

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Professional Counselors, November 2, 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 Professional Counselors (BPC). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for BPC. Currently under AS 08.03.010(c)(17), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BPC will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the termination date for BPC, 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 BPC with other behavioral health boards. Further discussion of our conclusions follows.

BPC should be consolidated with the Board of Marital and Family Therapy

In our opinion, BPC should not be reestablished by the legislature. Rather, we recommend the licensing of qualified professionals be continued through consolidation with the Board of Marital and Family Therapy (BMFT). We base our recommendation, which in part stems from circumstances involving BMFT, on the following factors:

1. Number of BMFT licensees has significantly declined.
2. Some BPC licensees also hold licenses with BMFT.
3. Scope of practice and educational requirements are similar for therapists and counselors.
4. BMFT is in a chronic-deficit position.
5. Survey results show mixed reactions to consolidating boards.
6. Similar professions on a board enhance public representation.
7. 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 professional counselors, along with marital and family therapists, 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.

BPC has consistently carried out its responsibilities in the public interest and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to statutes and regulations improving the proficiency of practitioners licensed in Alaska.

Alaska Statute 08.03.010(c)(17) requires BPC 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 BPC with BMFT and establish June 30, 2009 as termination date for the new board.

If the legislature elects not to consolidate the board, we recommend the Board of Professional Counselors be extended to June 30, 2010.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

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

BPC was created by the 1998 Legislature. At that time there was interest expressed by various legislators of placing professional counselors' licensing and regulation under the already existing BMFT. After legislative discussions and questioning, it was decided to create a separate Board of Professional Counselors – in part because of concern that one-time “start-up” costs should be borne entirely by counselors rather than made part of the costs paid by marital and family therapists.

As part of the sunset review we considered the merits of combining BPC with one or more of the boards involved with behavioral health, such as BMFT, the Board of Psychologist and Psychological Associate Examiners, and the Board of Social Work Examiners

Based on our review we recommend that the Board of Professional Counselors and Board of Marital and Family Therapy be consolidated into one board maintaining licensure of each profession separately. 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.

November 30, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF PROFESSIONAL COUNSELORS

November 2, 2004

Audit Control Number
08-20034-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.505(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)(17), the Board of Professional Counselors is scheduled to terminate on June 30, 2005.

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

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

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Professional Counselors (BPC). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for BPC. Currently under AS 08.03.010(c)(17), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BPC 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 BPC should be extended.
2. To determine if BPC is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed professional counselors.
4. To analyze possible cost savings and other factors in order to determine if there is merit to the consolidation of BPC 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 BPC for the period 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. Test of files and documentation of licensees.
3. Minutes of board meetings and Division of Occupational Licensing correspondence files.

4. Annual reports issued by BPC.
5. Case files involving complaint investigations related to professional licensed by, and applicants seeking, licensure from BPC.
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 Professional Counselors (BPC) was established under the provisions of Title 8, Chapter 29 of Alaska Statutes. BPC consists of five members appointed by the governor and subject to legislative confirmation. Four members must be professional counselors and one member must be appointed from the general public. Board members serve staggered terms of four years.

The board regulates the practice of professional counselors. BPC sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants,
2. Establishing continuing education requirement for license renewal,
3. Adopting a code of ethics for professional counselors,
4. Establishing, amending, or eliminating regulations controlling the standards of the professional counselors practice,
5. Adopt regulations necessary to enforce the statutes relating to the Board of Professional Counselors, and

Board of Professional Counselors (As of June 24,2004)
<u>Professional Members</u> Anne Henry, Counselor, Chair Allan Morotti, Ph.D., Counselor, Vice Chair Janet McGillivray, M.Ed., Counselor, Stephanie Friese, Counselor
<u>Public Member</u> (Vacant)

6. Holding hearings in order to impose disciplinary sanctions on persons who violate the statutes or regulations related to the licensure of professional counselors.

An applicant can be licensed by meeting the licensing requirements under AS 08.29.110 which includes passing a written examination required by the board.

