

ALASKA STATE LEGISLATURE  
**SENATE LABOR & COMMERCE COMMITTEE**

January 31, 2002  
1:35 p.m.

**MEMBERS PRESENT**

Senator Ben Stevens, Chair  
Senator Alan Austerman  
Senator Loren Leman  
Senator John Torgerson  
Senator Bettye Davis

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

SENATE BILL NO. 243

"An Act extending the termination date of the Board of Chiropractic Examiners; and relating to chiropractors."

MOVED SB 243 OUT OF COMMITTEE

SENATE BILL NO. 244

"An Act extending the termination date of the Board of Examiners in Optometry; and relating to optometrists."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

SB 243 - No previous action to record.

SB 244 - No previous action to record.

**WITNESS REGISTER**

Ms. Heather Brakes, Aide  
Senator Therriault  
State Capitol Bldg.  
Juneau AK 99811

**POSITION STATEMENT:** Staff to sponsor of SB 243 and SB 244..

Ms. Pat Davidson  
Legislative Audit

P.O. Box 113300  
Juneau AK 99811-3300

**POSITION STATEMENT:** Commented on SB 243 and SB 244.

Dr. Conners-Allen  
Juneau Off-net

**POSITION STATEMENT:** Supported SB 243.

Ms. Catherine Reardon, Director  
Division of Occupational Licensing  
Department of Community and Economic Development  
P.O. Box 110806  
Juneau AK 99811

**POSITION STATEMENT:** Commented on SB 243.

#### **ACTION NARRATIVE**

#### **TAPE 02-2, SIDE A**

Number 001  
#SB243

#### **SB 243-CHIROPRACTORS: SUNSET/LICENSING**

**CHAIRMAN BEN STEVENS** called the Senate Labor & Commerce Committee meeting to order at 1:35 p.m. and announced SB 243 to be up for consideration.

MS. HEATHER BRAKES, Aide to Senator Therriault, sponsor of SB 243, said that the bill extends the termination date of the Board from June 30, 2002 to June 30, 2006, a standard four-year extension. Section 2 restores the Board's authority to license by credentials giving it the necessary statutory authority to do so. The legislation was drafted based on a report done by the Division of Legislative Audit on December 5, 2001.

Page 5 of the audit found that the Board is operating in an efficient an effective manner and should continue to regulate and license chiropractors.

SENATOR LEMAN asked if she could remember the history behind "restoring" the Board's authority to license.

MS. PAT DAVIDSON, Legislative Audit, explained that last time the Board was up for sunset, the national exam at the time didn't have a practical component to it. So, the Board required people who were applying for licensure by credential to take the state practical exam again. This is conflicting with the concept of licensing by credential. Therefore, at that time they recommended to eliminate licensing by credential if the Board was going to

require an applicant to take an exam again.

What's changed is that the national exam now has a practical component to it. So when you accept passage of the national exam, you have really met the requirements of what the Board is currently requiring of applicants. Now that those things are both consistent, our recommendation is to reinstate licensure by credential.

SENATOR LEMAN asked if the practical part of the national exam is comparable to what the state of Alaska was using.

MS. DAVIDSON replied that it is acceptable to the Board.

SENATOR LEMAN asked if the term "licensing by credential" and "licensing by comity" are comparable.

MS. DAVIDSON replied that they have a very similar theme, but there are some minor differences, which she couldn't espouse right now.

DR. CONNERS-ALLEN said she had served on the Board of Examiners for eight years and this is a good path for them to take.

SENATOR LEMAN moved to pass SB 243 from committee with individual recommendations. There were no objections and it was so ordered.

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#SB244

**SB 244-OPTOMETRISTS: SUNSET AND MISCELLANEOUS**

MS. BRAKES testified that SB 244 extends the termination of the date of the Board of Optometrists, rescinds an unreasonable licensing requirement, makes some statutory changes allowing the Board to license by credentials and updates continuing education requirements to bring them in line with current practice and regulations. It also eliminates the state practical exam in lieu of the National Board of Examiners and Optometry examination and implements an Alaska jurisprudence section.

