

Report Highlights

Why DLA Performed This Audit

The audit was performed to determine if there is a continued need for the board and if its termination date should be extended. The board is set to sunset on June 30, 2024, and will have one year from that date to conclude its administrative operations.

What the Legislative Auditor Recommends

1. The Division of Corporations, Business and Professional Licensing's (DCBPL) director should develop a control procedure to help ensure licenses are not approved based on outdated documentation.
2. DCCED's commissioner should work with policymakers to improve the recruitment and retention of investigators.
3. DCCED's commissioner should work with policymakers to improve the recruitment and retention of DCBPL licensing staff.
4. DCBPL's director, in consultation with the board, should consider increasing licensing fees.

A Sunset Review of the Department of Commerce, Community, and Economic Development (DCCED), Board of Massage Therapists (board)

August 14, 2023

Audit Control Number 08-20134-24

REPORT CONCLUSIONS

Overall, the audit concluded that the board operated in the public's interest by conducting its meetings in an effective manner; and actively amending regulations to address statutory changes, improve the licensing process, and enhance public safety. The audit also concluded that licenses were not consistently issued in compliance with state law, board related cases were not consistently investigated in a timely manner, continuing education audits were not completed, and licensing fees did not cover the cost of regulating the profession.

In accordance with AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2024. We recommend the legislature extend the board's termination date six years, to June 30, 2030, which is two years less than the maximum allowed by statute. The reduced extension reflects the need for more routine oversight in recognition of the audit findings.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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October 5, 2023

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Massage Therapists and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
BOARD OF MASSAGE THERAPISTS
SUNSET REVIEW

August 14, 2023

Audit Control Number
08-20134-24

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2024. We recommend the legislature extend the board's termination date to June 30, 2030.

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

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
AS	Alaska Statute
board	Board of Massage Therapists
CISA	Certified Information Systems Auditor
COVID-19	Coronavirus Disease 2019
CPA	Certified Public Accountant
DCBPL	Division of Corporations, Business and Professional Licensing
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
FBI	Federal Bureau of Investigation
FY	Fiscal Year

CONTENTS

Report Sections	Organization and Function	1
	Report Conclusions	3
	Findings and Recommendations	11
	Objectives, Scope, and Methodology	15
Agency Responses	Department of Commerce, Community, and Economic Development	23
	Board of Massage Therapists	25
	Legislative Auditor’s Additional Comments	27
Appendices	Appendix Summary	19
	Appendix A: Analysis of Public Need Criteria	21
Exhibits	Exhibit 1: Board of Massage Therapists Members as of March 31, 2023	1
	Exhibit 2: Board of Massage Therapists Licensing and Establishment Registration Activity, FY 21 through December 31, 2022	6
	Exhibit 3: Board of Massage Therapists Schedule of Revenues and Expenditures, FY 21 through March 31, 2023	9
	Exhibit 4: Board of Massage Therapists License and Establishment Registration Fees, FY 21 through December 31, 2022	10

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ORGANIZATION AND FUNCTION

Board of Massage Therapists

The Board of Massage Therapists (board) is established under the authority of AS 08.61.010 and is comprised of five members appointed by the governor. By statute, four board members must be licensed massage therapists actively engaged in the practice of massage therapy for a period of three years immediately preceding appointment and plan to remain actively engaged in the practice of massage therapy while serving on the board. In addition, not more than one member may have an ownership or partnership interest in a massage therapy school. The remaining position is to be filled by an individual from the public. Statutes prohibit the public member from being a licensed health care provider, a state employee, or a current member of another occupational licensing board. Board members, as of March 31, 2023, are listed in Exhibit 1.

Exhibit 1

Board of Massage Therapists Members as of March 31, 2023

Jill Motz, Chair
Licensed Massage Therapist

Annetta Atwell
Licensed Massage Therapist

Tonia Nelson
Licensed Massage Therapist

Kelli Shew
Licensed Massage Therapist

Julie Endle
Public Member

Source: Office of the Governor, Boards and Commissions website.

Alaska statutes define the practice of massage therapy as the provision, for compensation, of a service involving the systematic manipulation and treatment of the soft tissues, including the muscular and connective tissues of the human body, to enhance the functions of those tissues and promote relaxation and well-being.