Alternatively, a professional counselor applicant may be initially licensed under AS 08.29.120 or by what is termed “credentials.” In order to be licensed by credentials, an applicant must provide proof of licensure by another jurisdiction. BPC must find that the other jurisdiction has the same or higher licensure requirements than does Alaska.

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

DCCED's OccLic provides administrative and investigative assistance to the Board of Professional Counselors. Administrative assistance includes budgetary services and functions such as: collection of fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065, that mandates DCCED, with the concurrence of the board, adopts regulations to establish the amount and manner of payment of fees for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers OccLic with the authority to conduct an investigation 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, and
4. Issue subpoenas for the attendance of witnesses and records.

BACKGROUND INFORMATION

In 2002, while considering legislation extending 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 stated 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 Professional Counselors (BPC), 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 BPC with other behavioral health boards along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

BPC should be consolidated with the Board of Marital and Family Therapy

When the legislature first created BPC there was extensive discussion, within referral committees, regarding the placement of professional counselors under the already existing Board of Marital and Family Therapy (BMFT). Eventually, it was decided to create a separate Board of Professional Counselors – in part because of concern the one time “start-up” costs involved in regulation should be borne entirely by counselors rather than part of the costs paid by marital and family therapists. BPC has successfully come through the board’s start-up period. Now circumstances are such, primarily because of BMFT-related factors, that we find it advisable to consolidate the two boards. The basis of our position is as follows:

1. Number of BMFT licensees has significantly declined. The number of professionals licensed by BMFT is steadily declining. Currently, there is less than half the number of licensees BMFT had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BPC licensees also hold licenses with BMFT. Fourteen professional counselors also hold a license as a marital and family therapist.
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 both 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 mix 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.”*

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.

The survey results from marital and family therapists were different. 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.

5. Similar professions on a board enhance public representation. A consolidated board also 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. Members of the related professions would essentially be quasi-public members. This would have the potential to provide more representation of broader, consumer-oriented interests and less representation to any given profession’s commercial interests in carrying out its regulatory mission.
6. BMFT is in a chronic-deficit position. BMFT has operated in a cumulative deficit position for the past four years. In order to reduce the deficit, and be in compliance with state law,¹ 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.
7. 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 letter 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.

¹ 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. Because fees are to be set for each profession to cover its costs, even under a consolidated board, there would be no cross-subsidization between counselors and therapists.

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 at June 30, 2009. Both boards have actively been working in the public's interest by promoting the competence of individuals who hold themselves out to the public as professional counselors or marital and family therapists.

BPC has consistently carried out its responsibilities in the public interest and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to statutes and regulations improving the proficiency of practitioners licensed in Alaska.

Alaska Statute 08.03.010(c)(17) requires BPC 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 BPC with BMFT and establish June 30, 2009 as termination date for the new board.

If the legislature elects not to consolidate the board, we recommend the Board of Professional Counselors be extended to June 30, 2010.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

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

The Board of Professional Counselors (BPC) was created by the 1998 Legislature. At that time there was interest expressed by various legislators of placing professional counselors' licensing and regulation under the already existing Board of Marital and Family Therapy (BMFT). After legislative discussions and questioning, it was decided to create a separate Board of Professional Counselors – in part because of concern that one-time “start-up” costs should be borne entirely by counselors rather than made part of the costs paid by marital and family therapists.

As part of our sunset review of BPC, we considered the merits of combining BPC with one or more of the boards involved with behavioral health, such as BMFT, the Board of Psychologists and Psychological Associate Examiners, and the Board of Social Work Examiners. We base our recommendation, which in part stems from the circumstances involving BMFT, on the following factors and analysis:

1. Number of BMFT licensees has significantly declined since its inception. The number of professionals licensed by BMFT 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 BPC licensees also hold licenses with BMFT. Fourteen professional counselors also hold a license as a marital and family therapist.
3. Practice, as defined in law, is similar between counselors and therapists. As defined in state law, the areas of practice for both boards are similar. 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]²

² Definition of practice of professional counseling is from AS 08.29.490(1).