She said that the Division of Legislative Audit found the Board of Examiners and Optometry should be extended to June 30, 2006, the standard four-year extension. They found the regulation and licensing of qualified optometrists is necessary to protect the public's health, safety and welfare. Page 7 of the Audit has the findings and recommendations of the auditor and page 15 has the response from the Division of Occupational Licensing.

MS. BRAKES said that SB 244 was drafted based on the Audit's findings and recommendations.

SENATOR LEMAN was concerned with the provision saying that the department may not require the applicant to submit a photograph. "We are needing to have increased security and there are people taking on other identities," he said and didn't know if this was consistent with what was happening with security.

MS. BRAKES responded that on page 7 the first recommendation in the audit is to rescind the photo requirement for the applicant.

MS. DAVIDSON said the idea behind eliminating the requirement of photo accompanying an application has to do with eliminating an opportunity for any prejudice in reviewing the application. A person sitting for a test must bring their i.d. to prove who they are. On the balance, they thought the opportunity for discrimination in that setting outweighed particular needs for proving who you are at the time the application goes in.

SENATORS LEMAN and wanted to hear what the division had to say about that.

SENATOR AUSTERMAN asked if identification was the only reason the photo was originally required.

MS. DAVIDSON responded that photo i.d.'s are not uniformly required across all professions; this is one of the professions that still has it. "Using it as a vehicle to associate everyone isn't there."

At one point the thought was if there was a written or oral exam, they would know who they were looking for, but that can be achieved by asking for an i.d. at the time they come rather than prescreening people with a picture.

SENATOR AUSTERMAN asked her to clarify what she meant by prescreening.

MS. DAVIDSON replied that many boards have an evaluation process to determine whether somebody's credentials or education requirements meet the standards for licensure or meet the standards to apply for an exam.

To the extent that any of those are subjective in nature and not wholly objective in nature, then that allows for an opportunity to establish a prejudice or a prescreening of some sort that could happen...You're

trying to eliminate a possibility for that to happen...

SENATOR AUSTERMAN said he thought having a photo of someone on file would have some merit to it and thought maybe they could look at having a photo after the person has qualified or something like that.

MS. DAVIDSON agreed saying that maybe you would put a photo on file after you became licensed.

SENATOR LEMAN asked if there was a place for people to write in their own handwriting on their applications. Is their name actually on the application or does it go to the review board by number. A conclusion could also be formed based on a name or handwriting as well as a picture.

MS. DAVIDSON replied that her experience is with the Board of Accountants that has its application online, but they all require signatures. Most of the information is collected through electronic means or typed, but there is typically a signature.

SENATOR LEMAN said he was a little concerned about that. He didn't know if he wanted to make this step today. He thought it was important to establish positive i.d. on lots of people in this world.

SENATOR DAVIS asked which boards required an i.d.

MS. DAVIDSON said she didn't have that information at her fingertips, but that most of the Boards have eliminated it.

SENATOR DAVIS said she didn't know why one would have to have an identification in order to apply for a license although she understands they would have to have some proof of who they are.

CATHERINE REARDON, Director, Division of Occupational Licensing, explained that there is a real mix as to who requires photos and who doesn't. Pharmacy and chiropractors, electrical and mechanical administrators require photos.

CHAIRMAN STEVENS asked if they required photos on the application or when the license is issued.

MS. REARDON replied that they only require photos at application and probably for convenience, asking applicants to send them a list of things and giving them a license when the division has received everything on the list. Also, when they used to administer an oral exam, it was nice to have a photo so when a

person walks in they can see they are the same person that is taking the test. Another potential thing to consider would be to submit the photo at application time, but the law directs that the division doesn't forward it to the board.

CHAIRMAN STEVENS asked if the reason it was included in the bill was because it was a suggestion in the audit and the board did not request it.

MS. REARDON replied that was right.

SENATOR TORGERSON moved amendment #1 to delete the additional language in section 2, which says, "The department may not require the applicant to submit a photograph of the applicant."