Alaska Statute 08.61.020 establishes the board's duties, which include:

- examining applicants and issuing licenses to qualified applicants;
- adopting regulations governing the licensing of massage therapists, the practice of massage therapy, and massage therapy establishments;
- establishing standards of professional competence, ethical conduct, and continuing education for massage therapists;

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

- providing the public with a list of licensed massage therapists;
- determining the states that have educational and licensing requirements equivalent to the requirements of Alaska;
- approving one or more nationally recognized competency examinations, and publishing and periodically updating the list of approved examinations; and
- enforcing massage therapist statutes and adopting and enforcing regulations.

DCBPL provides administrative and investigative assistance to the board. Administrative assistance includes providing budgetary services, collecting fees, maintaining files, receiving application forms, publishing notices for meetings, and assisting with board regulations. DCCED is required by AS 08.01.065 to adopt regulations that establish the amount and manner of payment for applications, licenses, investigations, registrations, and other fees as appropriate.

Alaska Statute 08.01.087 gives DCCED authority to act on its own initiative or in response to a complaint. DCBPL staff may:

- conduct an investigation to determine whether a person has violated a law;
- issue an order directing a person to stop an act or practice;
- bring an action in Superior Court to enjoin the act;
- examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; and
- issue subpoenas for the attendance of witnesses and the production of records.

REPORT CONCLUSIONS

In developing conclusions regarding whether the Board of Massage Therapists' (board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A to this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continued operations.

Overall, the audit concluded that the board operated in the public's interest by conducting its meetings in an effective manner; and actively amending regulations to address statutory changes, improve the licensing process, and enhance public safety. The audit also concluded that licenses were not consistently issued in compliance with state law, board related cases were not consistently investigated in a timely manner, continuing education audits were not completed, and licensing fees did not cover the cost of regulating the profession.

In accordance with AS 08.03.010(c)(12), the board is scheduled to terminate on June 30, 2024. We recommend the legislature extend the board's termination date six years, to June 30, 2030, which is two years less than the maximum allowed by statute. The reduced extension reflects the need for more routine oversight in recognition of the audit findings.

Detailed report conclusions are as follows.

The board conducted its meetings effectively.

Board meetings held from July 2020 through December 2022 were conducted in an effective manner. During the audit period, the board held 13 meetings. A review of seven board meetings found the meetings were appropriately public noticed, allotted time for public comments, and a quorum was consistently met.

The board actively amended regulations.

During the audit period, the board amended regulations to implement statutes, expedite licensure, establish fees, and expand continuing education requirements. Significant regulatory changes include:

-
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- A statutory change required regulations to be updated allowing for the expedited licensure of an active-duty military member or spouse of an active-duty military member who meets the regulatory requirements.
 - Regulations for renewing the registration of massage therapy establishments were created and requirements were added to address location changes. These changes were made to enhance public safety.
 - Regulations were created to require an unregistered massage therapy establishment owner pay an investigation fee if an inspection or complaint results in an investigation. The change was made to enhance public safety.
 - Continuing education requirements were expanded to require documentation of a cardiopulmonary resuscitation course and allow credit for attending a board meeting once every biennial licensing period. The changes were made to improve the licensing process and align regulations with national standards.
 - Regulations governing licensure by credentials were amended to require additional documentation to verify the education claimed by applicants. The change was made to improve the licensing process.
 - Regulations were amended to require an applicant submit documentation to the board within six months after being notified that the license application was approved pending receipt of additional documentation. The change was made to improve the licensing process.

Private organizations duplicate the board's licensing functions to some extent.

Massage related professional organizations include the Federation of State Massage Therapy Boards, the National Certification Board of Therapeutic Massage and Bodywork, and the American Massage Therapy Association. Collectively, these organizations provide continuing education, examinations, career guidance, and

Only a small number of massage therapy establishments registered with the board.

certification. The certification function may be seen as duplicative of the board's licensing function. However, the organizations do not have state licensing or investigative authority.