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].³*

As with marital and family therapist, 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 BMFT therapists and BPC professional 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. BMFT has operated in a cumulative deficit position for the past four years. Alaska Statute 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. In order to reduce the deficit and be in compliance with state law, fees would have to be increased by more than \$300 per licensee.

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, Professionals Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective.*”

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

³ Definition of practice of marital family practice is from AS 08.63.900(5).

some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

The survey results from marital and family therapy licenses were different. 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.

7. Similar professions on a board enhance 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.

8. 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, various states 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.

We recommend the legislature merge BPC and BMFT. 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.

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A ANALYSIS OF PUBLIC NEED D

The following analysis of Board of Professional Counselors (BPC) 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.

BPC has operated in the public interest by licensing qualified individuals. The board has established licensing requirements and minimal practice standards that licensed professional counselors are to adhere to in the course of practice. While BPC acknowledges the need for more professional counselors in the State of Alaska, the board has maintained that existing statutes requiring post-graduate additional education (60 hours) and supervised work experience are in the public interest, designed to ensure higher standards for professional counselors.

In addition, BPC approved, adopted, and distributed a consumer brochure to educate consumers of professional counseling services about state law and regulation.

BPC 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.

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 BPC were originally set at \$630. The licensing fees were subsequently reduced to \$530 where they remain. Since inception, the collected board fees were more than sufficient to cover all of BPC’s expenses. In fact, the number of licensees was greater than originally anticipated and investigative costs, which are typically high at the inception of a regulatory board, were much lower than anticipated.

BPC uses a biennial roll-forward method to determine the amount of fees to charge. The board renews in even-numbered fiscal years. BPC’s biennial roll-forward balance increased \$144,800 between FY 00’s renewal and the end of FY 04. From the surplus shown in the

summary schedule below, licensing fees can likely again be reduced. The following table reflects financial information for BPC during FY 02 – FY 04:

State of Alaska Board of Professional Counselors FY 02 - FY 04 Schedule of Revenues and Expenditures (Unaudited)			
	<u>FY 04</u>	<u>FY 03</u>	<u>FY 02</u>
Revenue	\$ <u>160,000</u>	\$ <u>14,100</u>	\$ <u>135,200</u>
Direct Expenditures			
Personal Services	33,900	28,300	28,700
Travel	4,900	2,200	6,500
Contractual	7,400	12,000	16,900
Supplies	<u>-</u>	<u>100</u>	<u>-</u>
Total Direct Expenditures	46,200	42,600	52,100
Indirect Expenditures	<u>16,600</u>	<u>15,000</u>	<u>16,100</u>
Total Expenditures	62,800	57,600	68,200
Net Income (Loss)	<u>97,200</u>	<u>(43,500)</u>	<u>67,000</u>
Beginning Cumulative Surplus (Deficit)	169,500	213,000	146,000
Ending Cumulative Surplus (Deficit)	\$ <u>266,700</u>	\$ <u>169,500</u>	\$ <u>213,000</u>

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

In 2002, BPC testified in favor of legislation that had a big impact on professional counselors. The legislature changed state law to broaden the definition of mental health professionals 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 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 licensed professional counselors 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.

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 BPC meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News* with adequate time for interested individuals to attend or submit written comment for review. BPC's meeting agenda sets aside adequate time for the board 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.

BPC changed or added regulations regarding license by examination, supervised experience requirements, and repealed the transitional license regulations. The board also spent considerable time and allowed public comment on the regulation regarding the requirement of 60 graduate credit hours for licensure. Although some public testimony was taken stating that the requirement was excessive, BPC felt that it was acting in the public's best interest by maintaining the required hours at the present level in regulation.

BPC also implemented a change to regulations that would allow it to extend the period of time an applicant may have to obtain the supervised experience necessary for licensure.⁴ Previously, an applicant had three years to obtain the necessary supervised hours in counseling required for licensure under state law. After the change in regulation, the board may extend this period for up to two more years upon request of the applicant, if other requirements are met.