DR. ERIC CHRISTIANSON, Ketchikan, said there are benefits to having a picture, but they are not allowed to look at pictures in an applicant's file prior to allowing them to sit for an examination. He did not oppose amendment #1.

SENATOR DAVIS objected.

SENATORS TORGERSON, LEMAN AUSTERMAN AND STEVENS voted yea; SENATOR DAVIS voted nay and the amendment #1 was adopted with a vote of 4 yeas and 1 nay.

MS. BRAKES continued to explain that section 3 would implement recommendation #4 of the audit report eliminating the reference to the state practical exam and specifies that the written exam must include testing about Alaska law. The division supports this recommendation. The board announced its desire to eliminate the practical exam in September.

SENATOR AUSTERMAN noted that the drafter took the practical part out, but not the oral part.

MS. BRAKES said they supported the board's recommendation to remove the oral part of the exam.

MS. REARDON apologized for not having her amendments finished and explained amendment #1 was an alternative way of trying to achieve the same thing. It removes references to whether it's a written practical or oral, which clarifies the goal of the Board - that being a person takes the national written and then a state jurisprudence exam to make sure you know about Alaska's laws on optometry. The first amendment would also delete, "the oral portion of the examination shall be recorded and retained for two years." because there would be no more oral examination. Oral

exams are both cumbersome to administer and hard to administer equally.

The reason not to do it the way the bill does it now, which is deleting "practical" is because the national written examination includes a section entitled "practical." That's why I'm suggesting going with just saying there's two parts to the exam; the state portion of jurisprudence and the national.

SENATOR AUSTERMAN said he was trying to understand how it would read.

SENATOR LEMAN wondered if there was an applicant who was sight impaired and the test had to be given orally instead of a written form.

MS. REARDON answered that she didn't know what the origin of written and oral exam was, but eliminating all those terms allows flexibility so his concern would be provided for.

2:13

SENATOR LEMAN commented that in this case it may not make sense. "I can't imagine an optometrist being able to function without being able to see."

MS. REARDON recommended deleting sections 4 and 5 because they used to provide guidance to the state when the board, itself, was writing the comprehensive exam. It was giving guidance as to retakes on certain sections, but now applicants take the national exam before interacting with the state in any way. They have to present an application stating they have passed the national examination.

DR. CHRISTIANSON said he didn't see any problems with the first amendment and thought they should say that a person has the right to take a test over again under "Alaska state law" in section 4.

MS. REARDON commented that a person has that right without putting it in there.

DR. CHRISTIANSON said he liked to keep statutes as clean as possible and didn't see a problem with her wording.

CHAIRMAN STEVENS said they would move on to Section 6.

SENATOR LEMAN noted that portions of that were affected by the division's amendment #4.

MS. REARDON said that was right and explained that she tried to reflect the recommendations about what the Board would like to have for their qualifications for licensure by credentials, which are slightly different than what the bill proposed. Basically, amendment #4 would keep the introductory language and then she adds alternative qualifications 3 - 7. There would be no oral exam of the boards and then you would have to be holding a current license to practice optometry in another U.S. jurisdiction; second, you have to take a written examination to get a U.S. license; you had been engaged in continuous active clinical practice averaging at least 20 hours a week in the last three consecutive years preceding your application (Board language); that you haven't committed an act that would be a violation of the state's optometry laws or the subject of an unresolved or pending disciplinary action in another jurisdiction; and finally, that you qualify for the pharmaceutical agent prescription and use endorsement in Alaska state law.

SENATOR LEMAN asked if Alaska allows an optometry licensure by credential for someone coming from another country, like Canada, and if so, are we precluding that possibility using the suggested language.

MS. REARDON answered yes and this is an important point. In this bill, you have to have your license in a state or territory of the U.S. or District of Columbia. "You cannot get in with your license from Canada or Germany or Bolivia. This is a significant policy decision..."

SENATOR AUSTERMAN asked in section 6 of the changes it says, "constitutes a violation of this state's..." and asked what was meant by "this."

