enforced the laws for issuing licenses in a uniform and consistent manner, held meetings, and administered examinations in accordance with statutory requirements.

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.

State law⁷ requires that BMFT consist of three board-licensed therapists and two members of the public. For most of the last three years, one or both public member seats on the board have been vacant. Currently, one licensed professional seat is vacant and the term of another licensee seat will expire in December 2004. In the past, vacancies on the board have created difficulties in maintaining a quorum which would permit the board to operate. See Recommendation No. 3 for further discussion of this issue.

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing (OccLic), must “*establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation.*” Licensing fees for BMFT were originally set at \$300 for a Therapist and \$200 for an Associate License. The licensing fees were subsequently increased to \$775 where they currently remain. Since inception, the collected board fees have not been sufficient to cover all of BMFT’s expenditures. The number of licensees has steadily declined over recent years, resulting in a significant deficit having to be covered by fewer and fewer licensees.

⁷ AS 08.63.010(b)

OccLic evaluates the fee level to be set by analyzing costs and revenues on a biennial roll-forward or cumulative basis. As reflected by the summary schedule below, BMFT renews licenses in odd-numbered fiscal years – resulting in the highest revenues.

State of Alaska Board of Marital and Family Therapy FY 02 - FY 04 Schedule of Revenues and Expenditures (Unaudited)			
	<u>FY 04</u>	<u>FY 03</u>	<u>FY 02</u>
Revenue	\$ <u>5,500</u>	\$ <u>67,700</u>	\$ <u>1,600</u>
Direct Expenditures			
Personal Services	6,700	14,600	11,700
Travel	600	4,500	4,500
Contractual	900	1,900	11,400
Supplies	<u>-0-</u>	<u>100</u>	<u>-0-</u>
Total Direct Expenditures	<u>8,200</u>	<u>21,100</u>	<u>27,600</u>
Indirect Expenditures	<u>4,900</u>	<u>5,500</u>	<u>4,900</u>
Total Expenditures	<u>13,100</u>	<u>26,600</u>	<u>32,500</u>
Net Income (Loss)	<u>(7,600)</u>	<u>41,100</u>	<u>(30,900)</u>
Beginning Cumulative Surplus (Deficit)	(68,000)	(109,100)	(78,200)
Ending Cumulative Surplus (Deficit)	\$ <u>(75,600)</u>	\$ <u>(68,000)</u>	\$ <u>(109,100)</u>

BMFT has been able to reduce its deficit substantially at the end of FY 04, compared to the total at FY 02, the end of the previous two-year licensing cycle. While progress is being made, it is clear that current licensing fees are not set appropriately for BMFT to be self-sufficient in the near term.

Another fee increase poses a dilemma, possibly encouraging licensees to switch licensure as BPC counselors, or perhaps leave the profession altogether – which in turn would exacerbate the deficit problem. See Recommendation No. 2 for further discussion of these issues.

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

BMFT testified in favor of two pieces of legislation, one passed in 2002 and the other passed in 2003, having a big impact on professional practice. In 2002, the legislature adopted a statute that broadened the definition of a mental health professional as it related to the state's policy and procedures for individuals with mental health problems. The legislation changed state law to include licensed clinical social workers, marital and family therapists, and professional counselors recognized as mental health professionals. By including these professions under the definition of mental health professional, practitioners now could take a legal role in the state's mental health system to protect youths and adults who are experiencing acute psychiatric crises.

The legislation allowed therapists to: (1) provide mental health treatment for prisoners; (2) evaluate children and minors in custody of the state to determine appropriate placement in residential treatment centers; and, (3) conduct civil psychiatric commitment evaluations. Additionally, therapists were included in the list of individuals who are required to report incidents of harm to vulnerable adults.

In 2003, the legislature adopted a change to state law that allowed marital and family therapists to breach their duty of confidentiality to their clients in cases where:

1. Threats have been made by a client. Therapists can now communicate with either a potential victim or law enforcement officers where a threat of imminent serious physical harm to an identified victim has been made by a client; or,
2. Client has discussed actions that could be a basis for professional sanction. Therapists can now disclose communications about an act that they have reasonable cause to "*suspect constitutes unlawful or unethical conduct that would be grounds for imposition of disciplinary sanctions by a person licensed to provide health or mental health services.*" Such disclosure is to be made only to the relevant licensing board and the disclosure must be made in good faith by the therapist.