Proposed regulations are often circulated to those affected by the proposed regulations through professional trade journals, public notice advertisement, or direct mail correspondence from OccLic. We verified the public received adequate public notice of the location, date, and time of board meetings where regulatory changes were considered. This

⁴Under state law, an applicant for licensure had to work at least 3,000 hours of professional counseling under approved supervision. At least 1,000 of the hours were to involve direct counseling with individuals, couples, families, or groups. Additionally, the applicant was required to obtain a minimum of 100 hours of direct contact with a supervisor approved by the board.

notice was provided through advertisements in the state's major newspaper, BPC's internet website, and the state's on-line public notice internet website. The state also offers a subscription service whereby the state will e-mail the subscriber requested public notices. BPC'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 15 investigation cases related to BPC licensees or applicants. Eight of the complaints were generated by OccLic administrators and involved issues of contested licensing denials or deficiencies in meeting continuing education requirements related to license renewal. Five of the complaints were classified as alleged ethics violations and were generated by either law enforcement authorities or other local or state government service agencies. The other two complaints involved allegations of incompetent practice.

We reviewed seven of the 15 investigative case files. All investigations of the issues and complaints were carried out in a timely manner. Where applicable, the involved licensing decisions or sanctions were reasonable and consistent with the authority of OccLic and BPC. We conclude the complaint investigation process for BPC-related complaints was carried out in an effective and efficient manner.

No BPC 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.

BPC is responsible for ensuring only qualified applicants receive a professional counselor license. An applicant may apply for licensure by either credentials or examination. The creation of BPC was to license counselors wanting licensure in the State of Alaska and to use the title of a Licensed Professional Counselor. Requirements for licensing are stringent and eliminates applicants who do not have the necessary educational background and adequate work experience in a "counseling or related field."

Applicants licensed by credentials are required to have been licensed in another jurisdiction with licensing requirements similar to the State of Alaska. These applicants must list the requirements of their prior licensing jurisdiction and disclose any disciplinary actions against them to BPC.

Those licensed by examination require approval to sit for the BPC examination, pass a uniform computer-based test, and provide a record of their required academic credit hours and supervised/unsupervised contact hours in the field of counseling.

Currently, the State of Alaska still allows people to counsel without a license. Those without a license cannot advertise or give the impression that they are “Licensed Professional Counselors.”

Licenses Issued	Newly Issued				Total As of June 30, 2004
	FY 01	FY 02	FY 03	FY04	
Professional Counselors	11	15	12	40	300

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 BPC was not in compliance with state personnel practices, including affirmative action in qualifying applicants. In no instances has BPC 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 Recommendation No. 1, we recommend the legislature consider combining the Board of Marital and Family Therapists and the Board of Professional Counselors. Accordingly, given: (1) the current status and recent history of BMFT; (2) the similarities in definitions of the two board’s licensing practices and educational requirements; and, (3) the legislative interest in combining boards, both in the past and more recently, we believe consolidating these boards would benefit both professions and the public interest. A combination of boards would improve the overall effectiveness of the governing board by eliminating overlapping regulatory activities.



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 Professional Counselors

Dear Ms. Davidson:

We appreciate the opportunity to review the Board of Professional Counselors Preliminary Audit Report.

Comments on the recommendation is noted below:

Recommendation No. 1:

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

The Department supports consolidation of the Board of Professional Counselors and the Board of Marital and Family Therapy. 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 to a minimum.

Again, we appreciate the opportunity to comment.

Sincerely,

Edgar Blatchford
Commissioner

cc: Rick Urion, Director
Division of Occupational Licensing

December 20, 2004

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

Dear Ms. Davidson:

RE: Preliminary Report
Board of Professional Counselors

As chair of the Board of Professional Counselors (BPC), it is my responsibility to respond to the Preliminary Report regarding the Sunset review of the BPC. Let me start off by saying that I agree that the board continues to consistently carry out its “responsibilities in the public interest and has demonstrated an ability to conduct its business in a satisfactory manner”. The priority effort for the board in recent years is to adopt regulations that protect the public. Our licensing fees to licensees continue to decrease each renewal period and the number of licensees continues to grow. These are indicators that the board is on track, fulfilling its responsibilities for the public and the licensees. Yet, the focus of this report, Recommendation 1 appears to be an attempt to “fix” another board’s problems by merging the successful BPC with the Board of Marital and Family Therapy (BMFT). The Board of Licensed Professional Counselors strongly opposes this burdensome proposed merger.