In July 2019, legislation was passed to expand the board's statutory duties to include the registration of massage therapy establishments. The sponsor of the legislation believed the new registration requirement would help protect the public from businesses that engage in prostitution and sex trafficking under the guise of legitimate massage businesses and from unlicensed persons performing massage therapy type activities. Regulations governing the registration of massage therapy establishments became effective March 2020.

According to Division of Corporations, Business and Professional Licensing (DCBPL) staff, a mass email and postal mailing was performed in May 2020 to inform businesses of the registration requirements. No additional outreach efforts were made after this date. Per review of the Department of Commerce, Community, and Economic Development (DCCED) license database, there were 312 active business licenses as of September 2023 that included the word "massage". However, there were only 18 massage therapy establishments registered as of December 2022. Although many businesses are exempt from the registration requirements (e.g. exempt if the majority owner of a massage therapy establishment is a licensed acupuncturist, chiropractor, or massage therapist), the low number raises a concern that many businesses subject to the requirement are not registering. Even with a low level of compliance, the registration requirement is considered useful by law enforcement as a tool to help identify and investigate nefarious entities.

Licenses were generally issued in compliance with state law; however, expired documentation was accepted in some instances.

As shown in Exhibit 2, there were 1,139 active massage therapist licenses and 18 registered massage therapy establishments as of December 31, 2022.

Auditors tested 15 new and 15 renewal massage therapy licenses as well as two new massage therapy establishment registrations. All but three licenses tested were found to be issued in compliance with state law. The three exceptions involved applications for new licenses that were approved by the board based on outdated documentation. Regulation 12 AAC 79.920(a) states that documents older than six months must be resubmitted. Specifically, auditors identified two applicants that had background checks older than six months and applications signed six months prior to approval. One additional application signed over six months prior to approval was also identified.

Additionally, auditors noted one of the licenses had a 204-day processing delay, which contributed to the outdated documentation.

Exhibit 2

Board of Massage Therapists Licensing and Establishment Registration Activity FY 21 through December 31, 2022			
	New Licenses and New Registrations Issued (Exclusive of Renewals)		Total Active Licenses and Registrations as of December 31, 2022
	FY 21	FY 22	
Massage Therapist Licenses	88	123	1,139
Massage Therapy Establishment Registrations	7	4	18
Total	95	127	1,157

Source: Compiled from DCBPL licensing database.

According to DCBPL management, there was no internal control in place to ensure documentation submitted to the board was still valid (i.e. not older than six months). (See Recommendation 1)

Investigations were not always conducted in a timely manner.

A total of 155 cases were open or opened between FY 21 and December 31, 2022. Of these cases, 53 (10 complaints and 43 investigations) were open for over 180 days. Auditors reviewed 10 of the 53 cases and found two with unjustified periods of inactivity greater than 60 days. DCBPL management stated that investigator staff vacancies contributed to the delays. (See Recommendation 2)

Continuing education audits were not completed during the audit period.

DCBPL regulations require the division to audit the continuing education requirements of 10 percent of licensees if a board's total licensees are less than 3,000 and five percent if the total is 3,000 or greater. An audit verifies that the continuing education reported by applicants renewing a license is accurate and supported. DCBPL regulations require the audit be completed within six months unless unusual circumstances are involved.

DCBPL staff began a continuing education audit of 116 board licensees in November 2021. Auditors noted that, as of June 2023, continuing education for 56 of 116 licensees had not been verified. Per DCBPL management, staff vacancies and turnover limited the resources available to audit continuing education, and staff time for processing and issuing licenses was prioritized. (See Recommendation 3)

License fees were not increased to cover regulatory costs.

The board receives most of its revenue from licensure and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle of board revenues. During the audit period, the board was allocated \$289,513 of general funds to replace revenue lost due to the license fee freeze mandated by the governor to help mitigate the financial impact of the COVID-19 pandemic. General fund

allocations are not expected in the future. As shown in Exhibit 3, as of March 2023 the board had a cumulative surplus of \$36,446, but is expected to have a deficit at the end of FY 23.