MS. REARDON answered that she intended it to mean Alaska.

SENATOR DAVIS asked why she added number 7 and if it was giving them more authority than they had before and whose idea was it.

MS. REARDON said she offered it because it reflects the Board's request in what they would like to see in licensure by credentials.

**TAPE 02-2, SIDE B**

MS. REARDON explained that it says everyone who comes in by credential must meet the existing qualifications in state law for this endorsement. There are some people who hold optometry licenses that don't allow them to prescribe. In order to get that endorsement, you have to have additional education. This says you can't come in from another state at that lower level; you can

only come in from another state if you have what it takes to get the endorsement. She assumed that it was a policy decision on the Board's part that they think it would be better to try to get everyone up to that level. It's referring to the pharmaceutical endorsement in AS 08.72.175 (a). It also gives adds an alternative way of earning it.

SENATOR AUSTERMAN said they would be setting a different level for all new optometrists in Alaska.

MS. REARDON asked Mr. Christianson whether they ever license anyone new coming in through examination who doesn't qualify for an endorsement. She thought the answer would be yes.

MR. CHRISTIANSON said that this basically verifies that they are not moving in at a level that they previously did not have. They must meet the requirements of AS 8.72.175 or verify that the applicant has been authorized the use of prescribed pharmaceutical agents at the same level that was described in Alaska statute.

SENATOR AUSTERMAN asked why they are requesting this.

MR. CHRISTIANSON answered that currently the statute reads that persons cannot come into the state without a therapeutic license. There are optometrists who are licensed to practice under a couple of other different levels and it's the Board's intention to do away with that over a period of a few years. Currently, the people in the lower levels are either semi-retired, retired or not actively practicing in the state.

SENATOR AUSTERMAN said it seems to him that they are trying to stifle competition when he reads (a) and (b).

MR. CHRISTIANSON said:

It wasn't written in that particular spirit. It's not our goal to have multiple levels of licensure, because it's really a very difficult thing to keep track of and it's also difficult for the public, because they can become even more confused in an already confusing issue. So, we would like everyone at one level of licensure...

SENATOR STEVENS said they would go to #8.

MS. REARDON said this amendment is an alternative to the way the current bill solves the problem. Her amendment gives the Board more flexibility in establishing its continuing education requirements.

CHAIRMAN STEVENS asked if she wanted to delete 40 hours and have no number at all.

MS. REARDON said that was correct; that would allow the Board to decide by regulation how many hours of continuing education were needed. The reason no set amount is needed is that the current statute says 48 hours, but that's because at the time it was passed, there were four-year licenses and a long time ago they were switched to two-year licenses. So, the Division started using 24 hours.

SENATOR LEMAN said he did not want to make that policy change without hearing from the Board.

CHAIRMAN STEVENS recapped that they should consider eliminating page 3, line 10.

2:35

SENATOR LEMAN moved to adopt amendment #2 with the provision it's consistent with the statutes.

MS. BRAKES said she would speak to the amendment on page 2, line 26. Current statute provides for Canada, also, making new language more restrictive than current statute allows. Amendments offered by the Division and Board would have a narrower scope of letting someone come in with a current license from somewhere else.

CHAIRMAN STEVENS asked if the national standard allows Canada to come in.

MS. REARDON replied that she was just reflecting what they board was requesting.

MS. BRAKES explained that amendment #3 doesn't reference Canada which current statute allows.

CHAIRMAN STEVENS asked why that was.

DR. CHRISTIANSON said he wasn't aware of that issue. But, the vast majority of optometrists who practice in Canada are educated in the United States.

SENATOR AUSTERMAN suggested listening to what other concerns the sponsor might have and hold the bill for further work.

MS. BRAKES commented that regarding amendment #5, she was concerned that a military family moving to Alaska, but licensed in another state and the woman had taken off a year for

childbirth, she would not be able to come in under licensure by credential under this wording. She also had concerns with #7.

CHAIRMAN STEVENS said that bill needed further work and they would bring it up again and adjourned the meeting at 2:45 p.m.