The Preliminary Report addresses the issues of the sunset review for the board, the background information on the Letter of Intent from the House Labor and Commerce Committee, the discharge of that Letter of Intent, your conclusions and your Findings and Recommendation that this board be combined with the Board of Marital and Family Therapists. This letter of response will address these and other issues.

Your report states that thoughts of combining the MFT and the Professional Counselor boards came during discussions in initial hearings on BPC licensure. While I recall discussing an omnibus board with then-Occupational Licensing Director Cathryn Reardon, I do not recall any such conversations during legislative hearings. It is my recollection that the notion of combining of licensing boards was initiated during the last sunset review of this board. The bill to extend the sunset date for the Board of Professional Counselors was introduced in both the House and Senate Labor and Commerce Committees. In the House Labor and Commerce Committee, then-Chair, Representative Lisa Murkowski passed out of committee the sunset extension bill with the Letter of Intent. As you have included a

copy of the Letter of Intent in your Management Letter, I will not repeat the content. Though they had the opportunity to vote on it, the Senate did not support the inclusion of the Letter of Intent. One must conclude that not all legislators were invested in combining boards.

As you have stated in your report, the chairs of the House and Senate Labor and Commerce Committees then co-signed a letter discharging the boards from planning and reporting on their progress toward combining boards. That letter encouraged the boards to instead continue the work for which the boards were intended. This is of critical importance as it clearly implies that the topic of combining boards was no longer under legislative consideration. Furthermore, this letter discharging the boards from planning and reporting on their progress toward combining boards was addressed to all for mental health professional boards. In speaking with staff to the LC Committee chairs, the chairs of the Psychologist and Social Worker boards, we all believed that the matter of combining boards was over and that we would no longer need to spend unpaid personal and unpaid board time responding to an effort that was so unpopular among three of the four boards.

The conclusion of your report suggests extending the termination date of the board and consolidation of the BPC and BMFT. The board agrees with your recommendation of the extension of the termination date to at least June 30, 2009, or 2010, but finds very little in Recommendation No. 1 to support your recommendation of combining the two boards. The Report lists 7 items under "Report Conclusions" and the same items under "Factors and Analysis"—one item split into two for 8 total items, which are addressed below.

1. Decline in number of BMFT licensees. The fact that the number of BMFT licensees has declined is not an issue relating to the BPC. Combining boards would not increase the number of licensees. Nor would it decrease the cost of BMFT licenses--see item Number 5. However, if the boards were combined with equal number of BMFT and BPC representatives, the representation would not be appropriate given that there are three times more BPC licensees than BMFT licensees. This would create a situation where $\frac{1}{4}$ of the group would have 50% of the control. We oppose this for obvious reasons.

2. Cross-licensing. Some MFT licensees also hold BPC licenses. Some licensees also hold LMSW and Psychological Associate licenses. Some licensees also hold licenses in other states. The reasons for holding and paying for multiple licenses and professional certifications in this and other states are many. For those individuals who currently hold multiple licenses, combining boards would not mean that they would then only want to hold one license. National standards do not support this in any of the fields represented by the four licensing boards under discussion. The number of licenses would not decrease as a result of consolidation, nor would the administrative burden of managing the four licensing programs. The proposal that there someday be a single license for the two disciplines with specialty certifications would destroy licensee's ability to transfer their licenses to other states because it would not be compatible with other state standards. These two license types are distinct nationally and there is no move nationally to combine them. To do so in Alaska would harm licensees.