Exhibit 3 indicates that a fee increase is needed to prevent a continuing deficit. DCBPL did not recommend a fee increase for the 2023 licensure renewal period based on DCCED's FY 24 proposed operating budget that requested general funds be used for all board investigative costs. The request was not approved by the legislature and DCBPL management stated that there was insufficient time to update fees once the request was denied. Consequently, the board's deficit is expected to grow over the next two years. (See Recommendation 4) Exhibit 4 on page 10 presents a fee schedule for FY 21 through December 31, 2022.

Exhibit 3

**Board of Massage Therapists
Schedule of Revenues and Expenditures
FY 21 through March 31, 2023
(Unaudited)**

	FY 21	FY 22	July 1, 2022 – March 31, 2023
Revenues			
Licensing Fees	\$ 79,165	\$400,630	\$ 50,025
General Fund Received	33,654	230,859	25,000
Other Sources	-	-	842
Total Revenues	<u>112,819</u>	<u>631,489</u>	<u>75,867</u>
Direct Expenditures			
Personal Services	174,843	200,721	121,430
Travel	839	4,610	1,222
Services	21,874	56,208	11,265
Commodities	-	-	-
Total Direct Expenditures	<u>197,556</u>	<u>261,539</u>	<u>133,917</u>
Indirect Expenditures	<u>88,077</u>	<u>104,706</u>	<u>78,530</u>
Total Expenditures	<u>285,633</u>	<u>366,245</u>	<u>212,447</u>
Annual Surplus (Deficit)	(172,814)	265,244	(136,580)
Beginning Cumulative Surplus (Deficit)	<u>80,596</u>	<u>(92, 218)</u>	<u>173,026</u>
Ending Cumulative Surplus (Deficit)	<u><u>\$(92,218)</u></u>	<u><u>\$173,026</u></u>	<u><u>\$ 36,446</u></u>

Source: DCBPL Schedule of Revenue and Expenditures 3rd Quarter – Fiscal Year 2023 published on DCBPL’s website.

Exhibit 4

**Board of Massage Therapists
License and Establishment Registration Fees
FY 21 through December 31, 2022**

**FY 21 -
December 31, 2022**

Nonrefundable Massage Therapy Application Fee	\$ 200
Massage Therapy Initial License and Renewal Fee	290
Nonrefundable Fingerprint Processing Fee	60
Nonrefundable Massage Therapy Establishment Registration and Renewal Fee	300
Investigation of an Unregistered Massage Therapy Establishment Fee	2,000
Massage Therapy Establishment Change of Location Fee	65

Source: 12 AAC 02.396.

FINDINGS AND RECOMMENDATIONS

The prior 2017 sunset audit made three recommendations:

- Division of Corporations, Business and Professional Licensing's (DCBPL) director, in consultation with the Board of Massage Therapists (board), should take action to improve procedures to ensure licensure requirements are met.
- DCBPL's director should address the Federal Bureau of Investigation's (FBI) audit findings and concerns.
- The director of the Office of the Governor, Boards and Commissions should work to fill the public member position.

The prior audit recommendation to improve license procedures has been resolved. The prior audit found licenses were issued without adequate supporting documentation and/or review. This audit found the specific cause of the prior finding was resolved. However, different licensing deficiencies were identified, which are addressed in Recommendation 1.

The prior audit recommendation to address the FBI audit findings has been addressed. Wording was added to the license application to notify applicants that their fingerprints will be used for an FBI background check and procedures were provided for changing, correcting, or updating an FBI identification record. In addition, procedures were created to ensure confidential criminal history is communicated through secure means.

The prior audit recommendation to fill the public member position was addressed and there were no prolonged board vacancies during the audit period. However, as of June 2023, the board chair's term had been expired for 15 months. The Office of the Governor, Boards and Commissions director reported that a February 2023 announcement sent to all licensees regarding the board vacancy did not result in any applications. No additional efforts were made to fill the vacancy due to competing priorities. State law allows a board member to continue to serve until a replacement is found.

This audit makes four new recommendations.

Recommendation 1:
DCBPL’s director should develop a control procedure to help ensure licenses are not approved based on outdated documentation.

Auditors tested 15 new and 15 renewal licenses, as well as two new massage therapy establishment registrations, for compliance with statutes and regulations. Three of the licenses tested were approved by the board using outdated documentation. Specifically, auditors identified two approved applications with background checks older than six months. Further, three applications were signed more than six months prior to approval.

