

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 Veterinary Examiners, October 29, 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 Veterinary Examiners (BVE). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for BVE. Currently under AS 08.03.010(c)(21), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BVE will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Veterinary Examiners (BVE) should be extended. The board is operating in the public interest by effectively regulating the individuals who hold themselves out to the public as practitioners of veterinary medicine.

BVE serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations improving access to licensure without compromising the competency of practice. Alaska Statute 08.03.010(c)(21) requires the Board of Veterinary Examiners be terminated on June 30, 2005. If not extended, under law the board would have a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2009.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

BVE should ensure the completeness and timeliness of its required annual reports.

Under AS 08.01.070(10), BVE is required to submit "... *an annual performance report to the department [Commerce, Community, and Economic Development] stating the board's accomplishments, activities, and needs.*"

Annual reports for FY 01, FY 02, and FY 03 were submitted on time to the department. However, pertinent standard information was not included in several of the reports. Noted omissions included budget reports, investigative reports, continuing education enforcement reports, and perhaps most importantly, BVE's operating goals and objectives for the upcoming year(s). Text stating that these items were to be "added later" was included for the omitted sections, but the reports were never updated.

The FY 04 annual report does include all the essential elements. Accordingly, we recommend BVE take steps to ensure that each annual report is complete and timely, in order to meet the intended purpose of both the general licensing reporting statute and the board's specific reporting statute.

ANALYSIS OF PUBLIC NEED

The board has served the public through its examination and licensing of qualified applicants. As recommended in the prior sunset audit report,¹ the board adopted regulations that clarified what serves as a passing score on the national examination. The change resolved our concerns about the ambiguity in the previous regulatory language.

The board also provided for easier access to licensure by examination, expanding the nature and type of transcripts it would accept as part of the license application. In addition, the board is reviewing regulations pertaining to licensing of veterinary technicians that would permit individuals who trained in Canada to be more readily licensed in Alaska.

In the previous sunset review we reported BVE's operations had been impeded by a delay in the distribution of a handbook to veterinarians regarding how to handle various public health threats. The delay was attributable to a policy difference with the Department of Health and Social Services related to the appropriate handling and disposal of rabid animals. The board worked with the Division of Public Health in order to ensure its policy was consistent with guidance issued by the national veterinary organizations. Subsequently, this handbook has been distributed to all interested parties and is available upon request.

¹ Division of Legislative Audit's report *Department of Community and Economic Development, Board of Veterinary Examiners Sunset Review, October 20, 2000*, Audit Control No. 08-20005-00.

November 4, 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 VETERINARY EXAMINERS

October 29, 2004

Audit Control Number

08-20036-05

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)(21), the Board of Veterinary Examiners is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations. We recommend that the legislature extend the board's termination date to June 30, 2009.

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 Veterinary Examiners (BVE). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the board should be reestablished. Currently, AS 08.03.010(c)(21) states that the board will terminate on June 30, 2005, and will have one year from that date to conclude its affairs. If the legislature does not extend the termination date for the board, BVE will have one year to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed veterinarians and veterinary technicians.

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.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions for fiscal years ending June 30, 2001 through 2004. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing of veterinarians and veterinarian technicians.
- Minutes of meetings of the Board of Veterinary Examiners.

- Annual reports issued by the Board of Veterinary Examiners.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
- Reading and correspondence files maintained with the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
- Interviews with employees of the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
- Review of financial records related to the revenues generated and the operating costs incurred by BVE.
- Files related to applicants for, and holders of, licenses issued by BVE.

Additionally, we attended a meeting of the Board of Veterinary Examiners.

ORGANIZATION AND FUNCTION

The Board of Veterinary Examiners (BVE) was established for the purpose of controlling and regulating the practice of veterinary medicine in the State. BVE is made up of five members. State law requires four board positions be filled by licensed veterinarians that have been engaged in practice of veterinary medicine in the State for least five years immediately prior to appointment. The remaining position is to be filled by an individual from the general public¹.

The board regulates the profession of veterinary care in the State by examining applicants and approving the issuance of licenses to qualified applicants, establishing or amending rules and regulations necessary to enforce state statutes and conducting disciplinary proceedings in accordance with law.

Applicants for a veterinary license are required to pass the National Board of Veterinary Medical Examiners (NBVME) and a state written exam which covers specific Alaska issues of veterinary practice.

Board of Veterinary Examiners Members as of June 30, 2004

Veterinarians

Steven Torrence, DVM, Chair

Timothy Bowser, DVM

David J. Hunt, DVM

James L. Morris, DVM

Public Member

William F. McDonald

Department of Commerce, Community, and Economic Development, Division of Occupational Licensing

The Department of Commerce, Community, and Economic Development, Division of Occupational Licensing provides administrative and investigative assistance to the Board of Veterinary Examiners. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of fees for application, examinations, licenses, registrations, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

¹ In a unique provision, state law specifically prohibits an individual from serving on the board “*who is, or was during two immediately preceding appointment, a member of the faculty, board of trustees, or advisory board of a veterinary school.*”

Alaska Statute 08.01.087 empowers the Division of Occupational Licensing with the authority to conduct an investigation on its own initiative or in response to a complaint.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Veterinary Examiners (BVE) should be extended. The board is operating in the public interest by effectively regulating the individuals who hold themselves out to the public as practitioners of veterinary medicine.

BVE serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose changes to regulations to improve access to licensure without compromising the competency of practice. Alaska Statute 08.03.010(c)(21) requires the Board of Veterinary Examiners be terminated on June 30, 2005. If not extended, under law the board would have a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2009.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Veterinary Examiners (BVE) should ensure the completeness and timeliness of its required annual reports.

Under AS 08.01.070(10), BVE is required to submit:

“... an annual performance report to the department [Commerce, Community, and Economic Development] stating the board's accomplishments, activities, and needs.”

Over the years, the appearance and contents of these reports, required of all professional licensing boards, have become more standardized. While much of the report involves statistics and information maintained and generated by the Division of Occupational Licensing, the board is responsible for significant narrative segments of the each year's report.

Annual reports for FY 01, FY 02, and FY 03 were submitted on time to the department. However, pertinent standard information was not included in several of the reports. Noted omissions included budget reports, investigative reports, continuing education enforcement reports, and perhaps most importantly, BVE's operating goals and objectives for the upcoming year(s). Text stating that these items were to be “added later” was included for the omitted sections, but the reports were never updated.

Such information is critical to monitoring and assessing BVE operations. Setting out specified goals and objectives establishes standards by which the board, the licensees, the general public, and the legislature can better understand and evaluate the operations of the board. Such reports can highlight issues that need to be addressed by the legislature or by the board in regulation.

The FY 04 annual report does include all the essential elements. Accordingly, we recommend BVE take steps to ensure that each annual report is complete and timely, in order to meet the intended purpose of both the general licensing reporting statute and the board's specific reporting statute.

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ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The board has served the public through its examination and licensing of qualified applicants. As recommended in the prior sunset audit report,² the board adopted regulation that clarified what serves as a passing score on the national examination. The change resolved our concerns about the ambiguity in the previous regulatory language.

The board also provided for easier access to licensure by examination, expanding the nature and type of transcripts it would accept as part of the license application. In addition, the board is reviewing regulations pertaining to licensing of veterinary technicians that would permit individuals who trained in Canada to be more readily licensed in Alaska.

In the previous sunset review we reported BVE's operations had been impeded by a delay in the distribution of a handbook to veterinarians regarding how to handle various public health threats. The delay was attributable to a policy difference with the Department of Health and Social Services related to the appropriate handling and disposal of rabid animals. The board worked with the Division of Public Health in order to ensure its policy was consistent with guidance issued by the national veterinary organizations. Subsequently, this handbook has been distributed to all interested parties and is available upon request.

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.

BVE's revenue is from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with the BVE receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the Division of Occupational Licensing (OccLic) for revenues and expenditures associated with BVE. We did not audit this information, but present it for general information purposes.

² Division of Legislative Audit's report *Department of Community and Economic Development, Board of Veterinary Examiners Sunset Review, October 20, 2000*, Audit Control No. 08-20005-00.

Alaska Statute 08.01.065(c) states, “...that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.” As shown in the financial schedule below, BVE accumulated a deficit at the end of FY 02 and it is anticipated that the board will be in deficit again in FY 04, albeit considerably smaller.

While such a recurring cumulative deficit typically warrants increasing licensing fees, it appears BVE has taken action to reduce the cumulative deficit. Specifically, the board supported regulatory changes increasing the application by exam licensing fee from \$100 to \$250 and have reduced general operating costs by conducting board meetings telephonically several times each year. The following table reflects financial information for the board for fiscal years 2002, 2003, and 2004:

State of Alaska Board of Veterinary Examiners Schedule of License Revenues and Board Expenditures FY 02- FY 04 (Unaudited)			
	<u>FY 04</u>	<u>FY 03</u>	<u>FY 02</u>
Revenue	\$ <u>27,800</u>	\$ <u>142,800</u>	\$ <u>24,900</u>
Direct Expenditures			
Personal Services	33,300	39,400	33,200
Travel	2,900	7,900	3,000
Contractual	7,100	17,400	18,700
Supplies	<u>200</u>	<u>100</u>	<u>-0-</u>
Total Direct Expenditures	43,500	64,800	54,900
Indirect Expenditures	<u>19,000</u>	<u>18,700</u>	<u>15,500</u>
Total Expenditures	62,500	83,500	70,400
Net Income (Loss)	<u>(34,700)</u>	<u>59,300</u>	<u>(45,500)</u>
Beginning Cumulative Surplus (Deficit)	24,700	(34,600)	10,900
Ending Cumulative Surplus (Deficit)	\$ <u>(10,000)</u>	\$ <u>24,700</u>	\$ <u>(34,600)</u>

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

The board has supported legislative changes to update statutes pertaining to the practice of veterinary medicine. During the 22nd Legislature two bills, SB 321 and HB 372, were proposed. Neither bill was passed out of its first committee of referral.

SB 321 proposed numerous amendments to the veterinary practice statutes, some of which were controversial. Other, less controversial sections proposed statutory changes that appear to be of general benefit to public interest. These included:

1. Board membership. The legislation proposed more specific language related to the qualifications of the public member, requiring the individual to never have been a licensed veterinarian or the spouse of a veterinarian.
2. Establishment of a code of conduct. The senate bill would allow BVE to establish, by regulation, a code of conduct for licensees. This would have provided more specificity as to what constitutes unethical conduct that would be subject to disciplinary action by BVE. Such regulatory standards would have established clearer, more objective standards and definitions that could be used by investigators, licensees, board members, and the public.
3. Clearer licensure requirements. The senate bill restructured statutory language to more clearly communicate requirements for licensure by both examination and credentials.
4. Past disciplinary sanctions considered for licensure by credentials. The senate bill included a segment that required an individual seeking licensure by credentials to not have “*been subject to disciplinary action related to veterinary license for acts inimical to public health or safety... .*”

HB 372 was primarily targeted to more specifically define what did and did not constitute the practice of veterinary medicine.

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 board meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News* and on the State’s internet site. The board’s meeting agenda sets aside adequate time for the board to take public comment.

Minutes from BVE meetings reflect public participation throughout the meeting. 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.

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

Public notices of proposed regulations are published in the *Anchorage Daily News* and the Alaska Online Public Notice System. Proposed regulation changes were subjected to the public notice process.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period July 2001 through May 2004, the Division of Occupational Licensing opened 35 investigative cases related to individuals either seeking licensure or licensed by the BVE. Just over half of these cases originated from complaints made by the public. As of June 2004, 30 of the complaints had been closed.

All five of the outstanding cases in June 2004 had been open for longer than 120 days. The average length of time these cases had been opened exceeded 250 days. Four of the five open cases did not have any record of contact for over 90 days between the assigned investigator and the individuals involved in the complaint.

Three of these cases involved complaints of negligence made by the general public. Two other cases, generated by OccLic, stemmed from a situation where a veterinarian was sanctioned for practicing without a license. The veterinarian, who had recently transferred to Alaska and was licensed in another state, had started practice prior to receiving her State license. Her employer, also a veterinarian, was also sanctioned. The resolution of these two cases was delayed by the way OccLic handled the related Memorandum of Agreements (MOAs).³

The MOAs originally drafted by OccLic investigators called for the veterinarians involved to be fined \$5,000 with \$3,000 suspended. When news of the proposed MOAs became general knowledge, the State Veterinary Medical Association wrote a January 2004 letter of complaint to OccLic's director, stating the association believed the size of the fine unfair

³ An MOA is a document that sets out the conditions of settlement between the licensee and the board when it is determined that the individual involved has violated a statute or regulation related to practice of the profession involved. MOAs are typically drafted by OccLic investigators and negotiated with the licensees involved before being presented to the board for review and approval.

given the nature of the violation. At this time the MOAs had not been presented to the board, which was to a large degree not aware of the specific charges involved.

The director held back the MOAs for more than six months. When he issued them in late September, he had modified the agreement to require a fine of \$5,000 with \$4,500 suspended. The MOAs were finally presented to the board for approval in October 2004. The delay in processing the MOAs through the board created extensive criticism and consternation in the professional community with the board and OccLic.

BVE has repeatedly expressed concerns regarding the costs involved with investigations of complaints. The board wants to expand its role in monitoring what complaints are being investigated in an effort to expedite the investigative process and restrain costs. BVE believes it can be effective in resolving investigations and related litigations quicker by becoming more directly involved with complaints early in the investigative process. After reviewing how other states' licensing boards handle investigations, the board has sought a more active role in screening, prioritizing, and directing cases related to various complaints from the public.

As part of another audit, we reviewed the operations of OccLic's investigation section. In that report we recommend that OccLic develop policies for reasonable timelines in the process of disciplinary documents such as MOAs. The report also discusses the necessity for OccLic to revisit its policies regarding the utilization of board members in its investigations.

No complaints or investigations specifically involving the actions and activities of the Board of Veterinary Examiners were received, or undertaken by, either the Office of the Ombudsman or the Office of Victim's Rights within the past three fiscal years.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that the board was not complying with state personnel practices, including affirmative action in qualifying applicants. In no instance did the board deny an applicant a license based on personal attributes.

The extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Listed, on the following page, is a summary of new licenses and permits issued by the board for the period under review:

New Licenses or Permits Issued (Exclusive of Renewals)	FY 01	FY 02	FY 03	FY 04	Current as of June 30, 2004
Veterinarians	10	14	17	13	257
Veterinary Technicians	17	11	14	9	112
Temporary Permits	8	6	6	8	-
Temporary Licenses	1	0	5	4	-
Courtesy Licenses	47	53	47	52	-

Veterinary licensing requirements involve passing of both the national examination and a State examination. The national examination is developed and graded nationally. The State examination is developed by the board and includes statutory and regulatory questions specific to Alaska. The board has spent considerable time in developing and reviewing examination questions.

Each applicant is required to meet the State requirements for licensing. In order to expedite the approval process, the board reviews each application as it is completed and responds via telephonic vote, after receiving copies of the documentation transmitted from the licensing examiner.⁴ Upon successful completion of the required examination the applicant may be licensed.

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, BVE must take steps to ensure that each annual report is complete and timely. While the FY 04 annual report was complete, various elements of the report were missing from the FY 01, FY 02, and FY 03 annual reports.

Besides being required by both the general public and BVE's specific licensing statutes, such reporting is an important aspect of public accountability. By publishing key information annually, the board has a forum to publicize how well the board is or is not operating.

⁴ Under board policy, all telephonic votes by board members have to be confirmed in writing (letter or email).



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 Veterinary Examiners

Dear Ms. Davidson:

We appreciate the opportunity to review the Board of Veterinary Examiners Preliminary Audit Report. Response to the recommendation is noted below:

Recommendation No. 1:

The Board of Veterinary Examiners (BVE) should ensure the completeness and timeliness of its required annual reports.

The Department concurs that future annual reports should not be submitted to the Director, until all sections required in the report are complete. Department staff will renew efforts to ensure statistical information is available to the Board and will assist members with timely compilation of those sections of the reports.

Again, we appreciate the opportunity to comment.

Sincerely,

Edgar Blatchford
Commissioner

cc: Rick Urion, Director
Division of Occupational Licensing

State of Alaska
Department of Commerce,
Community and Economic Development
Board of Veterinary Examiners

Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300
legaudit@legis.state.ak.us

December 27, 2004

Sunset Review

RE. Audit Control Number 08-20036-05

The Board of Veterinary Examiners (BVE) is pleased that the legislative audit review has concluded that the BVE serves an important role to the citizens of Alaska. Extension of the BVE's regulatory oversight of licensed veterinarians and veterinary technicians serves the public interest by helping to ensure that properly credentialed, qualified medical professionals are practicing within Alaska. The changes, advances and complexities affecting modern veterinary medicine require review and modernization of statutes and regulations to keep abreast of the times and technology. The BVE has a strong interest in maintaining fair and effective licensing and oversight that assures those who are properly credentialed the ability to work in their chosen field with minimal hurdles, expenses and delays, while also ensuring that the public is protected from poor quality medicine and fraud through suitable standards of practice.

The BVE is cognizant of the recommendations made through the review process. The primary recommendation involved completion of yearly reports. In the recent past, they were completed in a timely manner albeit lacking pertinent standard information, including budget reports, investigative reports, continuing education enforcement reports and the BVE's goals and objectives for the upcoming year. The BVE submitted a timely and complete report for FY2004 and will make every attempt to continue to do so with future reports.

Current BVE members work as an effective and efficient group. The BVE has taken steps to attempt to keep costs down and will continue to do so where possible. The members recognize the importance of competent veterinary medicine to the public health, animal welfare and biosecurity. Extension of the termination date of the BVE will allow the board to continue operating in the public interest while exercising appropriate regulatory oversight of licensed veterinarians and veterinary technicians. The BVE welcomes this continued opportunity and privilege.

Sincerely,

Dr. Steven M. Torrence,
Chair, Alaska Board of Veterinary Examiners