3. Practice similarities and differences between therapists and counselors. Your letter referred to "similarities" between therapists and counselors. There are a variety of differences that are not contemplated in your letter. The most prominent difference I believe is that most MFT practitioners will identify marital and family therapy as being based on a systems approach to therapy, where the BPC licenses people utilize a variety of differing approaches to therapy. In addition, LPC practitioners provide a much broader range of therapeutic services than MFT licensees, whose range of practice is a more narrowly defined specialty.

If you use the "similarity" argument for defining what the two licensee groups do in their practices, you should use this same argument for requiring that the psychologists and social workers combine. In your letter you state, "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." If the words are not exactly the same in the statutes regarding licensed psychologists and social workers, it is widely understood and presumed that that is what they do.

Having stated that, there are fundamental differences among each of those licensed professional disciplines that are recognized by their professions and by national organizations. The few "similarities" or these differences do not justify combining boards.

4. Educational Requirements for the two licenses. When the legislation creating licensure for professional counselors was drafted, it was clear to us that in order to have a license that accepted a broad range of degree types and guarantee a high level of skills and knowledge, we needed to require more than normal hours and more experience of our licensees. The statutory requirements for an LPC license have higher education and experience standard than the MFT:

License	Degree hours	Post-graduate Experience
LPC	60 hours	3,000 hours
MFT	48 hours	1,500 hours

Further, the types of education hours required are different from each other. MFT licensure requires that a good portion of the graduate course work be specific to marriage and family classes. BPC licensure requires coursework in eight of ten discipline areas that are national professional counselor standards. One of these discipline areas is Marital and Family Counseling.

5. The cost of the BMFT chronic deficit should not and cannot be borne by other licensed occupations. The report states that your "analysis of costs did not indicate there would be any significant reduction in board operating costs". In fact, we believe the opposite to be true. When operating under the instructions of the Letter of Intent,

the BPC members researched combining boards. They found several discouraging facts: one is that there are no financial savings where similar boards are combined. As discussed later in this letter, we discovered that combined boards are bigger, have more and longer meetings and that the separate disciplines (which in this case would be the two old board groups) meet in "subcommittee" meetings. Thus creating more, not less, cost to the licensees and more meetings for board members, Occupational Licensing staff and other support staff like those from the Department of Law.

When the LPC Board was initially formed it was the legislature's intent that its "start-up" costs be solely borne by professional counselors so as not to unfairly burden other professional licensees (i.e., MFT licensees) with these expenses. To ignore the precedence that each professional board is responsible for its own costs would raise questions of financial fairness. It also presents a challenge to the principles of justice under the legal concept of equity.

I am informed by the chair of the BMFT that their licensees will pay down their deficit over the next renewal period even with their declining numbers. On the other hand, the BPC licensees have consistently grown in numbers and have experienced reduced renewal fees at every renewal period including the last reduction to \$500. Because of hard work and few legal problems, this board anticipates another reduction in licensee fees during the upcoming 2005 renewal period.

In addition, BPC members are quite concerned that there is a misconception on the part of LMFTs that the deficit of the BMFT will somehow be reduced or eliminated by combining boards—that the surplus of BPC funds would be used to eliminate the BMFT deficit. I am informed that this could not be done under current law.

Again, there is no justification here for combining boards. If the BPC licensees pay the fees for their licensure and for their board costs, and the board attends to statutory and regulatory requirements in an effort to meet public safety needs, then, why change a good thing?

6. There is mixed support for some type of consolidation. While your letter states that about one-third of LPC licensees (respondents to the survey) "favored some sort of consolidation", if I recall correctly, in the survey, there were implications that such a combination might reduce cost of fees. If the question were posed to imply that the costs would be increased, we believe that the numbers in favor would be different. The members of the board believe that these respondents are less aware than board members of the consequences of combining boards.

Board members have queried licensees to ascertain their understanding and opinions on this topic. None of us have spoken with any licensee who favored combining boards, although it is obvious that many did not respond to the survey. Because licensees along with the board thought the issue of combining boards was dead, people may not have bothered to respond. And certainly there was no effort on the part of the BPC to do

education about the findings about the negative impact of combining boards, again, because we thought it was a dead issue.

When the Letter of Intent was first read, some members of the BPC thought that combining boards was worth investigating. It was. As mentioned above, upon investigation, board members determined that there would be virtually no benefit to Professional Counselors, and that there was a high likelihood that there would be increased costs, greater consumption of board member time and potential for problems arising from conflicts between disciplines.

Consolidation could benefit the MFTs financially if they thought their “chronic deficit” were to be shared by the LPCs. MFTs then might be highly motivated to promote consolidation, which might explain their strong support of consolidation. Again, in conversation with you, Pat Davidson, cost sharing of the deficit would not be possible given current law.

7. Similar professions on a board do not enhance public representation. This argument contradicts the opinion pressed in your report that the professions are "virtually identical". In the Analysis of Public Need portion of the document, you essentially state that the board has been doing a good job. There is no apparent justification here for changing due to public need for better service. The public need is being met. Public representation is a high priority for the BPC, of course, and the BPC always seeks ways to include the public in its activities. The public on the board is currently vacant and we await word of a new appointee from the Governor's Office.

8. Combination of professions under a single board is **not** the most efficient regulatory model. The majority of states that combine boards do combine MFTs and LPCs. However, in conversations with other board chairs from around the country, and from research done by the board, the pairing of any boards does not mean greater efficiencies. Generally these combined boards have greater numbers of members. There are currently 5 BPC members (4 LPCs and 1 public) and 5 BMFT members (4 MFTs and 1 public).

To keep representation from around the state and to keep an odd number of board members, the combined board would have to either add a public member or cut two or more licensees and add a public member. In the board's opinion, there would be better representation and fewer problems with raising a quorum by adding a public member in this instance if the BPC were forced to combine with the BMFT.

This would mean a larger single board. There would of necessity be one or two combined board meetings per year and two to four subcommittee meetings each year to manage the business that is specific to each discipline. At this point, the younger BPC is far from finished developing all of the regulations and doing other board duties that it feels are necessary to manage licensees where public interest is concerned. Thus, the cost of doing business would increase because of more meetings, not fewer meetings. Members of both disciplines would be required to take more volunteer time

out of their already busy work schedules and home lives to travel and handle more paperwork with a combined board. One must ask how this better serves the public interest. It certainly does not better serve the board members and their families, jobs or reduce the cost of licenses. We firmly believe that there are no cost-savings to combining boards.

Conclusion

In summation, the BPC and its members have already spent much board time discussing the issue of combining boards, determined that it was a bad idea and thought it was a dead issue. The board strongly opposes combining boards. The board sees virtually no justification for combining boards, and believes that combining boards would increase the license cost to licensees and would have no impact on improving public safety. In fact, because a person can practice in Alaska without a license, if license costs were to rise, current licensees might not renew licenses and there would be no recourse for the public if they had a bad experience with an unlicensed person. Thus, combining boards could harm the public good.

Instead of combining boards, I would like to suggest two alternatives which I believe would benefit the public, the professions and everyone involved with the sunset auditing process. First, I believe that it is important for the four boards to communicate among themselves. In the past, there have been occasional joint meetings outside of regular board meetings. I would suggest that the Division of Legislative Audit encourage that these be done yearly or every other year. Such open communication could only benefit recipients of mental health services across Alaska.

Second, in an effort to reduce costs and the consumption of valuable time, the Division of Legislative Audit could recommend to the legislature that they create longer extensions of the termination dates on boards. If boards are fulfilling their public obligations, their termination dates could be extended to 10 years. During the course of those ten years, if there appeared to be a problem, the legislature could request an early audit. This would alleviate the time consuming nature of handling rapid cycle legislative sunset audits and extensions for the boards, the Division of Legislative Audit and for the Legislature.

Thank you for allowing me the opportunity to respond to this report. If you have any questions, please do not hesitate to contact me at 250-5244.

Respectfully,

Anne L. Henry, LPC
Board Chair