Regulation 12 AAC 79.920(a) states that licensing documents older than six months must be resubmitted. Delays in processing the application resulted in one of the errors. According to DCBPL management, there was no internal control in place to ensure application documentation was still valid at the time of approval. Additionally, staff turnover reduced supervisory resources that should have identified and corrected the finding. Outdated license documentation increases the risk to public safety.

We recommend DCBPL’s director develop a control procedure to help ensure licenses are not approved based on outdated documentation, and ensure DCBPL staff and board members are trained on the new procedure.

Recommendation 2:
DCCED’s commissioner should work with policymakers to improve the recruitment and retention of investigators.

Two of 10 board related cases reviewed by auditors had unjustified periods of inactivity greater than 60 days. One of the cases had three periods of unjustified inactivity of 74, 79, and 117 days respectively. The other case had a 153-day span of unjustified inactivity.

Per AS 08.01.050(a)(19), DCBPL is responsible for investigating licensing activity. Investigations and complaints that sit idle for extended periods increase the risk to public safety. DCBPL management stated that investigator staff vacancies contributed to this finding.

We recommend the Department of Commerce, Community, and Economic Development (DCCED) commissioner work with policymakers to improve the recruitment and retention of investigators. As the recruitment and retention problem is pervasive across State government, the problem should be addressed at a statewide policy level.

Recommendation 3:
DCCED’s commissioner should work with policymakers to improve the recruitment and retention of DCBPL licensing staff.

Continuing education audits were not conducted in a timely manner. DCBPL staff began a continuing education audit of 116 massage therapy licensees in November 2021 to determine if licensees satisfied continuing education requirements. Auditors noted that, as of June 2023, the continuing education for 56 of 116 licensees had not been verified.

Per regulation 12 AAC 02.960(c), the division must audit continuing education requirements of 10 percent of a profession’s licensees if total licensees are less than 3,000 and five percent if the total is 3,000 or greater. The purpose of an audit is to verify the continuing education reported by applicants renewing a license is accurate and supported.

Per DCBPL management, staff vacancies reduced the staff available to audit; processing and issuing licenses was the priority. Incomplete audits increase the risk that licensees are not meeting a profession’s continuing education requirements, which increases the risk to public safety.

We recommend the DCCED commissioner work with policymakers to improve the recruitment and retention of DCBPL licensing staff. As the recruitment and retention problem is pervasive across State government, the problem should be addressed at a statewide policy level.

Recommendation 4:
DCBPL's director, in consultation with the board, should consider increasing licensing fees.

A review of the board's revenues and expenditures during the audit period indicates that license fees were lower than needed to cover the cost of regulating the profession. An allocation of COVID-19 pandemic funding of \$289,513 prevented the board from operating at a deficit during the audit period; however, the funding is not expected to continue.

Alaska Statute 08.01.065 requires DCCED to adopt regulations that establish the amount and manner of payment for applications, licenses, fingerprints, investigations, registrations, and location changes. Fee levels must be established so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. The department must annually review each fee level to determine whether the regulatory costs of each occupation are approximately equal to fee collections related to that occupation. If the review indicates that an occupation's fee collections and regulatory costs are not approximately equal, the department shall calculate fee adjustments and adopt regulations to implement the adjustments.

DCBPL management did not recommend a fee increase based on DCCED's proposed FY 24 operating budget that requested general funds be used for all occupational boards' investigative costs. If approved, the board's costs would go down in the future. The request was not approved by the legislature and DCBPL management stated that there was insufficient time to update fees once the request was denied. Consequently, the board's deficit is expected to grow over the next two years.

We recommend DCBPL's director, in consultation with the board, consider increasing licensing fees.

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 Massage Therapists (board) to determine if there is a demonstrated public need for its continued existence.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 08.03.010(c)(12) the board will terminate on June 30, 2024, and will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of the audit are to:

1. Determine if the termination date of the board should be extended.
2. Determine if the board is operating in the public's interest.
3. Determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of board operations and performance 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. We reviewed the board's activities from July 1, 2020, through December 31, 2022. Financial information is presented, unaudited, from July 1, 2020, through March 31, 2023.