The 2003 legislation also added "*sexual misconduct with a client during the course of therapy, either within or outside the treatment setting, or within two years of therapy or counseling contact...*" as grounds for disciplinary sanction by board against a license holder.

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

The location, date, and time of upcoming BMFT meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News* with adequate time for interested individuals to attend or to submit written comment for review. The board's meeting agenda sets aside adequate time for BMFT to take public comment. Minutes from the meetings reflect public participation throughout various meetings.

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

BMFT changed its regulations, repealing licensing by transition, amending and adding new subsections to licensing by examination, simplifying the renewal process, and amending the code of ethics for practitioners. The board initiated regulations to put into place definitions regarding what constituted "sexual misconduct," in the context of new state law, which gave the board authority to sanction licensees for such actions.

BMFT developed and finalized a new state ethics test to be administered by OccLic; and, starting with FY 01 the board switched to a computerized form of testing administered by Prometric Tompson Learning Center, utilizing the National Licensure Examination for Marriage and Family Therapy.

Proposed regulations are often circulated through professional trade journals, public notice advertisement, or direct mail correspondence from the Division of Occupational Licensing. We verified the public received adequate notice of the location, date, and time of board meetings where regulatory changes were considered. This notice was provided through advertisements in the state's major newspaper, the board's internet website, and the state's online public notice internet website. The State also offers a subscription service whereby the State will email the subscriber requested public notices. BMFT's meeting agendas provided time for the board to take public comment.

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.

From July 2001 through May 2004, OccLic's investigative unit opened up four investigation cases related to BMFT licensees or applicants. Two involved complaints of ethics violations (one made by another BMFT licensee and one generated by OccLic). One involved a dispute

over continuing professional education with license renewal, while the fourth complaint was generated by an inquiry from another state.

We reviewed three of the four complaint files. All investigations were conducted in a timely manner and, where applicable, resulted in reasonable licensing actions. We conclude the complaint investigation process for BMFT-related complaints was carried out in an effective and efficient manner.

No BMFT complaints or investigations were carried out by the Office of Victim's Rights or the state Office of the Ombudsman.

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 board has only licensed applicants that have applied for licensure by credentials or by examination. Requirements to be licensed under BMFT are stringent and eliminate those that do not have the educational background and adequate work experience.

Continuing education is required, and appropriately monitored, by BMFT to promote a high level of quality performance and to help ensure the integrity of the profession. Each applicant is required to satisfy requirements for licensing. BMFT meeting minutes reflect that the board considers each applicant and verifies the licensing requirements are satisfied prior to issuing a license. Activity related to issued licenses for the last three fiscal years are presented below:

Licenses Issued	Newly Issued			Total At
	FY 02	FY 03	FY04	June 30, 2004
Marital and Family Therapist	1	2	3	93
Marital and Family Associate	0	0	0	1

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 BMFT was not in compliance with state personnel practices, including affirmative action in qualifying applicants. In no instances has BMFT denied an applicant a license based on personal attributes.

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

As discussed in the Report Conclusions and Recommendation No. 1, we recommend that the legislature consider combining the Board of Marital and Family Therapy and the Board of Professional Counselors. There is minimal difference in the definition of what constitutes each profession's practice as set out in AS 08.29.490 (Professional Counselors) and AS 08.63.900 (Marital and Family Therapist). Both boards would benefit from such a combination.

As discussed in Recommendation No. 2, OccLic, in conjunction with BMFT, should increase licensing fees to eliminate the board's current and projected operating deficits.

If BMFT is not consolidated with BPC, as discussed in Recommendation No. 3, the Office of the Governor should take steps to expedite appointments to the board.

December 23, 2004

Ms. Pat Davidson
Legislative Auditor
Legislative Audit Division
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson:

This letter is in response to your agency's November 1, 2004 Preliminary Report regarding a sunset review of the Board of Marital and Family Therapy.

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

The Office of the Governor concurs with this recommendation. However, the Governor's Office strives to have geographical as well as gender and ethnic diversity on state boards. This is made difficult by the limited number of marital and family therapists residing in the state and then only in the larger communities. In addition, it is very difficult to find members of the general public who are willing to serve on the occupational licensing boards.

Sincerely,

Linda J. Perez
Administrative Director

cc: Jim Griffin, Audit Manager
Laraine Derr, Director Boards & Commissions



OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

December 30, 2004

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

RE: Board of Marital and Family Therapy

Dear Ms. Davidson:

We appreciate the opportunity to review the Board of Marital and Family Therapy Preliminary Audit Report. Comments on the recommendations are noted below:

Recommendation No. 1:

The Board of Marital and Family Therapy and the Board of Professional Counselors should be combined into a single oversight and licensing board.

The Department supports consolidation of the Board of Marital and Family Therapy and the Board of Professional Counselors. The Department recommends a five member board (two professionals from each existing board and one public member) as the make-up for a consolidated board. We believe five members would be sufficient to represent the combined professions and to work effectively on issues of common interest/scope of practice concerns. Additionally, a five member board would assist with keeping travel costs at a minimum.

Recommendation No. 2:

The Division of Occupational Licensing (Occ Lic), in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

The Division considered the program deficit and the existing license fees as part of the review for the upcoming renewal period. The Division determined it was in the best interest of the profession to maintain the license/renewal fee at \$775 and to allow the continuation of pay back of the deficit over future years. As noted in your review, the board has attempted to cut costs where possible and seek ways to reduce operating costs from previous fiscal years.

In the event to legislature deems it appropriate to require the Board of Marital and Family Therapy to pay back the deficit prior to board consolidation, the legislature may consider enacting a requirement that

licensees under the board pay a one-time assessment to cover the deficit. The assessment would be applied to all current licensees; if payment were not made, the legislation should provide for license revocation. In the event 80 licenses are current at the time of assessment, the fee per licensee would be approximately \$938 (i.e., 80 licensees covering a \$75,000 deficit).

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

We defer response on this recommendation to the Office of the Governor.

Again, we appreciate the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Edgar Blatchford". The signature is written in a cursive style with a large initial "E".

Edgar Blatchford
Commissioner

cc: Rick Urion, Director,
Division of Occupational Licensing

December 13, 2004
Ms. Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
P. O. Box 113300
Juneau, AK. 99811-3300

Dear Ms. Davidson,

Re: Preliminary audit report on Board of Marital and Family Therapy Sunset Review,
November 1, 2004

My comments relate to the "Report Conclusions" and "Findings and Recommendations". I believe I represent the MFT Board members as well as many licensees.

I support the overall recommendation that the BMFT should be consolidated with BPC. However, I disagree with some of the conclusions and findings.

1. It is true that BMFT licensees have significantly declined, however, this is largely due to several factors not noted in your report, namely:

- a) Licensing fees are extremely high, so psychotherapists may choose to obtain another license instead of MFT, or to not be licensed at all;
- b) There are no master's degree programs for MFT's in the State of Alaska; therefore, the only people who get licensed are those from other states;
- c) Alaska does not have a "Practice license" so that therapists can do "marital and family therapy" without a license;
- d) The initial number of licenses issued when BMFT was formed in 1993 was less than those in all the other Boards (due to the stringent education and training requirements).

2. A) The 15% of MFT's who hold dual licenses have the necessary education and training for both licenses and they want to hold dual licenses. There is value in the MFT designation because of the specific training that license infers. However, many people who have one license may not be able to obtain a dual license.

3 and 4. The scope of practice may be similar for therapists and counselors, however, I disagree that educational requirements are similar for therapists and counselors. The report states that MFT's have "more specialized systemic training for group and family counseling". In fact, if you compare the specific courses required for the LMFT, you will note MFT's are required to take numerous courses that educate and train the therapist in systemic thinking. This distinction is CRITICAL to the basic difference in practice between the two professions. Systemic thinking and working is used for all types of therapy, not just for groups and families, and represents a different and unique methodology/theoretical model for the way we work with clients. Other professionals may not be adequately trained in systemic work unless they have taken relevant courses.

Furthermore, the legislative audit committee may not be aware that the BMFT is charged with monitoring licensees who are "Approved Supervisors". Marriage and

Family Therapy is the only mental health discipline that requires extensive education and training on a national level for a therapist to become a Supervisor of those wanting to become licensed. This is because the training in “systemic areas” is so specific and specialized. BMFT is charged with monitoring that there is sufficient training and continuing education of Alaska State Approved Supervisors.

Therefore, if the two Boards were consolidated, provision needs to be made to have Board members who are able to differentiate between the requirements for the two licenses, and who are able to issue two distinctive licenses.

I definitely disagree with the recommendation on p. 13 that the “combined board may want to consider “a single counseling license with an endorsement to practice a specialty...” I do not believe that this would serve the public because the implication is the training for both licenses is the same; that both licenses are covered by the public’s health insurance; (however, in at least one instance, I am aware of a medical insurance plan that covers therapy by a LMFT with no restrictions, but restricts coverage of the LPC practitioner-the military person’s insurance); and there could be less Board scrutiny over who is stating they are qualified to do “marital and family therapy”.

5) I have grave concerns about your findings and recommendations about the BMFT deficit. You state on p. 14 that “The major contributing factor to the deficit is that in the past board costs have exceeded license renewal fee revenues”. Operating costs for the BMFT are increased by investigative and administrative functions that are unrelated to licensees, or to the Board functions. According to Jennifer Strickler, who spoke to the BMFT at our October 1, 2004 meeting regarding our budget report, the deficit is due to expenses related to two large investigations from 1998. Since that time, the Board has shown surpluses in revenue over expenses for each licensing period. Standard governmental accounting principles would not carry a deficit over 6 years, just as they would not carry forward excess revenues. It should be noted that the BMFT has absolutely no oversight over any investigations. Also, investigations of therapists could, and have, occurred in any discipline/license. The BMFT was most affected because of the small number of licensees. (Please refer to the points in #1) The Board has discussed the need to challenge the procedures that prevent the Board from having oversight. One such proposal is for the investigators to use volunteer “expert witnesses” who may assist in evaluating concerns about therapists’ behaviors. Another proposal would require statutory changes which thereby would incur further expenses to the Board, so no action has yet been taken on this. Another proposal is for OccLic to spear head legislation to create a legal defense fund to help protect all Boards from incurring deficits associated with litigation costs. It is my opinion that MFT licensees should not be penalized by increased fees for investigations not authorized or approved by the Board. In fact, there should be a mechanism to charge investigation expenses to the therapists who incurred the investigations, particularly if a law was violated. This would need legislative action. Ms. Strickler stated that if the number of licensees stays the same and there are no major costs incurred, the fee for the 2006 license renewal might come down. This is different from your statement that the deficit cannot be eliminated until beyond FY07 unless fees are doubled.

On p.14 you recommend that fees would have to be doubled to \$1,550. Increasing fees to “double” would be shortsighted. I think many licensees would choose not to

renew their licenses. They could practice without a license, and therefore, would not be monitored for legal and ethical violations. This could be detrimental to the public, and could further delay payment toward the deficit. Consolidating Boards will not alleviate the deficit as LMFT's would need to cover their own "deficits", according to current statutes. I do think the naming of expenditures from 8 years ago as ongoing "deficits" needs to be re-considered. Furthermore, if the "deficit" might indeed be eliminated during the next licensing period (December of 2006), then this is a moot point.

I wanted to point out potential errors under Recommendation No. 3, p. 14. As of December 31, there will be **two** licensed professional seats on the BMFT that are vacant, and the term of third seat has expired though that person (myself) is serving pending a replacement appointment that was requested in November, 2003. Therefore, I strongly support your recommendation that the Governor's office work to fill appointments to all seats on the Board in a timely manner. Please also note that on p. 3 a listing of the BMFT members as of June 30, 2004 is not correct. Mr. Larry Holman, Chair, resigned from the Board last February due to health problems. The BMFT did not have a Chair until they met to elect one on October 1, 2004.

Under the final subsection on p.22 in reference to statutory, regulatory, budgeting, or other changes, I think the BMFT would better serve the interest of the public if, whether alone or consolidated with BPC, it could be proactive in all its efforts. This can best be achieved with full board membership, regular and timely meetings (to be determined by the Board and not OccLic), keeping licensing fees reasonable, (which requires legislative changes) and knowledge and oversight of investigations.

In summary, I do not object to the consolidation of Boards, but I disagree with some significant points that you raised, and have noted those. Please contact me at 907-373-6006 should you have any questions.

Sincerely,

Vivian C. Finlay, LMFT, Chair BMFT