Methodology

During the course of our audit, we reviewed and evaluated the following:

- The prior sunset audit report (Audit Control Number 08-20109-17) to identify issues affecting the board and to identify prior sunset audit recommendations.

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- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
 - Board meeting minutes and annual reports to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.
 - The State's Online Public Notices System to verify board meetings were adequately public noticed in compliance with state law.
 - Expenditures, revenues, and fee levels for the board to determine whether fee levels covered the costs of operations.
 - Various Alaska news websites to identify complaints against the board or other board related concerns.
 - Various websites containing information for potential duplication of board activities.
 - Board investigation data for cases open or opened from July 1, 2020, through December 31, 2022, to assess the efficiency of the investigative process.

Internal controls over the licensing and investigative processes were assessed to determine if controls were properly designed and implemented. Additionally, to identify and evaluate board activities, we conducted interviews with State agency staff and the board chair. Specific areas of inquiry included: board operations, statutory duties, regulations, duplication of efforts, fee levels, and complaints against the board. Further, we interviewed a Federal Bureau of Investigation (FBI) staff member to determine whether the FBI had conducted any Federal Bureau of Investigation National Identity Services audits since the prior sunset audit of the Board of Massage Therapists.

The audit utilized the following samples:

- A judgmental sample of seven of 13 board meetings held from FY 21 through December 31, 2022, was reviewed to gain an understanding of board proceedings and activities, the nature and extent of public input, whether a quorum was maintained, whether the meetings were public noticed, and whether board vacancies impeded operations. Test results were not projected to the population.
- There were 155 investigation or complaint cases that were open or opened between FY 21 and December 31, 2022. Of these cases, 53 were open for over 180 days. Auditors randomly selected 10 of 53 cases to determine if the board had operated in the public interest by enforcing laws and effectively processing and resolving investigations and complaints. Test results were not projected to the population.
- Random samples of 15 of 178 new licenses, 15 of 961 renewal applications, and two of 13 new massage therapy establishment registrations issued from FY 21 through December 31, 2022, were selected to assess compliance with statutes and regulations. The sample size was based on low control risk, moderate inherent risk, and moderate audit risk. Test results were not projected to the population.

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APPENDIX SUMMARY

Appendix A provides the sunset criteria used in developing the conclusions regarding whether the Board of Massage Therapists' termination date should be extended.

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APPENDIX A

Analysis of Public Need Criteria AS 44.66.050(c)

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

1. the extent to which the board or commission has operated in the public interest;
2. the extent to which the operation of the board or commission 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;
3. the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
4. the extent to which the board or commission 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;
5. the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
6. the efficiency with which public inquiries or complaints regarding the activities of the board or commission 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;
7. the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

APPENDIX A (Continued)

8. the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission in its own activities and in the area of activity or interest;
9. the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
10. the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
11. the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

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and Economic Development

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January 2, 2024

Kris Curtis, CPA CISA
Legislative Auditor
Legislative Budget and Audit Committee
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RECEIVED

JAN 02 2024

LEGISLATIVE AUDIT

Dear Ms. Curtis:

Thank you for the December 13, 2023, Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development (DCCED), Board of Massage Therapists (board) Sunset Review. I concur with recommendations 1-3 and agree with recommendation 4 that this board's licensing fees likely need to be increased, but the recommendation is rightly to the division, not the board. Please see the following comments regarding the recommendations:

Recommendation #1: DCBPL's director should develop a control procedure to help ensure licenses are not approved based on outdated documentation.

It is the intent and policy of this agency to ensure that all documentation required by statute and regulation to obtain a license from the board be reviewed to ensure it meets those requirements, especially related to timeliness. Portions of the audit period were extremely tumultuous for the agency with vacancy rates reaching 35% at times. As noted in the finding, staff turnover reduced supervisory resources that would normally have detected and corrected the error related to outdated documentation. We have implemented an additional layer of supervision over this (and other) programs so that supervisors are not spread as thin. This allows them to provide more one-on-one ongoing training, be more accessible for questions, and have more time to conduct quality checks on licensing work. The newly created supervisor of this program is responsible for five programs.

The high vacancy rate contributed to less robust training for new staff than the agency normally offers. Staffing has returned to normal levels and with it, the division's ability to train staff. New staff attend a training "boot camp" and new and existing staff receive ongoing training every two weeks.

Recommendation #2: DCCED's commissioner should work with policymakers to improve the recruitment and retention of investigators.

The division works diligently to keep the investigations team staffed. With the largest investigations unit in the state (26 PCNs), we try to emphasize the opportunities that size affords staff in an effort to improve retention. We are currently reclassing the supervisory staff in investigations to create a clearer career ladder within the unit which we believe will improve staff retention. Additionally, we offer staff a great deal of training. All investigators are trained in interviewing techniques, and all receive training on how to conduct investigations on their specific programs, (e.g., chiropractors, physicians, nurses, social workers, etc.). We feel that investing in staff through training ensures staff are confident in their ability to carry out their duties, improving job satisfaction and increasing retention. When we have turnover, we submit the vacant positions for posting within days of

learning of them to minimize periods of short staffing. At an executive branch-wide level, the Division of Personnel and Labor Relations is soliciting bids for a state-wide salary survey, the results of which may greatly assist with recruitment efforts.

Recommendation #3: DCCED's commissioner should work with policymakers to improve the recruitment and retention of DCBPL licensing staff.

The division also works diligently to keep the professional licensing team staffed. With 41 Occupational Licensing Examiners (OLE), five Records and Licensing Supervisors (RLS), five Program Coordinators, six Executive Administrators and a Marine Pilot Coordinator, a certain level of turnover is to be expected. We are currently in the middle of large class study reviewing the majority of these positions. We are hopeful that the outcome of the study may result in the OLE and RLS positions becoming part of a job family with different levels (OLE 1, OLE 2, etc.). We feel this will better reflect the variety in the scopes of work and responsibilities handled by the staff as well as creating a clearer career ladder within the division. We believe that this will improve staff retention. If the class study does yield levels of OLE positions, this will allow our positions to be more aligned with the workload and responsibility of other jobs at the same range within the state workforce.

When we have turnover, we work to ensure the vacant positions are submitted for posting within days of learning of them to minimize periods of short staffing. At an executive branch-wide level, the Division of Personnel and Labor Relations is soliciting bids for a state-wide salary survey, the results of which may greatly assist with recruitment efforts.

Recommendation #4: DCBPL's director, in consultation with the board, should consider increasing licensing fees.

The division is aware of and monitoring the current funding situation for this program. As noted in the management letter, for this program the timing of the end of legislative session and license renewal conspired to prevent a fee increase from being instituted this year. After next year's fee analysis is complete, we will consult with the board and implement a fee increase if the fiscal situation merits one.

Again, thank you for the opportunity for the department to provide input on this matter. If you have any questions, please feel free to contact me.

Sincerely,



Julie Sande
Commissioner

cc: Micaela Fowler, Deputy Commissioner, DCCED
Hannah Lager, Administrative Services Director, DCCED
Sylvan Robb, CPBL Director, DCCED

Agency Response from the Board of Massage Therapists

The chair of the Board of Massage Therapists was unable to provide comments concerning the audit findings, conclusions, and recommendations because the position became vacant. A new member was appointed to the board after the board's December 2023 meeting. Because the previous chair's term had already expired, her extended service came to an end as a result of the appointment.

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Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit



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January 5, 2024

Members of the Legislative Budget
and Audit Committee:

I have reviewed management's response to this audit. Nothing contained in the response causes me to revise or reconsider the report conclusions and recommendations.

Internally, we identified an error in the report on page 3 regarding board meetings. The report incorrectly states "A review of seven board meetings found the meetings were appropriately public noticed, allotted time for public comments, and a quorum was consistently met." It should read "A review of seven board meetings found the meetings were generally public noticed, allotted time for public comments, and a quorum was consistently met." We identified that one of the seven board meetings auditors reviewed was not public noticed. This board meeting occurred at the beginning of the audit period. The other six board meetings reviewed by auditors were properly public noticed.

In summary, except for the revision noted above, I reaffirm the report conclusions and recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor