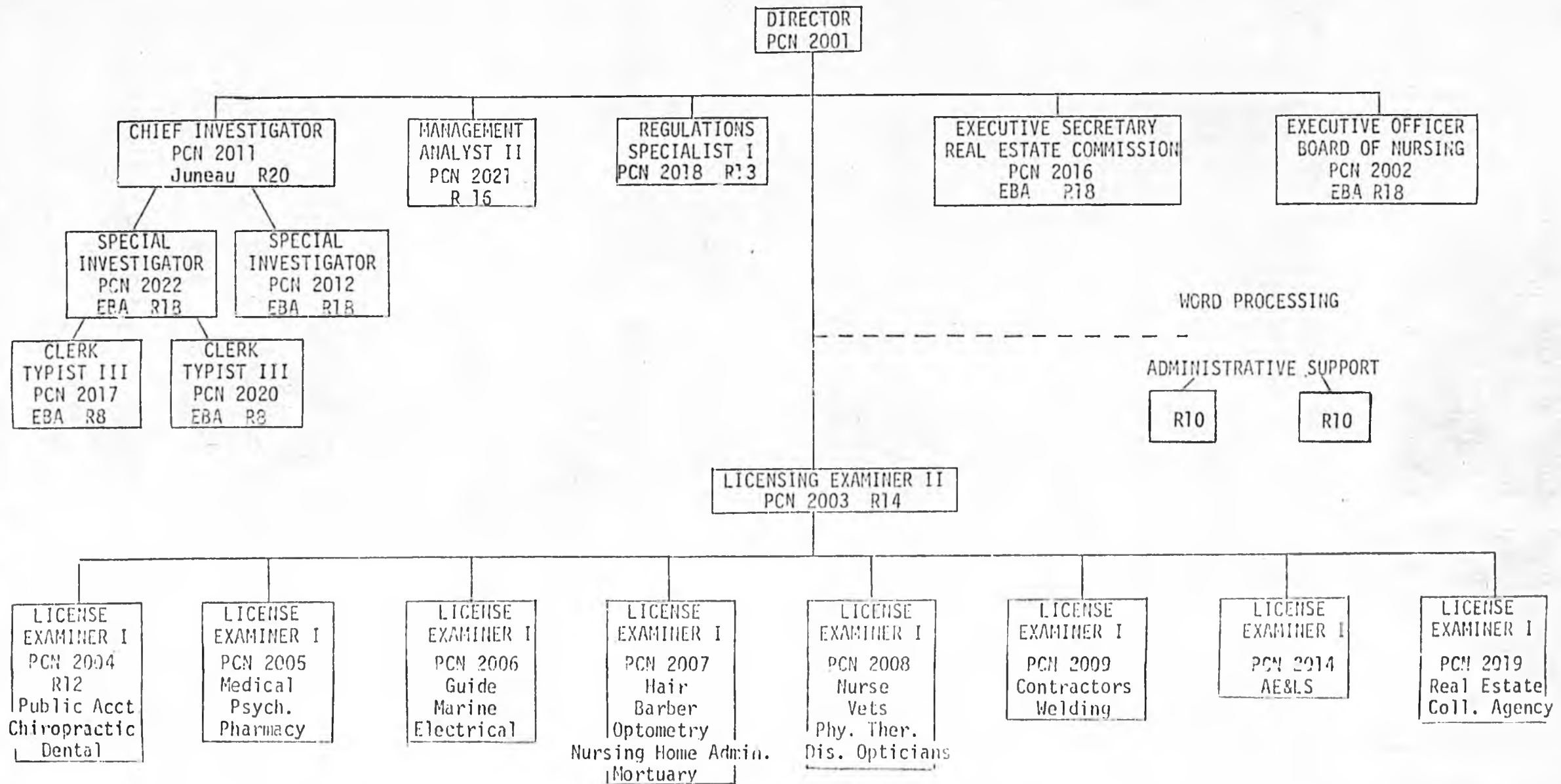


SUNSET  
REVIEW  
HEALTH  
CARE Bds.

Send to

Senate  
Commerce  
Committee

Senator Bradley



- Optometry Board  
- Chiropractic Board

Pat Connolly  
~~Conn~~  
Connolly  
(789-7956)

SUNSET REVIEW  
Prepared by

The Department of Commerce &  
Economic Development  
Division of Occupational Licensing

A SUNSET REVIEW OF THE  
STATE HEALTH CARE RELATED BOARDS

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
Division of Occupational Licensing

Commissioner, Department of Commerce  
and Economic Development

Charles Webber

Deputy Commissioner, Department of  
Commerce and Economic Development

Bertram L. Wagnon

Director, Division of Occupational  
Licensing

Don Hostak

Prepared by: Elaine Garrett  
Management Analyst

# STATE OF ALASKA

JAY S. HAMMOND, Governor

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

*DIVISION OF OCCUPATIONAL LICENSING*

POUCH D

JUNEAU, ALASKA 99811

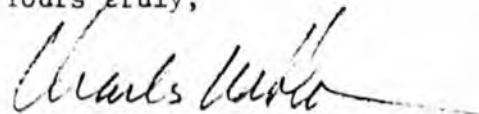
January 15, 1979

The Alaska State Legislature:

Transmitted herewith, pursuant to AS 44.66.050, are the reports of the Alaska State Board of Dental Examiners, Board of Nursing, Board of Dispensing Opticians, Board of Examiners in Optometry, Board of Pharmacy, Board of Veterinary Examiners, Board of Psychologist and Psychological Associate Examiners, Board of Nursing Home Administrators, Physical Therapy Board, Board of Chiropractic Examiners and State Medical Board.

This evaluation, supplemental to my oral testimony before the Legislature, serves to focus attention upon the question of whether or not the boards are best serving the interests of the public. Data as provided by the Division of Occupational Licensing, the board members, licensees and members of the public has been received, reviewed and evaluated. Specific proposals are made on the basis of this data achieving increased effectiveness and protection to the consuming public.

Yours truly,



Charles Webber,  
Commissioner

### Philosophy of Evaluation

This review and evaluation has been undertaken to determine whether continued regulation of an industry or occupation under State auspices can be justified in terms of protection of public health, safety and welfare. State boards and regulatory agencies should be continually cognizant of the public's right to a government acting responsibly in licensing competent practitioners and doing so only in the best interests of the people. Evidence must clearly indicate that the primary goal of regulation is to promote the public good rather than that of the industry or profession. The absence of such evidence indicates cessation of State regulation. Where public benefit or a potential for benefit can be shown to exist, recommendations are made with respect to possible alternatives in the regulatory process which will serve to enhance public health, safety, welfare and accountability.

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I

STATE OF ALASKA  
Board of Dental Examiners  
(July, 1978)

Findings

Dissolution of the Board of Dental Examiners and subsequent governmental deregulation of the dentistry profession would subject the public to the possibility of persons practicing dentistry who are not compelled to meet requisite minimum standards of proficiency. Lack of control could result in financial loss, physical injury or death among members of the general public. With the abrogation of governmental regulation and investigative follow-up on complaints of alleged dental malpractice, unqualified practitioners would be unhindered in their practices on an unaware public, even though previous violations such as overcharging or physical harm had occurred. Therefore, it is recommended that the Board of Dental Examiners be reestablished for an additional four-year period.

I. General Information

A. Regulated Parties

1. Dentists
2. Dental Hygienists

B. Statutory Definition of Regulated Profession

"A person engages in the practice of dentistry who

- (1) performs or holds himself out to the public as being able to perform dental operations;
- (2) diagnoses, treats, operates on, corrects or attempts to correct, or prescribes for, a disease, lesion, pain, injury, deficiency, deformity, or physical condition, malocclusion or malposition of the human teeth, alveolar process, gums or jaws and adjacent tissues;
- (3) performs or attempts to perform an operation incident to the replacement of teeth;
- (4) furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth, except on prescription of a duly licensed and registered dentist and by the use of impressions or casts made by a duly licensed and registered dentist;
- (5) uses the word 'dentist' or 'dental surgeon' or the letters D.D.S. or D.M.D. or other letter or title which represents him as engaging in the practice of dentistry;

- (6) extracts or attempts to extract human teeth;
- (7) owns, manages or operates a place where the acts and things described in this section are performed or done."  
(AS 08.36.360)

C. Purpose of Regulation

"The practice of dentistry in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the state. All provisions of this chapter relating to the practice of dentistry and dental hygiene and to the registration of dental laboratories shall be liberally construed to carry out these objects and purposes." (Section 1, Chapter 155, SLA 1968)

D. Nature and Composition of Board

1. Board members and terms:

Five-year term (no restrictions regarding consecutive terms or number of terms).

Arthur Hansen, DDS (Chairman)	ends February 1, 1982
Wayne Putman, DMD	ends February 1, 1983
Leonard Yuknis, DDS	ends February 1, 1979
Claude Rick, DDS	ends February 1, 1981
John Kobylarz, DMD (Secretary)	ends February 1, 1980
Jana Varrati, RDH	ends February 1, 1981
John R. Beard, Attorney	ends February 1, 1981

2. Representation:

Profession = 6 (includes one dental hygienist)  
Public = 1

3. Qualifications:

"Five members shall be qualified resident dentists who have been engaged in the practice of dentistry in the state for five years immediately preceding appointment, one member shall be a dental hygienist licensed under AS 08.32, and one member with no direct financial interest in the health care industry." (AS 08.36.010)

E. Licensing Data

DENTISTS

By Examination

Year	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1974	26	15	11	58	42
1975	33	16	17	48	52
1976	31	25	6	81	19
1977	28	23	5	82	18
1978	25	12	13	48	52

Currently licensed:

in-State = 203 (through June 1978)  
out-of-State = 172 (through June 1978)  
Total 375

(includes 23 specialist licenses)

## DENTAL HYGIENISTS

### By Examination

<u>Year</u>	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1974	7	6	1	86	14
1975	9	8	1	89	11
1976	11	11	-	100	-
1977	28	28	-	100	-
1978	15	15	-	100	-

Currently licensed: 142 (issued through July 13, 1978)

### F. Fees

#### DENTISTS

1.	original license	\$30.00
2.	examination	50.00
3.	reexamination	50.00
4.	biennial registration	40.00
5.	branch office	
	biennial registration	40.00
6.	temporary permit	25.00
7.	reinstatement	10.00
8.	specialty license	30.00
9.	duplicate license	10.00

DENTAL HYGIENISTS

1. application	\$25.00
2. initial registration	20.00
3. biennial registration	20.00
4. reinstatement	25.00

G. Board Revenues and Expenditures

	<u>FY '75</u>	<u>FY '76</u>	<u>FY '77</u>	<u>FY '78</u>
Receipts	\$11,040.00	\$11,524.40	\$14,707.00	\$6,040.24
-Refunds	<u>100.00</u>	<u>755.00</u>	<u>270.00</u>	<u>70.00</u>
Total	10,940.00	10,769.40	14,437.00	5,970.24
Expenditures				
Per Diem	-	3,998.75	3,471.16	3,202.50
Transportation	130.40	2,480.75	1,493.10	3,371.97
Phone	209.30	638.04	588.88	741.07
Printing, Adver. & Postage	172.30	939.46	657.30	394.74
Fees & Services	-	476.50	50.00	914.20
Rents, Leases & Other	<u>50.00</u>	<u>120.69</u>	<u>140.35</u>	<u>151.40</u>
Total	<u>\$ 562.00</u>	<u>\$ 8,654.19</u>	<u>\$ 6,400.79</u>	<u>\$ 8,775.88</u>
Surplus	\$10,378.00	\$ 2,115.21	\$ 8,036.21	-
Deficit	-	-	-	\$ 2,805.64

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	5	4	0
1976	7	2	2
1977	12	2	1
1978	1	0	0
(through June 30)			

Pending: 16

I. Qualifications

1. Dentists:

Applicants applying for licensure by examination are required to be of good moral character and to have graduated from an approved dental college. College requirements may vary, however, six to eight years of post high school education is obligatory. Examination is required by every state prior to initial licensure.

2. Dental Hygienists:

Applicants must be at least 18 years of age, of good moral character, a graduate from both high school and an approved training school with at least a two-year program and must pass an examination prior to initial licensure.

## II. Criteria and Analysis

A. To what extent has the Board of Dental Examiners operated in the public interest?

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A major function of the Board is to examine and license qualified applicants to practice dentistry and dental hygiene throughout the State. While some qualifications are provided by statute (i.e., graduation from an approved dental college), the Board is given wide latitude in setting standards by which professional competence is judged.

One method of judging competency of applicants is through an examination, now given once each year, consisting of either written testing, clinical testing, or a combination of both at the discretion of the Board. Applicants who have completed the National Board written examination may or may not be required to successfully complete an additional written examination for Alaska. The Board has consistently required clinical examination of applicants, however, written examination requirements have been inconsistent. The 1975 dental examination included a written test, no longer in use, composed by the Board of Dental Examiners. In 1976 and 1977 no written examination was administered. In 1978, applicants were required to successfully complete the American Association of Dental Examiners' written test. The Board recently resolved to implement the June, 1978 requirements cited through adoption as regulations. This lack of continuity obviously contributed to the litigations instituted against the Board by unsuccessful candidates during this period.

Applicants who do not exhibit the prescribed level of knowledge and proficiency remain unlicensed until reexamination is successfully completed. It should be noted that an applicant who has failed to pass the examination on two separate occasions must submit proof of further study before reexamination.

Public interests are protected by requiring that applicants demonstrate professional proficiency. Incompetence could result in financial loss, physical harm and perhaps death. By licensing and registering dentists in the State, the Board is certifying to the public that the practitioner is at least minimally competent by its standards.

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In contrast to other health care board statutes (i.e. State Medical Board, Board of Pharmacy, Board of Nursing), those of the Board of Dental Examiners do not specifically provide that an applicant for licensure shall meet specific requirements or substitutes. Rather, applicants may follow alternative procedures which the Board may designate at its discretion. It is, therefore, recommended that a separate, short term task force be created with the specific directive and goal of reviewing, revising and recommending concise and definitive statutory language. This task force should be represented by members of the dental profession, the legal profession, and knowledgeable lay persons, and should be dissolved immediately upon completion of this single directive.

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Continued competency is not assured by initial testing procedures. No review or reexamination procedures exist. Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of implementation in a rural state or of requiring professionals to go out of state to obtain education must be weighed against

whatever assurance there may be that incompetency will be significantly reduced or avoided by this method. Pending further study of this issue, one opinion<sup>1</sup> seems to indicate that vigorous investigation and enforcement programs may be an effective course of action.

It must be recognized that there is a widespread trend toward continuing education requirements as a condition of license renewal. Alaska is one of only 12 states not presently considering mandatory implementation of such requirements.<sup>2</sup> The American Dental Association supports continuing education. Continuing dental education requirements in the State of Minnesota have resulted in voluntary termination of licensure by out-of-state, semi-retired, and retired dentists and in suspension of 1.2% of all licenses for failure to meet reassessment requirements.<sup>3</sup> The recommended statutory review task force could appropriately address this subject as it relates to dental and other health care related boards.

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<sup>1</sup>Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J. 1976, p. 35.

<sup>2</sup>Dunn, R. and Porter, D., A Performance Audit of Dental Licensing in Utah. Office of Legislative Auditor General, Salt Lake City, Utah, June, 1978, p. 7.

<sup>3</sup>Ibid.

In the event that reassessment advantages are determined to outweigh the disadvantages, alternatives are:

1. certification of completion of approved courses to provide a basis for public selection of practitioners;
2. periodic in-office review of client records, dental practices and procedures;
3. mandatory reexamination by methods such as written tests, records and x-ray review;
4. routine periodic oral interviews before the Board, a member, or a selected committee;
5. review and analysis of quantity, type and disposition of complaints;
6. well developed and effective peer review mechanisms; and/or
7. programs that may be offered by the Alaska branch of the National Dentistry Association.

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The problem of providing dental care to outlying communities is a very real one within the State. Permits for isolated areas may be issued upon recommendation by the Department of Health and Social Services and a "pool" of licensed dentists exists in some areas to provide periodic dental care to remote communities under contract. The Board has discontinued, as a matter of policy, the issuance of temporary permits prior to successful completion of the dental examination.

Formal licensure is not necessarily a guarantee against malpractice. Safeguards exist which can be utilized as measurements of ability, and as bases for revocation or limitation of temporary permits. Graduation from dental college should be indicative of ability and knowledge sufficient to have completed stringent academic and practical curricula. Additionally statutory provisions for issuance of a temporary permit require: That the permittee practice in a city or rural village where there is no actively practicing resident dentist; that the applicant have a license in good standing in a state, district, territory or possession of the U.S.; that the Board may issue one year permits only for a maximum of two years by which time the applicant must pass a Board examination; and that the Board may revoke, suspend or annul the license or take disciplinary action if necessary during that period.

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The Board of Dental Examiners, at its discretion, also does not license by waiver or reciprocity, nor does it permit out-of-state proctoring, nor does it allow for examination in out-of-state dental colleges. Regional examinations in which several states may participate and which provide reciprocity among those states are not accepted or being considered as alternatives by the Board at this time.

The current practice of the Board in examining candidates annually, in conjunction with restrictive policies against reciprocity and the issuance of temporary permits, is not conducive to opportunity for entry into dentistry in the State. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing

qualified applicants and with providing services of practitioners. It is recommended that statutory changes be made to allow for licensure by endorsement and that the Board take positive steps toward implementation of all methods which would allow additional availability of services to the public.

B. To what extent has the operation of the Board of Dental Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The functions of the Board have been limited and impeded by the lack of specific criteria and guidelines relevant to its operation. Much Board time is consumed with clarification and refinement of regulations. Recent revisions in Board regulations and policies have largely evolved out of court cases in which unsuccessful applicants allege nonuniformity of standards and failure of the Board to establish specific guidelines.

In an attempt to clarify its functions and requirements and to provide specific guidelines, the Board approved updated regulations delineating examination procedures, content, criteria for grading, and notification procedures (which were subsequently invalidated because formal adoption procedures were faulty). This continual refinement process has also contributed to confusion in interpretation and some conflict with statutes. Those regulations (12 AAC 28.100) stated: "Before each clinical examination the board will appoint three to five persons (who may be but are not required to be members of the board) as examiners for that examination." AS 08.36.130 states in part: "At least once each year the board shall appoint from its membership an examination committee of at least three persons." There also existed some ambiguity in the regulations covering examination procedures as to what constitutes a testing "section," a "subject" and a "part" as they pertain to reexamination provisions.

A general review of the statutes applicable to dentists and dental hygienists indicates a need to reexamine statutory language and continuity. Statutory consistency and standardization covering the functions and operations applicable to all health care boards could be expected to produce the following results:

1. a reduction in time expended in attempting to clarify Board functions and requirements;
2. a reduction in litigation, costs and time;
3. a reduction in time expended by the administrative agency in research, documentation and interpretation,
4. formalization of the Board's relationship with the public and with the administrative agency; and
5. formalization of the Board's scope of authority and support for its subsequent activities.

As previously noted, it is recommended that a separate, short-term task force be created with the specific directive and goal of reviewing, revising, and recommending concise and definitive statutory language. The task force would be dissolved immediately upon completion of this single task.

The Board of Dental Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Dental Examiners has experienced the same difficulties as other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Dental Examiners recommended statutory changes which are generally of benefit to the public interest?

Health care legislation enacted in 1976 provided several amendments and additions to existing statutes relating to Dental Hygienists and the Board of Dental Examiners:

AS 08.32.165 and 08.36.325 expand on previous sections which provide for revocation or suspension of licenses. The additions enumerate less severe disciplinary measures that may be enforced to limit or place conditions on a practitioner (i.e., reprimand, censure, probation, practice restrictions, or requirements for additional education or training).

AS 08.01.050(a)(19) was added to "provide investigative services" to boards for assistance in "matters of professional discipline." The Enforcement and Investigation Section of the Division of Occupational Licensing handles complaints received in which licensing violations are alleged. Complaints which are determined not to be this type of violation are referred to appropriate agencies while cases within Division jurisdiction are investigated and processed. Two investigators (including the chief investigator) currently are responsible to twenty-four (24) boards, commissions and interest groups.

AS 08.02.020 provided immunity from personal liability for licensing board members acting within their scope of authority.

AS 08.36.010 amended Board membership from five (5) to seven (7) members adding one dental hygienist and one member with no direct financial interest in the health care industry to the then existing five qualified resident dentist members.

AS 08.36.020 deleted the requirement that nominations for appointment to the Board be made by, and restricted to, the Alaska Dental Society.

1978 amendments relating to the practice of dental hygiene consisted for the most part of "housekeeping items," clarification and updating of existing statutes.

No statutory recommendations have been made by the Board of Dental Examiners that would be of specific benefit to the public.

D. To what extent has the Board of Dental Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written comment. Most public concern is expressed as a result of controversial issues arousing publicity or by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State. It can be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical or scientific nature which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists, due to the nature of the occupation involved, which probably tends to deter public knowledgeability and participation.

The Board has not taken any overt action to solicit general public response to the quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>4</sup>

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<sup>4</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Dental Examiners processed and resolved?

No complaints were received which were specifically directed at individual members of the Board of Dental Examiners. Current and recent litigations have charged that the Board as a whole has been arbitrary and capricious in its examination requirements and grading standards. Two such cases were resolved through determination by a hearing officer that a special examination be held eight months later to accommodate the candidates (both passed and were subsequently licensed). In another instance, the hearing officer determined that the candidate should be reexamined on the failed portion of the test and that all costs of this procedure be borne by the Board.

Over the past three years only one complaint was received by the Office of the Ombudsman relating to Board activities. This complaint involved a delay in the receipt of a hygiene certificate and was resolved satisfactorily.

F. To what extent does the Board of Dental Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Dental Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Because examinations are given only once each year, it may be of some public benefit to increase examination schedules. Applicants who have failed the examination or a portion, or who apply too late to be scheduled for an examination, would not be required to wait as long as a

year. A second examination could be scheduled providing that a minimum number of applications are received 30 days prior to the examination date. This increase in scheduling, once established, could be expected to increase the availability of licensed practitioners within the State. It should be noted that an applicant who has failed to pass the examination on two separate occasions must submit proof of further study before being reexamined (AS 08.36.180).

The current practice of the Board in examining candidates once each year, in conjunction with restrictive policies against reciprocity and the issuance of temporary permits, is not conducive to encouraging entry into the profession. It is again recommended that the Board review its regulatory alternatives, including the possibility of endorsement, and that it make every effort in providing opportunities for availability of dental services to the public.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Dental Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Dental Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Dental Examiners to better serve the interests of the public?

Recent litigation and interpretation difficulties have led to attempts at refining Board regulations. The Board is cognizant of the need for standardization and specificity within its regulations and is continually reviewing and revising them to provide more definite guidelines. Board policies with respect to examination criteria and uniformity in grading are also subject to continual scrutiny.

Changes in statutory language need to be enacted upon which the Board, the applicants, and the public may rely. While Board discretion may be advantageous in some functional aspects, it also exposes Board judgment and decisions to challenge. This latitude results in lengthy discussions and time-consuming attention to interpretation, primarily concerning matters of qualifications for licensure. More Board time could be provided addressing matters such as examinations, temporary permits and reciprocity or endorsement provisions if its functions and standards were more clearly defined by statute.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination expenses, investigative services and litigation.

The Board presently consists of seven members, five qualified resident dentists who have practiced in the State for the five years preceding appointment, one licensed hygienist, and one public member with no interest in the health care industry. Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable laymembers is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure

that there will be input from groups other than those representing the regulated occupation."<sup>5</sup> Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." It is recommended that public Board membership be increased to three with three qualified resident dentists and one dental hygienist and that number of terms or of consecutive terms be limited for all members.

### III. Conclusion

The Board of Dental Examiners and regulation of this profession does function to protect the public health, safety and welfare.

### IV. Summary of Recommendations

The Board of Dental Examiners should be reauthorized for another four-year period. The following recommendations are made:

1. It is recommended that a short term task force be created with the specific direction and goal of reviewing, revising and recommending concise and definitive statutory language, such task force to be represented by members of the dental profession, the legal profession, and knowledgeable lay persons, and to be dissolved immediately upon completion of this single task. This task force should also review the area of continuing education requirements upon which license renewal would be contingent. (See discussion on p. 9)

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<sup>5</sup>Ibid, Shimberg & Roderer, p. 9.

2. The Board should request statutory changes or adopt regulations requiring continuing education as a condition of relicensure. Acceptable compliance methods should be outlined and adopted through Board regulations. (See discussion on p. 9)
3. The Board should not take a blanket position against the issuance of any and all temporary permits. Board policy should allow for consideration of temporary permits on an individual basis. The statutory provision requiring that temporary permits be only in areas where there is no licensed resident dentist should be deleted. (See discussion on p. 11)
4. Statutory changes should be made which allow for licensure by endorsement rather than reciprocity. If this is not done, the Board should take positive steps to establish reciprocal agreements with other states wherever possible. If qualifications in Alaska are substantially dissimilar to those of other states, they should be carefully reviewed for validity and appropriate recommendations made. (See discussion on p. 12)
5. The Board and the administrative agency should take positive steps to inform the public of Board and profession activities. (See discussion on p. 17)
6. The Board should schedule two examinations each year provided that a minimum number of applications are received 30 days prior to the second examination date. This would eliminate the year-long waiting period if enough candidates are available and would allow more frequent opportunity for entry into practice. (See discussion on p. 18)
7. Board membership should be changed to consist of three licensed resident dentists, one dental hygienist and three public members. (See discussion on p. 20)

Jurisdictions with Mandatory Continuing Education

1. Alabama					
2. Alaska					
3. Arizona	XXXXXXXXXX				
4. Arkansas					
5. California	XXXXXXXXXX				
6. Colorado					
7. Connecticut					
8. Delaware					
9. District of Columbia					
10. Florida	XXXXXXXXXX	(For Dental Hygienists only)			
11. Georgia					
12. Hawaii					
13. Idaho					
14. Illinois					
15. Indiana					
16. Iowa	XXXXXXXXXX				
17. Kansas	XXXXXXXXXX				
18. Kentucky	XXXXXXXXXX				
19. Louisiana					
20. Maine					
21. Maryland					
22. Massachusetts					
23. Michigan					
24. Minnesota	XXXXXXXXXX				
25. Mississippi					
26. Missouri					
27. Montana					
28. Nebraska					
29. Nevada					
30. New Hampshire					
31. New Jersey					
32. New Mexico	XXXXXXXXXX				
33. New York					
34. North Carolina					
35. North Dakota	XXXXXXXXXX				
36. Ohio					
37. Oklahoma	XXXXXXXXXX				
38. Oregon	XXXXXXXXXX				
39. Pennsylvania					
40. Rhode Island					
41. South Carolina					
42. South Dakota	XXXXXXXXXX				
43. Tennessee					
44. Texas	XXXXXXXXXX				
45. Utah	XXXXXXXXXX				
46. Vermont					
47. Virginia					
48. Washington					
49. West Virginia					
50. Wisconsin					
51. Wyoming					
52. Guam					
53. Puerto Rico	XXXXXXXXXX				
54. Virgin Islands					

Member Jurisdictions in Regional Testing Agencies

	NERB East	SRTA South	CRDTS Central	WREB West	
1. Alabama					
2. Alaska					
3. Arizona				XXXXXXXXXX	
4. Arkansas		XXXXXXXXXX			
5. California					
6. Colorado			XXXXXXXXXX		
7. Connecticut	XXXXXXXXXX				
8. Delaware					
9. District of Columbia	XXXXXXXXXX				
10. Florida					
11. Georgia					
12. Hawaii					
13. Idaho					
14. Illinois	XXXXXXXXXX				
15. Indiana					
16. Iowa			XXXXXXXXXX		
17. Kansas			XXXXXXXXXX		
18. Kentucky		XXXXXXXXXX			
19. Louisiana					
20. Maine	XXXXXXXXXX				
21. Maryland	XXXXXXXXXX				
22. Massachusetts	XXXXXXXXXX				
23. Michigan	XXXXXXXXXX				
24. Minnesota			XXXXXXXXXX		
25. Mississippi					
26. Missouri			XXXXXXXXXX		
27. Montana					
28. Nebraska			XXXXXXXXXX		
29. Nevada					
30. New Hampshire	XXXXXXXXXX				
31. New Jersey	XXXXXXXXXX				
32. New Mexico					
33. New York	XXXXXXXXXX				
34. North Carolina					
35. North Dakota			XXXXXXXXXX		
36. Ohio	XXXXXXXXXX				
37. Oklahoma			XXXXXXXXXX		
38. Oregon				XXXXXXXXXX	
39. Pennsylvania	XXXXXXXXXX				
40. Rhode Island	XXXXXXXXXX				
41. South Carolina					
42. South Dakota			XXXXXXXXXX		
43. Tennessee		XXXXXXXXXX			
44. Texas					
45. Utah				XXXXXXXXXX	
46. Vermont	XXXXXXXXXX				
47. Virginia		XXXXXXXXXX			
48. Washington					
49. West Virginia	XXXXXXXXXX				
50. Wisconsin			XXXXXXXXXX		
51. Wyoming			XXXXXXXXXX		
52. Guam					
53. Puerto Rico					
54. Virgin Islands					

## Chapter 32. Dental Hygienists.

### Article

1. Examination and Licensing (§§ 08.32.010 — 08.32.090)
2. Regulation of Dental Hygienists (§§ 08.32.100 — 08.32.180)
3. General Provisions (§ 08.32.190)

### Article 1. Examination and Licensing.

#### Section

10. License required
15. Malpractice insurance
20. Examination required
30. Examination waived
40. Application and fee
50. Disposition of fees

#### Section

60. Frequency and content of examination
70. Registration and licensing of dental hygienists
80. [Repealed]
81. Lapse and reinstatement of license
90. Temporary license

**Sec. 08.32.010. License required.** No person may practice, offer or attempt to practice, or advertise or announce himself as prepared or qualified to practice dental hygiene without a license. (§ 1 ch 78 SLA 1953)

**Sec. 08.32.015. Malpractice insurance.** If medical malpractice insurance for dental hygienists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental hygiene services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 7 ch 102 SLA 1976)

**Sec. 08.32.020. Examination required.** (a) An applicant for examination shall be

- (1) of good moral character;
- (2) at least 18 years of age;
- (3) a graduate of an accredited high school;
- (4) a graduate of an American training school for dental hygienists which requires at least a two-year course and is accredited and recognized by the board; and

(5) an examinee who has successfully completed the National Board Examination or the written examination given by the board.

(b) An applicant for examination shall apply in writing to the secretary of the board at least 30 days before the date selected by the board for the examination. (§ 1 ch 78 SLA 1953; am § 1 ch 36 SLA 1969; am § 1 ch 99 SLA 1970)

**Sec. 08.32.030. Examination waived.** A dental hygienist who holds a certificate from a school accredited by the American Dental Association and who has had two years of practical experience is qualified to practice in the state without examination upon registering with the board. (§ 1 ch 78 SLA 1953)

**Sec. 08.32.040. Application and fee.** An application for qualification shall be accompanied by the applicant's certificate of graduation, and a fee of \$25. (§ 1 ch 78 SLA 1953; am § 2 ch 36 SLA 1969)

**Sec. 08.32.050. Disposition of fees.** All fees and charges shall be deposited in the general fund of the state. (§ 1 ch. 78 SLA 1953)

**Sec. 08.32.060. Frequency and content of examination.** The examination shall be held once each year at the same time as the examination of dentists. The examination shall cover subjects considered essential by the board for a dental hygienist, including a practical examination on the removal of deposits or stains from the exposed surfaces of the teeth. (§ 1 ch. 78 SLA 1953)

**Sec. 08.32.070. Registration and licensing of dental hygienists.** If the applicant passes the examination, the board shall register him and issue a certificate. The fee for registration is \$20. Before May 1 of every other year after the year of registration, every registered dental hygienist shall pay a registration fee of \$20. (§ 1 ch. 78 SLA 1953; am § 3 ch. 36 SLA 1969)

**Sec. 08.32.080. Lapse and reinstatement of license.**  
Repealed by § 7 ch. 94 SLA 1968.

**Sec. 08.32.081. Lapse and reinstatement of license.** The failure, neglect, or refusal of a licensed dental hygienist to pay the biennial registration fee constitutes a forfeiture of the license. The board may reinstate the license within three years upon written application and payment of \$25. (§ 4 ch 36 SLA 1969)

**Revisor's note (1969).** — "Annual" was changed to "biennial" in this section in order to make it consistent with the change in sec. 70 of this chapter. In ch. 36, SLA 1969, this section was numbered AS 08.32.080.

**Sec. 08.32.090. Temporary license.** The board may issue a temporary license, without examination, to a person qualified to take the examination who has a license to practice in another state. The temporary license granted to a hygienist in the employ of a privately practicing dentist terminates at the time of notification of the results of the next board examination. The board may revoke a temporary license at any time. Time spent on a temporary license does not count toward license by reciprocity. (§ 2 ch. 75 SLA 1953; am § 5 ch 36 SLA 1969)

## Article 2. Regulation of Dental Hygienists.

Section	Section
100. Employment of dental hygienists	160. Suspension or revocation of license
110. Scope of work of dental hygienists	165. Limits or conditions on license; discipline
120. Place of employment	170. Procedure followed
130. Information required	180. Violation
140. Supervision required	
150. Revocation of dentist's license	

**Sec. 08.32.100. Employment of dental hygienists.** A licensed dentist, incorporated eleemosynary dental dispensary or infirmary, private school or welfare center, the United States of America or the state may employ a licensed dental hygienist. (§ 3 ch 78 SLA 1953)

**Sec. 08.32.110. Scope of work of dental hygienists.** The role of the dental hygienist is to assist members of the dental profession in providing oral health care to the public. He may not perform any of the following functions dealing with dentistry:

- (1) diagnosis, treatment planning, or prescription;
- (2) operative or surgical procedures on hard or soft tissues;
- (3) restorative, prosthetic, orthodontic or other procedures which require the knowledge and skill of a dentist and constitute the practice of dentistry;
- (4) prescription for drugs, medicament or work authorization. (§ 3 ch 78 SLA 1953; am § 6 ch 36 SLA 1969)

**Sec. 08.32.120. Place of employment.** A dental hygienist may operate in the office of a licensed dentist, or legally incorporated eleemosynary dental dispensary or infirmary, private school or welfare center, or in a building owned or occupied by the state and under the direct or general supervision of a licensed dentist. (§ 3 ch 78 SLA 1953)

**Sec. 08.32.130. Information required.** Every dental hygienist shall furnish the board with the name and address of his employer. (§ 1 ch 78 SLA 1953)

**Sec. 08.32.140. Supervision required.** A dental hygienist may not practice except under the supervision of a licensed dentist. (§ 1 ch 78 SLA 1953)

**Sec. 08.32.150. Revocation of dentist's license.** The board may revoke the license of a dentist who permits a dental hygienist, employed by him or working under his supervision, to perform a dental operation other than that permitted under this chapter. (§ 4 ch 78 SLA 1953)

**Sec. 08.32.160. Suspension or revocation of license.** The board may suspend or revoke, with power to reinstate, the license of a dental hygienist who violates this chapter or who is guilty of professional misbehavior, or is not of good moral character. (§ 6 ch 78 SLA 1953)

**Sec. 08.32.165. Limits or conditions on license; discipline.** (a) In addition to action under § 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 7 ch 102 SLA 1976)

**Sec. 08.32.170. Procedure followed.** Procedures for the revocation or suspension of a license under §§ 150 and 160 of this chapter shall comply with the Administrative Procedure Act (AS 44.62). (§ 4 ch 78 SLA 1953)

**Sec. 08.32.180. Violation.** A person who violates this chapter or who fails to comply with the requirements of this chapter, a penalty for which is not otherwise provided, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100. (§ 5 ch. 78 SLA 1953)

### **Article 3. General Provisions.**

#### **Section**

190. "Board" defined

**Sec. 08.32.190. "Board" defined.** Board means the Board of Dental Examiners.

## Chapter 36. Dentistry.

### Article

1. Board of Dental Examiners (§§ 08.36.010—08.36.091)
2. Examination and Licensing (§§ 08.36.100—08.36.300)
3. Unlawful Acts (§§ 08.36.310—08.36.340)
4. General Provisions (§§ 08.36.350—08.36.360)

### Article 1. Board of Dental Examiners.

#### Section

10. Creation and membership of board
20. Appointment and term of service of members
30. Election of officers
40. Meetings
50. Quorum

#### Section

60. [Repealed]
70. General powers
80. Applicability of Administrative Procedure Act
90. [Repealed]
91. Records and reports

**Sec. 08.36.010. Creation and membership of board.** There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of seven members. Five members shall be qualified resident dentists who have been engaged in the practice of dentistry in the state for five years immediately preceding appointment, one member shall be a dental hygienist licensed under AS 08.32, and one member with no direct financial interest in the health care industry. (§ 1 art II ch 186 SLA 1955; am § 2 ch 155 SLA 1968; am § 8 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "seven members" for "five members" at the end of the first sentence and rewrote the second sentence.

**Editor's note.** — Section 1, ch. 155, SLA 1968, provides: "**Purposes.** The practice of dentistry in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to

practice dentistry in the state. All provisions of this chapter relating to the practice of dentistry and dental hygiene and to the registration of dental laboratories shall be liberally construed to carry out these objects and purposes."

**Am. Jur., ALR and C.J.S. references.** — 41 Am. Jur., Physicians and Surgeons, §§ 13, 23.

Dentist as within statutes pertaining to physician or surgeon, 115 ALR 261.

70 C.J.S. Physicians and Surgeons §§ 1 to 5.

**Sec. 08.36.020. Appointment and term of service of members.** Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session. Each board member serves for a term of five years, and until his successor is appointed and qualified. The term begins on February 1. An appointment to a vacancy

is for the unexpired term. (§ 2 art II ch 186 SLA 1955; am § 1 ch 59 SLA 1964; am § 9 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment deleted "assembled" from the end of the first sentence and deleted the former fifth through eighth sentences, which related to a list of names from which appointments were to be made.

**Sec. 08.36.030. Election of officers.** The board shall elect a president and a secretary from among its members, each to serve for a term not to exceed two years. (§ 3 art II ch 186 SLA 1955; am § 1 ch 121 SLA 1972)

**Sec. 08.36.040. Meetings.** The board shall meet as often as, and at the times and places, necessary to conduct its business. (§ 3 art II ch 186 SLA 1955)

**Sec. 08.36.050. Quorum.** A majority of the board constitutes a quorum for the transaction of business. (§ 4 art II ch 186 SLA 1955)

**Sec. 08.36.060. Expenses and salary.**

Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.36.070. General powers.** The board shall have, but not by way of limitation, the following powers and duties:

- (1) to examine and issue licenses to applicants;
- (2) to register licensed dentists in good standing;
- (3) to submit an annual report of its proceedings to the governor and to members of the Alaska Dental Society, containing a statement of money received and disbursed;
- (4) to affiliate with the American Association of Dental Examiners, and pay annual dues to the association;
- (5) to hold hearings, revoke, annul, or suspend the license of a person who violates this chapter or the rules and regulations of the board;
- (6) to supply forms for applications, licenses, permits, certificates, and other papers and records;
- (7) to enforce the provisions of this chapter and make, alter, or amend the rules and regulations necessary or desirable to make the provisions of this chapter effective. (§ 5 art II ch 186 SLA 1955; am § 6 ch 69 SLA 1970)

**Legislative committee report.** — For 1970 House Journal Supplement No. 2, p. report on ch. 69, SLA 1970 (HB 564), see 7.

**Sec. 08.36.080. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62).

**Sec. 08.36.090. Records and reports.**

Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.36.091. Records and reports.** The board shall maintain

- (1) a record of its proceedings;
- (2) a register containing the name, office and home addresses, and other information considered necessary by the board, of each person licensed as a dentist or dental hygienist, and a register of the licenses revoked by the board, and information on the status of each licensee. (§ 3 ch 155 SLA 1968)

## Article 2. Examination and Licensing.

Section	Section
100. License required	240. Issuance of license; recordation; display
110. Qualifications of applicants	244. License to practice as specialist required
115. Malpractice insurance	246. Qualification for a specialist license
120. Photograph and filing date of application	247. Limitation of special practice
130. Examination	248. Suspension or revocation of specialty licenses
140. Out-of-state examination	250. Biennial registration
150. Examination in out-of-state dental schools	260. Branch office registration
160. Contents of examination	270. [Repealed]
170. Partial examination	271. Permits for isolated areas.
180. Re-examination	280. Temporary permit
190. Grading of examination	285. [Repealed]
200. Waiver of written examination	290. Fees and penalties
210. Waiver of examination by reciprocity	300. [Repealed]
220. Issuance of license by reciprocity	
230. Practice outside the state	

**Sec. 08.36.100. License required.** No person, except those specifically exempted from the application of this chapter, may practice, or attempt to practice, dentistry without a license or permit, and a current certificate of registration. (§ 1 art III ch 186 SLA 1955; am § 4 ch 155 SLA 1968)

**ALR and C.J.S. references.** — Unlicensed dentist's right to recover for services, 30 ALR 860; 118 ALR 661.

Right of corporation or individual not himself licensed, to practice dentistry through licensed employees, 103 ALR 1240.

Constitutionality and construction of statutes or regulations prohibiting one who

has no license to practice dentistry from owning, maintaining, or operating an office therefor, 20 ALR2d 808.

70 C.J.S. Physicians and Surgeons §§ 6 to 23.

**Sec. 08.36.110. Qualifications of applicants.** An applicant for a license to practice dentistry may apply to the board for an examination and license by submitting information that he is

- (1) Repealed by § 25 ch 245 SLA 1970.
- (2) of good moral character;
- (3) Repealed by § 10 ch 127 SLA 1974.
- (4) a graduate of a dental college approved by the Council on Dental Education of the American Dental Association at the time of graduation, and holds a D.D.S. or D.M.D. degree or the equivalent;

(5) Repealed by § 1 ch 36 SLA 1970. (§ 2 art III ch 186 SLA 1955; am § 1 ch 26 SLA 1965; am § 1 ch 36 SLA 1970; am § 7 ch 69 SLA 1970; am § 25 ch 245 SLA 1970; am § 10 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment repealed paragraph (3).

**Legislative committee reports.** — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7. Chapter 245, SLA 1970 (HCSSB 399 am

H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 08.36.115. Malpractice insurance.** If medical malpractice insurance for dentists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 10 ch 102 SLA 1976)

**Sec. 08.36.120. Photograph and filing date of application.** Each applicant shall submit a recent unmounted, autographed photograph of himself. Applications shall be filed at least 30 days before the date scheduled for an examination. (§ 2 art III ch 186 SLA 1955)

**Sec. 08.36.130. Examination.** An examination shall be given at times and places determined by the board to be convenient and economical for the applicants and the state. At least once each year the board shall appoint from its membership an examination committee of at least three persons. The examination committee shall conduct an examination at least once a year and report the results to the board for official action. (§ 3 art III ch 186 SLA 1955; am § 5 ch 155 SLA 1968)

**Sec. 08.36.140. Out-of-state examination.** If an applicant requests the board to hold an examination outside the state, the board may require the applicant to pay the transportation costs to the members of the committee conducting the examination. (§ 3 art III ch 186 SLA 1955)

**Sec. 08.36.150. Examination in out-of-state dental schools.** The examination committee, with the approval of the board, may conduct an examination in the clinic of an approved dental school within the continental limits of the United States and admit to the examination a dental student in his last year of school who would otherwise be eligible

for admission to examination and licensing in the state upon completion of his education. (§ 3 art III ch 186 SLA 1955)

**Sec. 08.36.160. Contents of examination.** The examination shall be clinical and written and of such a character as to test in a satisfactory manner the qualifications of the applicant to practice dentistry. The examination shall consist of the following:

(1) The subjects of the written examination shall be selected in accordance with the trend of dental education as determined by the Council of Dental Education of the American Dental Association.

(2) The applicant shall give demonstration of his skill in operative and the prosthetic dentistry or any procedures as recommended by the American Association of Dental Examiners. (§ 4 art III ch 186 SLA 1955; am § 6 ch 155 SLA 1968)

**Sec. 08.36.170. Partial examination.** A student at least 19 years of age who has satisfactorily completed regular courses of instruction in dentistry in at least two different school years at an approved dental school, and who is certified by the dean of the college as having satisfactorily completed the subjects included in section I of the examination may take section I of the examination. If the student passes section I and subsequently takes the full examination, the requirements of section I are waived. (§ 5 art III ch 186 SLA 1955)

**Sec. 08.36.180. Re-examination.** An applicant shall pass each subject of each section of the examination with a score of at least 75 per cent. If an applicant fails in one subject in each section, he may be re-examined in that subject. If an applicant fails in more than one subject in any section, he shall be re-examined in the whole section. If an applicant fails the examination or any section of it on two separate occasions, the board shall refuse to examine him further until he produces evidence satisfactory to the board that he has pursued further study in preparation for the examination. (§ 6 art III ch 186 SLA 1955)

**Sec. 08.36.190. Grading of examination.** Upon the conclusion of the written examination and as soon as practicable, the papers shall be rated by an examiner. The examiner shall prepare a report in duplicate on each written examination and a report in duplicate on each practical examination. The examiner shall forward one copy of each report on each candidate to the secretary of the board and one copy to the division of occupational licensing. The secretary shall prepare a composite report on each applicant and file one copy of his report with the division of occupational licensing. As soon as practicable the division of occupational licensing shall notify each candidate of the results of the examination. (§ 7 art III ch 186 SLA 1955; am § 2 ch 121 SLA 1972)

**Sec. 08.36.200. Waiver of written examination.** The board may waive the requirement for written examination for an applicant who holds a certificate from the National Board of Dental Examiners that

he has passed the theoretical or written examination given by the national board. (§ 8(a) art III ch 186 SLA 1955)

**Sec. 08.36.210. Waiver of examination by reciprocity.** The board may waive the requirement for written examination for a graduate of an approved dental school who has been licensed, and has been in legal and reputable practice of dentistry in a state, territory, district or possession of the United States which has requirements for licensing, and give reciprocal rights, equivalent to those of this state, if the applicant meets the requirements of § 110 of this chapter. (§ 8(b) art III ch 186 SLA 1955; am § 3 ch 121 SLA 1972)

**Sec. 08.36.220. Issuance of license by reciprocity.** If an applicant having the qualifications contained in §§ 110 and 210 of this chapter has been engaged in the practice of dentistry for a period of five years in the state, territory, district or possession of the United States, immediately preceding his application to practice in the state, the board may license the applicant without examination. (§ 9 art III ch 186 SLA 1955; am § 2 ch 26 SLA 1965; am § 7 ch 155 SLA 1968; am § 4 ch 121 SLA 1972)

**Sec. 08.36.230. Practice outside the state.** A dentist licensed to practice in this state and residing and practicing dentistry outside of this state, may maintain his eligibility to practice in this state by biennially registering his name and place of residence with the division of occupational licensing. If the dentist fails to register, the board may reinstate his license without examination upon payment of a penalty of \$25, payment of all delinquent registration fees, and presentation of proof of active practice at his place of residence, certified by the dental board having jurisdiction at his place of residence, or, if there is no board, by evidence satisfactory to the board. (§ 10 art III ch 186 SLA 1955; am § 5 ch 121 SLA 1972)

**Sec. 08.36.240. Issuance of license; recordation; display.** The board shall issue a license to each successful applicant who has paid the required fees. The holder of a license shall register it in the office of the clerk of the superior court in the judicial district of his place of residence. The licensee shall display the license in a conspicuous place where he practices. (§ 11 art III ch 186 SLA 1955; am § 6 ch 121 SLA 1972)

**Sec. 08.36.244. License to practice as specialist required.** No licensed dentist may hold himself out to the public as being especially qualified in a branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising, using such terms as "specialist," or inserting the name of the specialty, or using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, without first securing a specialist's license as provided in this chapter. (§ 8 ch 155 SLA 1968)

**Sec. 08.36.246. Qualification for a specialist license.** (a) An applicant for a specialty license must

- (1) possess a license to practice dentistry in the state, and
- (2) have completed two or more academic years of advanced education in the specialty.

(b) The provision of (a) (2) of this section does not apply to dentists who have limited their practice exclusively and who ethically announced limitation of practice in accordance with American Dental Association policy before July 23, 1968. (§ 8 ch 155 SLA 1968)

**Sec. 08.36.247. Limitation of special practice.** (a) No specialty license may be issued unless the applicant presents proof satisfactory to the board that he is qualified to practice that specialty.

(b) This section may not be construed as limiting or preventing a licensed and qualified dentist from performing, without a specialty license, dental acts or services to the public in any of the branches of dentistry, except that no dentist may administer a general anesthetic to a patient without a valid permit as required by regulations of the dental examiners board. (§ 8 ch 155 SLA 1968)

**Sec. 08.36.248. Suspension or revocation of specialty licenses.** The board may suspend or revoke a specialty license upon any grounds set out in § 310 of this chapter, and the procedure for suspensions and revocations shall be the same as for the revocation or suspension of a regular license to practice dentistry. (§ 8 ch 155 SLA 1968)

**Sec. 08.36.250. Biennial registration.** At least 60 days before January 1 of every other year, the division of occupational licensing shall mail a form for biennial registration to each licensed dentist. Each licensee shall complete the form and return it together with the registration fee. The division of occupational licensing shall, as soon as practicable, issue a registration certificate valid for the years for which issued. Each licensee shall keep the registration certificate beside or attached to his license. Failure to receive the registration form does not exempt a dentist from biennial registration. (§ 12 art III ch 186 SLA 1955; am § 9 ch 155 SLA 1968; am § 7 ch 121 SLA 1972)

**Sec. 08.36.260. Branch office registration.** A licensee who practices in an established office with an address other than that address for which his biennial registration certificate is issued shall obtain a branch office registration certificate for each office. (§ 13 art III ch 186 SLA 1955; am § 10 ch 155 SLA 1968)

**Sec. 08.36.270. Permits for isolated areas.**

Repealed by § 3 ch 26 SLA 1965; § 5 ch 93 SLA 1965.

**Sec. 08.36.271. Permits for isolated areas.** (a) The Department of Health and Social Services shall designate as isolated areas those specific places and regions remote from major population centers which

are not served by dentists licensed under this chapter and which have a geographical location which works financial hardship, extended loss of time, or arduous and costly travel upon residents needing dental care.

(b) The board shall, upon recommendation of the Department of Health and Social Services, issue an annual permit authorizing the treatment of residents in an area designated under (a) of this section, who are not entitled to dental care by the state or federal government, by a dentist employed by the United States Public Health Service or qualified member of the armed services who serves in that area. (§ 1 ch 93 SLA 1965; am § 11 ch 155 SLA 1968; am § 6 ch 104 SLA 1971)

**Sec. 08.36.280. Temporary permit.** (a) The board may issue a one year temporary permit without examination to an applicant to practice dentistry in a locality requested by the applicant if the locality is of the type specified in (2) of this subsection and the applicant

(1) meets the requirements of § 110 of this chapter;

(2) desires to practice dentistry in a city or rural village which does not have a resident licensed dentist in active general practice;

(3) has a license in good standing to practice dentistry in a state, territory, district or possession of the United States;

(4) tenders and pays the fee prescribed in § 290 (6) of this chapter.

(b) The board may authorize a temporary permittee to practice dentistry in more than one city or rural village of the type specified in (a) (2) of this section.

(c) The board may annually renew a temporary permit upon written application of an applicant and upon payment of the prescribed fee if the applicant has not committed an act which is a ground for revocation in § 310 of this chapter, but in any case, within two years from issuance of his first temporary permit, the applicant must pass a board exam.

(d) A temporary permit may be revoked, suspended or annulled, or the permittee may be reprimanded, censured or disciplined by the board in the same manner and for the same cause as a licensed dentist under § 310 of this chapter.

(e) The board shall grant or deny an application for a temporary permit within 60 days after it is received. (§ 15 art III ch 186 SLA 1955; am § 4 ch 26 SLA 1965; am §§ 8, 9 ch 121 SLA 1972)

**Sec. 08.36.285. Licensing a permittee.**

Repealed by § 10 ch 121 SLA 1972.

**Editor's note.** — The repealed section derived from § 5, ch. 26, SLA 1965.

**Sec. 08.36.290. Fees and penalties.** The board shall impose and collect the following fees and penalties:

(1) for the issuance of an original license, \$30;

(2) for the examination of an applicant, \$50;

(3) for re-examination of an applicant, \$50;

- (4) for biennial registration, \$40;
- (5) for each branch office biennial registration, \$40;
- (6) for a temporary permit, \$25;
- (7) Repealed by § 7 ch 94 SLA 1968.
- (8) for re-instatement as provided in § 230 of this chapter a penalty of \$10;
- (9) for a specialty license, \$30;
- (10) for a duplicate license, \$10. (§ 16 art III ch 186 SLA 1955; am § 7 ch 94 SLA 1968; am § 12 ch 155 SLA 1968)

For history of taxation of profession of dentistry, see United States v. Dasher, 9 Alaska 719 (1940).

C.J.S. references. — 53 C.J.S. Licenses § 34; 70 C.J.S. Physicians and Surgeons §§ 2 to 4, 6 to 8.

**Sec. 08.36.300. Deposit of fees and payment of expenses.**  
 Repealed by § 3 ch 59 SLA 1966.

**Article 3. Unlawful Acts.**

Section	Section
310. Grounds for revocation of license	330. Injunction
320. Order of reprimand, suspension and revocation	340. Penalties
325. Limits or conditions on license; discipline	

**Sec. 08.36.310. Grounds for revocation of license.** A license and registration may be revoked, suspended, or annulled, or the licensee may be reprimanded, censured, or disciplined by the board after hearing when he

- (1) secures a license through deceit, fraud, or wilful misrepresentation of a material fact;
- (2) is convicted of a crime involving moral turpitude;
- (3) has a chronic or persistent inebriety or addiction to habit-forming drugs which renders him incompetent to continue the practice of dentistry;
- (4) commits wilful or gross malpractice or wilful or gross neglect in the practice of dentistry;
- (5) hires, supervises, permits or aids unlicensed persons to practice dentistry;
- (6) is insane or has a contagious or infectious disease making him an improper person to continue in the practice of dentistry;
- (7) practices or offers to practice dentistry under a name other than the name in which the license is issued;
- (8) uses the name of a company, association, corporation, trade name, dental clinic, or business name in connection with the practice of dentistry;
- (9) knowingly practices in the employment of or in association with a person who is practicing in an unlawful manner;

- (10) uses an advertising solicitor or free-publicity press agent;
- (11) wilfully deceives or attempts to deceive the board with reference to any matter under investigation by it;
- (12) advertises professional superiority;
- (13) advertises free dental work or free examination;
- (14) advertises prices for professional service;
- (15) advertises to perform any dental operation painlessly;
- (16) advertises by means of a large display, glaring light sign, or sign containing as a part of it the representation of a tooth, bridgework, or any portion of the human head;
- (17) advertises by a medium other than the carrying or publishing of a modest professional card or the display of a modest window or street sign at the licensee's office containing the name, address, profession, office hours, telephone number and specialty;
- (18) permits the use of his name as a dentist by others in the sale or advertisement of products;
- (19) violates a provision of this chapter or a regulation of the board promulgated under authority of this chapter;
- (20) advertises as a specialist in any branch of dentistry, unless he devotes a major portion of his practice to that branch;
- (21) engages in the practice of fee-splitting;
- (22) engages in unprofessional conduct;
- (23) obtains a fee by fraud;
- (24) directly or indirectly advertises or solicits for dental hygiene business;
- (25) advertises as a specialist in a branch of dentistry without first obtaining a specialty license;
- (26) fails to report a death that occurred on premises used for the practice of dentistry to the office of the secretary-treasurer of the board within 72 hours;
- (27) administers a general anesthetic without a valid permit required by regulations of the dental board. (§ 1 art IV ch 186 SLA 1955; am §§ 13—15 ch 155 SLA 1968)

**Cross reference.** — As to malpractice actions, see AS 09.55.530—09.55.560.

**ALR references.** — Ground for revocation, 54 ALR 1504; 82 ALR 1184.

What amounts to conviction within statute making conviction ground for cancelling license, 113 ALR 1179.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 ALR 1138.

Admissibility and necessity of expert evidence in proceeding for revocation of license, 6 ALR2d 675.

**Sec. 08.36.320. Order of reprimand, suspension and revocation.** The board may, by a majority vote, evidenced by the signatures of the members on the order, reprimand a licensee or revoke or suspend a license. (§ 5 art IV ch 186 SLA 1955)

**Sec. 08.36.325. Limits or conditions on license; discipline.** (a) In addition to actions under §§ 310 and 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action take by the board under this section. (§ 10 ch 102 SLA 1976)

**Sec. 08.36.330. Injunction.** The board may sue in its own name in a competent court to enjoin any person from doing an act constituting a violation of this chapter. (§ 7 art IV ch 186 SLA 1955)

**Sec. 08.36.340. Penalties.** A person who violates any provision of this chapter for which no specific penalty is provided, is guilty of a misdemeanor and is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both. (§ 8 art IV ch 186 SLA 1955)

#### **Article 4. General Provisions.**

##### **Section**

350. Application of chapter

360. Practice of dentistry defined

**Sec. 08.36.350. Application of chapter.** This chapter applies to a person who practices, offers or attempts to practice dentistry in the state except

(1) dental surgeons or dentists in the military service in the discharge of official duties;

(2) licensed dental hygienists in the performance of duties authorized by law;

(3) dentists in the employ of the United States Public Health Service, United States Veterans' Administration, Alaska Native Service, or Department of Health and Social Services, in the discharge of official duties;

(4) clinicians demonstrating at meetings of dentists approved by the board;

(5) physicians and surgeons;

(6) dentists in the employ of the United States Public Health Service providing care by authority of a permit issued under § 271 of this chapter. (§ 2 art I ch 186 SLA 1955; am § 2 ch 93 SLA 1965; am § 6 ch 104 SLA 1971)

**Sec. 08.36.360. Practice of dentistry defined.** A person engages in the practice of dentistry who

(1) performs or holds himself out to the public as being able to perform dental operations;

(2) diagnoses, treats, operates on, corrects or attempts to correct, or prescribes for, a disease, lesion, pain, injury, deficiency, deformity, or physical condition, malocclusion or malposition of the human teeth, alveolar process, gums or jaws and adjacent tissues;

(3) performs or attempts to perform an operation incident to the replacement of teeth;

(4) furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth, except on prescription of a duly licensed and registered dentist and by the use of impressions or casts made by a duly licensed and registered dentist;

(5) uses the word "dentist" or "dental surgeon" or the letters D.D.S. or D.M.D. or other letter or title which represents him as engaging in the practice of dentistry;

(6) extracts or attempts to extract human teeth;

(7) owns, manages or operates a place where the acts and things described in this section are performed or done. (§ 1 art I ch 186 SLA 1955)

CHAPTER 28.  
BOARD OF DENTAL EXAMINERS

Article

1. Administering of Anesthetic Agent
2. Clinical Examination for Licensure

ARTICLE 1.  
ADMINISTERING OF  
ANESTHETIC AGENT

Section

10. Permit requirements
20. Operative procedure
30. Other than permit holders
40. Written consent
50. Medical history
60. Requirements for administering general anesthetic
70. Suspension or revocation of permit
80. Filing report
90. Definition

12 AAC 28.010. PERMIT REQUIREMENTS. The Alaska Board of Dental Examiners shall issue a permit to a dentist licensed in Alaska for the administration of an anesthetic agent or agents for the purpose of inducing general anesthetic if the applicant offers certified proof that he

(1) is a diplomate of the American Board of Oral Surgery; or

(2) is a member of the American Society of Oral Surgery; or

(3) has fulfilled not less than 36 months of oral surgery advanced education approved by the Council on Dental Education of the American Dental Association; or

(4) is a certified member of an American Dental Association Specialty Board and meets the minimum requirement in anesthesiology as recommended by the American Board of Oral Surgery; or

(5) has completed a minimum of one year of advanced training in anesthesiology in an accredited program beyond the undergraduate dental school level. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)  
AS 08.36.247(b)

12 AAC 28.020. OPERATIVE PROCEDURE. A dentist administering a general anesthetic may not perform any operative procedures for the duration of the anesthesia. "Operative procedure" means surgical or restorative manipulations in or about the oral cavity. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

12 AAC 28.030. OTHER THAN PERMIT HOLDERS. In addition to a dentist holding a valid permit for the administration of an anesthetic agent or agents for the purpose of inducing general anesthesia, as provided in sec. 10 of this chapter, the following persons may administer an anesthetic agent:

(1) a registered nurse certified by the Association of Nurse Anesthetists who while in a dental office administers the anesthetic agent under the direct supervision of a dentist holding a valid permit under sec. 10 of this chapter;

(2) a board-eligible anesthesiologist who while in a dental office administers the anesthetic agent while under the direct supervision of a dentist holding a valid permit under sec. 10 of this chapter;

(3) a dentist who administers an anesthetic agent under the direct supervision of a medical doctor in a licensed hospital even though the dentist does not have a valid permit to do so under sec. 10 of this chapter. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)  
AS 08.36.247(b)

12 AAC 28.040. WRITTEN CONSENT. Written consent of the patient shall be obtained prior to the administration of a general anesthetic. In the case of a minor, the consent shall be obtained from his parent or legal guardian. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

12 AAC 28.050. MEDICAL HISTORY. (a) A medical history shall be taken before the administration of a general anesthetic. Patients should be asked to describe any current treatments, including drugs, impending operations, and pregnancies and to give other information that may be helpful to the person administering the anesthetic agent. The dentist is

not required to make a medical examination of the patient and draw medical diagnostic conclusions; therefore, if the dentist suspects a problem and calls in a physician for an examination and evaluation, he may then rely upon that conclusion and the diagnosis.

(b) Questions asked of and answers received from the patient shall be permanently recorded and signed by the patient before the administration of any general anesthetic and this record shall become a permanent part of the patient's treatment record. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

**12 AAC 28.060. REQUIREMENTS FOR ADMINISTERING GENERAL ANESTHETIC.** A holder of a permit to administer a general anesthetic for the purpose of inducing surgical anesthesia shall

(1) obtain and maintain an adequate airway for the patient;

(2) use an oxygen machine and have it available for maintaining the ventilation of the lungs;

(3) have the knowledge of and be able to skillfully place needles into veins for the administration of drugs; and

(4) maintain in his office at all times appropriate drugs and medicines for emergencies. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)  
AS 08.36.247(b)

**12 AAC 28.070. SUSPENSION OR REVOCATION OF PERMIT.** A permit to administer a general anesthetic for the purpose of inducing surgical anesthesia shall automatically become revoked upon the suspension or revocation of the holder's license to practice dentistry in the state. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)  
AS 08.36.320

**12 AAC 28.080. FILING REPORT.** In reporting a death as required under AS 08.36.310(26), each member of the anesthesia team that administered the anesthetic agent or

agents, shall file an individual report which includes his individual findings. Within two weeks of the receipt of these reports by the board, the board will review them and make a determination in writing as to whether further investigation by the board should be made. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)  
AS 08.36.310(26)

**12 AAC 28.090. DEFINITION.** "General anesthesia" means surgical or the third stage of anesthesia. The use of an anesthetic agent for introduction of analgesia (first state) or amnesia is not to be construed as the practice or use of general anesthesia. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

II

STATE OF ALASKA  
Board of Dispensing Opticians  
(August, 1978)

Findings

Dissolution of the Board of Dispensing Opticians and subsequent governmental deregulation of this profession would have little if any adverse impact on the physical health of the general public. Information obtained in the process of this review indicated that the potential for visual damage to the consumer by a licensed or unlicensed practitioner is minimal to non-existent except under the most extreme and ungovernable circumstances. Additionally, Board and regulatory control which results in endorsement of monopolistic practices only serves to promote the profession by restricting services that have assumed the sanction of government licensing. In accordance with the Sunset criteria, it is recommended that the Board of Dispensing Opticians and State support in regulation and licensing of this profession be allowed to terminate on June 30, 1979.

I. General Information

A. Regulated Parties

1. Dispensing opticians
2. Apprentice dispensing opticians

B. Statutory Definition of Regulated Profession

"(3) 'dispensing optician' means a person who prepares duplications of or prepares and dispenses lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the intended wearers of them on written prescriptions from physicians or optometrists; and in accordance with those prescriptions, measures, adapts, adjusts and fabricates lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the human face for the aid or correction of visual or ocular anomalies of the human eye." (AS 08.71.240)

A dispensing optician's apprentice shall be in training and under direct supervision for a period not to exceed six years (unless mitigating circumstances occur). A licensed dispensing optician may have no more than two apprentices under his/her supervision at the same time.

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Philip A. Lampert (Chairman)	Ends June 14, 1979
George Tresnak	Ends June 14, 1979
Dick Kleinkopf	Ends June 14, 1978
Edna M. Lyon	Ends June 14, 1978
John W. Greiff	Ends June 14, 1977
Robert Sherwood	Ends June 14, 1980
Harry J. Lang	Ends June 14, 1979

2. Representation:

Profession	=	5
Public	=	2

3. Qualifications:

"Five board members shall be licensed, practicing dispensing opticians residing in the state. Two shall be persons with no direct financial interest in the health care industry." (AS 08.71.030)

D. Licensing Data

By Examination

<u>Year</u>	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1975	n/a	n/a	n/a	n/a	n/a
1976	7	3	4	43	57
1977	8	6	2	75	25
1978	(not given until 10-30-78)				

Currently licensed:

in-State =	40	(through June, 1978)
out-of-State =	<u>5</u>	(through June, 1978)
Total	45	

E. Fees

1. examination fee \$50.00
2. initial license 50.00
3. biennial renewal 50.00
4. penalty-failure to renew 10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$ 750.00	\$2,720.00	\$1,060.00	\$2,190.00
- refunds	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	\$ 750.00	\$2,720.00	\$1,060.00	\$2,190.00
Expenditures				
Per Diem	892.25	846.25	745.00	751.25
Transportation	1,108.48	494.23	712.16	517.10
Phone	332.50	95.53	91.00	60.55
Printing, Advert.,				
Postage	100.22	212.88	543.16	284.51
Fees & Services	-	63.70	-	297.00
Rents, Leases,				
Other	<u>9.75</u>	<u>15.75</u>	<u>-</u>	<u>-</u>
Total	<u>\$2,443.20</u>	<u>\$1,728.34</u>	<u>\$2,091.32</u>	<u>\$1,910.81</u>
Surplus	-	\$ 991.66	-	\$ 279.19
Deficit	\$1,693.20	-	\$1,031.32	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	0	1	0
1976	7	3	0
1977	6	0	0
1978	1	10	0
(through August 31)			

Pending: 1

Most complaints involving dispensing opticians related to nondisplay of licenses and charges by the public of defective workmanship. Five complaints were received from the public at large. None were found to be statutory violations and all but one has been closed as of this writing. None alleged physical harm or danger to the consumer.

#### H. Qualifications

Training for this profession usually consists of "on-the-job" or apprenticeship training, which lasts for approximately four to five years depending on experience gained and on individual ability. Formal institutional training is becoming more common and programs are offered through several vocational schools. High school graduation is usually a prerequisite for apprenticeship.

## II. Criteria and Analysis

### A. To what extent has the Board of Dispensing Opticians operated in the public interest?

The stated functions of the Board include assuring professional competency, governing the practice of opticianry and preventing conduct which would tend to harm the public's "visual health." Information obtained through discussions with several optometrists and dispensing opticians indicated that while visual damage to an individual by a dispensing optician may be possible in some extreme cases, it is highly unlikely. The consumer may become nauseated or perhaps have a headache but will usually be able to recognize that something is wrong. Further by statutory safeguard, a prescription calling for fitting of contact lenses must also require that the patient return to see the prescribing physician or optometrist as a check on the work done. Optometrists and ophthalmologists may also dispense, and may employ any person under their supervision, without State regulation or licensure, to dispense. It was noted that 39 out of

the 40 licensed in-State dispensing opticians practice in, or in the immediate vicinity of, Anchorage and Fairbanks. One individual licentiate is located in Homer. (See Figure 1) It must be assumed that the remainder of the State is serviced by an ophthalmologist, an optometrist, a traveling clinic or by mail. This type of geographic concentration must be questioned in analyzing "public" interest in relation to regulation by an agency funded Statewide.

Through regulations and by statutory directive the Board has established continuing education requirements designed to help assure continuing competency. Biennial relicensure is contingent on compliance with those requirements. If, however, it is improbable that incompetence could result in visual damage to the public, these regulations may be considered superfluous. Concurrently, examinations which test competency of candidates for licensure would not be valid measurements of public protection.

Other factors exist which contributed to the recommendation for termination of regulation and the Board. Less than half of the states regulate and license dispensing opticians; Alaska does not have a reciprocal agreement with any although this is provided by statute. There are more members of the Board than there were individuals licensed to practice in any one of the last three years. Six licenses were issued in 1975 and in 1977, four in 1976 and none through August of 1978. Additionally, none of the complaints received regarding this profession were determined to be statutory violations and none involved physical harm or damage to a member of the public.

All of the preceding factors indicate that State regulation and licensing of this profession is inappropriate and does not serve to protect the public interest in terms of health, safety or welfare. There can be no justification for regulation in the absence of potential harm or danger to public health, safety, or welfare.

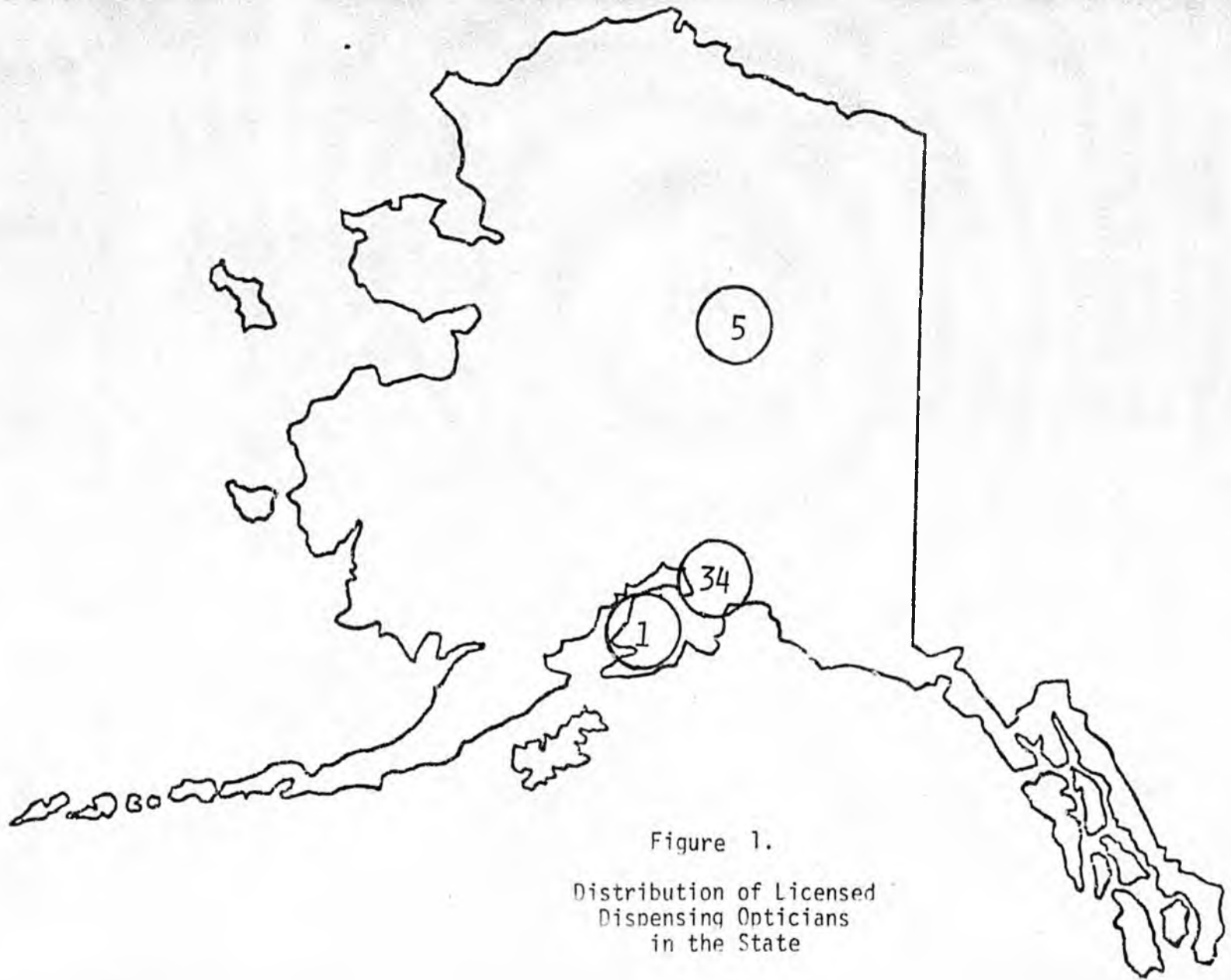


Figure 1.  
Distribution of Licensed  
Dispensing Opticians  
in the State

The Opticians Association of Alaska is headquartered in Anchorage and claims most licensed dispensing opticians in its membership. Association membership also includes unlicensed dispensers who are supervised by an ophthalmologist or optometrist. The major function of the Association is educational, to disseminate updated professional information. The Association may receive complaints regarding the profession for referral to the Board of Dispensing Opticians and encompasses a type of peer review process. In the event of governmental deregulation, the association membership could certainly expand its scope to accomplish self-regulation consistent with desirable professional standards as determined by a broader base of practitioners.

If continued regulation and licensing of this profession is determined to be beneficial and in the public interest, it is recommended that these functions be vested with the administrative agency. Practical examinations, now given once each year, may be proctored by licensed dispensing opticians selected specifically for that purpose or may be eliminated. All support services including administration of a written examination may be provided by the administrative agency and licenses issued by it as authorized by exam results and compliance with statutory qualifications. Should the Board of Dispensing Opticians be reestablished, recommendations are made throughout the body of this report that are based on that premise.

- B. To what extent has the operation of the Board of Dispensing Opticians been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

This Board has no statutory or regulatory provisions which would allow issuance of a temporary permit to an otherwise qualified applicant pending examination. It may also happen that an applicant has failed only the practical portion of the examination and must wait another year

before being reexamined. If this Board is reestablished, it should be given the authority to promulgate and adopt regulations by which it may issue a temporary permit pending examination or reexamination of the practical portion, one time only. It should also consider provisions for practical reexamination of a candidate, within a prescribed period of time, by two licensed Board members, at the discretion of the Board. Temporary permits thus issued would become invalid at the time of examination or reexamination and would not be renewed if an applicant failed a specially scheduled practical portion a second time. Due to the low number of candidates for examinations, an increase in routine scheduling is not recommended.

AS 08.71.150 allows reciprocity between states with equivalent requirements. Only two states were reviewed to this end in 1974 and 1975, prior to utilization of a national written examination. Alaska does not have reciprocity in this profession with any other state and no overtures have been made by the Board since 1975 to open this avenue of entry into practice. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and with providing services of practitioners. It is recommended that statutory changes be made to allow for licensure by endorsement rather than reciprocity. If this is not done, the question of reciprocity should be thoroughly addressed by the Board. In that a national written examination is now being utilized, other states may be more receptive to such an agreement. If they are not, qualifications and policies may need to be reviewed or revised for validity and to facilitate entry into the profession in this manner.

The Board also should adopt specific regulations for practice and supervision of apprentice dispensing opticians. Much concern has been expressed by members of the profession and the Board regarding "adequate supervision" but this concept has not been defined as a regulation or policy.

The statutes provide for seven Board members; it is noted that there are more members of this Board than there were individuals initially licensed to practice with or without examination in any of the last three years. If the Board of Dispensing Opticians is continued, it is recommended that membership be reduced from seven to five individuals, three of whom should be licensed practicing dispensing opticians and two of whom should be lay persons. This membership could adequately regulate the profession with the support services provided by the administrative agency. Members should not serve consecutive terms unless appointed initially to an unexpired term, but may be reappointed following a term of absence.

The Board of Dispensing Opticians has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into the general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Dispensing Opticians has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency.

During the past year, two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time and nature of alleged offense mandates that only the most flagrant and potentially injurious licensing complaints are pursued.

C. To what extent has the Board of Dispensing Opticians recommended statutory changes which are generally of benefit to the public interest?

Recent statutory changes with respect to the Board of Dispensing Opticians concerned: (1) Board membership, appointment and term of office; (2) addition of lay persons to membership; (3) Medical Indemnity requirements; (4) disciplinary matters, and (5) applicability of the Administrative Procedure Act to the Board and the licentiates.

The Board itself has recommended no statutory changes since its creation in 1973 that would be of direct benefit to the public.

D. To what extent has the Board of Dispensing Opticians encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Public concern, if any, is probably expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Public interests are furthered by the existence of public members in professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>1</sup>

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Dispensing Opticians processed and resolved?

No complaints were received which were specifically directed at individual members of the Board. No complaints were received by the Office of the Ombudsman against the Board or members of this profession.

For the period from January, 1975 through August, 1978 fourteen complaints were logged by the administrative agency which concerned this profession. None of these were found to be statutory violations and none alleged physical damage or danger to an individual. Until recently, there has been a considerable time lag between receipt of a complaint and its resolution, however, due to lack of validity or jurisdiction, ten cases were closed within the month of August, 1978. Investigative services to all boards and commissions under the jurisdiction of the administrative agency are expected to improve.

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

F. To what extent does the Board of Dispensing Opticians present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Dispensing Opticians but apprentices preparing for licensure may very well be serving under and trained by a Board member. Preparation for a career in dispensing opticianry, unlike in other health related fields, can be accomplished within the State of Alaska by serving a specific apprenticeship. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently given. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Board policies which would allow issuance of temporary permits and which would allow for special reexamination of the practical portion of the test as previously cited, and overt efforts to establish endorsement provisions or reciprocal agreements wherever possible, would increase the opportunity for licensure of practitioners within the State.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Dispensing Opticians in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards), who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Dispensing Opticians issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Dispensing Opticians to better serve the interests of the public.

In view of the functions of this Board and the relatively few professional members that are regulated (45), it is felt that present statutes are generally adequate with the exception of the number of members that serve on the Board. If the Board of Dispensing Opticians is continued, membership should be reduced to three professional members and two lay members.

Regulations need to be adopted which specifically outline supervision and practice of the dispensing optician's apprentice. Provisions for the issuance of temporary permits on an individual basis and at Board discretion should be authorized, formulated and adopted.

The Board should introduce legislation which would allow for licensure by endorsement. If unsuccessful, it should take positive and overt steps toward establishing reciprocal relationships with other states wherever possible.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary, examination expenses and investigative services.

### III. Conclusion

The regulatory functions of the Board of Dispensing Opticians and administration of those functions by the Department of Commerce and Economic Development are not determined to be justified in terms of protection of public health, safety and welfare.

#### IV. Summary of Recommendations

- A. The Board of Dispensing Opticians, and State regulation of the profession, should be allowed to terminate on June 30, 1979.
  
- B. In the event that State regulation is determined to be justified, the Board should terminate and the functions of examining and licensing members of this profession should be vested within the administrative agency. Two dispensing opticians may be selected to proctor a practical examination, if necessary, and support services (including administration of the written national examination) could be provided by the administrative agency.
  
- C. If the Board of Dispensing Opticians is continued, the following recommendations are made:
  1. The Board should adopt regulations which would allow for the issuance of temporary permits on an individual basis and at the discretion of the Board. This would allow an otherwise qualified person to practice pending examination and should be invalidated at the time the next scheduled examination results are final. (See discussion on p. 8)
  
  2. The Board should consider regulations which would allow for reexamination of a candidate who has failed only the practical portion of the test, within a prescribed time period, by two or three licensed Board members, at the discretion of the Board. There is no requirement that all Board members be present at an examination. The practical portion is generally not more than 1/2 hour in length and private facilities may be available within the

profession. An applicant who has failed only the practical portion of the examination need not wait another full year under this system. (See discussion on p. 8)

3. The Board should adopt regulations which specifically outline grading and scoring procedures for the practical examination. While this has been agreed on in the past among Board members, written procedures would help to eliminate potential inconsistencies or allegations of arbitrary grading.
4. Statutory changes should be made which allow for licensure by endorsement rather than reciprocity. If this is not done, the Board should explore the possibility of reciprocal agreements with other states. If Alaska's qualifications are substantially different from those of other states (less than half licensed dispensing opticians), they should then be reviewed for validity and appropriate recommendations made. (See discussion on p. 9)
5. The Board should adopt regulations governing the practice of apprentice dispensing opticians and defining the scope of supervision desirable and necessary for apprenticeship. (See discussion on p. 10)
6. Board composition should be reduced to three professional members and two lay members. Members should not serve consecutive terms unless appointed initially to an unexpired term, but may be reappointed following a three-year term of absence. (See discussion on p. 10)

## Chapter 71. Dispensing Opticians.

### Article

1. Board of Dispensing Opticians (§§ 08.71.010 — 08.71.070)
2. Licensing (§§ 08.71.080 — 08.71.160)
3. Unlawful Acts (§§ 08.71.170 — 08.71.180)
4. Miscellaneous Provisions (§ 08.71.200)
5. General Provisions (§§ 08.71.220 — 08.71.240)

### Article 1. Board of Dispensing Opticians.

#### Section

10. Creation of board
20. Membership of board; source of appointments; term of office
30. Qualifications of board members
40. Election of officers

#### Section

50. Board regulations
60. Record of proceedings
70. Applicability of Administrative Procedure Act

**Sec. 08.71.010. Creation of board.** There is created the Board of Dispensing Opticians. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.020. Membership of board; source of appointments; term of office.** The board consists of seven persons appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 1 ch 45 SLA 1973; am § 19 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment rewrote this section.

**Sec. 08.71.030. Qualifications of board members.** Five board members shall be licensed, practicing dispensing opticians residing in the state. Two shall be persons with no direct financial interest in the health care industry. (§ 1 ch 45 SLA 1973; am § 20 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "Five board members" for "A board member" at the beginning of the first sentence, and deleted "a" preceding "licensed" and substituted "opticians" for "optician" in that sentence, and added the second sentence.

**Sec. 08.71.040. Election of officers.** The board shall elect a chairman and secretary from among its members. The officers may administer oaths. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.050. Board regulations.** The board may adopt regulations:

- (1) necessary or advisable to carry out the provisions of this chapter and which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public;
- (2) governing the practice of dispensing opticians;
- (3) specifying the subject matter to be covered in examinations for dispensing opticians. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.060. Record of proceedings.** The secretary shall keep a record of all proceedings, including the name of each applicant for examination and licensing. These records shall be open for public inspection. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.070. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 45 SLA 1973)

## Article 2. Licensing.

Section	Section
80. License required	120. Fees
85. Malpractice insurance	130. Renewal of license
90. Content of examination	140. Display of license
100. Administration of examination	150. Issuance of license by reciprocity
110. Qualifications of applicants for examination	160. Dispensing optician's apprentice

**Sec. 08.71.080. License required.** No person may act as a dispensing optician in the state unless he is licensed under this chapter. In order to be licensed under this chapter, a person shall pass an examination given by the board, unless he is eligible for licensing without examination under § 150 of this chapter. A license shall be issued for (1) the dispensing of contact lenses, or (2) the dispensing of other lenses, eyeglasses, spectacles, artificial eyes, and their appurtenances, or (3) both. The board shall by endorsement on the license designate for which aspect of dispensing opticianry the license is issued. The board shall license successful examinees. (§ 1 ch 45 SLA 1973; am § 14 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment added "unless he is eligible for licensing without examination under § 150 of this chapter" to the end of the first sentence.

**Legislative committee report.** — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 08.71.085. Malpractice insurance.** If medical malpractice insurance for opticians becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optician services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 21 ch 102 SLA 1976)

**Sec. 08.71.090. Content of examination.** To be licensed as a dispensing optician a person, unless eligible for licensing without examination under § 150 of this chapter, shall pass an examination given by the board. At the discretion of the board, the examination may test orally, in writing, or otherwise, knowledge and skills in any or all of the following subjects: optics, anatomy, laboratory technology, ophthalmic dispensing, contact lens technology, technical mathematics and physics, and business concepts of optical dispensing. (§ 1 ch 45 SLA 1973; am § 15 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted "unless eligible for licensing without examination under § 150 of this chapter" in the first sentence.

**Legislative committee report.** — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 08.71.100. Administration of examination.** The board shall offer an examination at least once a year. Examinations shall be administered so that one who grades the written part of the examination does not know whose paper he is grading. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.110. Qualifications of applicants for examination.** A person is entitled to take the examination who

- (1) has either
  - (A) completed at least 6,000 hours of training as an apprentice, or
  - (B) been engaged for at least 10,000 hours as a practicing optician in good standing in a state, territory, district or possession of the United States; and
- (2) has paid the required examination fee. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.120. Fees.** The following fees shall be imposed under this chapter when applicable:

- (1) examination fee . . . . . \$50
  - (2) initial dispensing optician license fee . . . . . 50
  - (3) biennial renewal fee . . . . . 50
- (§ 1 ch 45 SLA 1973)

**Sec. 08.71.130. Renewal of license.** (a) A licensed dispensing optician shall renew his license biennially with the Department of Commerce on or before the date set by the department under AS 08.01.100.

(b) If the license is not renewed on or before that date, it shall lapse. A penalty of \$10 shall be charged, in addition to all delinquent fees, for the reinstatement of a license which remains lapsed for more than 60 days.

(c) If the license remains lapsed for more than one year, the board may require the applicant to be examined under § 90 of this chapter.

(d) Before a license may be renewed the licensee shall submit to the board evidence of 15 hours of continuing competence in optical dispensing as prescribed by regulations of the board. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.140. Display of license.** A licensed dispensing optician shall conspicuously display his license in his place of business. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.150. Issuance of license by reciprocity.** An applicant who has been licensed and has been practicing as a dispensing optician in a state, territory, district or possession of the United States which has requirements for licensing and gives reciprocal rights equivalent to those of this state, and who otherwise meets the requirements of § 110 of this chapter, shall be licensed by the board without examination. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.160. Dispensing optician's apprentice.** (a) A person may be employed by a licensed dispensing optician as an apprentice. An apprentice shall be designated as such in the records of the board at the request of a licensed physician, optometrist or dispensing optician and shall be in training and under the direct supervision of a licensed physician, optometrist or dispensing optician. No apprentice may be employed under this section for longer than six years unless the board determines that an apprentice is prevented by circumstances beyond his control from obtaining a license as a dispensing optician within that time.

(b) No more than two apprentices may be under the direct supervision of one licensed dispensing optician at the same time. (§ 1 ch 45 SLA 1973)

### Article 3. Unlawful Acts.

#### Section

- 170. Grounds for revocation, suspension or denial of license
- 175. Limits or conditions on license; discipline
- 180. Practicing without a license

**Sec. 08.71.170. Grounds for revocation, suspension or denial of license.** The board, after compliance with the Administrative Procedure Act (AS 44.62), may revoke, suspend or deny the license of a person who

- (1) has been convicted of a felony involving moral turpitude;
- (2) is addicted to the use of alcohol or any other drug;
- (3) has used advertising, whether printed, radio, display, or of any other nature, which is fraudulent, misleading or inaccurate in any material particular, or misrepresents in any way goods, services or credit terms, values, policies, services or the nature or form of the business conducted;
- (4) has practiced fraud or deception in his application for or in his examination for a license;
- (5) has used the word "licensed", "registered", or any of their synonyms publicly, except as provided in § 140 of this chapter;
- (6) has displayed or published directly or indirectly by any means, a price, terms of payment, or a discount, or a policy or practice of generally underselling competitors, or any reference to the benefits available to the subscribers to any prepaid health plan;
- (7) has participated in the division, assignment, rebate or refund of fees to a physician or optometrist in consideration of patient referrals;
- (8) has bartered or given away as premiums in any manner either on his own account or as agent or representative for another person, firm or corporation, any eyeglasses, spectacles, lenses or frames;
- (9) has advertised the "free examinations of eyes", "free consultation", "consultation without obligation", "free advice", or any words or phrases of similar import which convey the impression to the public that eyes are examined free or are of a character tending to deceive or mislead the public, or are in the nature of "bait advertising";
- (10) has employed either directly or indirectly any person commonly known as a "capper" or a "steerer" to obtain business;
- (11) has solicited or employed any person to solicit from house to house;
- (12) has used advertising offering a service to the public for which he is not licensed under this chapter; however, nothing in this section prohibits the optician from advertising merchandise for which the license which is the subject of this chapter is not required;

(13) has engaged in a group contract for the duplication of eyeglasses or spectacles without a written prescription from an optometrist or physician; or

(14) has advertised the services of any other segment of the healing arts. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.175. Limits or conditions on license; discipline.** (a) In addition to action under § 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 21 ch 102 SLA 1976)

**Sec. 08.71.180. Practicing without a license.** It is unlawful for a person to practice as a dispensing optician without a license issued under this chapter or while his license is suspended or revoked. A person who violates this section is guilty of a misdemeanor. (§ 1 ch 45 SLA 1973)

#### Article 4. Miscellaneous Provisions.

##### Section

200. Contact lenses

**Sec. 08.71.200. Contact lenses.** Contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist and with a written contact-lens prescription showing that the prescription may be filled for contact lenses and requiring that the patient return to see the prescribing physician or optometrist. In no case may contact lenses be prepared by neutralizing a person's eyeglasses or spectacles. (§ 1 ch 45 SLA 1973)

**Revisor's note (1973).**—In ch. 45, SLA 1973, this section appeared as part of what was designated there as AS 08.71.210(3) (now AS 08.71.240(3)).

#### Article 5. General Provisions.

##### Section

220. Persons practicing as dispensing opticians before July 1, 1973  
230. Exemptions from and limitations on the application of this chapter

##### Section

240. Definitions

**Revisor's note (1973).**—In ch. 45, SLA 1973, this article appeared as Article 4, and AS 08.71.220—08.71.240 appeared as AS 08.71.190—08.71.210.

**Sec. 08.71.220. Persons practicing as dispensing opticians before July 1, 1973.** (a) Within 60 days after July 1, 1973, a person who has been engaged in practice in Alaska as a dispensing optician for a period of at least six months immediately preceding July 1, 1973 shall be issued a license without examination upon the payment of a fee of \$50 and a certification to the board under oath that he is of good moral character and that

(1) he has been engaged as a dispensing optician for not less than 3,000 hours; or

(2) he has been engaged as a dispensing optician in contact lens fitting for not less than 6 000 hours.

(b) If a person qualifies for a license under (a) (1) or (2) of this section, the board shall by endorsement on the license designate for which aspect of dispensing opticianry the license is issued. If a person qualifies for a license under (a) (1) and (2) of this section, the board shall by endorsement on the license so designate.

(c) Within eight months after July 1, 1973, a person who has been engaged in practice in Alaska as a dispensing optician for a period of at least six months immediately preceding July 1, 1973 but who is not otherwise qualified for licensing under (a) (1) or (2) of this section may take the examination required under § 90 of this chapter. A person who has not been engaged in practice in Alaska as a dispensing optician for a period of at least six months immediately preceding July 1, 1973 must qualify to take the examination under § 110 of this chapter. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.230. Exemptions from and limitations on the application of this chapter.** This chapter may not be construed to

(1) limit or restrict a licensed physician or optometrist or employees working under the personal supervision of a licensed physician or optometrist from the practices enumerated in this chapter, and each licensed physician and optometrist has all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under it;

(2) prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

(3) prohibit an unlicensed person from engaging in the sale of eyeglasses, spectacles, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any like articles which are completely preassembled and sold only as merchandise;

(4) authorize or permit a licensee under this chapter to hold himself out as being able to, or to offer to, or to attempt by any means, to refract or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury. (§ 1 ch 45 SLA 1973)

**Sec. 08.71.240. Definitions.** In this chapter

(1) "board" means the Board of Dispensing Opticians;

(2) "department" means the Department of Commerce and Economic Development;

(3) "dispensing optician" means a person who prepares duplications of or prepares and dispenses lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the intended wearers of them on written prescriptions from physicians or optometrists; and in accordance with those prescriptions, measures, adapts, adjusts and fabricates lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the human face for the aid or correction of visual or ocular anomalies of the human eye. (§ 1 ch 45 SLA 1973; am § 52 ch 218 SLA 1976)

Revisor's note (1973).—In ch. 45, SLA 1973, paragraph (3) of this section included what is now AS C8.71.200.

Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

Effect of amendment. — The 1976 amendment substituted "Department of

CHAPTER 30.  
BOARD OF DISPENSING OPTICIANS

Article

1. Continuing Competence

ARTICLE 1.  
CONTINUING COMPETENCE

Section

10. Definition of "continuing competence"
20. Evidence of continuing competence
30. Date of continuing competence
40. Field in which continuing competence is obtained
50. Continuing competence required for renewal of initial license

12 AAC 30.010. DEFINITION OF "CONTINUING COMPETENCE." For the purpose of AS 08.71.130(d) and this chapter, "continuing competence" means

(1) attendance at a seminar or course conducted by

(A) the Opticians Association of America;

(B) the Contact Lens Society;

(C) the American Optometric Association;

(D) the Academy of Ophthalmology;

(E) the Optical Wholesalers Association;

(F) the Opticians Association of Alaska, Incorporated; or

(G) other recognized professional organizations in the field of opticianry;

(2) satisfactory completion of a course conducted by a recognized school of opticianry;

(3) attendance at an exhibit conducted for the optical public; or

(4) individual instruction by a licensed ophthalmologist, optometrist, dispensing optician or optical manufacturer outside of the

normal work situation. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.71.050(1)

AS 08.71.130(d)

12 AAC 30.020. EVIDENCE OF CONTINUING COMPETENCE. (a) Evidence of continuing competence is

(1) a seminar or course program indicating the sponsor and signed by the instructor;

(2) the original or a copy of a certificate of completion of a seminar or course;

(3) the original or a copy of a diploma;

(4) the original or a copy of a receipt for payment of a seminar or course registration fee;

(5) a sworn affidavit from an instructor attesting to the instruction given; or

(6) a form provided by the department validated by the instructor.

(b) Evidence of continuing competence must state the number of hours spent.

(c) A copy of a document must be certified by a notary public to be a true copy of the original document. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.71.050(1)

AS 08.71.130(d)

12 AAC 30.030. DATE OF CONTINUING COMPETENCE. Continuing competence must be obtained within two years preceding the date of application for license renewal or since the date of initial licensure, whichever is sooner. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.01.100

AS 08.71.050(1) and (2)

AS 08.71.130(d)

12 AAC 30.040. FIELD IN WHICH CONTINUING COMPETENCE IS OBTAINED. Continuing competence shall be in the aspect of dispensing opticianry for which the licensee is licensed. A person licensed to dispense both spectacles and contact lenses shall meet the requirement of AS 08.71.130(d) for each of those aspects of opticianry. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.71.050(1) and (2)

AS 08.71.080

AS 08.71.130(d)

12 AAC 30.050. CONTINUING  
COMPETENCE REQUIRED FOR RENEWAL  
OF INITIAL LICENSE. A person receiving his  
or her initial license under AS 08.71

(1) within six months of that date by which  
it must be renewed need not comply with the  
continuing competence requirement of AS  
08.71.130(d) until the second and subsequent  
renewal dates:

(2) within 14 months of but more than six  
months before the date by which it must be  
renewed need obtain only eight of the 15 hours  
of continuing competence required by AS  
08.71.130(d) for the first renewal period; or

(3) more than 14 months before the date by  
which it must be renewed must comply with the  
continuing competence requirement of AS  
08.71.130(d). (Eff. 6/23/78, Reg. 66)

Authority: AS 08.01.100  
AS 08.71.050(i) and (2)  
AS 08.71.130(d)

673 SC 1 VOLUME SUNSET REVIEWS, (HEALTH CARE)

III

STATE OF ALASKA  
Board of Veterinary Examiners  
(August, 1978)

Findings

The Board of Veterinary Examiners regulates a profession involved in treatment of diseased and injured animals which may include administration of medication or controlled substances. Federal authorization to prescribe controlled substances and to issue health certificates for interstate and international transportation of animals is contingent on State licensure. Disease prevention, control, and treatment and restrictions on prescriptive authority for drugs are legitimate areas of governmental concern in protecting public health, safety and welfare. It is the determination of this review that State licensure and regulation of this profession is justifiable and that the Board of Veterinary Examiners should be reestablished for an additional four-year period.

I. General Information

A. Regulated Parties

1. Veterinarians

B. Statutory Definition of Regulated Profession

"(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(AS 08.98.250)

C. Nature and Composition of the Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Berton A. Gore, DVM ends January 31, 1980

Clifford D. Lobaugh, DVM ends January 1, 1981

David Howe, DVM ends January 31, 1979

2. Representation:

Professional = 3

Public = -0-

3. Qualifications:

Members must be licensed veterinarians.

D. Licensing Data

By Examination

Year	<u># of</u> <u>Candidates</u>	<u>#</u> <u>Passed</u>	<u>#</u> <u>Failed</u>	<u>%</u> <u>Passed</u>	<u>%</u> <u>Failed</u>
1974	5	4	1	80	20
1975	12	11	1	92	8
1976	11	9	2	82	18
1977	8	8	-0-	100	-0-
1978	8	5	3	62	38

(through June)

Currently licensed:

in-State = 66 (through June, 1978)

out-of-State = 34 (through June, 1978)

Total - 100

E. Fees

1) examination fee	\$25.00
2) reciprocity fee	25.00
3) initial license fee	25.00
4) biennial renewal	50.00
5) temporary license	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$3,570.00	\$ 705.00	\$4,236.50	\$1,160.00
- Refunds	<u>25.00</u>	<u>-</u>	<u>50.00</u>	<u>-</u>
Total	3,545.00	705.00	4,186.50	1,160.00
Expenditures				
Per Diem	70.00	493.00	37.50	808.75
Transportation	32.00	355.15	85.14	170.05
Phone	34.05	88.45	83.35	21.00
Printing, Advert. & Postage	240.86	230.34	304.54	280.62
Fees & Services	320.00	540.00	588.32	360.00
Rents, Leases, Other	<u>-</u>	<u>-</u>	<u>11.34</u>	<u>-</u>
Total	<u>696.91</u>	<u>1,706.94</u>	<u>1,110.19</u>	<u>1,640.42</u>
Surplus	\$2,848.09	-	\$3,076.31	-
Deficit	-	\$1,001.94	-	\$ 480.42

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	-	-	-
1976	-	-	-
1977	2	-	-
1978	3	-	-

Pending: 5

These complaints involve allegations of over-charging and malpractice through neglect of animals resulting in death and injury. There are two complaints against one practitioner and three against another, both of whom are established in the same office. No action has been taken at this writing and resolution is pending.

H. Qualifications

Veterinarians are generally required to have from two to four years of preprofessional course work at an accredited university. Veterinary colleges usually require some 5,000 classroom hours over a four-year period. Individuals must successfully complete examination prior to initial licensure.

II. Criteria and Analysis

- A. To what extent has the Board of Veterinary Examiners operated in the public interest?

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The Board of Veterinary Examiners has statutory authority to pass on qualifications of applicants, to issue licenses, to administer and grade examinations and to revoke or suspend licenses. Public interests are protected by requiring that applicants be qualified and demonstrate proficiency in their profession and by providing methods by which incompetence or abuse may be disciplined.

For the past several years the Board has utilized a national written examination. This examination is administered only if the applicant has not taken and passed it within the last three years. An applicant may also choose to take this examination a second time as the Board will accept the higher of the two scores. Applicants are required to take and pass additional written and practical examinations composed by the Board. An average score of 72.5% has been established as the minimum passing score. The Board is required to offer at least one examination each year and this has been its practice. 1978 is the first year in which two examinations were scheduled.

Other qualifications for licensure include graduation from an approved school of veterinary medicine and a requirement that the applicant must not have had his license revoked in the past. By examining and licensing veterinarians in the State, based on these qualifications, the Board is certifying to the public that the practitioner is at least minimally competent.

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The Board has adopted regulations which define incompetence, require full disclosure of facts in instances of potential conflict of interest and require the exercise of care, skill and diligence in practice.

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No statutory provisions are made for continuing education requirements. Regulatory powers of the Board are restrictive (in comparison to those of other health care boards) and specify the subject matter to be regulated. Continuing education is not one of these specified subjects.

Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of implementation in a State where well developed systems of higher and/or professional education are limited, or of requiring professionals to go out of State to obtain education must be weighed against whatever assurance there might be that incompetency will be significantly avoided or reduced by this method. Pending further study of this issue, one opinion<sup>1</sup> seems to indicate that vigorous investigation and enforcement programs may be an effective course of action.

It must be recognized, however, that there is a widespread trend toward continuing education requirements within health care professions. Eighteen states presently have such requirements for the veterinary profession. In the event that reassessment advantages are determined to outweigh the disadvantages, alternatives are:

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<sup>1</sup>Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J., 1976.

1. certification of completion of approved courses to provide a basis for public selection of practitioners;
2. periodic in-office review of client records and/or actual veterinary practices and procedures;
3. mandatory reexamination by such methods as written tests, records and/or x-ray review;
4. routine periodic oral interviews before the Board, a member, or a selected committee;
5. review and analysis of quantity, type and disposition of complaints;
6. well developed and effective peer review mechanisms; and/or
7. programs that may be developed by the Alaska State Veterinary Association.

It is recommended that the Board of Veterinary Examiners be given the authority to adopt regulations which are necessary and advisable to carry into effect the chapter provisions. One of these should address the matter of continuing education as a condition of relicensure.

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The Board must allow entry into the profession and has no latitude under statutory temporary permit procedures. Candidates for licensure have obtained a temporary permit pending the examination, moved into the State, set up individual practice and then failed the examination (temporary permits are not renewable). In response to concern by the Board over instances such as this, an Attorney General's opinion in February of 1978 indicated that the Board may not decline to issue permits nor

does it have any legal responsibility to the candidate. Temporary permits are authorized as a means of expediting entry into a profession and of providing increased availability of qualified services to the public. The Board has indicated a desire to restrict the practice of permittees to an existing clinic but has no authority to do so. Provisions for reexamination in all or a portion of the test areas which were failed are advisable but would require clarification regarding procedures and scheduling.

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Endorsement is also utilized by the Board as a means of allowing entry into the profession.

- B. To what extent has the operation of the Board of Veterinary Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The statutes governing the Board of Veterinary Examiners and the veterinarian profession are perhaps the most restrictive of all Alaska health care statutes. There have been no statutory changes made since 1970 and none of major significance since the Board was created in 1963.

No public members serve on this Board as was provided by statute for all other health care boards in 1976. The Board has discussed this subject and requested in June of 1978, through the administrative agency, that a public member be allowed to attend Board meetings. No response or further action was taken on this request. Board membership consists of three licensed veterinarians. One member whose term expired in January of 1978 had moved from the State leaving a quorum of two professional members until September when a new member was appointed.

Regular annual meetings are required. However, any special meetings may only be held "with prior approval of the governor" (AS 08.98.040). "The commissioner of commerce and economic development is the executive secretary of the board" (AS 08.98.030).

Violations specified as causes for revocation or suspension of license include the terms "chronically drunk," "drug addict" and moral turpitude." Such terminology is considered to be outdated, somewhat ambiguous and difficult to charge in a legal proceeding.

Regulations may be adopted by the Board only if they define incompetence, specify approved schools of veterinary medicine or if they specify subject matter to be covered in examinations. In contrast to most health care boards, it may not specifically adopt regulations necessary or advisable to govern the practice of veterinary medicine within statutory guidelines.

Statutes for this Board and profession contain no provisions for veterinary assistants or technicians, no provisions for foreign graduates of veterinary medicine, no requirement for an annual report, no continuing education provisions, no penalties in the form of fines or designation as a misdemeanor of violations, and no provisions for emergency care or services under the "good samaritan" principle.

The Board of Veterinary Examiners, in conjunction with the professional association has drafted a complete "Proposed Alaska Veterinary Practice Act." Minutes of Board meetings indicate that at least since 1969 and every year thereafter, requests have been made to the administrative agency for assistance in introducing revised drafts. There is no record of any action having been taken. Separate requests for assistance in introducing changes in individual statutes (i.e., temporary permit changes) have apparently met the same fate.

It is recommended that a separate, short-term task force be created with specific directive and goal of reviewing, revising, and recommending concise and thorough statutory construction, such task force to be represented by members of the veterinary and legal professions, and knowledgeable lay persons, and to be dissolved immediately upon completion of this task.

The Board of Veterinary Examiners has experienced little difficulty in its general administrative operations with respect to personnel or budgetary restrictions with the exception of investigative services and technical assistance as previously noted. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Veterinary Examiners has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

- C. To what extent has the Board of Veterinary Examiners recommended statutory changes which are generally of benefit to the public interest?

As previously cited, no major changes have taken place in the profession's statutes since creation of the Board in 1963. Since 1968 numerous requests have been made by the Board for assistance in implementing statutory and regulatory changes. These changes involved Board discretion in issuing temporary permits and in licensing out-of-State practitioners by waiver of examination. The Board and the Alaska Veterinary Association have jointly drafted a proposed new practice act which they have been attempting to obtain assistance with.

No recommendations have been made by the Board of Veterinary Examiners relating to statutory changes that would be of specific direct benefit to the public, however, efficient administration and regulation of the profession would have an overall beneficial public effect.

- D. To what extent has the Board of Veterinary Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest or participation in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

The absence of public members on this Board is not felt to encourage public participation or to further public interests. Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>2</sup>

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Veterinary Examiners processed and resolved?

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<sup>2</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

No complaints were received which were specifically directed at individual members of the Board of Veterinary Examiners and no complaints regarding the Board or profession have been received by the Office of the Ombudsman. Five complaints received in the last past two years involve allegations of over-charging and malpractice through neglect of animals resulting in injury and death. All were against two practitioners in the same clinic and none have been acted upon.

F. To what extent does the Board of Veterinary Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Veterinary Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. State examinations are conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Every statutory authority is currently being exercised to screen qualified applicants and provide acceptable practitioners. The Board is already licensing by endorsement, issuing temporary permits and conducting examinations as warranted. These procedures help to expedite entry into the profession and to increase availability of services to the public.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Veterinary Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Veterinary Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Veterinary Examiners to better serve the interests of the public?

Several changes need to be made to the statutes governing this Board. All have been previously noted as have the recommendations for upgrading terminology and content. Needed regulatory changes cannot take place unless and until the Board is given authority to adopt such regulations as are advisable in governing the profession. The Board has repeatedly requested assistance with, and revised, statutory changes and a complete new practice act. Appropriate steps are now being taken by the administrative agency to provide the assistance requested by the Board.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses.

Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable laymembers is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."<sup>3</sup> Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." It is recommended that Board membership be increased to five to include two public members.

### III. Conclusion

Veterinarians have the responsibility for detecting and controlling animal diseases; they have the authority to issue prescriptions for controlled substances; federal authorization for a Drug Enforcement Agency number (necessary if prescribing controlled substances) is contingent on State licensure as is federal authorization to issue health certificates for interstate and international transportation of animals. It must also be recognized that many members of the public have a substantial economic and/or emotional investment in their animals. Continuation of the Board of Veterinary Examiners and State regulation is determined to be justified in terms of protection of public health, safety and welfare.

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<sup>3</sup>Ibid, Shimberg & Roederer, p. 9.

#### IV. Summary of Recommendations

The Board of Veterinary Examiners should be continued for an additional four-year period. The following recommendations are made:

It is recommended that a complete review and revision of these statutes take place in order that they be updated and extend the authority necessary and adequate to govern the practice of veterinary medicine in the State. (See discussion beginning on p. 9)

- a. The Board should be given authority to adopt regulations necessary to govern the practice of veterinary medicine in the State. (See discussion on p. 9)
- b. Mandatory continuing education requirements, and possible exceptions, should be imposed by statute. The Board should then adopt regulations delineating compliance methods and criteria. (See discussion on p. 7)
- c. Public members should be included in the composition of the Board. The statutory restriction precluding lay members on the Board has not encouraged public participation or interest in its regulations or decisions. (See discussion on p. 9, 13 and 16)
- d. The Board, in conjunction with the administrative agency, should be given the authority to establish a necessary and reasonable fee structure. (See discussion on p. 15)

## Chapter 98. Veterinarians.

### Article

1. Board of Veterinary Examiners (§§ 08.98.010 — 08.98.100)
2. Licensing (§§ 08.98.120 — 08.98.210)
3. Enforcement (§ 08.98.230)
4. General Provisions (§ 08.98.250)

### Article 1. Board of Veterinary Examiners.

#### Section

10. Creation and membership of board
20. Appointment and term of office
30. Executive secretary of board
40. Board meetings
50. Duties of the board
60. Board regulations

#### Section

70. Duties of the department
80. Department regulations
90. Applicability of the Administrative Procedure Act
100. Compensation

**Sec. 08.98.010. Creation and membership of board.** There is a Board of Veterinary Examiners. It consists of three licensed veterinarians. (§ 1 ch 91 SLA 1963; am § 1 ch 94 SLA 1966)

**Sec. 08.98.020. Appointment and term of office.** The governor shall appoint the members of the board, with the confirmation of the legislature, for terms of four years, or until their successors are appointed. A member serves at the pleasure of the governor. The first members shall be initially appointed for two-, three- and four-year terms. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.030. Executive secretary of board.** The commissioner of commerce and economic development is the executive secretary of the board. (§ 1 ch 91 SLA 1963; am § 59 ch 218 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce."

**Sec. 08.98.040. Board meetings.** The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.050. Duties of the board.** The board shall

- (1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;
- (2) prepare and grade examinations, provided that the board may use examinations prepared by the National Board of Veterinary Examiners;
- (3) after hearing, have the authority to suspend or revoke the license of a licensed veterinarian who
  - (A) obtained his license by fraud, misrepresentation, or deception;
  - (B) is chronically drunk or is a drug addict;

(C) makes untruthful statements about his professional ability, to solicit business;

(D) distributes alcohol or drugs except as required by the practice of veterinary medicine, surgery, or dentistry;

(E) in his professional capacity, conducts himself in a way that indicates he is not a competent veterinarian;

(F) is convicted of a felony or any crime involving moral turpitude;

(G) falsifies an official state or federal certificate relating to veterinary medicine. (§ 1 ch 91 SLA 1963; am § 2 94 SLA 1966, am § 1 ch 54 SLA 1967)

**Sec. 08.98.060. Board regulations.** (a) The board shall adopt procedural regulations describing how a person applies for and takes an examination under this chapter.

(b) The board shall adopt substantive regulations

(1) defining conduct which, if engaged in by a veterinarian, is evidence of incompetence;

(2) specifying approved schools under § 170(1) of this chapter;

(3) specifying the subject matter to be covered in an examination for veterinarians. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.070. Duties of the department.** The department shall furnish the board with administrative services, including renting space for holding examinations, printing and mailing licenses, sending notices, before December 1 of each year, that licenses must be renewed, collecting fees and issuing receipts, keeping a current register of licensees, employing secretarial assistants, replying to routine requests for information, printing forms and informational bulletins, typing all matter to be reproduced, maintaining records and completed examinations, and keeping records of receipts and disbursements. (§ 1 ch 91 SLA 1963; am § 3 ch 94 SLA 1966)

**Sec. 08.98.080. Department regulations.** The department shall adopt procedural regulations necessary to carry out the duties imposed on it by § 70 of this chapter. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.090. Applicability of the Administrative Procedure Act.** The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.100. Compensation.** Members of the board are entitled to per diem allowances and transportation expenses allowed by law and paid members of other state examining boards. (§ 1 ch 91 SLA 1963)

## Article 2. Licensing.

### Section

- 120. License required
- 130. Examination
- 140. Content of examination
- 150. Administration of examination
- 160. Reexamination

### Section

- 170. Qualification for examination
- 180. Temporary license
- 190. Fees
- 200. Reinstatement of lapsed license
- 210. Out-of-state veterinarian

**Sec. 08.98.120. License required.** No person may practice veterinary medicine, surgery, or dentistry unless he is licensed under this chapter. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.130. Examination.** A person who passes the examination given by the board is entitled to be licensed as a veterinarian. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.140. Content of examination.** The examination shall be in veterinary anatomy, surgery, medicine, obstetrics, pathology, chemistry, diagnosis, materia medica, therapeutics, physiology, sanitary medicine, dentistry, and other scientific subjects related to the practice of veterinary medicine, surgery, and dentistry. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.150. Administration of examination.** The board shall offer examinations at least once a year. Examinations shall be so administered that, whenever possible, one who grades a written examination does not know whose paper he is grading. (§ 1 ch 91 SLA 1963; am § 4 ch 94 SLA 1966)

**Sec. 08.98.160. Reexamination.** A person who fails an examination may apply for a subsequent examination, but shall pay the examination fee each time he applies. (§ 1 ch 91 SLA 1963)

**Sec. 08.98.170. Qualification for examination.** A person is entitled to take the examination who

(1) was graduated from a school of veterinary medicine approved by the board;

(2) Repealed by § 25 ch 245 SLA 1970.

(3) has completed application forms and returned them to the board;

(4) has paid the fee specified in § 190 of this chapter;

(5) has not had a veterinarian license revoked for cause in another jurisdiction;

(6) is of good moral character. (§ 1 ch 91 SLA 1963; am §§ 5, 6 ch 94 SLA 1966; am § 25 ch 245 SLA 1970)

**Legislative committee report.** — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.) For

report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

**Sec. 08.98.180. Temporary license.** A person who meets the requirements of § 170 of this chapter is entitled to be licensed. A license issued under this section is valid until the results of the examination following the issuance of the license are published. No person may receive more than one license under this section. (§ 1 ch 91 SLA 1963; am § 1 ch 94 SLA 1966)

**Sec. 08.98.190. Fees.** The following fees shall be imposed under this chapter when applicable:

- (1) examination fee .....\$25
- (2) reciprocity fee ..... 25
- (3) initial license fee ..... 25
- (4) biennial renewal ..... 50
- (5) temporary license ..... 10

(§ 1 ch 91 SLA 1963; am § 1 ch 53 SLA 1968)

**Sec. 08.98.200. Reinstatement of lapsed license.** A person whose license has lapsed is entitled to have his license reinstated without taking an examination unless his license has remained lapsed more than five years. (§ 1 ch 91 SLA 1963; am § 2 ch 53 SLA 1968)

**Sec. 08.98.210. Out-of-state veterinarian.** A veterinarian in good standing in a veterinary association of another state or territory or the District of Columbia which licenses veterinarians to practice veterinary medicine may be licensed without examination and otherwise upon substantially the same terms and conditions as are fixed in the jurisdiction from which he has come for the licensure of a veterinarian from this state. As a prerequisite to licensure the board shall require a veterinarian to take and pass an examination, unless the applicant has

- (1) passed a state veterinarian examination;
- (2) engaged in the active practice of veterinary medicine for at least five out of the previous seven years before filing the application excluding time spent in the military service of the United States;
- (3) graduated from an accredited school of veterinary medicine;
- (4) met the character requirements established by the board. (§ 1 ch 91 SLA 1963; am § 8 ch 94 SLA 1966; am § 2 ch 54 SLA 1967)

**Article 3. Enforcement.**

Section  
230. Injunction

**Sec. 08.98.230. Injunction.** When it appears that a person has engaged in or is about to engage in an act constituting a violation of § 120 of this chapter, the board, through its executive secretary, shall bring an action in the superior court to enjoin the act and to enforce compliance with § 120 of this chapter. (§ 1 ch 91 SLA 1963)

## Article 4. General Provisions.

### Section

#### 250. Definitions

##### **Sec. 08.98.250. Definitions.** In this chapter

(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(2) "board" means the Board of Veterinary Examiners;

(3) "department" means the Department of Commerce and Economic Development. (§ 1 ch 91 SLA 1963; am § 60 ch 218 SLA 1976)

**Revisor's note (1973).** — In light of the 1966 amendment of AS 08.98.010, "Veterinarian" has been changed to "Veterinary" in paragraph (2) of this section.

**Effect of amendment.** — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (3).

CHAPTER 68.  
BOARD OF VETERINARY  
EXAMINERS

Article

1. Examinations
2. Evidence of Incompetence

ARTICLE 1.  
EXAMINATIONS

Section

10. Applications
20. Time and place of examination
30. Notification of applicants
40. Application for license

12 AAC 68.010. APPLICATIONS. (a) An application for examination to practice veterinary medicine, surgery, or dentistry shall be made in writing to the Department of Commerce on a form prescribed and furnished by the Department. The fee required by AS 08.98.190 shall accompany the application form.

(b) An applicant may be required to furnish other information to demonstrate that he meets the minimum qualifications of AS 08.98.170.

(c) An application for examination must be postmarked no later than 60 days before the examination date. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)  
AS 08.98.070

12 AAC 68.020. TIME AND PLACE OF EXAMINATION. (a) The time and place of the examination will be published by all major newspapers, in the State of Alaska, at least six months before the examination date.

(b) The Department of Commerce will arrange for space in which the examination is given. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)  
AS 08.98.070

12 AAC 68.030. NOTIFICATION OF APPLICANTS. (a) All applicants will be notified in writing of the time and place of the examination by the Department of Commerce at least 10 days before the examination.

(b) An applicant will be advised by the department of his grade in writing no later than 60 days following the grading of the examination by the board. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)

12 AAC 68.040. APPLICATION FOR LICENSE. An application for a license is included on the same form used for the application for examination. Space is provided on the form to indicate whether licensing will be by examination or by waiver of examination. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060  
AS 08.98.210

ARTICLE 2. EVIDENCE OF  
INCOMPETENCE.

Section

50. Evidence of incompetence
60. Approved schools
70. Conflict of interest
80. Treatment of patients
90. Certificate of health
100. Confidential relationship
110. Testimonials
120. Soliciting

12 AAC 68.050. EVIDENCE OF INCOMPETENCE. The following conduct is considered evidence of incompetence of an applicant:

(1) a judgment of insanity by any competent court;

(2) a conviction of a violation of a federal or state law relating to narcotic drugs;

(3) a conviction of malpractice in veterinary medicine, surgery or dentistry. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060

12 AAC 68.060. APPROVED SCHOOLS. A school of veterinary medicine that is recognized and approved by the American Veterinary Medical Association is approved by the board. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(b)(2)

Editor's Note: A list of approved schools may be obtained from the American Veterinary Medical Association.

**12 AAC 68.070. CONFLICT OF INTEREST.** It is unprofessional to represent conflicting interest, except by express consent of all concerned, given after a full disclosure of the facts. A conflict of interest results when a veterinarian is employed by a buyer to inspect an animal for soundness or other reason, and he accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is evidence of unprofessional conduct for the purposes of AS 08.98.050. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050 (3) (E)  
AS 08.98.060 (b) (1)

**12 AAC 68.080. TREATMENT OF PATIENTS.** A licensed veterinarian shall exercise the degree of care, skill and diligence in treating patients that is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in the community in which he practices. Failure to comply with this section constitutes incompetence for the purpose of AS 08.98.050(3)(E). (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)  
AS 08.98.060(b)(1)

**12 AAC 68.090. CERTIFICATE OF HEALTH.** No licensed veterinarian may issue a certificate of health for an animal unless he performs the inspection and the appropriate tests it required. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)  
AS 08.98.060(b)(1)

**12 AAC 68.100. CONFIDENTIAL RELATIONSHIP.** A licensed veterinarian shall maintain a confidential personal relationship between himself and his client, or his client's authorized agent. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)  
AS 08.98.060(b)(1)

**12 AAC 68.110. TESTIMONIALS.** No licensed veterinarian may write testimonials endorsing proprietary remedies, instruments, equipment or food except that reports of the results of properly controlled experiments or clinical studies are permitted if given publicity through scientific journals or meetings. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)  
AS 08.98.060(b)(1)

**12 AAC 68.120. SOLICITING.** (a) No member of the veterinary profession may utilize the services of solicitors. No licensed veterinarian may participate in arrangements which share the proceeds from professional services with individuals who may have been instrumental in his having been selected to perform the particular service.

(b) A licensed veterinarian shall avoid the impropriety of employing questionable methods to attract public attention or claim to possess superior knowledge or skill in the treatment or prevention of a disease. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)  
AS 08.98.060(b)(1)

IV

STATE OF ALASKA  
Physical Therapy Board  
(August, 1978)

Findings

Governmental deregulation of the physical therapy profession would subject the public to potential danger from persons who are not required to meet minimum standards of proficiency. Physical therapy is performed at the direction of a physician and can be a prolonged process characterized by gradual physical improvement and frequently accompanied by substantial investments of time and money. Lack of quality control could result in considerable financial loss or physical injury among members of the general public. Unregulated and unqualified practitioners would be unhindered in practice and promises of physical aid that may be unrealistic or blatantly false. Regulation of this profession could, however, be accomplished without a State board by the administrative agency with appropriate statutory guidelines. If the Board is continued, recommendations are contained herein that would enhance its efficient functioning.

I. General Information

A. Regulated Parties

1. Physical Therapists
2. Physical Therapy Assistants

B. Statutory Definition of Regulated Profession

"(2) 'physical therapist' means a person who practices physical therapy;

(3) 'physical therapy' means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term 'physical therapy';

(4) 'physical therapy assistant' means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his responsibilities do not include testing or evaluation."

(AS 08.84.190)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

<u>Recently resigned</u> Chairman	ends September 1, 1977
Donna Klokkevold, RPT (Secy)	ends September 1, 1978
Richard Alsop, RPT	ends September 1, 1979
J. Michael James, M.D.	ends September 1, 1977
Edward Heuston	ends September 1, 1977

2. Representation:

Profession = 4 (includes one licensed physician)  
Public = 1

3. Qualifications:

"...The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person..." (AS 08.84.010)

D. Registration Data

Physical Therapists

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	3	3	0	100	-0-
1976	1	1	0	100	-0-
1977	3	2	1	67	33
1978	2	1	1	50	50

(through June 30)

Physical Therapy Assistants

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	0	0	0	-0-	-0-
1976	1	1	0	100	-0-
1977	0	0	0	-0-	-0-
1978	1	1	0	100	-0-

(through June 30)

Currently Registered:

Physical Therapists

in-State	=	87	(through June, 1978)
out-of State	=	<u>14</u>	(through June, 1978)
Total		101	

Physical Therapy Assistants

in-State	=	<u>2</u>
Total		2

E. Fees

1. application	\$25.00
2. registration by examination	25.00
3. registration by endorsement	25.00
4. biennial renewal	25.00
5. temporary permit	10.00
6. delinquent penalty	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$750.00	\$1,880.00	\$1,455.00	\$3,132.00
- refunds	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	\$750.00	\$1,880.00	\$1,455.00	\$3,132.00
Expenditures				
Per Diem	-	45.00	125.00	475.00
Transportation	-	168.30	86.64	516.51
Phone	16.20	43.75	74.52	107.95
Printing, Advert., Postage	-	212.33	242.52	371.13
Fees & Services	35.00	335.00	145.00	275.00
Rents, Leases, Other	16.30	-	-	-
Total	<u>\$ 67.50</u>	<u>\$ 804.38</u>	<u>\$ 673.68</u>	<u>\$1,745.59</u>
Surplus	\$682.50	\$1,075.62	\$ 781.32	\$1,386.41
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	1	1	0
1976	0	0	0
1977	0	0	0
1978	0	0	0
(through June)			
Pending:	0		

One complaint was received by the Office of the Ombudsman. This complaint was from an applicant charging that s/he was improperly denied licensure; the charge was determined to be justified and was rectified. One other complaint for practicing without a license received in 1975 had previously been referred to the Medical Board and is still pending.

H. Qualifications

Practitioners are required to have a Bachelor's degree (four-year program) from an approved school and work only under physician direction.

II. Criteria and Analysis

A. To what extent has the Physical Therapy Board operated in the public interest?

The statutory duties of the Board are to conduct examinations, control all matters pertaining to professional registration, issue, suspend or revoke registration certification, maintain current registration listings, and maintain records of its proceedings. The Board has no regulatory authority and, hence, has operated under the restrictive limitations of the foregoing duties.

A national examination for applicants has consistently been utilized by the Board. All applicants for registration, including those who are requesting licensure by endorsement, must have taken and passed this written examination with a minimal score of 70. The examination is given twice each year, is proctored by one or more members of the Board and is graded by the national testing service. No practical examination is given. The testing function could be assumed by the administrative agency.

Assuring competency of practitioners by utilizing nationally established testing standards and procedures is one method by which regulation operates in the public interest. Handicapped individuals or their relatives may be tempted to place their well being in the care of unqualified or unscrupulous persons who promise unrealistic help or cures. The result could be the loss of literally thousands of dollars and no assistance to the individual while actual physical harm could occur in the incorrect application of treatments such as those utilizing muscular exercise, heat, and electricity. The general public must be supplied with a measure for determining the qualifications of a person providing such services. Compliance with State requirements and subsequent registration controlling applicants for this profession function to protect the public health and safety.

Provisions for registration by endorsement and for issuance of temporary permits are found in the Board's statutes. These avenues of expeditious entry into the profession are utilized by the Board and are felt to be in keeping with the public interest by allowing opportunities for access to practitioners. Most licentiates within the State have been licensed by endorsement. Endorsement is allowed from any state whose registration requirements were substantially equal to those of Alaska at the date of the applicants' registration. Temporary permits may be, and are, issued to applicants who are otherwise qualified pending examination. Permits are valid for eight months or until the next examination results are

published - or until the endorsement application is considered by the Board - whichever occurs first. Foreign graduates must first be licensed in another state and must have passed the national examination to be eligible for endorsement in Alaska.

The Board has established a policy by which an applicant may take the examination an unlimited number of times. While it is felt to be advisable that an applicant who has failed the examination twice must obtain further qualifying training and/or experience, there is no authority for the Board to impose requirements of this kind.

There also is no authority for the Board to consider the subject of continuing education except as a policy matter. Valid arguments may be made against continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of this in a rural State where well developed systems of higher and/or professional education are virtually nonexistent, or of requiring professionals to go out-of-State to obtain education they cannot get here, must be weighed against whatever assurance there might be that incompetency will be significantly avoided or reduced by this method. It must be recognized, however, that there is a widespread trend toward continuing education requirements as a condition of license renewal and the Board should have the authority to consider the implications and implementation of such action.

If the Physical Therapy Board is allowed to terminate, continuing education should be delineated by statute to allow administration and determination of qualifications by the agency. If continued, it is recommended that the Physical Therapy Board be given the statutory authority to adopt regulations necessary and advisable to govern the practice of the profession within statutory limitations, including the matter of continuing education.

- B. To what extent has the operation of the Physical Therapy Board been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The operation of the Physical Therapy Board has been limited by the absence of statutory authority necessary to adopt regulations governing the profession and its practitioners. Procedures covering application for registration, codes of ethics, training functions and utilization of physical therapy assistants, and clarification of a supervisory relationship have been formulated as Board policies. These policies do not, however, have the sanctity of regulations. As previously noted, the Board may not consider or require continuing education as a condition for relicensure.

Present Board composition requires that only one public member may be appointed. This is not considered to enhance the public interest and accountability of the Board's operation. Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable lay members is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."<sup>1</sup> Shimberg and Roederer further indicate that,

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 9.

"... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." Public representation on the Board should be increased to two members for a public-profession ratio of 2:3.

A general review of Board statutes indicates a need to refine and define terms such as "habitually drunk," "immoral or unprofessional conduct," "moral turpitude" and "gross negligence." (AS 08.84.120)

The Physical Therapy Board has experienced some difficulty in its administrative operations with respect to budgetary matters. In an attempt to recognize and alleviate limitations, the Board recently resolved that a licensing examiner from the administrative agency need not be present at all Board meetings. (This is not in keeping with the policy of the administrative agency but is intended to demonstrate Board efforts with respect to minimizing expenditures.) The Board also has recently discussed the possibility of members not requesting transportation or per diem for meetings and has in fact refused this. (Again, this is contrary to administrative policy.) It is noted that prior to a 1977 statutory amendment, members of this Board were not entitled to a travel or per diem allowance by the Physical Therapist practice act.

Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs although employee turnover has not enhanced Board operations. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

Complaints received in relation to this profession would encounter the same difficulties as have those of all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

C. To what extent has the Physical Therapy Board recommended statutory changes which are generally of benefit to the public interest?

As with general statutory amendments recently made to many health care related boards, recent changes to these statutes included: deletion of the requirement that nominations to the Board be made only by the professional association, Medical Indemnity Corporation of Alaska provisions, applicability of the Administrative Procedure Act and minor "housekeeping" items.

No recommendations have been made by the Physical Therapy Board relating to statutory changes that would be of specific benefit to the public.

D. To what extent has the Physical Therapy Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance or participation at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

E. How efficiently are public inquiries or complaints regarding the activities of the Physical Therapy Board processed and resolved?

One complaint was received by the Office of the Ombudsman (in 1975) charging that an applicant was improperly denied licensure. This complaint was justified and resolved in a timely manner. Several references are found in the files of complaints made against a particular individual since 1975. These complaints also involve allegations of violations concerning the medical and chiropractic professions and action is still pending under jurisdiction of the Medical Board.

F. To what extent does the Physical Therapy Board present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Physical Therapy Board or any of its members. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. Two examinations each year are currently conducted and endorsement provisions are utilized. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Current Board practices which allow registration through endorsement and the issuance of temporary permits are conducive to entry into the profession, provide opportunity for availability and public access to services and could as well be agency administered. Qualifications delineated for these methods are designed to assure competency sufficient to meet minimal practicing standards.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Physical Therapy Board in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Physical Therapy Board issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Physical Therapy Board to better serve the interests of the public?

If continued, the Board should be authorized to promulgate and adopt regulations necessary and advisable to govern the practice of physical therapists and physical therapy assistants in the State within statutory guidelines. Areas which should be considered by the Board include: a limitation on the number of times an applicant may fail the examination before further study is required, continuing education/competency requirements, functions and training of physical therapy assistants and definitions of "supervision," "immoral or unprofessional conduct," "moral turpitude" and "gross negligence."

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>2</sup> It is, therefore, recommended that public membership on the board be increased to two, with three professional members and that number of terms or of consecutive terms be limited.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations and the costs of Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses.

### III. Conclusion

Regulation of this profession is determined to function in the protection of the public health, safety and welfare and could be accomplished by the administrative agency.

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<sup>2</sup>Ibid, Shimbeg & Roederer, p. 20.

#### IV. Summary of Recommendations

- A. The Physical Therapy Board should be allowed to terminate and the functions of examining and licensing should be assumed by the administrative agency with appropriate statutory guidelines.
- B. If the Physical Therapy Board is reestablished for an additional four-year period, the following recommendations are made:
1. It is recommended that the Physical Therapy Board be given authority to promulgate and adopt appropriate regulations. The Board may then consider advisable and needed regulations such as those concerning:
    - a. a limitation on the number of times an applicant may fail an examination before s/he must obtain further training, (See discussion on p. 9)
    - b. continuing education requirements, (See discussion on p. 9)
    - c. form and procedures for licensure applications,
    - d. the functions and scope of activities for physical therapy assistants, and
    - e. the definition and scope of activity of a supervisory relationship. (See discussion on p. 10)
  2. Terms such as "habitually drunk," "immoral or unprofessional conduct," "moral turpitude," and "gross negligence," should be refined and/or defined. (See discussion on p. 11)

3. The ratio of lay persons to professional members of the board should be increased. It is recommended that public membership be increased to two and that number of terms or consecutive terms be limited. (See discussion on p. 10)

## Chapter 84. Physical Therapists Practice Act.

### Article

1. State Medical Board (§§ 08.84.010 — 08.84.020)
2. Registration (§§ 08.84.030 — 08.84.120)
3. Unlawful Acts (§§ 08.84.130 — 08.84.185)
4. General Provisions (§§ 08.84.190 — 08.84.200)

### Article 1. State Medical Board.

#### Section

10. State Physical Therapy Board
20. Applicability of Administrative Procedure Act

**Sec. 08.84.010. State Physical Therapy Board.** (a) There is created the State Physical Therapy Board, which consists of five members appointed by the governor. The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person. Members of the board shall be appointed for terms of one, two and three years, respectively; all subsequent appointments shall be made for a term of three years and until their successors are appointed.

(b) The Physical Therapy Board shall conduct examinations for applicants and shall control all matters pertaining to the registration of physical therapists and physical therapy assistants and the practice of physical therapy. The board shall

- (1) pass upon the qualifications of applicants;
- (2) conduct examinations;
- (3) issue temporary permits and registration certificates to physical therapists and physical therapy assistants qualified under this chapter;
- (4) suspend or revoke registration certificates, when necessary;
- (5) keep a current register listing the name, business address, date and number of registration certificate of each physical therapist and physical therapy assistant who is registered to practice in this state;
- (6) keep a record and minutes of its meetings, proceedings and hearings. (§ 15 ch 74 SLA 1957; am § 8 ch 49 SLA 1969; am § 1 ch 71 SLA 1974; am § 1 ch 208 SLA 1975; am § 2 ch 43 SLA 1977)

**Effect of amendments.** — The 1974 amendment rewrote this section.

The 1975 amendment substituted "American Physical Therapy Association" for "American Physical Therapist Association" at the end of the former third sentence of subsection (a).

The 1977 amendment, in subsection (a), deleted the former third, fifth, and sixth sentences, which read, respectively, "The members shall be selected from a list of 10

persons which shall be submitted by the Alaska Chapter of the American Physical Therapy Association", "Vacancies on the board shall be filled by appointment in like manner", and "Board members are not entitled to a travel or per diem allowance."

**Legislative committee report.** — For report on ch. 43, SLA 1977 (SB 110), see 1977 Senate Journal, p. 173.

**Am. Jur. reference.** — 41 Am. Jur., Physicians and Surgeons, § 31.

**Sec. 08.84.020. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62).

## Article 2. Registration.

Section	Section
30. Qualifications for registration	80. Examinations
35. Malpractice insurance	90. Registration
40. Application for registration	100. Renewal of registration
50. Fees	110. [Repealed]
60. Registration by endorsement	120. Refusal, revocation and suspension of registration
65. Temporary permit	
70. [Repealed]	

**Sec. 08.84.030. Qualifications for registration.** To be eligible for registration by the board as a physical therapist or physical therapy assistant, an applicant shall

(1) be of good moral character;

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination from the Professional Examination Service Association, to determine his fitness for practice as a physical therapist or physical therapy assistant, or be entitled to registration without examination as provided in § 60 of this chapter. (§ 3 ch 74 SLA 1957; am §§ 1, 8 ch 49 SLA 1969; am §§ 1, 2 ch 26 SLA 1970; am § 25 ch 245 SLA 1970; am § 2 ch 71 SLA 1974; am § 2 ch 208 SLA 1975)

**Effect of amendments.** — The 1974 amendment repealed and re-enacted this section, renumbering the paragraphs and inserting "or physical therapy assistant" in the introductory language and in present paragraph (3).

The 1975 amendment substituted "Professional Examination Service

Association" for "professional examination service of the American Public Health Association" in paragraph (3).

**Legislative committee report.** — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

**Sec. 08.84.035. Malpractice insurance.** If medical malpractice insurance for physical therapists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of physical therapist services to the public, the director of insurance may require all persons registered under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of registration under this chapter. The provisions of this section are satisfied if the registrant's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 29 ch 102 SLA 1976)

**Sec. 08.84.040. Application for registration.** To be registered as a physical therapist or physical therapy assistant, an applicant shall apply to the board on a form prescribed by the board. An applicant shall include in his application, evidence under oath that he possesses the qualifications required by § 30 of this chapter. (§ 4 ch 74 SLA 1957; am § 3 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted "or physical therapy assistant" in the first sentence.

**Sec. 08.84.050. Fees.** The following fees shall be imposed under this chapter when applicable:

- (1) application . . . . . \$25
  - (2) registration by examination . . . . . 25
  - (3) registration by endorsement . . . . . 25
  - (4) biennial renewal . . . . . 25
  - (5) temporary permit . . . . . 10
- (§ 4 ch 74 SLA 1957; am § 2 ch 49 SLA 1969; am § 3 ch 26 SLA 1970)

**Sec. 08.84.060. Registration by endorsement.** The board may register without examination an applicant who is a physical therapist or physical therapy assistant registered under the laws of another state or territory, if the requirements for registration in that state or territory were, at the date of his registration, substantially equal to the requirements in this state. (§ 6 ch 74 SLA 1957, am § 4 ch 26 SLA 1970; am § 4 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted "or physical therapy assistant" near the middle of the section.

**Sec. 08.84.065. Temporary permit.** (a) The board may issue a nonrenewable temporary permit to an applicant for registration by endorsement or by examination who meets the requirements of § 30(1) and (2) of this chapter and pays the required fee.

(b) A temporary permit issued to an applicant for registration by endorsement is valid for eight months or until the board considers the applicant's endorsement application, whichever occurs first.

(c) A temporary permit issued to an applicant for registration by examination is valid for eight months or until the results of the first examination for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take the first examination for which he is scheduled his temporary permit lapses on the day of the examination. (§ 5 ch 26 SLA 1970; am § 5 ch 71 SLA 1974; am § 3 ch 208 SLA 1975)

**Effect of amendments.** — The 1974 amendment substituted "registration" for "licensure" in subsections (a) and (b) and in the first sentence of subsection (c).

The 1975 amendment substituted "§ 30(1) and (2)" for "§ 30(1), (2) and (3)" in subsection (a).

**Sec. 08.84.070. Registration fee.**  
Repealed by § 8 ch 49 SLA 1969.

**Editor's note.** — The repealed section derived from § 6, ch. 74, SLA 1957.

**Sec. 08.84.080. Examinations.** (a) The board shall examine applicants for registration as physical therapists or physical therapy assistants at the times and places it determines.

(b) An application for examination shall be submitted to the department at least 40 days before the examination date. (§ 7 ch 74 SLA 1957; am § 3 ch 49 SLA 1969; am § 6 ch 26 SLA 1970; am § 6 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment, in subsection (a), inserted "or physical therapy assistants" and deleted the former second sentence.

**Sec. 08.84.090. Registration.** The board shall register an applicant who meets the qualifications for registration under this chapter. It shall issue a certificate of registration to each person registered. A certificate of registration is prima facie evidence of the right of the person to represent himself as a registered physical therapist or registered physical therapy assistant. (§ 8 ch 74 SLA 1957; am § 7 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment added "or registered physical therapy assistant" to the end of the third sentence.

**Sec. 08.84.100. Renewal of registration.** (a) A registered physical therapist or physical therapy assistant shall renew his registration biennially with the Department of Commerce and Economic Development on or before the date set by the department under AS 08.01.100(a). If the registration is not renewed on or before that date, it lapses.

(b) A penalty of \$10 shall be charged in addition to all delinquent renewal fees for reinstatement of registration which remains lapsed for more than 60 days. If the registration remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under § 30(3) of this chapter. (§ 9 ch 74 SLA 1957; am § 4 ch 49 SLA 1969; am § 8 ch 71 SLA 1974; am § 4 ch 208 SLA 1975; am § 54 ch 218 SLA 1976)

**Effect of amendments.** — The 1974 amendment inserted "or physical therapy assistant" near the beginning of the first sentence of subsection (a).

The 1975 amendment substituted "§ 30(3)" for "§ 30(4)" in the second sentence of subsection (b).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the first sentence of subsection (a).

**Sec. 08.84.110. Renewal fee.**

Repealed by § 8 ch 49 SLA 1969.

**Editor's note.** — The repealed section derived from § 9, ch. 74, SLA 1957.

**Sec. 08.84.120. Refusal, revocation and suspension of registration.**

The board may refuse to register an applicant, may refuse to renew the registration of a person, and may suspend or revoke the registration of a person who

- (1) is habitually drunk or addicted to the use of narcotic drugs;
- (2) is, in the judgment of the board, guilty of immoral or unprofessional conduct;
- (3) has been convicted of violating a state or federal narcotic law;
- (4) has been convicted of a crime involving moral turpitude;
- (5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;
- (6) has obtained or attempted to obtain registration by fraud or material misrepresentation;
- (7) has been declared mentally ill by a court and has not thereafter been lawfully declared sane; or
- (8) has treated or attempted to treat ailments of human beings otherwise than by physical therapy, or has attempted to practice independent of the prescription and direction of a person licensed to practice medicine or osteopathy;
- (9) as a physical therapy assistant, has attempted to practice physical therapy which has not been initiated, supervised and terminated by a registered physical therapist. (§ 10 ch 74 SLA 1957; am § 5 ch 49 SLA 1969; am § 9 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment added paragraph (9).

Cited in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

**Article 3. Unlawful Acts.**

**Section**

- 130. False claim of registration forbidden
- 140. Penalty for fraud in obtaining registration
- 150. Registration of physical therapists
- 160. Practice of registered physical therapist

**Section**

- 170. Penalty
- 180. Investigation by board
- 185. Limits or conditions on license; discipline

**Sec. 08.84.130. False claim of registration forbidden.** (a) A person not registered as a physical therapist, or whose registration is suspended or revoked, or whose registration is lapsed, who uses in connection with his name the words or letters "R.P.T.," "Registered Physical Therapist," or other letters, words, or insignia indicating or implying that he is a registered physical therapist, or who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapist is guilty of a misdemeanor.

(b) A person not registered as a physical therapy assistant, or whose registration is suspended or revoked, or whose registration is lapsed, who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapy assistant is guilty of a misdemeanor. (§ 11 ch 74 SLA 1957; am § 10 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment designated the provisions of this section as subsection (a) and added subsection (b).

**Sec. 08.84.140. Penalty for fraud in obtaining registration.** A person who wilfully makes a false oath or affirmation or who obtains or attempts to obtain registration by a fraudulent representation is guilty of a misdemeanor. (§ 12 ch 74 SLA 1957)

**Sec. 08.84.150. Registration of physical therapists.** (a) It is unlawful for anyone to practice physical therapy without being registered in accordance with this chapter.

(b) A person practicing physical therapy without being registered on April 27, 1969 may continue to practice for a period of six months. At the end of that period he must be registered under § 90 of this chapter in order to continue to practice physical therapy in the state. (§ 14 ch 74 SLA 1957; am § 6 ch 49 SLA 1969)

**Sec. 08.84.160. Practice of registered physical therapist.** A person registered under this chapter may not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person licensed to practice medicine or osteopathy. This chapter does not authorize any person to practice medicine, osteopathy, chiropractic, or other method of healing. A person who violates this section is guilty of a misdemeanor. (§ 13 ch 74 SLA 1957; am § 7 ch 49 SLA 1969)

**Sec. 08.84.170. Penalty.** A person who violates this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than 30 days. (§ 17 ch 74 SLA 1957)

**Sec. 08.84.180. Investigation by board.** The board shall investigate every supposed violation of this chapter coming to its notice and shall report all cases which in the judgment of the board warrant prosecution to the proper law enforcement officials. (§ 17 ch 74 SLA 1957)

**Sec. 08.84.185. Limits or conditions on license; discipline.** (a) In addition to action under § 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a registration.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 29 ch 102 SLA 1976)

#### **Article 4. General Provisions.**

##### **Section**

190. Definitions

200. Short title

**Sec. 08.84.190. Definitions.** As used in this chapter, unless the context otherwise requires,

(1) "board" means the State Physical Therapy Board;

(2) "physical therapist" means a person who practices physical therapy;

(3) "physical therapy" means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term "physical therapy";

(4) "physical therapy assistant" means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his responsibilities do not include testing or evaluation. (§ 2 ch 74 SLA 1957; am § 11 ch 71 SLA 1974)

**Effect of amendment.** — The 1974 amendment substituted "State Physical Therapy Board" for "State Medical Board" in paragraph (1), inserted "and physical

therapy evaluation, treatment planning, instruction and consultative services" in paragraph (3), and added paragraph (4).

**Sec. 08.84.200. Short title.** This chapter may be cited as the Physical Therapists Practice Act. (§ 1 ch 74 SLA 1957)

11

STATE OF ALASKA  
Board of Examiners in Optometry  
(September, 1978)

Findings

Research and interviews conducted in the preparation of this review indicated that State regulation of this profession is justified, however, regulation through a Board of Optometry is unnecessary. Potential damage to a consumer is possible in some cases. The financial investment is not unduly large. The total number of licensees is small (37 in-State). Dissolution of the Board of Examiners in Optometry and assumption of the examination and licensing functions by the administrative agency would adequately serve the physical health and well being of the general public. It is therefore recommended that the Board of Examiners in Optometry be allowed to terminate on June 30, 1979. However, should retention and reestablishment of the Board be determined to be in the public interests, recommendations are made throughout this report which would contribute to efficiency of its operation.

I. General Information

A. Regulated Parties

1. Optometrists

B. Statutory Definition of Regulated Profession

"(2) 'optometry' is the employment of means or methods, other than the use of drugs, for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;

(3) 'practicing optometry' means the diagnosis by means or methods other than the use of drugs, of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;" (AS 08.72.300)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Curtis M. Johnson, OD (Chairman)	ends June 15, 1978
Timothy B. McLaughlin, OD	ends June 15, 1979
John T. Shank, OD	ends June 15, 1980
Thomas Kinsella	ends June 15, 1978
(Unfilled term since 11-76)	

2. Representation:

Profession = 3  
Public = 2 (by statute)

3. Qualifications:

"Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry." (AS 08.72.040)

D. Registration Data

By Examination

Year	# of Candidates	# passed	# failed	% passed	% failed
1975	2	1	1	50	50
1976	7	7	0	100	0
1977	5	5	0	100	0
1978	4	4	0	100	0

Currently registered:

in-State = 37 (through June, 1978)  
out-of-State = 8 (through June, 1978)  
Total 45

E. Fees

1. examination	\$35.00
2. reexamination	25.00
3. waiver	25.00
4. certificate	50.00
5. biennial renewal	50.00
6. branch office registration	25.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$2,190.00	\$ 630.00	\$2,800.00	\$ 795.00
- Refunds	<u>110.00</u>	<u>100.00</u>	<u>175.00</u>	<u>-</u>
Total	2,080.00	530.00	2,625.00	795.00
Expenditures				
Per Diem	558.00	900.00	837.50	1,991.84
Transportation	722.15	577.93	613.07	2,306.22
Phone	20.50	5.10	40.30	67.70
Printing, Advert. & Postage	25.40	330.16	179.16	488.65
Fees & Services	50.00	765.00	50.00	50.00
Rents, Leases, Other	<u>400.00</u>	<u>-</u>	<u>200.00</u>	<u>800.00</u>
Total	<u>\$1,776.05</u>	<u>\$2,578.19</u>	<u>\$1,920.03</u>	<u>\$5,704.41</u>
Surplus	303.95	-	704.97	-
Deficit	-	2,048.19	-	4,909.41

(EXCLUDING DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	3	0	0
1976	2	1	0
1977	10	0	0
1978	3	0	0
(through June)			

Pending: 17

An additional complaint was filed against the Board by an unsuccessful applicant for licensure. The applicant was given a failing grade, the case went to litigation and the Board agreed to pass and license the applicant largely because the oral examination contained unspecified subject matter that the candidate had not been notified would be included.

## II. Criteria and Analysis

### A. To what extent has the Board of Examiners in Optometry operated in the public interest?

The Board of Examiners in Optometry has the authority to adopt rules and regulations necessary for the performance of its duties, governing applicants and applications, registering of optometrists and governing the practice of optometry. It may define and adopt rules of professional conduct.

Included in statutory powers given to the Board is the authority to issue branch office certificates of registration to "an Alaskan licensee who maintains a full-time practice in the state but who serves other communities in the state on a part-time basis..." (AS 08.72.125). The Board is charged with the responsibility of prescribing factors to be considered in the issuance of branch office certificates. It appears, however, that the Board has far exceeded its authority in regulations and practices concerning branch office certificates the issuance of which is intended to provide public services.

Board files indicate that a number of applications for branch office registration have been turned down by the Board on the basis that another practitioner already has a branch office in the subject community. A review of current branch office licenses revealed that two practicing optometrists have branch offices in the same two communities. Another

application was refused because the Board determined that the community which was to be served was accessible to a larger community by road. A branch office registration was subsequently issued to another applicant for the same community. Additionally, the Board has periodically demanded that an applicant "explain his reasons" for wanting to establish a branch office practice but this requirement has not been applied to all applicants. Pertaining to branch office certificates, 12 AAC 48.030(a) states in part, "A branch office certificate may be issued for the purpose of servicing some community in the state which cannot support an optometrist and which can be shown to the satisfaction of the board to need the service of a licensed optometrist on a part-time basis may be issued a semiannual branch office certificate of registration..." (emphasis added). 12 AAC 48.030(b) states: "No branch office certificate will be issued in a community where a full-time optometric practice is available, and any certificate in force when a full-time practice is established will not be renewed." In October of 1977, an Attorney General's opinion was issued in which the Board was advised that such "obvious anticompetitive implications" restrict part-time practice to communities incapable of supporting a full-time practice and prevent a part-time practice in a community capable of supporting a full-time practice. This opinion further advised "that the board conduct a thorough review of its branching regulations so that it might consider the anticompetitive consequences of its regulations, weigh them against the public interest in maintaining the restrictions in their present form and consider substituting less restrictive alternatives in their stead." The Board has apparently chosen to ignore this advice and continues to restrict the availability of optometric services to the public. It also appears to have gone even further in inconsistent application of its restrictive practices by arbitrarily denying one application and granting another as previously noted.

Branch office certificates have also been transferred or sold with a practice by one practitioner to another. This is in conflict with statutes in that certificates are issued to a licensee, not a practice. If a certificate holder discontinues his practice for some reason, his successor or any other interested licensee should be allowed and required to apply for certification.

AS 08.72.140 sets out qualifications of an applicant for examination which require that (s)he must have "normal color perception and a visual acuity of a standard of at least 20/40 in at least one eye as corrected" and that (s)he must not be "afflicted with a contagious or infectious disease." Application forms do not address these items and there is no record of any applicant ever having complied or having submitted evidence of compliance with the statute. There also is no record of Board consideration and/or approval based on any evidence or statement of compliance from the applicant nor is there any record of continued compliance.

An applicant for examination must also be a graduate of a "recognized" school or college of optometry. Applicants may be, and have been, approved for examination without a Doctor of Optometry degree. These applicants have graduated from science curriculums with a major in optometry. The Board has never formally established what is considered to be a "recognized" school or college, however, it has rejected applicants who (1) did not graduate from an "accredited" school or (2) did not graduate from a "United States" school. In the absence of regulations specifying "accredited" or "recognized" schools, the Board has again exceeded its authority in the arbitrary granting of examination privileges.

"The examination shall be written, practical, and oral in nature. The oral portion of the examination shall be recorded and retained for two years" AS 08.72.160(a). It is difficult to comment on observed aspects of the Board administered examinations because licensing examiners from the administrative agency have been overtly and specifically barred from this procedure by the Board. Files maintained by the agency present the only substantive record of examination proceedings and are inadequate in documentation. Again, the Board has not adopted formal regulations and/or procedures covering the content or grading of examinations.

The first record in Board minutes of a Board administered written examination appears in 1976. However, this may be because the Board previously required only that the applicant had taken and passed the national examination. One unsuccessful candidate filed charges and was ultimately granted a license because the national examination may have been improperly scored and because he had not been notified that the Board would be testing on Alaska Statutes. Questions asked by the Board, and on which candidates are graded, include: (1) "How many members on the Optometry Board?", and (2) "What are the qualifications to be a member of the Board?". These types of questions do not constitute valid measures of competency nor do they elicit an applicant's knowledge of his responsibilities under the law.

While there is no requirement that applicants must have taken and passed the National Board Examination, some have been denied the Alaska examination on that basis. Portions of examination and scoring sheets are at times missing from the files and some scoring sheets were not completed by the examiners. The statutory requirement that oral examinations be recorded and retained for two years has apparently not been complied with.

"Before a license may be renewed the licensee shall submit to the board evidence of 24 hours post graduate education as prescribed by regulations of the board" AS 08.72.181(d). The Board has adopted broad criteria for acceptable post graduate education, including all those programs recognized and approved by the Board. The Board has never refused or questioned any submission. While the statute plainly states that 24 hours of post graduate education shall be submitted as a condition of relicensure, the Board has chosen to waive this requirement. Requirements for licensees who were initially licensed within the two year period prior to renewal have been waived. In a few instances, relicensure was granted to those who either did not comply with the requirements or who submitted a fewer number of hours than those required

without any documentation showing that they were prevented from compliance. "24 hours" has apparently been interpreted to mean either clock hours or credit hours. Forms submitted to verify completion of courses have been accepted without the licensees' name, without the licensees' signature and without an instructor's signature or initials. Notes and letters from various sources have been accepted as verification of attendance. The authority to adopt regulations exempting recent licensees and those who have compelling reasons prohibiting compliance is questionable under the statutory wording. This type of regulation is considered to be reasonable, however, it has not been done. The Board presently has no authority to waive the statutory requirements for continuing education as a condition of relicensure.

Arbitrary standards and procedures by which the Board purports to determine qualifications and competency of applicants and practitioners do not operate in the public interest. Statutory requirements, such as those concerning continuing education and health standards for applicants, are designed to insure a satisfactory level of care quality and availability which is not achieved unless applied consistently as directed.

In response to recent court decisions and concern regarding anticompetitive advertising restrictions, the Federal Trade Commission in May of 1978 adopted a final Trade Regulation Rule:

"It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:

- (a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

- (b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist." 16 C.F.R. § 456.3

Recent regulations adopted by the Board in April, 1978 are designed to allow competitive but ethical and professional advertising. This subject is being further addressed by the administrative agency with respect to all boards and commissions under its jurisdiction.

- B. To what extent has the operation of the Board of Examiners in Optometry been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Statutory provisions for the Board and the profession are considered to be adequate. The public participation intended for this Board has been somewhat limited by the presence of only one public member as opposed to two authorized by the Legislature in 1976.

Restrictive policies of the Board in issuing branch office certificates are not conducive to provision of services to the public. Practitioners are discouraged from competing in the profession and in the quality of services offered. Some communities either have no choice of practitioners or are only served sporadically.

The Board of Examiners in Optometry has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs except that employee turnover has impeded continuity and follow through on Board requests and actions. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Research and record keeping procedures within the administrative agency are now being developed. Noted deficiencies are partially due to the fact that some materials have been forwarded to the Board rather than to the administrative agency. Organization of records, forms and examination information would better enable the Board to perform its functions.

The Board of Examiners in Optometry has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

C. To what extent has the Board of Examiners in Optometry recommended statutory changes which are generally of benefit to the public interest?

Legislation enacted recently with respect to this profession concerned: (1) Board membership, appointment and term of office; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; and (4) general "housekeeping" items.

In the 1978 Legislative session, a bill was introduced which would have given selective authority for optometrists to administer diagnostic drugs. This bill did not get out of the committee and was not acted upon.

No recommendations were made by the Board of Examiners in Optometry relating to statutory changes that would be of specific benefit to the public.

- D. To what extent has the Board of Examiners in Optometry encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Public interest and participation in Board activities has been hampered by the absence of one of the public members authorized by the Legislature in 1976.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>1</sup>

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Examiners in Optometry processed and resolved?

Most complaints received against members of the optometry profession were allegations of improper prescriptions or fit, over charging, and prescribing glasses unnecessarily. One unsuccessful candidate for licensure filed charges against the Board and was subsequently licensed due to questionable testing procedures. Only one case out of 18 received since 1975 had been closed as of June 30, 1978. None of the complaints involved physical damage or danger to members of the public.

- F. To what extent does the Board of Examiners in Optometry present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Examiners in Optometry. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently conducted, monitored and graded by the Board. Applicants who demonstrate a required level of knowledge and proficiency are issued a license.

Current regulations of the Board which restrict temporary permits, restrict services to communities that are incapable of supporting a full-time practice and prohibit practice under a corporation or voluntary association, in conjunction with arbitrary granting of examination and licensure privileges, do not function to present qualified applicants and availability of services to the public.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Examiners in Optometry in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for four other regulated professions) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Examiners in Optometry issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Examiners in Optometry to better serve the interests of the public?

In view of the functions of this Board and the relatively few professional members that are regulated (45 in-and out-of-State), it is felt that present statutes are generally adequate with minor exceptions if the Board is reestablished. Specific statutory language which would grant appropriate exemptions under the continuing education requirements would eliminate any misinterpretation of its applicability. The Board should promulgate and adopt regulations covering examination content and grading procedures and what is considered to be an approved school when applying for licensure.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary, examination expenses, and investigative services.

### III. Conclusion

The regulatory functions of the Board of Optometry could be adequately performed by the administrative agency. Examination and licensure of practitioners is determined to be desirable due to the nature of the profession and the fact that optometrists may diagnose deficiencies, deformities or anomalies of the eye.

### IV. Summary of Recommendations

- A. The Board of Examiners in Optometry should be allowed to terminate on June 30, 1979, and the functions of examining and licensing should be assumed by the administrative agency.

Technical expertise could be provided by members of the profession if needed periodically.

- B. If the Board of Examiners in Optometry is reestablished for an additional four-year period, the following recommendations are made:

1. The Board should consistently and appropriately grant examination and licensing privileges based on statutory qualifications for applicants. (See discussion beginning on p. 5)
2. Examination tapes, records and materials should be maintained by the administrative agency as should all records pertaining to Board activities and licensees.
  - a. Procedures should be established which cover procedures for content and grading of examinations.

- b. Only questions relevant to competency and job performance should be included in examination. (See discussion on p. 7 & 8)
3. All restrictions regarding the issuance of branch office certificates should be deleted from Board regulations and certificates should be issued only as allowed by statute.

The Board should also reconsider its regulatory prohibition against employment of optometrists by a corporation or voluntary association. (See discussion on p. 5)

4. The Board should enforce statutory requirements with respect to visual and health standards for licentiates and should consider methods of ongoing compliance documentation. (See discussion on p. 7)
5. The Board should define what will be accepted as a "recognized school or college of optometry" and do so in consideration of AS 08.72.170(2) which allows waiver of examination to qualified applicants licensed in a foreign country. (See discussion on p. 7)
6. Definite statutory language should be implemented which specifically addresses possible exceptions to the requirements for continuing education as a consideration of relicensure. (See discussion on p. 8)
7. Operation of the Board and public representation/participation would be enhanced by inclusion on the Board of the second public member authorized by the Legislature in 1976. Terms of all members should be restricted to one unless initially appointed to fill a vacancy or following a term of absence. (See discussion on p. 10 and 12)

Advertising of Ophthalmic Goods and Services

§ 456.1 Definitions

- (a) A "buyer" is any person who has had an eye examination.
- (b) The "dissemination of information" is the use of newspapers, telephone directories, window displays, signs, television, radio, or any other medium to communicate to the public any information, including information concerning the cost and availability of a product or service.
- (c) An "eye examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.
- (d) "Ophthalmic goods" consist of eyeglasses, or any component of eyeglasses and contact lenses.
- (e) "Ophthalmic services" are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.
- (f) A "person" means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, and professional associations.
- (g) A "prescription" is the written specifications for ophthalmic lenses which are derived from an eye examination. The prescription shall contain all of the information necessary to permit the buyer to obtain the necessary ophthalmic goods from the seller of his choice. In the case of a prescription for contact lenses, the refractionist must include in the prescription only those measurements and directions which would be included in a prescription for spectacle lenses.

All prescriptions shall include all of the information specified by state law, if any.

(h) A "refractionist" is any Doctor of Medicine, Osteopathy or Optometry or any other person authorized by state law to perform eye examination.

(i) A "seller" is any person, or his employee or agent, who sells or provides ophthalmic goods and services directly to the public.

§ 456.2 Private Conduct

(a) It is an unfair act or practice for sellers to fail to disseminate information concerning ophthalmic goods and services notwithstanding state or local law to the contrary. PROVIDED: Violation of this subpart by any seller acting alone shall not be deemed to be a violation of Section 5(a)(1) of the Federal Trade Commission Act.

To prevent this unfair act or practice, any seller may engage in the dissemination of information concerning ophthalmic goods and services subject to the limitations expressed in Section 456.5 below.

(b) It is an unfair act or practice for refractionists to fail to disseminate information concerning eye examinations notwithstanding state or local law to the contrary. PROVIDED: Violation of this subpart by any refractionist acting alone shall not be deemed to be a violation of Section 5(a)(1) of the Federal Trade Commission Act.

To prevent this unfair act or practice, any refractionist may engage in the dissemination of information concerning eye examinations. Nothing in this subpart shall excuse a refractionist from compliance with any state or local law which permits the dissemination of information concerning eye examinations, including information on the cost

and availability of those examinations, but requires that specified affirmative disclosures also be included.

§ 456.3 Public Restraints

It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:

(a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist. PROVIDED: Nothing in subpart (b) shall be construed to prohibit the enforcement of a state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosure also be included.

Violation of subparts (a) and (b) shall not be deemed for purposes of Section 5(m)(1)(A) or Section 19 of the Federal Trade Commission Act to be a violation of Section 5(a)(1) of the Act.

§ 456.4 Conformance to State Law

It is an unfair act or practice under Section 5 of the Federal Trade Commission Act:

(a) for any seller to reduce, limit, or burden the dissemination of information concerning ophthalmic goods and services in order to comply with any law, rule, regulation or code of conduct of any non-

federal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information, or

(b) for any refractionist to reduce, limit, or burden the dissemination of information concerning eye examinations in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information. PROVIDED: To the extent that a state or local law, rule, or regulation permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, compliance with that law or regulation shall not be construed to reduce, limit or burden the dissemination of information concerning eye examinations.

§ 456.5 Permissible State Limitations

(a) To the extent that a state or local law, rule, or regulation requires that any or all of the following items be included within any dissemination of information concerning ophthalmic goods and services, such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information:

(1) whether an advertised price includes single vision and/or multifocal lenses;

(2) whether an advertised price for contact lenses refers to soft and/or hard contact lenses;

(3) whether an advertised price for ophthalmic goods includes an eye examination;

(4) whether an advertised price for ophthalmic goods includes all dispensing fees; and

(5) whether an advertised price for eyeglasses includes both frames and lenses.

(b) Where a state or local law, rule or regulation applies to all retail advertisements of consumer goods and services (including a law, rule, or regulation which requires the affirmative disclosure of information or imposes reasonable time, place and manner restrictions), such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.

(c) If, upon application of an appropriate state or local governmental agency, the Commission determines that any additional requirement of any such state or local governmental agency deemed by that agency to be necessary to prevent deception or unfairness is reasonable and does not unduly burden the dissemination of information, then that requirement shall be permitted to the extent specified by the Commission.

§ 456.6 Private Restraints

(a) It is an unfair act or practice for any person, other than a state or a political subdivision of agency thereof, to prohibit, limit or burden:

(1) the dissemination of information concerning ophthalmic goods and services by any seller;

(2) the dissemination of information concerning eye examinations by any refractionist. PROVIDED: Nothing in this subpart shall be construed to prohibit any person from imposing reasonable affirmative disclosure requirements on the dissemination of information concerning eye examinations.

(b) Any organization or association which is not composed primarily of sellers and/or refractionists, which adopts or enforces self-regulatory guidelines for the dissemination of information which apply to all retail advertisements of consumer goods and services, shall not be deemed to be in violation of this subpart.

(c) The conditioning of membership in a professional or trade association of sellers or refractionists on a requirement that members or prospective members of that association not engage in the dissemination of information concerning ophthalmic goods and services and eye examinations or a requirement that ophthalmic goods and services be advertised only in a prescribed manner shall be deemed to prohibit, limit or burden the dissemination of that information.

§ 456.7 Separation of Examination and Dispensing

In connection with the performance of eye examinations, it is an unfair act or practice for a refractionist to:

(a) fail to give to the buyer a copy of the buyer's prescription immediately after the eye examination is completed. PROVIDED: A refractionist may refuse to give the buyer a copy of the buyer's prescription until the buyer has paid for the eye examination but only if that refractionist would have required immediate payment from that buyer had the examination revealed that no ophthalmic goods were required;

(b) condition the availability of an eye examination to any person on a requirement that that person agree to purchase any ophthalmic goods from the refractionist;

(c) charge the buyer any fee in addition to the refractionist's examination fee as a condition to releasing the prescription to the buyer. PROVIDED: A refractionist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) place on the prescription, or require the buyer to sign, or deliver to the buyer a form or notice waiving or disclaiming the liability or responsibility of the refractionist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.8 Federal or State Employees

Nothing in this part shall be construed to prohibit any federal, state or local governmental entity from adopting and enforcing standards or requirements concerning the dissemination of information and release of prescriptions by sellers or refractionists employed by those governmental entities.

§ 456.9 Declaration of Commission Intent

(a) It is the purpose of this part to allow retail sellers of ophthalmic goods and services to disseminate information concerning those goods and services in a fair and nondeceptive manner to prospective purchasers. This part is intended to eliminate certain restraints, burdens, and controls imposed by state and local governmental action as well as by private action on the dissemination of information, including advertising, concerning ophthalmic goods and services.

It is the intent of the Commission that this part shall preempt all state and local laws, rules, or regulations that are repugnant to this part, and that would in any way prevent or burden the dissemination of information by retail sellers of ophthalmic goods and services to prospective purchasers, except to the extent specifically permitted by this part. All state or local laws, rules, or regulations which burden the dissemination of information by requiring affirmative disclosure specifically addressed to ophthalmic goods and services are preempted, except for those specifically permitted by this part. State and local laws,

rules, or regulations which apply to advertising of all consumer goods and services, including those that require affirmative disclosure of information, are not preempted.

(b) It is the Commission's intent that state laws which do not permit refractionists to disseminate information concerning eye examinations, including information concerning the cost and availability of those examinations, be preempted. State and local laws, rules or regulations which require affirmative disclosure of information in all disseminations of information concerning eye examinations are not preempted.

(c) The Commission intends this part to be as self-enforcing as possible. To that end, it is the Commission's intent that this part may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any retail seller of ophthalmic goods and services or refractionist who advertises in a nondeceptive and fair manner.

(d) It is not the Commission's intent to compel any seller or refractionist to disseminate information by virtue of this part. On the contrary, the provisions of this part are intended solely for the protection of those sellers and refractionists who want to disseminate information but have been restrained or prevented from advertising due to the prohibitions and restrictions of state and local laws and regulations, or by private action.

(e) In prohibiting the use of waivers and disclaimers of liability in Section 456.4(d), it is not the Commission's intent to impose liability on a refractionist for the ophthalmic goods and services dispensed by another seller pursuant to that refractionist's prescription.

(f) In this part, the Rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

## Chapter 72. Optometry Law.

### Article

1. Board of Examiners in Optometry (§§ 08.72.010—08.72.100)
2. Licensing and Registration (§§ 08.72.110—08.72.270)
3. Unlawful Acts (§§ 08.72.275—08.72.290)
4. General Provisions (§§ 08.72.300—08.72.310)

### Article 1. Board of Examiners in Optometry.

#### Section

10. Creation of board of examiners
20. Membership of board and terms of office
30. Vacancies
40. Qualifications
50. Power of board to adopt regulations
60. Miscellaneous powers and duties of board

#### Section

70. Applicability of Administrative Procedure Act
80. [Repealed]
90. Record of proceedings
100. [Repealed]

**Sec. 08.72.010. Creation of board of examiners.** There is created the Board of Examiners in Optometry. (§ 35-3-132 ACLA 1949)

**Am. Jur., ALR and C.J.S. references.—**  
41 Am. Jur., Physicians and Surgeons, § 28.

Optometrist within statute relating to practice of medicine, 22 ALR 1173.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against or in favor of optometrists, 37 ALR 682.

Constitutionality of statutes and validity of regulations relating to optometry, 98 ALR 905; 22 ALR2d 939.

Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 ALR 343; 128 ALR 585.

One who fills prescription under reciprocal arrangement with optometrist, as subject to charge of practice of optometry without license, 121 ALR 1455.

What constitutes practice of "optometry," 141 ALR 883.

70 C.J.S. Physicians and Surgeons §§ 1, 3, 5, 6, 8, 10, 12.

**Sec. 08.72.020. Membership of board and terms of office.** The board consists of five persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. (§ 35-3-132 ACLA 1949; am § 22 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "five persons" for

"three persons" in the first sentence and rewrote the second and third sentences.

**Sec. 08.72.030. Vacancies.** The governor shall fill vacancies on the board by appointment for the unexpired term. (§ 35-3-132 ACLA 1949)

**Sec. 08.72.040. Qualifications.** Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry. (§ 35-3-132 ACLA 1949; am § 23 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment rewrote this section.

**Sec. 08.72.050. Power of board to adopt regulations.** The board shall adopt rules and regulations

- (1) necessary for the proper performances of its duties;
- (2) governing the applicants and applications for licensing;
- (3) for the registration of optometrists;
- (4) necessary to govern the practice of optometry. (§ 35-3-133 ACLA 1949)

**Chapter contains sole powers of board.**  
— The board, being purely a creature of the legislature, has no powers other than those contained in this chapter. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**And must be strictly construed.**—This chapter and the powers invested in the board are to be strictly construed. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Sec. 08.72.060. Miscellaneous powers and duties of board.** (a) The board or a member designated by the board, may issue subpoenas, administer oaths and take testimony concerning any matter within its jurisdiction.

(b) The board may adopt a seal.

(c) The board shall elect a president and secretary from among its members.

(d) Repealed by § 3 ch 59 SLA 1966.

(e) The board may define professional conduct and adopt rules of professional conduct.

(f) Repealed by § 3 ch 59 SLA 1966. (§§ 35-3-133, 35-3-140 ACLA 1949; am § 3 ch 59 SLA 1966)

**Sec. 08.72.070. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62).

**Sec. 08.72.080. Compensation of board and secretary.**

Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.72.090. Record of proceedings.** The Department of Commerce shall keep a record of all proceedings, including the name of each applicant for examination and registration. These records shall be open for public inspection. (§ 35-3-133 ACLA 1949; am § 1 ch 76 SLA 1969)

**Sec. 08.72.100. Bond of secretary.**

Repealed by § 3 ch 59 SLA 1966.

**Article 2. Licensing and Registration.**

Section	Section
110. License required	190. [Repealed]
115. Malpractice insurance	191. Fees
120. Registration	200—220. [Repealed]
125. Registration of branch offices	230. Fees and disbursements
130. Optometry register	240. Revocation of registration certificate or exemption
140. Qualifications for examination	250. Board action on revocation and renewal
150. Application for examination and issuance of certificate	255. Limits or conditions on license; discipline
160. Examination	260. Revocation of license by court
170. Issuance of certificate by waiver of written examination	270. Practice not at place of business
180. [Repealed]	
181. Renewal of license	

**Sec. 08.72.110. License required.** No person not licensed as an optometrist may fit, sell, or dispose of or take, receive or solicit an order for fitting, sale or disposition of spectacles, eyeglasses or lenses for the correction or relief of an optical or visual defect of the human eye or sell spectacles, eyeglasses or lenses from house to house, or in the streets or highways. This chapter does not apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses, or complete ready-made spectacles and eyeglasses sold only as merchandise, or the sale or repair of eyeglass frames, or repair or replacement of lenses without pretense of adapting them to the eyes. (§ 35-3-134 ACLA 1949)

**Sec. 08.72.115. Malpractice insurance.** If medical malpractice insurance for optometrists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optometrist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance

on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 24 ch 102 SLA 1976)

**Sec. 08.72.120. Registration.** It is unlawful for a person to practice, or attempt, or offer to practice, optometry without first obtaining a certificate of registration from the board, and without filing the certificate with the clerk of the superior court in each judicial district in which he practices. (§ 35-3-135 ACLA 1949)

C.J.S. reference.—70 C.J.S. Physicians and Surgeons § 10

**Sec. 08.72.125. Registration of branch offices.** (a) The board may issue to an Alaskan licensee who maintains a full-time practice in the state but who serves other communities in the state on a part-time basis a branch office certificate of registration.

(b) It is unlawful for a person to practice, or to attempt or offer to practice, optometry in communities on a part-time basis without obtaining a branch office certificate of registration from the board, and without filing the certificate with the clerk of the superior court in each judicial district in which he maintains a branch office.

(c) The board shall prescribe in the regulations the factors to be considered in issuing a branch office certificate of registration. (§ 2 ch 76 SLA 1969)

**Sec. 08.72.130. Optometry register.** The clerk of the superior court in each judicial district shall keep a record known as the "Optometry Register" and record the certificate of registration of each optometrist who files his certificate. The clerk shall charge the regular filing fee for registration. When an optometrist dies, or when his certificate is suspended or revoked, the clerk shall note that fact on the record. (§ 35-3-147 ACLA 1949)

**Sec. 08.72.140. Qualifications for examination.** The board shall admit to the examination a person who furnishes proof that

- (1) Repealed by § 3 ch 76 SLA 1969.
- (2) he has normal color perception and a visual acuity of a standard of at least 20/40 in at least one eye as corrected;
- (3) he is not afflicted with a contagious or infectious disease;
- (4) he has had education equivalent to four years attendance at a state high school;
- (5) he is a graduate of a recognized school or college of optometry;
- (6) he is of good moral character. (§ 35-3-141 ACLA 1949; am § 1 ch 95 SLA 1966; am §§ 3—5 ch 76 SLA 1969)

Cited in *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

C.J.S. references. — 53 C.J.S. Licenses § 34; 70 C.J.S. Physicians and Surgeons § 12.

**Sec. 08.72.150. Application for examination and issuance of certificate.** An applicant shall apply for the examination by filing an application with the department together with the examination fee at least 15 days before the examination. Upon successful completion of the examination by the applicant and payment of the fee, the board shall issue a certificate of registration as a licensed optometrist to the applicant. After the applicant has properly filed his certificate of registration he may practice optometry in the state. (§ 35-3-141 ACLA 1949; am § 6 ch 76 SLA 1969)

**Sec. 08.72.160. Examination.** (a) The examination shall be written, practical, and oral in nature. The oral portion of the examination shall be recorded and retained for two years.

(b) An applicant who fails the practical or the oral portion of the examination may take a re-examination in that portion without paying an additional examination fee.

(c) An applicant who fails the written portion of the examination may take a re-examination in the written portion upon payment of an additional examination fee.

(d) An applicant who fails more than one portion of the examination must retake the entire examination and pay the full examination fee. (§ 35-3-141 ACLA 1949; am § 7 ch 76 SLA 1969)

**Sec. 08.72.170. Issuance of certificate by waiver of written examination.** (a) The board may waive the written portion of the examination requirement for an applicant who:

(1) meets the qualifications of § 140 of this chapter;

(2) holds a current license by examination in another state, territory or foreign country and has been established in ethical optometric practice for at least three years before the application, or shows satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry; and

(3) has not had a certificate or license revoked for cause in any state, territory or foreign country.

(b) No waiver of the practical or oral portions of the examinations may be given. (§ 35-3-142 ACLA 1949; am § 8 ch 76 SLA 1969)

Cited in *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Sec. 08.72.180. Annual renewal of license.**

Repealed by § 7 ch 94 SLA 1968.

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**Sec. 08.72.181. Renewal of license.** (a) To remain in force a license must be renewed biennially.

(b) An optometrist licensed in this state and serving in the military service of the United States, while in the discharge of his official duties, may maintain his eligibility to practice in this state without paying a renewal fee by registering his name and place of residence with the department.

(c) An application for license renewal shall contain the name, office and post office address, date and license number of the licensee, and other information the board considers necessary.

(d) Before a license may be renewed the licensee shall submit to the board evidence of 24 hours post graduate education as prescribed by regulations of the board. (§ 9 ch 76 SLA 1969)

**Sec. 08.72.190. Fee for license by reciprocity.**

Repealed by § 10 ch 76 SLA 1969.

*Editor's note.* — The repealed section derived from § 35-3-149, ACLA 1949.

**Sec. 08.72.191. Fees.** The following fees shall be imposed under this chapter when applicable:

(1) examination fee . . . . .	\$35
(2) re-examination fee for written portion . . . . .	25
(3) waiver of examination fee . . . . .	25
(4) certificate fee . . . . .	50
(5) biennial renewal fee . . . . .	50
(6) branch office biennial registration fee . . . . .	25

(§ 11 ch 76 SLA 1969)

**Sec. 08.72.200. Examination fee.**

Repealed by § 10 ch 76 SLA 1969.

*Editor's note.* — The repealed section derived from § 35-3-149, ACLA 1949.

**Sec. 08.72.210. Certificate fee.**

Repealed by § 10 ch 76 SLA 1969.

*Editor's note.* — The repealed section derived from § 35-3-149, ACLA 1949; § 1, ch. 12, SLA 1963.

**Sec. 08.72.220. Renewal fee.**

Repealed by § 10 ch 76 SLA 1969.

*Editor's note.* — The repealed section derived from § 35-3-149, ACLA 1949; § 2, ch. 12, SLA 1963.

**Sec. 08.72.230. Fees and disbursements.** The department shall collect all fees and keep a record of each transaction, and shall remit to the Department of Revenue all money received. (§ 35-3-138 ACLA 1949; am § 12 ch 76 SLA 1969)

**Sec. 08.72.240. Revocation of registration certificate or exemption.** The board may revoke a certificate of registration or exemption granted by it if the holder

- (1) has violated a rule, order or regulation of the board; or
- (2) has violated this chapter or is guilty of a crime; or
- (3) is grossly incompetent, afflicted with a contagious disease, habitually drunk or guilty of unprofessional conduct. (§ 35-3-140 ACLA 1949)

**C.J.S. references.** -- 53 C.J.S. Licenses § 44; 70 C.J.S. Physicians and Surgeons §§ 10, 15.

**Sec. 08.72.250. Board action on revocation and renewal.** In a proceeding for the revocation of a certificate of registration or for the annulment of registration the board shall make a complete written report of its findings, and if the board finds that any of the charges are sustained, the board may revoke the certificate of the accused, or annul his registration, or both. If the board annuls the registration, it shall transmit to the clerk of the judicial district in which the accused is registered as an optometrist, a certificate under its seal, certifying that his registration has been annulled. The clerk shall, upon receipt of the certificate, file it and mark the registration "annulled." The board may, after the expiration of one year, entertain an application for the renewal of a revoked certificate, in the same manner as an original application for a certificate and may exempt the applicant from the examination. (§ 35-3-140 ACLA 1949)

**Full and substantial hearing.**—It is not necessary that the board follow technical legal procedure. A full and substantial hearing of the charges, where denied, is all that is required. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Under this section the board may not entertain an application until the expiration of one year.** *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Order revoking renewal certificate cannot be set aside in a mandamus proceeding.** *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Conduct justifying treatment of charge as confessed.**—Where a written complaint and notice were served on an optometrist requiring him to appear and answer charges against him by the board, but where no answer, denial or appearance was ever made, it was not incumbent upon the board to call any witnesses or receive any evidence in support of the charges, and the board was justified in treating the charge as confessed and entering its findings accordingly. *Edmunds v. Board of Exmrs. Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Sec. 08.72.255. Limits or conditions on license; discipline.** (a) In addition to action under §§ 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 24 ch 102 SLA 1976)

**Sec. 08.72.260. Revocation of license by court.** A license may be revoked by the superior court upon proof of violation of law or for a cause for which the board may refuse admittance to its examination. The attorney general shall prosecute appropriate judicial proceedings upon request of a member of the board. (§ 35-3-146 ACLA 1949)

**Sec. 08.72.270. Practice not at place of business.** (a) A registered optometrist, who temporarily practices optometry away from his regular place of business, shall display his registration certificate and deliver to each patient or person fitted or supplied with glasses a receipt with his signature showing his permanent place of business or post office address, certificate number, and the amount charged. A licensee who fails to comply with any of the foregoing provisions for six months after issuance of the certificate shall forfeit his certificate.

(b) Nothing contained in this section shall be construed as permitting peddling or canvassing by licensed optometrists. (§ 35-3-136 ACLA 1949)

### Article 3. Unlawful Acts.

Section	Section
275. Lenses and frames for eyeglasses and sunglasses	280. Violations 290. Penalty

**Sec. 08.72.275. Lenses and frames for eyeglasses and sunglasses.** (a) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses unless they are fitted with plastic lenses, laminated lenses, heat-treated glass lenses, or glass lenses made impact resistant by other methods. All plastic and heat-treated glass lenses, before they are mounted in frames, shall be capable of withstanding the impact of a five-eighths inch steel ball dropped on the lens from a height of 50 inches. The impact test shall be conducted at room temperature, with the lens supported by a plastic tube one inch inside diameter, one and one-fourth inch outside diameter, with a one-eighth inch by one-eighth inch neoprene gasket on the top edge.

(b) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses having frames manufactured from cellulose nitrate or other highly flammable materials.

(c) A person who violates this section is punishable by a fine of not less than \$50 nor more than \$100. (§ 1 ch 220 SLA 1968; am § 1 ch 48 SLA 1973)

**Effect of amendment.** — The 1973 amendment rewrote subsection (a).

**Sec. 08.72.280. Violations.** No person may falsely personate a registered optometrist, nor buy, sell or fraudulently obtain a certificate of registration issued to another or advertise the practice of optometry in violation of rules of the board. Practicing or offering to practice optometry is sufficient evidence of a violation of this chapter. (§ 35-3-144 ACLA 1949)

**Sec. 08.72.290. Penalty.** A person who violates this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment for a term of not less than 10 days nor more than 90 days, or by both. (§ 35-3-145 ACLA 1949)

**C.J.S. references.** — 53 C.J.S. Licenses  
§§ 62 to 65.

#### Article 4. General Provisions.

**Section**  
300. Definitions  
310. Short title

**Sec. 08.72.300. Definitions.** As used in this chapter

- (1) "board" means the Board of Examiners in Optometry;
- (2) "optometry" is the employment of means or methods, other than the use of drugs, for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;
- (3) "practicing optometry" means the diagnosis, by means or methods other than the use of drugs, of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;
- (4) "lenses" means conventional or contact lenses;
- (5) "recognized school or college of optometry" is one which is approved by the American Optometric Association or one of its committees;

(6) "department" means the Department of Commerce and Economic Development. (§ 35-3-131 ACLA 1949; am § 2 ch 95 SLA 1966; am § 13 ch 76 SLA 1969; am § 53 ch 218 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (6).

This chapter is a valid exercise of the legislative power. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

**Sec. 08.72.310. Short title.** This chapter may be cited as the Optometry Law. (§ 35-3-150 ACLA 1949)

**CHAPTER 48.**  
**BOARD OF EXAMINERS IN OPTOMETRY**

**Section**

- 10. Board membership
- 20. Biennial license renewals and reinstatement
- 30. Branch office certificates
- 40. Display of certificate
- 50. When a practice is conveyed to another
- 60. Visual analysis records
- 63. Advertising
- 65. Routine vision examination
- 70. Unprofessional conduct
- 80. Definitions

**12 AAC 48.010. BOARD MEMBERSHIP.** The secretary shall notify the office of the governor of Alaska whenever a vacancy occurs. The secretary shall supply the governor with a list of all Alaska-registered optometrists who have resided in Alaska for a period of three years or more, and are qualified as the statute provides, AS 08.72.040. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.030  
AS 08.72.050(1)

**12 AAC 48.020. BIENNIAL LICENSE RENEWALS AND REINSTATEMENT.** (a) The postgraduate education may be obtained any time within the two-year renewal period, but may not be carried over from one renewal period to the other.

(b) Courses that will be accepted are: educational courses given at the American Optometric Association Annual Convention or any AOA affiliate state optometric convention; seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes; postgraduate courses offered by recognized schools or colleges of optometry. Other postgraduate courses may be approved by the board if course titles, instructors' names, and a brief description of the course material is submitted to the board 30 days before the commencement of the educational program. Licensees who submit satisfactory proof that they were prevented from attending an educational program because of illness or other reasons may be exempted from this requirement. A form shall be provided

with the biennial renewal application that must be validated by the instructor teaching the course. Correspondence courses will not be accepted as fulfilling the requirements of AS 08.72.181. (Eff. 4/24/71, Reg. 37)

Authority: AS 08.72.181

**12 AAC 48.030. BRANCH OFFICE CERTIFICATES.** (a) A branch office certificate may be issued for the purpose of serving some community in the state which cannot support an optometrist and which can be shown to the satisfaction of the board to need the service of a licensed optometrist on a part-time basis may be issued a semiannual branch office certificate of registration. The name of an associate practicing in a branch office shall appear on the entrance door to the office used and upon all stationery; no commercial name or designation may be used in connection with any branch office nor may such a practice have any commercial lay connections, nor may there be anything in the nature of "chain exploitation" of licenses. Nothing in this section requires an active licensee to obtain a branch office certificate for the purpose of rendering necessary optometric services for his patients confined to their homes.

(b) No branch office certificate will be issued in a community where a full-time optometric practice is available, and any certificate in force when a full-time practice is established will not be renewed.

(c) No branch office certificate will be required for a licensee to participate in bona fide vision and eye-screening projects outside of his regular or branch office. Vision and eye-screening projects must be organized under the auspices of an established service organization not composed primarily of optometrists.

(d) Optometrists who participate in vision and eye-screening projects may not receive remuneration for their services other than for travel and living expenses and for emergency care as required. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.125(c)

**12 AAC 48.040. DISPLAY OF CERTIFICATE.** A licensee's registration certificate and renewal certificate shall be

displayed in the office in which the holder practices optometry, but not in such a manner that the certificate may be seen from the street. Every licensee, whenever requested, shall exhibit the certificate to a member of the board or person authorized to represent the board and shall notify the department or board of his address and changes of his address. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

**12 AAC 48.050. WHEN A PRACTICE IS CONVEYED TO ANOTHER.** When an optometrist disposes of his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery, and directories connected with the practice he has acquired or is acquiring, all words or phrases such as "successor to," "associate of," or words of like import. Under no circumstances may the use of these signs, cards, stationery or advertising continue for more than two years. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

**12 AAC 48.060. VISUAL ANALYSIS RECORDS.** Every optometrist shall keep a record of examinations and visual analyses made and prescriptions issued and for whom the prescriptions were prepared. The record shall be preserved for a period of at least five years from the date services were rendered, except in the case of death of the patient. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

**12 AAC 48.063. ADVERTISING.** (a) An advertisement concerning the availability, sale or price of frames or mountings for spectacle lenses must contain a readily legible statement, in the same type size as the main body of the advertisement, which specifies the

- (1) name of the manufacturer;
- (2) material from which the frames or mountings are made;
- (3) country of origin; and
- (4) style name or model number.

(b) An advertisement concerning the availability, sale, or price of spectacle or contact lenses must contain a readily legible statement, in the same type size as the main body of the advertisement, which specifies the

- (1) name of the manufacturer;
- (2) material from which the lenses are made;
- (3) country of origin;
- (4) absorptive property of the lenses, whether clear or tint;
- (5) refractive powers of the lenses, whether low, medium or high; and
- (6) type or style, whether single vision, bifocal or trifocal.

(c) An advertisement concerning the fees charged for optometric services, other than for an initial routine vision examination, must contain a readily legible statement in the same type size as the main body of the advertisement, which specifies the tests and measurements to be performed.

(d) An advertisement for a routine vision examination or complete eye examination or which uses language of similar import, need not specify the tests and measurements to be performed so long as the optometrist providing the advertised services complies with the examining and recording standards established by sec. 65 of this chapter. Failure to comply with the standards is unprofessional conduct within the meaning of AS 08.72.240(3).

(e) Advertising permitted by this section may only appear in newspapers, periodicals, and professional directories and must include the name of the licensed optometrist. (Eff. 2/14/78, Reg. 65)

Authority: AS 08.72.050(4)  
AS 08.72.060(e)

**12 AAC 48.065. ROUTINE VISION EXAMINATION.** For the purposes of this chapter, an advertisement for a routine vision examination means that the optometrist shall at a minimum adhere to the following standards in the initial examination of the patient:

(1) the optometrist shall, in accordance with professionally recognized standards, make and record the following findings of the condition of the patient:

(A) a complete case history including ocular, physical, occupational and medical data and other pertinent information concerning the patient;

(B) aided and unaided visual acuity at both near and far;

(C) external examination of the eyes and adnexa;

(D) internal ophthalmoscopic examination;

(E) ocular motility and neurological integrity;

(F) a far point subjective examination, a static retinoscopy, and a subjective refraction;

(G) a near point subjective examination, a dynamic retinoscopy and a subjective refraction;

(H) tests of accommodation and convergence and binocular coordination at far and near, preferably made with a phoropter; and

(I) confrontation fields and tonometry tests;

(2) if contact lenses are prescribed, a routine vision examination includes, in addition to the requirements of subsection (1):

(A) a slit lamp evaluation;

(B) a fluorescein examination;

(C) a diagnostic evaluation when soft lenses are prescribed; and

(D) reexamination and reevaluation within three months in the case of firm lenses and within six months in the case of soft lenses. (Eff. 2/14/78, Reg. 65)

Authority: AS 08.72.050(4)  
AS 08.72.060(c)

12 AAC 48.070. UNPROFESSIONAL CONDUCT. (a) An optometrist may not engage in unprofessional conduct within the meaning of AS 08.72.240(3). Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) except as provided by sec. 63 of this chapter, soliciting patients by advertising of any nature or description regardless of means or media employed; however, upon the opening, reopening or removal of any office for the practice of optometry, an optometrist may publish, in local newspapers, an announcement, which announcement is limited to a statement of his name, title, profession, degrees, specialty, address, telephone number and office hours; the announcement may not be published for more than 90 days after the opening, reopening, or removal of the office; the announcement may not exceed eight square inches in area;

(2) displaying any spectacle, eyeglasses or eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eyeglass cases, ophthalmic material of any kind, optometric instruments or optical tools or machinery, or any merchandise, material or displays of a commercial nature in office windows or reception rooms or display cases outside the office, where the display of the merchandise, material or display would make it visible from outside the office;

(3) using display or boldface type or type that is in any way dissimilar in size, shape or color to that used for others of the healing arts in the same directory;

(4) using any false, deceptive, or misleading representation in connection with any advertising concerning ophthalmic prosthetic products or optometric services;

(5) using "bait" advertising;

(6) using signs whether painted, neon, decalcomania, colored or otherwise, and whether constructed in the form of eyes or structures resembling them, or frames or mountings for any type of lenses or other ophthalmic prosthetic products displayed in any manner or place connected with the practice of optometry;

(7) using publicly, a sign, card, stationery, or other publicity medium which fails to clearly identify the individual optometrist or optometrists engaged in practice in an office or practice location, or using a name other than the name under which the optometrist is licensed including such designations as "optical company," "optical laboratory," or words or phrases of like import which are out of keeping with the use of the title "Doctor of Optometry" and the practice of optometry as a profession;

(8) soliciting, personally or through agents, from house to house for the rendering of optometric services or sale of ophthalmic prosthetic products;

(9) advertising self-styled superiority or the performance of services in a manner presumed to be superior, or the making of untruthful, improbable or impossible claims regarding treatments, cures, or values;

(10) lending, leasing, renting, or in any other manner placing a certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this state.

(b) An optometrist may not associate with a corporation or voluntary association for the practice of optometry, or in any manner practice the profession, on a salary or commission basis, for a corporation or voluntary association. However, this subsection does not prohibit professional incorporation under the Professional Corporation Act, AS 10.45. The fact that an officer, trustee, director, agent, or employee of a corporation or voluntary association is an optometrist does not permit the corporation or voluntary association to do the acts prohibited in this section, nor is that fact a defense to board action against any of the persons mentioned in this subsection for a violation of this section; however, this subsection does not apply to a partnership of two or more registered and licensed optometrists who practice under their own names.

(c) It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile

establishment that he is a registered practitioner and is practicing or will practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or in connection with one. Nothing in this subsection prohibits the rendering of professional services to the officers and employees of a person, firm, or corporation by an optometrist, whether or not the compensation for the services is paid by the officers and employees or by the employer or jointly by all or any of them.

(d) No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

(e) No optometrist may display a sign containing other than his name, profession, recognized specialty, and office hours, which sign may be used only on office windows or at an entrance to his office. Letters may not be luminous or illuminated.

(f) No optometrist may represent himself or herself as a specialist in an optometric field unless he or she is certified, as a diplomate of the American Academy of Optometry or as a fellow of the College of Vision Development, in a recognized specialty. The board recognizes American Academy certification in contact lenses, binocular vision, geriatric care, and low vision, and College of Vision Development fellowships in vision training and developmental vision. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65; am 7/6/78, Reg. 67)

Authority: AS 08.72.050(4)  
AS 08.72.060(e)  
AS 08.72.240(3)

12 AAC 48.080. DEFINITIONS. Unless the content in this chapter otherwise states:

(1) "Act," "law," or "statute" refers to AS 08.72.;

(2) "regulations" referred to are those made by the board in keeping with AS 08.72.;

(3) "registration" means registration under AS 08.72.;

(4) "chain exploitation" means establish-

ments that provide vision care in various locations either in one community or throughout a geographic area, where the service is provided by one or more than one optometrist in each or more than one location, and who is under the employ or have an agreement based on a lease, rental agreement partnership, stockholder, or other binding agreement; where control over these establishments are exercised by an individual or group of individuals;

(5) "established service organizations" means an organization who holds a charter from a parent organization whose primary established goal is public service without profit;

(6) "vision and eye-screening projects" means a project organized with the intent of identification and referral of vision and eye disorders;

(7) "prescription" means a written formula prepared by a person licensed under AS 08.72 and which contains the following essential elements when applicable to eyeglasses, contact lenses or other visual therapy: dioptric power of spheres, cylinders and prisms, axis of cylinders and position of prism base; designation of inter-pupillary distances; size, base curve, power, color and type, when a contact lens; and the name of the patient, date of prescription and name and office location of prescriber;

(8) "ophthalmic prosthetic products" means eye-glasses, lenses, contact lenses, frames or any component thereof or any other device used for or incident to the correction of any visual anomaly;

(9) "optometric services" means the measuring, fitting and adjusting of ophthalmic prosthetic products to the face and eyes; and

(10) "routine vision examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective and subjective tests. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65)

Authority: AS 08.72.050(1) and (4)

12 AAC 48.1100 - 12 AAC 48.1121.  
Repealed. (4/24/71, Reg. 37)

VI

STATE OF ALASKA  
Board of Psychologist and Psychological  
Associate Examiners  
(September, 1978)

Findings

In contrast to most health care professions, services of a psychological nature often cannot be measured in terms of imminent physical improvement or tangible results. Methods are employed in the treatment of illnesses of the mind and emotions which should be used only by properly educated and certified individuals.

Persons with emotional handicaps should be given a choice in the type of treatment which is available. Mental therapy is available in two general forms: through the use of drugs by a psychiatrist and without the use of drugs by a psychologist. The choice of methods, in theory, results in the same end. It is the method of treatment which differs and, in the case of the mind and emotions, both methods require regulation by the State. State regulation and certification of this profession is necessitated by the need to assure the public of practitioner competency so that whatever form of therapy is chosen, the practitioner has been determined to be qualified.

The Board of Psychologist and Psychological Associate Examiners, in practice, has been arbitrary and capricious in the application of the laws contained in its practice act to applicants for examination and licensure. The Board also has repeatedly ignored Attorney General advice relating to various applicants. In accordance with the criteria established within the Sunset Act, it is recommended that the Board of Psychologist and Psychological Associate Examiners be allowed to terminate on June 30, 1979. In

light of the Board's past performance, the availability of standardized examinations offered by a Professional Examination Service and statutorily defined minimum qualifications, regulatory functions necessary for this profession could be assumed by the administrative agency.

I. General Information

A. Regulated Parties

1. Psychologists
2. Psychological Associates

B. Statutory Definition of Regulated Profession

"(2) 'to practice psychology' means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including

- (A) counseling and guidance;
- (B) using psychotherapeutic techniques with persons or groups at school, or at work;
- (C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;
- (D) conducting research on human behavior;"

"(5) 'psychological associate' includes a counselor and psychometrist;"

"(7) 'to practice counseling' means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment,

- (A) counseling and guidance;
- (B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;
- (C) limited use of testing including tests of intelligence or tests of motor skills;"

"(9) 'to practice psychometrics' means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational education, guidance or placement;"  
 (AS 08.85.230)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Dorothy Whitmore, Ed.D. (Chairman)	ends July 1, 1980
Pamela Delys-Baglien, Ph.D	ends July 1, 1981
James C. Parsons, Ed.D.	ends July 1, 1979
Dick L. Madson	ends July 1, 1980
Robert D. Bowers	ends July 1, 1981

2. Representation:

Profession = 3  
 Public = 2

3. Qualifications:

Professional members must be licensed; public members must have no direct financial interest in the health care industry.

D. Licensing Data

Psychologists Examined

<u>Year</u>	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1974	2	1	1	50	50
1975	4	3	1	73	27
1976	5	4	1	80	20
1977	3	2	1	67	33
1978	6	5	1	83	17

(through June)

Currently Licensed

Psychologists

in-State = 46 (through June 1978)

out-of-State = 6 (through June 1978)

52

Psychological Associates

in-State = 3

out-of-State = 0

3

E. Fees:

1) application	\$50.00
2) renewal	50.00
3) biennial	50.00
4) out-of-state	50.00
5) temporary license	10.00
6) duplicate license	2.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$1,580.00	\$1,600.00	\$1,700.00	\$2,780.00
- Refunds	<u>10.00</u>	<u>20.00</u>	<u>150.00</u>	<u>100.00</u>
Total	\$1,570.00	\$1,580.00	\$1,550.00	\$2,680.00
Expenditures				
Per Diem	35.00	750.12	443.33	2,385.25
Transportation	168.90	1,405.62	530.85	1,933.63
Phone	207.45	314.63	122.24	138.51
Printing, Advertising & Postage	39.11	594.14	866.01	660.29
Fees and Services	56.00	239.00	407.00	500.00
Rents, Leases, Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>20.00</u>
Total	<u>506.46</u>	<u>3,303.51</u>	<u>2,369.43</u>	<u>5,637.68</u>
Surplus	1,063.54	-	-	-
Deficit	-	1,723.51	819.43	2,957.68

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	3	0	0
1976	5	1	0
1977	1	0	0
1978	1	0	1
(through June)			

Pending: 9

The only case closed was closed by virtue of the fact that the party against whom the complaint was lodged left the State. In 1976 three complaints were received against a single practitioner; potential litigation is pending in this case. Most complaints involved allegations of practicing without a license and of false advertising. None were received in recent years from the public and none were determined to have resulted in harm to the public. The case referred to litigation was brought by an unsuccessful applicant for licensure charging that the board is arbitrary and capricious in its application of examination and scoring procedures.

II. Criteria and Analysis

- A. To what extent has the Board of Psychologist and Psychological Associate Examiners operated in the public interest?

The Board is statutorily charged with responsibility for passing on applicant qualifications; for preparation, administration and grading of written examinations; for revocation or suspension of licenses as a result of statutory violations; and for setting associate fees (AS 08.86.070). "Passing on qualifications of applicants" has been a problem with this Board for a number of years. A 1975 Division of Legislative Audit report recommended that the Board "should apply Alaska Statute 08.86 consistently to all applicants for licensing." Specific examples

of arbitrary granting of examination and licensure privileges are cited within the report. That recommendation and the examples cited are still relevant and could alone be the basis of this report.

The Board has continued to approve one applicant by waiving standards for examination while denying another with equal qualifications for not complying with the standard. Applications for licensure by endorsement are held pending information on licensure from another state which is already contained in the applicant's file. While statutes require a doctoral degree with emphasis on psychology from an accredited school, the Board has held action or refused examination or licensure to candidates meeting this requirement who did not take specific courses or who took courses which the Board did not approve of. At least one applicant who held a doctoral degree in education was allowed to sit for the exam while another was denied because his doctoral emphasis was not in psychology. The Board approved one applicant for examination pending receipt of a letter from his supervisor. This applicant was advised the day before the examination that he would not be allowed to take the examination because the information had not been received. A review of the applicant's file indicates that the information was received and the applicant so notified several months before the examination date. This applicant has since left the State. One applicant was refused because he had not resided in Alaska for thirty days preceding the date of examination. Another applicant was approved by a previous Board, took and passed the examination, and was subsequently denied licensure because he had not graduated from an "accredited" school, a criteria which has not yet been formally defined through Board regulations nor consistently applied through Board policy.

The Board has adopted a policy in Board minutes whereby the requirement for one year's experience acceptable to the Board is defined as one year's post doctoral experience under the supervision of a licensed psychologist. However, enforcement of this policy has also been con-

sistently inconsistent. One candidate who was initially refused licensure under this policy was subsequently licensed by intervention from the Office of the Attorney General. It is interesting to note that the Board will not accept supervision by a licensed psychiatrist to fulfill this post graduate requirement. At its September, 1978 meeting the Board considered two particular candidates for examination, both of whom met the statutory requirements and neither of whom met the post doctoral experience policy requirements. One was approved, the other was not. The only apparent differences in these two candidates were the specific courses taken though both graduated from American Psychology Association "fully approved programs."

If this Board is continued, recommendations are noted herein which should be considered for implementation.

Examination procedures need to be improved with respect to conduct of the examination and to anonymity of applicants. Answer sheets found in files contain the name of the applicant and at least one 1978 applicant made references to his current employment status and professional associations. Applicant anonymity should be maintained to the extent possible to help insure complete objectivity in scoring. The Board constructed written examination is of the essay type. During the time period in past examinations in which some candidates were writing their responses they were also interviewed orally by the Board on those same questions. Candidates should not be interrupted during the examination and should not be given the opportunity to test their own responses against Board reaction during this interview. Additionally, the Board does not have the statutory authority to give an oral interview as part of the examination, only to prepare, administer and grade written examinations.

The Board should discontinue the practice of approving applications for examination prior to receipt of all application materials. This procedure has created a number of problems when an applicant is notified that he is approved and scheduled and then finds at a late date that a reference has not been received or a transcript is missing from his file. Regulations currently being processed require that an applicant's file be complete "at least 45 days before a scheduled examination," and, once adopted, should be complied with.

Statutes provide that the Board may issue a temporary permit to an otherwise qualified applicant pending examination. This provision has been utilized in granting temporary permits to individuals who have not yet submitted proof that they are qualified, such as official transcripts which indicate a doctoral degree. Statutes applicable to applicants already licensed in an authority other than Alaska provide that the applicant is entitled to be licensed if he holds a doctoral degree with emphasis on psychology and if the other authority's qualifications were similar to Alaska's at the time he was licensed. One applicant was initially denied by the Board because the other state's qualifications at the time he was initially licensed were different from those presently in effect in Alaska. Another was required to take the Board's written examination because he did not have the experience required by the other state although he had worked for two years following the date of his degree. Another was approved for endorsement without examination but did not meet the endorsement requirements. Another applicant for endorsement was denied but approved for examination and did not meet requirements for either one.

Lack of continuity and standardization in Board policies and practices does not operate in the public interest. Statutes regarding qualifications for licensure and Board responsibilities in regulation of the profession are designed to assure competency of practitioners and to allow methods by which services may be made available to the public.

The Board has been aware of these problems for some time and pending Board regulations address many of the points raised in this report. If, however, the Board has failed to apply existing statutes and policies consistently in the past, the effect of future regulatory provisions is questionable.

The Board has authority to adopt regulations to carry out the purposes of 08.86. A recent resolution was made expressing the intent of the board to draft mandatory continuing education requirements. If the board is reestablished, it should pursue this subject. A statutory change, however, would be advisable if relicensure or exemptions are contingent on compliance with board outlined criteria.

Regulatory functions for this profession could be carried out by the administrative agency with utilization of professional expertise where necessary.

B. To what extent has the operation of the Board of Psychologist and Psychological Associate Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Existing statutes have not particularly impeded or enhanced the operation of the Board. Inconsistent application of statutory provisions, as previously cited, has impeded impartial examination and licensure of qualified applicants. Arbitrary Board policies and practices restrict

the quality and quantity of services to the public. If adhered to, present statutes and pending regulations would be generally adequate to govern this profession.

The Board of Psychologist and Psychological Associate Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs except that high turnover of agency personnel has in some respects prevented continuity of services to all boards. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better assist the Board and the agency in carrying out its functions.

This Board has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense mandates that only the most flagrant and potentially injurious licensing complaints are pursued.

Complaints regarding this profession are in the nature of unethical advertising and practicing without a license. There also were no complaints received from the public at large, only from the Board, the profession, or a related profession.

- C. To what extent has the Board of Psychologist and Psychological Associate Examiners recommended statutory changes which are generally of benefit to the public interest?

Recent statutory changes with respect to the profession concerned:

- (1) addition of lay persons to Board membership; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; and (4) general "housekeeping" items.

Records of Board meetings reflect a desire of the Board to require a one-year State residency clause as a licensure qualification. There is also indication that the Board wishes to regulate unlicensed governmental employees and counselors. No recommended changes were made by the Board which would be of specific public benefit.

- D. To what extent has the Board of Psychologist and Psychological Associate Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input although notices of pending meetings and new or changing regulations are published in major newspapers in the State. It may be that members of the public are somewhat reluctant to involve themselves

in areas of a technical or scientific nature and which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists which probably tends to deter public knowledgeability and participation. This barrier appears to be perpetuated by the Board through the use of professional terminology and the aura of secrecy that is conveyed at Board meetings. The licensing examiner from the administrative agency has been instructed not to record large portions of "public" Board meetings. Additionally, minutes of those meetings are edited and reworded by individual Board members at the time the draft is circulated for perusal. This practice has resulted in questions regarding past Board considerations and does not lend credence to the minutes as written.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>1</sup> If this Board is continued, consideration should be given to a public membership majority.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Psychologist and Psychological Associate Examiners processed and resolved?

No complaints have been received which were directed against individual members of the Board. However, on at least four occasions the Board as a whole was threatened with litigation by applicants for licensure, another applicant was licensed after intervention by the Attorney General's

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

Office and litigation was initiated by another applicant charging capricious and arbitrary conduct by the Board.

One of the ten cases received during the past four years had been closed through June, 1978. No recent complaints have been received which were lodged by a member of the general public or which were determined to have resulted in actual danger to the public. The administrative agency is currently addressing complaints and investigative procedures and the need for timely disposition of issues. Investigative services to all boards and commissions under its jurisdiction are expected to improve.

F. To what extent does the Board of Psychologist and Psychological Associate Examiners present qualified applicants to serve the public?

Applicants for examination and/or licensure are not sponsored by the Board. Individuals wishing to practice within the State must submit fees and application with documentation of qualifications. Unfortunately, as is noted previously in this report, compliance with statutory requirements does not necessarily insure an applicant that (s)he will be examined and/or licensed in a timely manner if at all. Review of files for recent years revealed that applicants generally must wait several months from the time of initial application to final licensure. One applicant was licensed seven years after the date of application. Another waited over three years.

Board practices which would allow for the issuance of temporary permits and expeditious licensing by endorsement or examination for all applicants who are qualified would be conducive to entry into the profession and to increased availability of practitioners within the State.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Psychologist and Psychological Associate Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

This Board is responsible for issuing licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Psychologist and Psychological Associate Examiners to better serve the interests of the public?

If the Board is reestablished, the statutes should specifically delineate Board duties and applicant qualifications in a manner that precludes Board latitude in interpretation beyond statutes. For instance, the Board should not be able to deny examination to an applicant who meets the degree requirements of AS 08.86.130(2) because it does not approve of specific courses taken in pursuit of the degree. Continuing education requirements, if desirable, should be set down by statute as should any exceptions to those requirements.

The Board should consistently apply its own standards as set forth in pending regulations. For instance, if "one year's experience acceptable to the board" is defined as one year's post doctoral supervised experience, the Board should apply this regulation to all cases regardless of other background factors.

The Board should issue temporary permits only in compliance with statutes and should take positive steps toward utilizing endorsement provisions wherever possible. If Alaska's examination and qualification requirements are determined to be substantially different than those of other states, they should then be reviewed for validity as measures of professional competency.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination costs and investigative services. The need for a State Board has not been demonstrated to justify expenses of regulation in this instance.

### III. Conclusion

No public need has been demonstrated which would mandate continuation of regulation of this profession by an established board. Aside from this main consideration, restrictive and monopolistic practices by a board which serve to protect and perpetuate only a small interest group should not have the sanction of State authority and should not continue under its auspices.

### IV. Summary of Recommendations

- A. The Board of Psychologist and Psychological Associate Examiners should be allowed to terminate on June 30, 1979.

The functions of examining and licensing should be assumed by the administrative agency with appropriate statutory guidelines and regulatory authority.

B. In the event that the Board of Psychologist and Psychological Associate Examiners is continued, the following recommendations are made:

1. Statutory amendments should be made which outline specific qualifications and examination criteria. Content and language should be such that the Board is precluded from arbitrary granting or withholding of these privileges. (See discussion on pp. 8 & 9)
2. The Board should act consistently in applying its own policies and regulations within statutory authority. Standardization of examination procedures should be formulated, and observed, and applicant anonymity should be maintained to the extent possible. The Board should refrain from practices which imply an oral examination and from interrupting candidates while being tested. (See discussion on p. 9)
3. The Board should discontinue past practice of approving and notifying candidates for examination prior to completion of the application. (See discussion on p. 10)
4. The Board should review its policies with respect to the issuance of temporary permits and grant these only as allowed by statute. (See discussion on p. 10)
5. Continuing competency requirements as a condition of licensure, should be addressed by statute as should any exemptions from the requirements. (See discussion on p. 11)

6. The Board should confine its activities in regulating the profession to those over which it has regulatory authority. This does not include government employees or unlicensed counselors within the State. (See discussion on p. 13)
7. The Board should utilize endorsement provisions wherever possible. If Alaska's qualifications are found to be substantially different from those of other states, they should be reviewed for validity and appropriate recommendations made. (See discussion on p. 10)
8. Consideration should be given to placing a majority of public members on this Board. Professional members would provide advice and expertise and would review written examination sheets. Members should not serve consecutive terms unless initially appointed to an unexpired term, but may be reappointed following a term of absence.
9. The Board should refrain from giving the appearance of concealing information during meetings that should properly be a matter of public record. It should also refrain from making substantive changes in minutes of Board meetings. (See discussion on p. 14)

## Chapter 86. Psychologists and Psychological Associates.

### Article

1. Board of Psychologist and Psychological Associate Examiners (§§ 08.86.010 — 08.86.050)
2. Administration of Board Affairs (§§ 08.86.070 — 08.86.100)
3. Licensing of Psychologists (§§ 08.86.120 — 08.86.150)
- 3A. Licensing of Psychological Associates (§§ 08.86.160 — 08.86.162)
4. Prohibitions and Penalties (§§ 08.86.170 — 08.86.220)
5. General Provisions (§ 08.86.230)

### Article 1. Board of Psychologist and Psychological Associate Examiners.

#### Section

10. Creation and membership of board
20. Appointment and term of office
30. Board meetings

#### Section

40. Assistants
50. [Repealed]

**Sec. 08.86.010. Creation and membership of board.** There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry. (§ 1 ch 136 SLA 1967; am § 1 ch 65 SLA 1973; am § 30 ch 102 SLA 1976)

**Effect of amendments.** — The 1973 amendment inserted "and Psychological Associate" in the first sentence. interest in the health care industry" to the end of the second sentence.

The 1976 amendment added "and two persons who have no direct financial

**Sec. 08.86.020. Appointment and term of office.** Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor. (§ 1 ch 136 SLA 1967; am § 31 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment added the present second sentence.

**Sec. 08.86.030. Board meetings.** The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman or of two board members. (§ 1 ch 136 SLA 1967)

**Sec. 08.86.040. Assistants.** The board may employ assistants to prepare and grade examinations and to investigate alleged violations of this chapter. (§ 1 ch 136 SLA 1967)

**Sec. 08.86.050. Transportation and per diem.**  
Repealed by § 1 ch 42 SLA 1977.

Editor's note. — The repealed section derived from § 1, ch. 136, SLA 1967.

**Article 2. Administration of Board Affairs.**

Section	Section
70. Duties of the board	100. Applicability of the Administrative Procedure Act
80. Board regulations	
90. Administrative duties of the department	

**Sec. 08.86.070. Duties of the board.** The board shall

- (1) pass on qualifications of applicants for licenses;
- (2) prepare, administer and grade written examinations;
- (3) after hearing, suspend or revoke the license of a licensed psychologist or psychological associate who violates a regulation of the board;
- (4) set fees which are charged for psychological associates. (§ 1 ch 136 SLA 1967; am §§ 2, 3 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment inserted "or psychological associate" in paragraph (3) and added paragraph (4).

**Sec. 08.86.080. Board regulations.** The board shall adopt regulations to carry out the purposes of this chapter. (§ 1 ch 136 SLA 1967)

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Sec. 08.86.090. Administrative duties of the department.** The department shall furnish administrative services for the board. (§ 1 ch 136 SLA 1967)

**Sec. 08.86.100. Applicability of the Administrative Procedure Act.** The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 136 SLA 1967)

### Article 3. Licensing of Psychologists.

#### Section

120. Entitlement to licensure  
125. Malpractice insurance  
130. Qualification for examination

#### Section

135. Temporary license  
140. Fees  
150. Out-of-state license

**Sec. 08.86.120. Entitlement to licensure.** A person who passes the examination given by the board is entitled to be licensed as a psychologist. (§ 1 ch 136 SLA 1967)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Distinctions between psychotherapy and counseling.** — See *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Sec. 08.86.125. Malpractice insurance.** If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of psychologist or psychological associate services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 32 ch 102 SLA 1976)

**Sec. 08.86.130. Qualification for examination.** A person is entitled to take an examination if the board finds he

(1) has not engaged in dishonorable conduct relevant to the practice of psychology;

(2) holds a doctoral degree with primary emphasis on psychology from an accredited school;

(3) has at least one year's experience acceptable to the board. (§ 1 ch 136 SLA 1967)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Sec. 08.86.135. Temporary license.** The board may issue a temporary license to a person who meets the requirements of § 130 of this chapter. A temporary license issued under this section is valid until the results of the examination following the issuance of the temporary license are published. (§ 1 ch 38 SLA 1970)

**Sec. 08.86.140. Fees.** Each application fee, renewal fee, biennial and out-of-state license fee is \$50. The fee for a temporary license is \$10. The fee for a duplicate license is \$2. (§ 1 ch 136 SLA 1967; am § 2 ch 38 SLA 1970)

**Revisor's note (1970).** — In ch. 38, SLA 1970, "biannual" was used instead of "biennial" in the first sentence of this section. The correction was made in light of AS 08.01.100(a) (which requires biennial

renewal) and the statement in Webster's Third New International Dictionary that the two words are "sometimes" synonymous. Such a usage was clearly the intent of ch. 38, SLA 1970.

**Sec. 08.86.150. Out-of-state license.** A person who is licensed or certified as a psychologist by an authority other than Alaska is entitled to be licensed in Alaska without examination if

(1) he holds a doctoral degree with primary emphasis on psychology from an accredited school;

(2) the examination and qualification requirements for his out-of-state license or certificate were essentially similar to the examination and qualification requirements for licensure in Alaska at the time he was licensed; or

(3) he is a diplomate in good standing of the American Board of Examiners in Professional Psychology;

(4) he completes and returns the proper application forms, and pays the out-of-state certificate fee. (§ 1 ch 136 SLA 1967)

### Article 3A. Licensing of Psychological Associates.

#### Section

- 160. Associates: Entitlement to licensure
- 162. Associates: Qualification for examination

**Sec. 08.86.160. Associates: Entitlement to licensure.** A person who passes the examination given by the board is entitled to be licensed as a psychological associate. (§ 5 ch 65 SLA 1973)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Sec. 08.86.162. Associates: Qualification for examination.** A person is entitled to take a psychological associate examination if the board finds that he:

(1) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;

(2) holds a master's degree from an accredited or approved educational institution, with at least 24 credit hours of course work directly related to counseling or another specialized area in which licensure is requested, including a practicum;

(3) has at least three years' experience within the past ten years, two of which are in Alaska, and including one year's supervised postgraduate experience acceptable to the board;

(4) has the recommendation of his immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees;

(5) has not within the preceding six months failed an examination given by the board. (§ 5 ch 65 SLA 1973)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

#### Article 4. Prohibitions and Penalties.

##### Section

- 170. Use of title
- 180. Practice of psychology
- 185. Practice of counseling and psychometrics
- 190. Name under which person practices

##### Section

- 200. Confidentiality of communication
- 210. Penalty
- 220. Limits or conditions on license; discipline

**Sec. 08.86.170. Use of title.** (a) Unless he is licensed under this chapter, no person may use the title "psychologist" or a title, designation, or device indicating or tending to indicate that he is a psychologist or practices psychology.

(b) Unless he is licensed under this chapter, no person may use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that he is a psychological associate or practices counseling or psychometrics. (§ 1 ch 136 SLA 1967; am § 6 ch 65 SLA 1973)

**Effect of amendment.** — The 1973 amendment added subsection (b).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. *Allred v.*

*State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

**Distinctions between psychotherapy and counseling.** — See *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

**Sec. 08.86.180. Practice of psychology.** (a) Unless he is licensed under this chapter, no person may practice psychology, or offer to practice psychology, or represent to the public that he is a psychologist or that he practices psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of his employment, if the employer maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board is qualifying training and experience for psychologist, if his activities constitute a part of his supervised course of study and he is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, such as a social worker, or pastoral counselor, in doing work of a psychological nature consistent with his training and consistent with the code of ethics of his profession;

(4) Repealed by § 15 ch 65 SLA 1973.

(5) a person practicing medicine, if he is licensed to practice medicine.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state. (§ 1 ch 136 SLA 1967; am § 10 ch 69 SLA 1970; am §§ 7, 15 ch 65 SLA 1973)

**Effect of amendment.** — The 1973 amendment deleted "or" preceding "educational institution" in paragraph (1) of subsection (b) inserted "or private agency" and the proviso, and repealed paragraph (4) of that subsection.

**Legislative committee report.** — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

**Sec. 08.86.185. Practice of counseling and psychometrics.** (a) Unless he is licensed under this chapter, no person may practice counseling or psychometrics, offer to practice counseling or psychometry, or represent to the public that he is a counselor or psychometrist.

(b) This sections does not apply to:

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a counseling nature in the course of his employment, if the employer

maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern or resident in psychology pursuing a course of study approved by the board as qualified training and experience for counseling, if his activities constitute a part of his supervised course of study;

(3) pastoral counselors.

(c) Nothing in this chapter authorizes a person licensed as a psychological associate to engage in the practice of medicine, as defined by the laws of the state. (§ 8 ch 65 SLA 1973)

**Sec. 08.86.190. Name under which person practices.** (a) A licensed psychologist may practice psychology only under his own name.

(b) A licensed psychological associate may practice counseling or psychometry only under his own name. (§ 1 ch 136 SLA 1967; am § 9 ch 65 SLA 1973)

**Effect of amendment.** — The 1973 amendment added subsection (b).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. *Allred v.*

*State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

**Distinctions between psychotherapy and counseling.** — See *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

**Sec. 08.86.200. Confidentiality of communication.** No psychologist or psychological associate may reveal to another person a communication made to him by a client of his about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to a case conference with other psychologists, psychological associates or with physicians and surgeons, or in the case in which the client in writing authorized the psychologist or psychological associate to reveal a communication. (§ 1 ch 136 SLA 1967; am § 10 ch 65 SLA 1973)

**Effect of amendment.** The 1973 amendment, in the first sentence, inserted "or psychological associate" twice and, in the second sentence, inserted "psychological associates" and "or psychological associate."

This section does not provide a statutory psychotherapist privilege in criminal cases. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

This section nowhere states that it was intended as creating a privilege. It does not refer to courtroom testimony. The general thrust of its language seems to point towards "anti-gossip" consideration. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

The legislature's failure to create expressly an evidentiary privilege for psychotherapists while doing so for newspapermen during the same session as the Psychological Licensure Act was enacted indicates a legislative intent that psychotherapists were not to be so favored. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

It is only as an "anti-gossip" measure that this section makes sense. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

This section provides that only a writing may waive whatever rights a patient acquires under the section. But evidentiary privileges are traditionally much more easily waived, in light of the strong

competing policy in favor of compulsory testimony. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Effect of enacting this section as "anti-gossip" measure.** — By enacting this section as an "anti-gossip" measure the legislature has opened the door to professional licensing sanctions and possibly broadened the scope of common-law duty in suits against indiscreet psychotherapists. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

The supreme court recognizes a common-law privilege, belonging to the patient, which protects communications made to psychotherapists in the course of treatment. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

As to the scope of the common-law privilege, see Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Sec. 08.86.210. Penalty.** A person who violates §§ 170, 180, 185, or 190 of this chapter is guilty of a misdemeanor. (§ 1 ch 136 SLA 1967; am § 11 ch 65 SLA 1973)

**Effect of amendment.** — The 1973 amendment inserted "185."

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Sec. 08.86.220. Limits or conditions on license; discipline.** (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 32 ch 102 SLA 1976)

## Article 5. General Provisions.

### Section

#### 230. Definitions

**Sec. 08.86.230. Definitions.** In this chapter

- (1) "psychologist" means a person who practices psychology;
- (2) "to practice psychology" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including
  - (A) counseling and guidance;
  - (B) using psychotherapeutic techniques with persons or groups of persons who have adjustment problems in the family, at school, or at work;
  - (C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;
  - (D) conducting research on human behavior;

(3) "board" means the Board of Psychologist and Psychological Associate Examiners;

(4) "department" means the Department of Commerce and Economic Development;

(5) "psychological associate" includes a counselor and psychometrist;

(6) "counselor" means a person who practices counseling;

(7) "to practice counseling" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment,

(A) counseling and guidance;

(B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;

(C) limited use of testing including tests of intelligence or tests of motor skills;

(8) "psychometrist" means a person who practices psychometrics;

(9) "to practice psychometrics" means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational selection, guidance or placement;

(10) "private agency" means a clinic or private practice under the direction of a licensed psychologist, psychiatrist, or a custodial, rehabilitative or health care organization which is acceptable to the board;

(11) "supervision" means at least one hour a week of personal interview with a supervisor whose educational qualifications are consistent with the level of activity being supervised; a supervisor is responsible for insuring that the extent, kind and quality of the psychological and counseling services performed are consistent with a psychological associate's training and experience, as well as his obedience to the provisions of this chapter. (§ 1 ch 136 SLA 1967; am §§ 12, 13 ch 65 SLA 1973; am § 55 ch 218 SLA 1976)

**Effect of amendments.** — The 1973 amendment inserted "and Psychological Associate" in paragraph (3) and added paragraphs (5) to (11).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (4).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others

such as psychological associates be limited to the practice of counseling. *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

**Distinctions between psychotherapy and counseling.** — See *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

VII

STATE OF ALASKA  
Board of Chiropractic Examiners  
(October, 1978)

Findings

Manipulation of the human body in such a way as to relieve pain rather than increase pain or cause injury requires a degree of skill that can only be obtained through specialized study and training. The practice of chiropractic includes the taking of x-rays and administration of treatments such as those utilizing heat, water, and electricity. Unqualified practitioners present a danger to the public health, safety and well-being in that the possibility of inappropriate application of treatment methods would be increased by deregulation of the profession. Regulation of the chiropractic profession by a State Board should continue. Recommendations to enhance efficient functioning of the Board are made in this report.

I. General Information

A. Regulated Parties

1. Chiropractors
2. Associate Chiropractors

B. Statutory Definition of Regulated Profession

"Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery."  
(AS 08.20.220)

An associate chiropractor serves in an existing clinic or office under direct supervision of a licensed chiropractor for a period not to exceed three years pending completion of at least two years of college in liberal arts or science, and providing all other qualifications have been met.

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Keith Godfrey, DC (Chairman)	ends July 15, 1979
Lee Q. Burger, DC (Vice President)	ends July 15, 1980
Adrian Barber, DC (Secy)	ends July 15, 1978
Linnea Burmeister	en's July 15, 1978
Locke Jacobs	ends July 15, 1979

2. Representation:

Profession = 3  
Public = 2

3. Qualifications:

"Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry..." (AS 08.20.020)

D. Licensing Data

By Examination

<u>Year</u>	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1975	7	6	1	86	14
1976	4	4	0	100	-0-
1977	12	12	0	100	-0-
1978	7	5	2	71	29

(through August)

Currently licensed:

in-State = 32 (through June, 1978)  
out-of-State = 9 (through June, 1978)  
Total 41

Associate licenses = 4 (through June, 1978)

E. Fees

1. application for examination	\$25.00
2. application for reexamination	10.00
3. temporary permit	25.00
4. initial license	50.00
5. biennial renewal	50.00
6. associate license	30.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$1,205.00	\$ 345.00	\$1,910.00	\$1,070.00
- refunds	<u>-</u>	<u>25.00</u>	<u>-</u>	<u>-</u>
Total	\$1,205.00	\$ 320.00	\$1,910.00	\$1,070.00
Expenditures				
Per Diem	-	1,001.25	1,000.00	1,835.00
Transportation	-	1,027.36	1,128.58	1,815.32
Phone	-	20.55	19.51	65.98
Printing, Advert.,				
Postage	85.98	544.58	174.67	370.55
Fees & Services	-	220.04	-	107.63
Rents, Leases,				
Other	<u>75.00</u>	<u>25.00</u>	<u>54.24</u>	<u>23.59</u>
Total	<u>\$ 160.98</u>	<u>\$2,838.78</u>	<u>\$2,377.00</u>	<u>\$4,218.07</u>
Surplus	\$1,044.02	-	-	-
Deficit	-	\$2,518.78	\$ 467.00	\$3,148.07

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	2	1	0
1976	0	1	0
1977	2	0	0
1978	1	3	0
(Through September 15)			

Pending: 0

One complaint was closed because no violation was found to exist, another due to lack of information. Three complaints alleged over-charging, unethical advertising, and practicing without a license. None alleged harm to the public.

H. Qualifications

According to the Alaska Chiropractic Society, chiropractors must have a minimum of six years of college study and internship, the latter two years of which are generally devoted to practical or clinical studies.

## II. Criteria and Analysis

- A. To what extent has the Board of Chiropractic Examiners operated in the public interest?

Board authority in governing the practice of chiropractic includes the adoption of regulations necessary to carry out chapter provisions, approval of accredited schools or colleges, administration and approval of examinations and licensing of qualified chiropractors and associates. Authority to issue temporary permits and to license out-of-State licensees without examination is discretionary. Requirements which are designed to measure proficiency operate in the public interest in assuring competency of practitioners. While administration and approval of examinations by the Board is an appropriate and desirable function, consistency and validity of these measures must be a major consideration.

Two examinations are scheduled routinely each year as provided by regulations. Applicants are required by statute to have taken and passed "to the satisfaction of the board, Part I and Part II of the examination of the National Board of Chiropractic Examiners." The State Board has, in the past, given this examination to applicants who have not already taken it or who have not passed. Pending regulations will require that an applicant have passed the national examination before s/he applies for examination in Alaska with the result that the Board will no longer be administering the national examination as it has been doing.

In addition to the requirement for successful completion of the national examination, the Board requires a written Board prepared examination, an oral (diagnosis, x-ray, visual) examination and a practical (application, treatment) examination. Each portion is graded by individual examiners and scores are averaged including the national examination score. A general average rating of 75% is considered to be a passing grade.

A review of Board prepared examination materials for recent years indicates that content was frequently identical or at least strikingly similar for as long as three years. Most questions are in essay form and require a measure of subjective judgment on the part of the examiners. The Board has not promulgated regulations which govern methods of grading or scoring for consistency of application. Although not specifically cited in Board records, it appears that there may have been additional inconsistencies in averaging methods utilized.

As one method of avoiding allegations of arbitrary and capricious action, the Board should adopt regulations which specify grading criteria. The Board should also adopt a policy which would promote substantial dissimilarity in successive Board examinations and regulations which govern "general average rating" procedures that would apportion examination sections appropriately and definitively. Potential problem areas could be largely avoided through the use of a national testing service.

Continuing education requirements, as a condition of continuing licensure, have been discussed by the Board. The Board (and the Alaska Chiropractic Society) has expressed a desire to institute such requirements, however, it has no authority to do so as a condition of relicensure. There are no current review or reexamination procedures. Valid arguments may be made against mandatory education requirements: lack of facilities, cost of programs, and the prospect of legal issues arising from failure to renew a license. Equally valid arguments may be made in behalf of measures that are designed to help insure continued competency and allow practitioners to up-date themselves in their profession.

Statutory authority to adopt "necessary" regulations implies that the Board may consider continuing education requirements. To provide definitely that this may be done the Board should be given the specific

statutory direction to consider the subject and to impose requirements that are determined to be advisable. This would not be inconsistent with other health care boards, i.e., Medical, Optometry and Dispensing Opticians, whose statutes require continuing education. It is considered advisable to address mandatory continuing education by statutory directive with any appropriate exemption provisions.

Statutory authority exists for the issuance of temporary permits pending examination to applicants who are otherwise qualified. Records indicate that only one temporary permit has been requested and approved in recent years.

Present statutes require that out-of-State applicants meet both endorsement and reciprocity provisions. It is interesting to note that while all present professional members of this Board were licensed by reciprocity, the Board has made a formal policy decision that it will not license in this manner. The last license to be issued by reciprocity was issued in 1970-to a member of the Board. Several requests have been made by out-of-State applicants seeking endorsement. Board replies indicate that no reciprocal agreement exists between Alaska and the other state, however, there is no documentation that suggests reciprocity has been explored as a possibility, only that such relationships do not exist. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and increasing services of practitioners. It is recommended that licensing be allowed on the basis of endorsement and that the Board consider every mechanism by which entry into the profession and availability of services to the public may be facilitated.

- B. To what extent has the operation of the Board of Chiropractic Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Restrictive policies of the Board regarding reciprocity impede the opportunity of providing additional services to the public. The Board should recommend statutory changes for licensure by endorsement and, if unsuccessful, it should investigate the possibility of establishing reciprocal agreements with other states. If the requirements of Alaska and other states are substantially dissimilar, the Board should then review statutory qualifications for validity and make any appropriate recommendations that may be indicated.

Other statutory provisions for the Board of Chiropractic Examiners are generally considered to be adequate with the exception of mandatory continuing education requirements. The Board is given authority and latitude sufficient to allow it to operate in regulating the chiropractic profession.

The Board of Chiropractic Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions, one of which is submission of an annual report.

The Board of Chiropractic Examiners has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Chiropractic Examiners recommended statutory changes which are generally of benefit to the public interest?

Laymembers were added to the Board by statute in 1976. Other 1976 amendments were concerned with Medical Indemnity provisions and general "housekeeping" items.

No recommendations have been made by the Board of Chiropractic Examiners relating to statutory changes that would be of specific benefit to the public.

- D. To what extent has the Board of Chiropractic Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board appears to be generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may partially mitigate public disinterest.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>1</sup>

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Chiropractic Examiners processed and resolved?

No complaints were received which were specifically directed at individual members of the Board and none against the Board or profession were received by the Office of the Ombudsman. All complaints received against the profession through September, 1978 have been closed.

- F. To what extent does the Board of Chiropractic Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Chiropractic Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. State Board examinations are conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Board policy against licensure of out-of-State applicants by reciprocity is not conducive to encouraging entry into the profession. In order to provide the opportunity for increased availability of services to the public, it is recommended that reciprocity requirements be deleted and that licensure by endorsement be utilized. If not, the Board should attempt to establish reciprocal relationships with other states wherever possible.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Chiropractic Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Chiropractic Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Chiropractic Examiners to better serve the interests of the public?

Steps should be taken by the Board to apply existing statutes, regulations, and policies uniformly. Standards for examinations and grading should be formulated and enforced. Continuing education upon which relicensure would be contingent, and appropriate exemptions, should be considered and implemented. Efforts should be made to establish reciprocal relationships with other jurisdictions or to amend statutes to allow for licensure by endorsement.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination expenses, and investigative services.

Information obtained in the process of this review indicates that the Board has not complied with 12 AAC 16.210 concerning the practice and working agreements of chiropractic associates. Under these regulations, an associate must execute a contract with a supervising chiropractor which "provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract."

"The supervising chiropractor assumes liability for all malpractice of the associate." "The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate." Available documentation suggests that the Board has abrogated its responsibility in reviewing these contracts and that the contracts are, in fact, unfair to associates. There is question also as to the legality of the current agreements, however, determination on this is a matter to be taken up by another department. If such agreements are to exist, the Board should enforce its regulations regarding them.

Board membership in terms of numbers is considered adequate. Although it would be desirable to have the two separate chiropractic schools of thought represented by professional members, this may be difficult in administration. Terms of membership should be limited unless appointed to an unexpired term or following a term of absence.

Reciprocity requirements in many cases serve to restrict entry into professions in a state. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and with providing services of practitioners.

Regulations of this and all boards which pertain to advertising prohibitions are currently in the process of review and appropriate revisions.

### III. Conclusion

Regulation of this profession is determined to function in the public interest.

### IV. Summary of Recommendations

The Board of Chiropractic Examiners should be reestablished for an additional four-year period. The following recommendations are made:

1. The Board should promulgate and adopt regulations covering examination and grading procedures, content, and criteria.  
(See discussion on p. 7)
2. The Board should address the subject of mandatory continuing education, possible exemptions, and qualifying courses or methods of compliance.

It is recommended that these requirements and exceptions be established by statute. (See discussion on p. 7)

3. It is recommended that statutory provisions for reciprocity be deleted and endorsement be allowed instead. Whether by reciprocity or by endorsement, the Board should make every effort to encourage entry into the profession and to increase the availability of practitioners. (See discussion on p. 8)
4. The Board should fulfill its responsibility in applying statutes and regulations uniformly and fairly.

Chiropractic associate agreements should be reviewed as stipulated or appropriate amendments made to the regulations.  
(See discussion on n. 13)

5. The Board should adopt regulations which define "accredited" schools or colleges of chiropractic which are approved by the Board.
  
6. The Board should comply with the statutory requirement for submission of an annual report.

## Chapter 20. Chiropractors.

### Article

1. Board of Chiropractic Examiners (§§ 08.20.010 — 08.20.090)
2. Licensing and Regulation (§§ 08.20.100 — 08.20.190)
3. Unlawful Acts and Penalties (§§ 08.20.200 — 08.20.210)
4. General Provisions (§ 08.20.220)

### Article 1. Board of Chiropractic Examiners.

#### Section

10. Creation and membership of Board of Chiropractic Examiners
20. Members of board
30. Members' terms; vacancies
40. Organization of board
50. Power of officers to administer oaths and take testimony

#### Section

55. Board regulations
60. Power of board to adopt seal
- 70 — 80. [Repealed]
90. Quorum of board

**Sec. 08.20.010. Creation and membership of Board of Chiropractic Examiners.** There is created the Board of Chiropractic Examiners consisting of five members appointed by the governor. (§ 35-3-23 ACLA 1949; am § 2 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "five members" for "three members."

**Am. Jur., ALR and C.J.S. references.** — 41 Am. Jur., Physicians and Surgeons, § 27.

Constitutionality of statute prescribing conditions of practicing medicine as

affected by discrimination against chiropractors, 37 ALR 680; 54 ALR 600.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 ALR 630.

70 C.J.S. Physicians and Surgeons §§ 1, 8, 10, 12, 15.

**Sec. 08.20.020. Members of board.** Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry. Each member serves without pay but is entitled to per diem and travel expenses allowed by law. (§§ 35-3-23, 35-3-30 ACLA 1949; am § 3 ch 102 SLA 1976)

**Revisor's note.** — This section relating to per diem and expenses was impliedly amended by § 1, ch. 130, SLA 1953, as amended by § 1 ch. 34, SLA 1960.

**Effect of amendment.** — The 1976 amendment substituted "Three members"

for "Each member" and "licensed chiropractic physicians who" for "a licensed chiropractic physician and shall" in the first sentence and added the present second sentence.

**Sec. 08.20.030. Members' terms; vacancies.** Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 35-3-23 ACLA 1949; § 4 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment rewrote this section.

**Sec. 08.20.040. Organization of board.** Every two years, the board shall elect from its membership a president, vice president and secretary. (§ 35-3-24 ACLA 1949)

**Sec. 08.20.050. Power of officers to administer oaths and take testimony.** The president and the secretary may administer oaths in conjunction with the business of the board. (§ 35-3-24 ACLA 1949)

**Sec. 08.20.055. Board regulations.** The board shall adopt substantive regulations necessary to effect the provisions of this chapter. (§ 1 ch 102 SLA 1966)

**Sec. 08.20.060. Power of board to adopt seal.** The board shall adopt a seal and affix it to all licenses issued. (§ 35-3-24 ACLA 1949)

**Sec. 08.20.070. Secretary.**  
Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.20.080. Records, reports and accounts of board.**  
Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.20.090. Quorum of board.** A majority of the board constitutes a quorum for the transaction of business (§ 35-3-24 ACLA 1949)

## Article 2. Licensing and Regulation.

Section	Section
100. Practice of chiropractic without license prohibited	150. Recording of license
110. Application for license	160. Temporary permits
115. Malpractice insurance	170. Grounds for suspension, revocation or refusal to issue a license
120. Qualifications for license	175. Limits or conditions on license; discipline
130. Examination	180. Fees
135. Associate	190. Disposition of fees
140. Out-of-state licenses	

**Sec. 08.20.100. Practice of chiropractic without license prohibited.** No person may practice chiropractic in the state without a license. (§ 35-3-21 ACLA 1949)

**Cited in Territory of Alaska v. Hawkins,** 9 Alaska 573 (1939).

**Am. Jur. reference.** — 41 Am. Jur., Physicians and Surgeons, §§ 15, 16, 27.

**Sec. 08.20.110. Application for license.** A person desiring to practice chiropractic shall apply in writing to the board. (§ 35-3-26 ACLA 1949)

**Sec. 08.20.115. Malpractice insurance.** If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 5 ch 102 SLA 1976)

**Sec. 08.20.120. Qualifications for license.** An applicant shall be issued a license to practice chiropractic if he

- (1) Repealed by § 25 ch 245 SLA 1970.
- (2) has had a high school education or its equivalent;
- (2) has successfully completed at least two academic years of study in a college of liberal arts or sciences;
- (4) is a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each;
- (5) passes an examination given by the board;
- (6) Repealed by § 8 ch 32 SLA 1971.
- (7) passes to the satisfaction of the board Part I and Part II of the examination of the National Board of Chiropractic Examiners. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955; am § 1 ch 91 SLA 1965; am § 25 ch 245 SLA 1970; am § 8 ch 32 SLA 1971; am § 1 ch 84 SLA 1972)

**Revisor's note (1972).** — In ch. 84, SLA 1972, the apparently necessary word "examination" was omitted from AS 08.20.120(7). It has been added here.

**Legislative committee reports.** — Chapter 245, SLA 1970 (HCSSB 399 am H),

was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

**Sec. 08.20.130. Examinations.** (a) Examinations for a license to practice chiropractic may be held in the time and manner fixed by the board.

(b) The examination may include practical demonstration and oral and written examination in those subjects usually taught in accredited chiropractic schools.

(c) A general average rating of 75 per cent is a passing grade on the examination.

(d) An applicant may take a re-examination within one year after failing the examination upon payment of a fee of \$10. (§ 35-3-27 ACLA 1949; am § 2 ch 91 SLA 1965)

**Am. Jur. reference.** — 41 Am. Jur.,  
Physicians and Surgeons, §§ 40, 41.

**Sec. 08.20.135. Associate.** A person who complies with § 120 (1), (2), (4), (5), and (6) of this chapter shall, pending compliance with (3) of § 120 of this chapter, be licensed to serve as an associate in an existing chiropractic clinic or office under the direct supervision of a licensed chiropractor for a period not to exceed three years. (§ 3 ch 91 SLA 1965)

**Editor's note.** — Paragraphs (1) and (6) of § 120, referred to in this section have been repealed.

**Sec. 08.20.140. Out-of-state licenses.** The board may issue a license without examination to an applicant presenting satisfactory proof of the possession of a license or certificate of registration in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of his license are considered by the board as equivalent to those in this chapter, and if the licensing jurisdiction extends the same privilege to those holding a license from this state. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955)

**Sec. 08.20.150. Recording of license.** Each licensee shall record his license with the clerk of the superior court in the judicial district in which he is practicing his profession. (§ 35-3-28 ACLA 1949)

**Sec. 08.20.160. Temporary permits.** Temporary permits may be issued to persons apparently qualified until the next regular meeting of the board. (§ 35-3-28 ACLA 1949)

**Sec. 08.20.170. Grounds for suspension, revocation or refusal to issue a license.** (a) The board may refuse to issue, or may suspend or revoke a license upon any of the following grounds:

- (1) malpractice;
- (2) misrepresentation;
- (3) unprofessional conduct;
- (4) habitual intemperance, or addiction to the use of narcotics;
- (5) conviction of a felony or misdemeanor involving moral turpitude;
- (6) violation of any provision of this act.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board for the suspension or revocation of a license.

(c) Any person whose license is suspended or revoked may within two years from date of suspension apply for reinstatement, and if the board is satisfied that the applicant should be reinstated, it shall order reinstatement. (§ 35-3-29 ACLA 1949).

Am. Jur. reference. — 41 Am. Jur.,  
Physicians and Surgeons, §§ 44 to 46.

**Sec. 08.20.175. Limits or conditions on license; discipline.** (a) In addition to action under § 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 6 ch 102 SLA 1976)

**Sec. 08.20.180. Fees.** The board shall impose and collect the following fees:

- (1) upon the filing of an application for examination, \$25;
- (2) upon application for re-examination, \$10;
- (3) for issuance of temporary permit, \$25;
- (4) initial and renewal biennial license, \$50;
- (5) associate license, \$30. (§ 35-3-30 ACLA 1949; am § 1 ch 13 SLA 1968)

**Sec. 08.20.190. Disposition of fees.** All fees collected by the board shall be paid into the general fund of the state. (§ 35-3-30 ACLA 1949)

### Article 3. Unlawful Acts and Penalties.

#### Section

200. Violation of § 100 of this chapter

210. Fraudulent certificates

**Sec. 08.20.200. Violation of § 100 of this chapter.** A person who violates § 100 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than a year, or by both. In prosecutions under this section, evidence that the defendant has failed to file his certificate of registration with the board is prima facie evidence that he is not a licensed chiropractor. (§ 3 ch 53 SLA 1955)

**Revisor's note.** — This section introduces a requirement which does not exist in this chapter, viz., filing a certificate with the board. It is the board's duty to keep a registry.

**Sec. 08.20.210. Fraudulent certificates.** Any person who obtains or attempts to obtain a chiropractic certificate by dishonest or fraudulent means, or who forges, counterfeits, or fraudulently alters any such certificate is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both. (§ 4 ch 53 SLA 1955)

#### **Article 4. General Provisions.**

##### **Section**

220. Chiropractic defined

**Sec. 08.20.220. Chiropractic defined.** Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery. (§ 35-3-22 ACLA 1949)

**Prescription of drugs or medicine illegal.** — It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

**Expenditures from fishermen's fund for medicine prohibited.** — Money cannot

CHAPTER 16. BOARD OF  
CHIROPRACTIC EXAMINERS

Article

1. The Board
2. Licensing
3. General Provisions

ARTICLE 1. THE BOARD

Section

10. Objectives
20. Meetings

12 AAC 16.010. OBJECTIVES. (a) It is the objective of the board to foster professional standards consistent with the best interests of the profession.

(b) It is the objective of the board to adhere to the Code of Ethics of the American Chiropractic Association or International Chiropractic Association as a basis for considering what comprises the duties and obligations of chiropractors to the public. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.020. MEETING. (a) Robert's Rules of Order govern the deliberations of the board to the extent that they do not conflict with this chapter or with the laws of the state.

(b) The board will meet regularly the second Saturday and Sunday of January and June for purposes of meeting and examining applicants. Other meetings or examinations are termed "special."

(c) The board will, when possible, coincide business meetings and examination of applicants for licensure. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

ARTICLE 2. LICENSING

Section

30. Application for examination
40. Evaluation
50. Notification
60. Schedule
70. Basis of questions
80. Identity of applicant
90. Method of examination

100. Materials
110. Leaving examination room
120. Disturbance
130. Questions
140. Grades
150. Re-examination
160. Time
170. Special examination
180. Reconsideration of papers
190. Certificates
200. Temporary permits
210. Associates
220. Duplicate licenses
230. Misrepresentation
240. Unprofessional conduct

12 AAC 16.030. APPLICATION FOR EXAMINATION. No applicant may take the examination unless he

(1) applies on the board approved form for application for licensure;

(2) complies with all the forms, requirements and any additional requests for information by the secretary of the board when necessary to complete the applicant's credentials;

(3) submits to the board written proof of meeting all requirements of AS 08.20;

(4) pays the required fees for application and

(5) applies no less than 30 days before a scheduled examination. (Eff. 3/8/71, Reg. 37)  
Authority: AS 08.20.055  
AS 08.20.130

12 AAC 16.040. EVALUATION. Evaluation of an applicant's credentials in work for liberal arts or science (two years' liberal arts and science college) shall be made from a course of study from an institution equivalent to those of the University of Alaska or acceptable to the regional accrediting agencies for approved colleges of liberal arts or sciences. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.050. NOTIFICATION. An applicant will be notified of his passing or failing of an examination or the acceptance or denial of his application for examination within a reasonable time from the date of examination or

the receipt of application for examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.060. SCHEDULE.** The board will when possible, regularly examine applicants on the second Saturday and/or Sunday of January and June at a time and place determined by the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130(a)

**12 AAC 16.070. BASIS OF QUESTIONS.** All examination questions will be based upon material contained in standard text books used in chiropractic schools or colleges. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.080. IDENTITY OF APPLICANT.** An applicant for examination will be designated by a number instead of a name, so that the identity is not disclosed to the examiners until the papers are graded. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.090. METHOD OF EXAMINATION.** The paper of an applicant will be identified by numbers as follows:

(1) each envelope will be numbered and will contain a blank sheet of paper with a number on it which the applicant shall write his name and address on the blank and return it to the envelope which shall be sealed and delivered to the director;

(2) each applicant shall place on his examination paper the number given to him. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130(a)

**12 AAC 16.100. MATERIALS.** No applicant may have on his examination table any paper or object other than the examination questions, examination paper, blotter, pencil, pens, and ink, eraser, and a watch. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130(a)

**12 AAC 16.110. LEAVING THE EXAMINATION ROOM.** No candidate may leave the examination room for any reason

unless accompanied by a proctor or board member. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130(a)

**12 AAC 16.120. DISTURBANCE.** No applicant may communicate with another applicant during the examination. A disturbance on the part of the applicant will cause him to be required to leave the examination room. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130(a)

**12 AAC 16.130. QUESTIONS.** An applicant shall rely solely on his own judgment for the meaning of each question, and on his own knowledge of the subject in answering each question. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.140. GRADES.** (a) An applicant failing to make required grade average will be credited for the subjects passed.

(b) An applicant failing to attain a general average rating of 75 percent after two examinations is required to produce evidence of refresher courses in the subjects failed before he is allowed a re-examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130

**12 AAC 16.150. RE-EXAMINATION.** An applicant may apply for re-examination by

(1) informing the board of his intention at least 30 days before the next regularly scheduled examination: and

(2) paying the re-examination fee. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.160. TIME.** An applicant will be allowed to proceed at his own speed on each subject given in the examination, within the time specified. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.130(a)

**12 AAC 16.170. SPECIAL EXAMINATION.** A special examination of an applicant may be

allowed if all members of the board agree and notice of 30 days in writing is given to the board and the applicant has complied with the provisions of this chapter and AS 08.20. (Eff. 3/8/71, Reg. 37)

Authority: AS 20.055

**12 AAC 16.180. RECONSIDERATION OF PAPERS.** The examining board will not reconsider an applicant's examination papers unless the applicant presents his reason in writing to the board. The applicant is bound by the decision of the board. (Eff. 3/8/71, Reg. 37)

Authority: 08.20.055

**12 AAC 16.190. CERTIFICATES.** The board shall issue one form of license to those passing the examination for licensure. The license shall be designated "License to Practice Chiropractic." The license authorizes its holder to practice chiropractic in the state, and shall be signed by all board members. All certificates shall be numbered consecutively. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.200. TEMPORARY PERMITS.** (a) Temporary permits are subject to termination by the board at any time if, in the board's determination, the holder of the permit is violating ethical behavior or law after being warned by the board that this action in regard to him was being contemplated.

(b) Temporary permits shall be displayed in a conspicuous place in the office where the holder practices chiropractic.

(c) It is the duty of the permittee to inform the board of any change in his mailing and practicing address. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

AS 08.20.160

**12 AAC 16.210. ASSOCIATES.** (a) No associate may treat or diagnose a patient professionally unless

(1) he furnishes the board periodic evidence that he is pursuing reasonable academic study to fulfill the two years liberal arts or science requirements within the three-year period;

(2) he executes a contract with the supervising chiropractor which provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract;

(3) the supervising chiropractor assumes liability for all malpractice of the associate.

(b) The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate.

(c) The associate shall inform the board of any changes in his current mailing address and contemplated changes in his contract.

(d) The associate shall openly display his license in the office in which he practices and on the license shall be stamped in a conspicuous place on the face, the words, "associate" or "as the associated chiropractor licensed under statute."

(e) The board will revoke the license of an associate at any time it reasonably appears impossible for the associate to complete the specified curricula within three years from the date of licensure issue.

(f) The licensed associate shall use the word "associate" after his name to inform the public of his status. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

AS 08.20.135

**12 AAC 16.220. DUPLICATE LICENSES.** The board shall, upon request, issue a duplicate license in place of the original if the original is destroyed or lost, or if the licensee legally changes his name. The duplicate license shall have on the face in a conspicuous place the word "duplicate." (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

**12 AAC 16.230. MISREPRESENTATION.** As used in AS 08.20.170 (2) "misrepresentation" means

(1) the use of any advertising in which untruthful, exaggerated, improper, misleading or deceptive statements are made;

(2) the advertising of techniques or modalities to infer or imply superiority of treatment or diagnose by their use;

(3) impersonation of another practitioner of like or different name;

(4) advertising either in his own or under the name of another person, or clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by fellow chiropractic physicians;

(5) the advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method or procedure;

(6) knowingly permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.240. UNPROFESSIONAL CONDUCT. In AS 08.20.170 (3) "unprofessional conduct" means

(1) aiding the practice of any of the healing arts by an unlicensed person;

(2) the use of his name under the designation "Doctor," "Dr.," "Chiropractor," "Chiropractor Physician," or "Ph.C." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise;

(3) advertising which contains offers, premium gifts or cut rates for the purpose of attracting or retaining patients; or which is not in accordance with sec. 250 of this chapter;

(4) mention of either

(A) superiority to other members of the chiropractic profession; or

(B) of the school from which the advertising chiropractor was graduated;

(5) the use of handbills for the purpose of attracting patients;

(6) advertising the prices for which services are available;

(7) dishonorable conduct of degradation by a license relating to the occupation. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.170

### ARTICLE 3. GENERAL PROVISIONS

#### Section

- 250. Violations
- 260. Advertising
- 270. Definitions

12 AAC 16.250. VIOLATIONS. It is the duty of all members of the board to report to the Division of Occupational Licensing, instances of alleged violations of AS 08.20.100. The secretary shall inform a new licensee in the state that it is his duty to report all instances of suspected unlicensed practice of chiropractic known to him to the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055  
AS 08.20.100

12 AAC 16.260. ADVERTISING. (a) Upon the opening, reopening or removal of an office for the practice of chiropractic, the chiropractor may publish, in local newspapers, an announcement, which shall be limited to a statement of his name, title, profession, degrees, address, telephone number and office hours. The announcement may not be published for more than 90 days after the opening, reopening, or removal of the office. The announcement may not exceed eight square inches in area.

(b) When a chiropractor transfers his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery and directories connected with the practice he has acquired or is acquiring, all such words or phrases as "successor to" or words of like import. Under no circumstances may these signs, cards, stationery or advertising

continue for a period of more than two years.  
(Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.270. DEFINITIONS. In this chapter:

(1) "board" means the Board of Chiropractic Examiners as established by AS 08.20.010. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

VIII

STATE OF ALASKA  
Board of Pharmacy  
(October, 1978)

Findings

The practice of pharmacy is controlled by AS 08.80, by Title 17 (Food and Drugs) and by federal laws and regulations. Practitioners dispense, upon prescription, controlled and dangerous drugs as well as those routinely prescribed to relieve pain or illness or to promote health. Lack of control over persons responsible for appropriate dispensing and security of these substances would present a danger to the welfare of the public. In general, the Board of Pharmacy has operated to insure high standards within the profession, to allow entry of qualified individuals, and to provide availability of services to the consuming public. Inconsistencies, exceptions and recommendations concerning the Board and regulation of the profession are cited in this report. It is recommended that the Board of Pharmacy and State regulation of this profession be reestablished for another four-year period.

I. General Information

A. Regulated Parties

1. Pharmacists
2. Intern Pharmacists
3. Pharmacies
4. Shopkeepers

B. Statutory Definition of Regulated Profession

1. Pharmacist: None specified
2. Intern pharmacist: None specified
3. Pharmacy: "... includes 'drug store' and 'pharmacy or drug department' and means a place of business in which physicians' prescriptions are compounded or dispensed and in which drugs and medicines are compounded or dispensed;" (AS 08.80.480(5))
4. Shopkeepers: "... means a retail dealer who sells over the counter medicinal preparations in original unbroken packaging which do not require a prescription for dispensing." (AS 08.80.480(19))

C. Nature and Composition of Board

1. Board members and terms:

Five-year term (no restrictions regarding consecutive terms or number of terms).

Eldon Ulmer (Chairman)	Ends March 31, 1977
James L. Murphy	Ends March 31, 1976
Lester E. Elkins	Ends March 31, 1983
Charles R. Rush (Secy.)	Ends March 31, 1979
James H. McCorcle	Ends March 31, 1980
Fred Savok	Ends March 31, 1981
Robert K. Snider	Ends March 31, 1980

2. Representation:

Profession = 5  
Public = 2

3. Qualifications:

Five members shall be resident licensed pharmacists who have actively practiced in the State for the three-year period immediately preceding appointment and two members shall be persons with no direct financial interest in the health care industry.

D. Licensing Data

Year	# of Candidates	By Examination			
		# Passed	# Failed	% Passed	% Failed
1975	2	1	1	50	50
1976	1	1	0	100	0
1977	2	2	0	100	0
1978	4	4	0	100	0

(through June 30)

Currently licensed:

in-State	=	179	(through June, 1978)
out-of-State	=	<u>95</u>	(through June, 1978)
Total		274	

Currently licensed pharmacies:	77
Currently licensed drug rooms:	14
Current shcpkeeper permits:	0

E. Fees

1. examination fee	\$50.00
2. reexamination fee	15.00
3. reciprocity investigation fee	25.00
4. biennial license fee	50.00
5. temporary license fee	10.00
6. wholesale drug dealer biennial license fee	50.00
7. retail pharmacy biennial license fee	50.00
8. pharmacy intern registration fee	10.00
9. emergency permit fee	10.00
10. hospital pharmacy biennial license fee	50.00
11. hospital drug room biennial license fee	25.00
12. nursing home license fee	25.00
13. shopkeepers biennial permit fee	10.00
14. license amendment or replacement fee	2.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$5,570.00	\$13,883.00	\$8,384.00	\$16,547.00
-refunds	<u>25.00</u>	<u>35.00</u>	<u>135.00</u>	<u>65.00</u>
Total	5,545.00	13,848.00	8,249.00	16,482.00
Expenditures				
Per Diem	551.25	2,677.15	2,216.67	2,016.67
Transportation	345.20	1,928.53	1,508.28	1,712.80
Phone	218.00	252.97	140.55	215.74
Printing, Advertising & Postage	495.58	586.30	320.23	313.19
Fees & Services	120.00	390.00	330.00	100.00
Rents, Leases, Other	<u>-</u>	<u>19.50</u>	<u>139.50</u>	<u>543.00</u>
Total	<u>\$1,730.03</u>	<u>\$ 5,854.45</u>	<u>\$4,655.23</u>	<u>\$ 4,401.40</u>
Surplus	\$3,814.97	\$7,993.55	\$3,593.77	\$11,580.60
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	5	0	0
1976	4	0	0
1977	5	0	0
1978	1	0	0
(through June 30)			

Pending: 15

The largest portion of these cases was referred by members of the Board or profession and most deal with allegations of unethical advertising. Due to the nature of offense and length of time since filed, several of these complaints may be considered moot at this point.

II. Criteria and Analysis

A. To what extent has the Board of Pharmacy operated in the public interest?

Overall, the Board of Pharmacy is, and has been, acting in the public interest in assuring qualified practitioners and availability of services throughout the State. Recommendations and observations made in this report are designed to enhance Board operation in regulating the profession in a manner which is most desirable for the continued protection of the public.

The Board of Pharmacy has a number of statutory powers and duties through which it regulates the profession. For example, it may examine applicants, investigate State or federal violations, promulgate and adopt regulations, register and govern the practice of interns, and promulgate regulations

to ensure security of dangerous drugs (AS 08.80.030). AS 08.80.040 provides that the Board shall examine applicants, grant registration, initiate prosecution of violators, submit reports on the condition of pharmacy in the State to the Legislature, maintain necessary records, issue a list of potentially dangerous medicinal ingredients or preparations, and issue shopkeeper permits. These powers and duties are felt generally to be necessary if the Board is to continue to function for the public interest and protection by maintaining control over the quality and integrity of practitioners and pharmaceutical related establishments.

Qualifications for licensure include fluency in the English language, two character affidavits, graduation from a recognized college of pharmacy, successful completion of the NABP examination and 1,500 hours of internship, of which 540 must be postgraduate. The only other requirement established by the Board is that the applicant must pass a jurisprudence examination given by a member of the Board. Applicants may take this jurisprudence examination at their convenience and as many times as needed to pass.

The written examination proctored by the Board is developed and provided by the National Association of Boards of Pharmacy. This examination, the NABPLEX, is given nationwide to graduates who are then registered through the National Board. Very few licentiates have been licensed by examination in Alaska, only those who have not previously taken the National Board examination. Most applicants for an Alaska license are approved by endorsement as certified by the National Board.

Licensure may be delayed in instances where an applicant does not meet the requirement for 540 hours of postgraduate training under direct supervision of a licensed pharmacist. Registration as a postgraduate intern is then available until completion of the requirement at which time a permanent license is issued.

Upon completion of all items except validation of registration by the National Board, a Board member may issue a temporary registration certificate. Temporary certificates are valid for three months or until the next Board meeting - whichever is longer, may be extended for 60 days maximum, are nonrenewable and are issued on a one-time basis. This procedure allows adequate time in which to receive NABP certification and allows the applicant to begin practicing in the interim. Pregraduate intern permits are also issued to applicants who are enrolled and at least a junior in pharmacy school.

Practices and policies which utilize standard examinations, standard endorsement procedures and the issuance of temporary permits to qualified applicants are felt to operate in the public interest by encouraging entry into the profession and promoting increased availability of services.

Regulations adopted by the Board govern the practice of interns, practices of hospital pharmacies, and expanded definitions. Statutory authority to promulgate regulations ensuring dangerous drug security and to issue a list of potentially dangerous medicinal ingredients or preparations has been provided, the latter being a mandatory directive. However, some difficulty has been encountered by the Board in attempting to follow through on these. Some time ago regulations were proposed with respect to the required list of dangerous ingredients and preparations; they were not approved and no further action has taken place. This requirement is mandated by statute and should be pursued by the Board. Promulgation and adoption of regulations concerning security of dangerous drugs has also not occurred although this statute is optional and not mandatory.

Investigations of statute violations per se are conducted by and are generally the responsibility of the administrative agency. The Board, on its own initiative, and considering budgetary constraints, has con-

ducted on-premise inspections of pharmaceutical establishments wherever and whenever possible. These inspections include drug security, sanitation, access of pharmacy within the building, display of license, and equipment and references available. Because of budgetary limitations, these inspections have not occurred as often as may be desirable and in some areas very seldom or not at all. Self-inspection forms may be mailed in lieu of a personal visit as a reminder to proprietors.

Statutory provisions are made with respect to registration of shopkeeper permits. Issuance of such permits would entail on-going certification and regulation of all food stores, convenience stores, and so on, which sell items such as aspirin and laxatives to the public. Control over these establishments would assist in such matters as recalling items at the request of the manufacturer but regulation in this area has been unworkable due to opposition on behalf of retail establishments. Without enforcement capabilities, the Board of Pharmacy has requested that provisions regarding shopkeepers be deleted from the statutes.

No report has been made to the Legislature on the condition of pharmacy in the State although the administrative agency has been requested by the Board to accomplish this.

Maintenance of registration records with supporting documents is an area of some concern. Administrative agency files are inadequate with respect to licensing of applicants and actions authorized by the Board. Additionally, there is evidence that one member is acting or approving action which should be documented as occurring after consideration by the Board as a whole. For example, temporary permits, retail pharmacy registrations, and hospital pharmacy registrations are routinely issued by one Board member with no record of other members' consideration or approval. Statutes authorizing these items address the Board, not individual members, and the Board should take action as a body at a duly conducted meeting in the performance of its duties. Also missing from

some files are: (1) renewal information, (2) records of approval for licensure following internship, (3) jurisprudence examinations and scores, (4) copies of initial licenses, (5) application information, and (6) records of licensure authorization. Every effort should be made by the Board and by the agency to maintain adequate records and documents. Organization of records, forms and examination information would better enable the Board to perform its functions, such as submission of an annual report.

Another problem in this area is that fees, examination materials, application forms and other information have frequently been initially sent to a member of the Board rather than to the administrative agency. This procedure should be discontinued and all materials pertaining to applicants and licensees should be forwarded to and maintained by the administrative agency. Again, review and action on files should only occur through consideration of the Board at a regular meeting.

The Board of Pharmacy has been incorrectly interpreting and applying statutes concerning temporary registration in some instances. AS 08.80.150 states, "The board shall issue a temporary license to an applicant applying for registration as a pharmacist under § 140 of this chapter upon written or oral examination..." § 140 provides for licensure by endorsement for an applicant certified by the National Board who meets the requirements of § 110(1) - (4). Section 110(5), requiring 1,500 hours of internship training of which 540 hours must be postgraduate, is excluded from the endorsement provision and from the temporary registration provision. The Board has, however, denied temporary registration to applicants who have not had 540 hours of postgraduate experience, against statutory provisions. Amendments have been recently proposed to change these particular statutes but until such time as a change is made, if it is made, the Board should act in compliance with law.

No continuing education requirements are in effect for members of this profession nor are any contemplated as a condition of relicensure. The Board has recently taken a position in favor of such requirements but against mandatory imposition based on the scarcity of available educational resources within the State. Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. Pending further study of this issue, one opinion<sup>1</sup> seems to indicate that vigorous investigation and enforcement programs may be an effective course of action. It must be recognized, however, that there is a widespread trend toward continuing education requirements as a condition of license renewal. In view of the technical nature of the profession, changing procedures, new and increasing numbers of medicinal aids, and increasing technology in this field, it is recommended that the Board reconsider its position and adopt regulations requiring some form of continuing competency as a condition of relicensure. This may also be accomplished by statute with the Board outlining acceptable educational criteria. Any exceptions to such requirements should also be delineated by statute.

- B. To what extent has the operation of the Board of Pharmacy been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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<sup>1</sup>Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J., 1976, p. 35.

As previously noted, present statutes are considered to be appropriate to Board operation. While there have been no particular difficulties with advertising in the profession, AS 08.80.420(b) should be repealed in keeping with recent federal court decisions which deal with this subject. A statutory provision is also recommended which would require continuing education and which would clarify qualifications for temporary registration.

Board policies which allow for one member to act on matters of licensing and which circumvent the administrative agency's responsibility in the areas of fees collection and applicant files are felt to impede effective regulation. There is also indication that applicants are notified of approval for licensure but no certificate is issued until the applicant passes the jurisprudence examination. If certification is to be withheld in this manner, the Board and the regulations should clearly indicate that this examination is a prerequisite to licensure.

Available records further indicate that temporary registrants may have been practicing without authorization. In several instances temporary registrations expired prior to the effective date of licensure with no record of an extension having been applied for or approved. At least one applicant was granted two temporary permits with a three-month interruption between them. The effective date of licensure was beyond initial temporary registration even with an extension period. Temporary registrations are statutorily provided for applicants for licensure by endorsement pending National Board certification. They have, on occasion, been issued pending receipt of such items as birth certificate notarization. The Board should grant temporary registration privileges as provided by statutes and in a uniform manner. It further should act on these matters as a Board and ensure that adequate documentation exists for action.

The desires of the Board to delete AS 08.80.030(6), .040(7), .160(13), .380, and .480(19) concerning shopkeepers is concurred with as being unrealistic in terms of regulation or control. Opposition previously cited regarding regulation of potentially dangerous medicines and preparations has made these statutory provisions unenforceable under present circumstances.

The Board of Pharmacy has experienced some difficulty in its administrative operations with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs although high employee turnover has impeded continuity and follow-up on Board requests. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes. An expanded budget which would allow for increased inspection scheduling would be desirable if this Board is to be effective in administration of its duties.

Consideration should be given to an increased number of scheduled meetings to allow the Board to consider matters needing action and to facilitate documentation of subsequent action.

The Board of Pharmacy has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and poten-

tially injurious licensing complaints. It must be noted that until recently this Board was unaware of the number of complaints on file concerning the profession.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

- C. To what extent has the Board of Pharmacy recommended statutory changes which are generally of benefit to the public interest?

Health care legislation enacted in 1976 provided amendments to existing statutes relating to the Board and the practice of pharmacy concerning: (1) addition of lay members to the Board; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; (4) expansion of violations provisions; and (5) general "housekeeping" items.

The Board of Pharmacy has discussed and recommended statutory and regulatory changes which it has determined would be of benefit in regulating the practice of pharmacy. Specific recommendations of direct benefit to the public are absent from Board records, however, increased administrative efficiency has an overall beneficial public effect.

- D. To what extent has the Board of Pharmacy encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is conscientious and sensitive to public concern and to aspects of public health and welfare. However, very little public interest or participation in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State. It can be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical or scientific nature and which may be considered too complex for anything but minimal scrutiny by a layperson. A technical and professional "barrier" of sorts exists, due to the nature of the occupation involved, which probably tends to deter public knowledgeability and participation.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>2</sup>

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<sup>2</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Pharmacy processed and resolved?

As of June, 1978 there were 15 complaint cases pending in agency files. Most of these deal with advertising and would be invalid in view of recent court rulings. Until recently the Board has been unaware of the number and nature of these complaints and little action was taken. The administrative agency is currently addressing complaints and investigative procedures and the need for timely disposition of issues. Investigation services to all boards and commissions under its jurisdiction are expected to improve.

There have been no complaints against the Board of Pharmacy or its members and no complaints regarding the Board or profession were reported received by the Office of the Ombudsman.

An accelerated inspection program by the Board is recommended to ensure adherence to laws, quality of premises and quality of services provided. Concurrently, it is recommended that budgetary allowances be made for such inspections throughout the State.

- F. To what extent does the Board of Pharmacy present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Pharmacy. Individuals wishing to practice within the State must submit fees and application with documentation of qualifications. Two examinations each year are currently scheduled. Applicants who demonstrate the required level of knowledge and proficiency are granted a license by examination or by endorsement.

High professional standards are advocated by this Board and members have exhibited a willingness to serve to the utmost to assure those high standards. Exceptions to procedure and statute and inconsistencies noted in this report are not felt to be a result of professional disinterest or disregard of public welfare. On the contrary, entry into the profession is facilitated and expedited by the Board in most cases. Recommendations made should be implemented to correct any inequities and to increase administrative efficiency. The Board should consider scheduling one or two additional meetings each year for the purpose of acting on Board business and coordinating its actions.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Pharmacy in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Pharmacy issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Pharmacy to better serve the interests of the public?

AS 08.80.030(6), .040(7), .160(13), .380 and .480(19), concerning shopkeepers, should be repealed as being unenforceable and unrealistic in terms of control. AS 08.80.420(b) should also be repealed as inappropriate with respect to advertising restrictions. The Board should be given specific statutory direction concerning the subjects of continuing education requirements and temporary permit qualifications.

The Board of Pharmacy has adequate regulatory authority. The Board should act to comply with AS 08.80.040(6) which requires issuance of a list of dangerous medicinal ingredients or preparations. It should also clarify the requirement for a jurisprudence examination as it relates to disbursement of certification. Board members should discontinue the practice of acting independently from the Board and from requesting or retaining materials that should be directed to and maintained by the administrative agency. This would also facilitate compliance with .040(4) which requires reports to the Legislature on the condition of pharmacy in the State. The administrative agency will establish procedures and ensure maintenance of records to facilitate assistance to the Board and accountability to the public or other interested parties. The agency will also continue to address the need for efficient and responsive investigation of complaints.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination expenses and investigative services. Resources which would enable the Board to conduct periodic inspections of premises throughout the State are not available. This function of the Board is necessary to insure compliance with laws and standards and to inspect the quality of establishments and services. Budgetary allowances are needed for adequate inspection scheduling and for an increase in meetings when necessary to conduct Board business.

Current Board composition is also determined to be adequate. It is recommended, however, that the number of terms served be restricted to one in view of the fact that members serve for a five-year period.

### III. Conclusion

The Board of Pharmacy and State regulation of this profession is justified in terms of protection of public health, safety and welfare.

### IV. Summary of Recommendations

The Board of Pharmacy should be reestablished for an additional four-year period. The following recommendations are made:

1. The Board should comply with statutory provisions and apply those provisions uniformly.
  - a. The Board should comply with § 040(6) which requires that it "issue a list of potentially dangerous medicinal ingredients or preparations that may be sold only under the direct supervision of a licensed pharmacist;" (See discussion on p. 9)
  - b. The Board should "promulgate regulations to ensure adequate security for all dangerous drugs" as authorized by § 030(8). (See discussion on p. 9)
  - c. The Board and the administrative agency should comply with § 040(4) which requires a report to the Legislature on the condition of pharmacy within the State. (See discussion on p. 10)
  - d. The Board should apply the requirements for the issuance of temporary registrations as delineated by statute. While the Board is proposing a change which would make 540 hours of postgraduate supervision under a licensed pharmacist mandatory, this is not presently a requirement for temporary registration. (See discussion on p. 11)

2. The Board should clarify its position with respect to a jurisprudence examination and its relationship to licensure. (See discussion on p. 13)
3. A statutory change is recommended which sets out mandatory continuing education requirements for this profession and any appropriate exceptions. The Board should then address the kinds of educational courses which meet the requirements. (See discussion on p. 12)
4. Consideration should be given to deleting § .420(b) concerning advertising and § .030(6), .040(7), .160(13), .380, and .480(19) concerning shopkeepers and their regulation. (See discussion on p. 10)
5. The Board should act on all matters pertaining to licensure and examination privileges as a body at a regular business meeting. Individual members should not act independently of the Board in granting or denying these privileges. (See discussion on p. 10)
6. It is recommended that the Board expand its inspection duties to encompass periodic inspections of all establishments throughout the State and that it increase the number of meetings scheduled each year when necessary for the efficient conduct of Board business. The Board will not, however, be able to accomplish this without adequate budgetary allowances. (See discussion on p. 9)
7. It is recommended that membership on the Board be restricted to one five-year term unless initially appointed to fill a vacant term or following a term of absence. (See discussion on p. 19)

## Chapter 80. Pharmacy Act.

### Article

1. The Board of Pharmacy (§§ 08.80.010—08.80.100)
2. Licensing and Registration (§§ 08.80.110—08.80.265)
3. Duties of Licensed Pharmacists (§§ 08.80.270—08.80.365)
4. Unlawful Acts (§§ 08.80.370—08.80.460)
5. General Provisions (§§ 08.80.470—08.80.490)

### Article 1. The Board of Pharmacy.

#### Section

10. Creation and membership of Board of Pharmacy
20. Term of office
30. Powers of the board
40. Duties of the board
50. Applicability of Administrative Procedure Act

#### Section

60. Meetings of the board
70. Quorum
80. Expenses of members
90. Disposition of fees
100. [Repealed]

#### Sec. 08.80.010. Creation and membership of Board of Pharmacy.

There is created the Board of Pharmacy, composed of seven members, five of whom shall be pharmacists licensed in the state who have been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding their appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district. (§ 3 ch 194 SLA 1955; am § 25 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment, in the first sentence, substituted "seven members, five" for "five members, each," "pharmacists" for "a pharmacist," "have" for "has," and

"their" for "his." The amendment also added the present second sentence.

**Am. Jur. and C.J.S. references.**—17 Am. Jur., Drugs and Druggists, §§ 7 to 13.  
28 C.J.S. Druggists §§ 1, 2, 4.

**Sec. 08.80.020. Term of office.** Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do not expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year. (§ 3 ch 194 SLA 1955; am § 26 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment added the present second sentence.

**Sec. 08.80.030. Powers of the board.** The board may

- (1) elect a president and secretary from its membership and adopt rules for the conduct of its business;
- (2) examine applicants for registration as pharmacists;
- (3) investigate individually, collectively, or through its agent, for violations of this chapter, or of any other state or federal statute relating to the practice of pharmacy;
- (4) adopt regulations and do whatever else is necessary and advisable to carry out the purposes of this chapter;
- (5) promulgate regulations to carry out the purposes of this chapter;
- (6) examine applicants for shopkeeper permits;
- (7) register intern pharmacists and promulgate rules relating to their minimum experience requirements;
- (8) promulgate regulations to ensure adequate security for all dangerous drugs. (§ 4 ch 194 SLA 1955; am § 1 ch 72 SLA 1969; am § 9 ch 69 SLA 1970; am § 1 ch 206 SLA 1972; am § 1 ch 187 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "investigate individually, collectively, or through its agent, for" for "investigate, individually, collectively, all alleged" in paragraph (3).

**Legislative committee report.**—For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

**Sec. 08.80.040. Duties of the board.** The board shall

- (1) examine qualified applicants for registration as pharmacists; each examination shall be graded by a member who resides in a judicial district other than the district in which the applicant resides;
- (2) grant certificates of registration;
- (3) initiate prosecution of any person violating this chapter;
- (4) report to the legislature on the condition of pharmacy in the state; the report shall include a resumé of the proceedings of the board during the year and the names of all persons registered under this chapter;
- (5) maintain a record of the name and place of business of each person registered under this chapter, together with evidence adequate to justify registration;
- (6) issue a list of potentially dangerous medicinal ingredients or preparations that may be sold only under the direct supervision of a licensed pharmacist; the failure to include an ingredient or preparation in this list does not affect any law or regulation, which prohibits or restricts the sale of the ingredient or preparation; and
- (7) issue shopkeeper permits in accordance with § 380 of this chapter. (§ 5 ch 194 SLA 1955; am § 2 ch 206 SLA 1972)

**Sec. 08.80.050. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62).

**Sec. 08.80.060. Meetings of the board.** The board shall meet at least once each year at the call of the president for the transaction of business

properly before it. The president shall also call the board into session when requested in writing by at least two members. The secretary shall give at least 30 days written notice to all members before a meeting. (§ 6 ch 194 SLA 1955)

**Sec. 08.80.070. Quorum.** Four members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for registration, three members of the board constitute a quorum. (§ 6 ch 194 SLA 1955; am § 27 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "Four members" for "Three members" at the beginning of the section and "three members" for "two members" near the end of the section.

**Sec. 08.80.080. Expenses of members.** Members of the board are entitled to reimbursement for actual travel expenses incidental to the discharge of their duties and, while in the performance of their duties, are entitled to the per diem expenses allowed by law. (§ 7 ch 194 SLA 1955)

**Sec. 08.80.090. Disposition of fees.** The fees collected by the secretary of the board shall be deposited in the general fund of the state. (§ 21 ch 194 SLA 1955)

**Sec. 08.80.100. Board secretary as certifying officer.**  
Repealed by § 3 ch 59 SLA 1966.

## Article 2. Licensing and Registration.

Section	Section
110. Qualifications for registration	220. Prescription department required for issuance of license
115. Registration of pregraduate and postgraduate intern pharmacist	230. Sanitary conditions required for issuance of license
117. Malpractice insurance	240. Form and display of registration certificate and license
120. Grading and content of examination	250. Renewal of lapsed registration
130. Re-examination	260. Grounds for refusing or revoking a license
140. License by endorsement	265. Limits or conditions on license; discipline
150. Temporary registration	
155. Emergency permit	
160. Fees	
170—210. [Repealed]	

**Sec. 08.80.110. Qualifications for registration.** An applicant for registration as a pharmacist shall

(1) be fluent in the reading, writing and speaking of the English language;

(2) furnish the board with at least two affidavits from reputable citizens, whom he has known for at least one year, attesting to his good moral character and freedom from addiction to the use of drugs or alcoholic liquors;

(3) be a graduate of a college of pharmacy recognized by the National Association of Boards of Pharmacy;

(4) pass an examination by a board of pharmacy which board has been approved by the National Association of Boards of Pharmacy;

(5) have completed at least 1,500 hours of internship training under the direct supervision of a licensed pharmacist in a licensed pharmacy, 540 hours of which must have been completed after graduation. (§ 8 ch 194 SLA 1955; am § 1 ch 24 SLA 1968; am § 2 ch 72 SLA 1969; am §§ 3, 4 ch 206 SLA 1972; am § 16 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment deleted "a citizen of the United States and" following "be" in paragraph (1).

**Legislative committee report.** — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Cited in *Hicklin v. Orbeck*, Sup. Ct. Op. No. 1435 (File No. 3025), 565 P.2d 159 (1977).

**C.J.S. references.** — 28 C.J.S. Druggists § 3; 53 C.J.S. Licenses §§ 32 to 34.

**Sec. 08.80.115. Registration of pregraduate and postgraduate intern pharmacist.** (a) An applicant for registration as a postgraduate intern pharmacist shall meet the requirements of § 110(1) — (3) of this chapter and pay the required fee.

(b) An applicant for registration as a pregraduate pharmacist shall meet the requirements of § 110(1) and (2) and shall be enrolled in a pharmacy school recognized by the National Association of Board of Pharmacy and shall be declared a junior by the pharmacy school. An applicant for registration as a pregraduate internship pharmacist may be on recognized vacation from the pharmacy school; however, the vacation may not exceed one quarter or one semester. The pregraduate internship pharmacist shall pay the required fee.

(c) The registration of postgraduate or pregraduate internship pharmacists is valid for one year and may be renewed upon application. (§ 5 ch 206 SLA 1972)

**Sec. 08.80.117. Malpractice insurance.** If medical malpractice insurance for pharmacists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of pharmacist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 28 ch 102 SLA 1976)

**Sec. 08.80.120. Grading and content of examination.** To pass the state pharmacy examination each applicant must attain a general average of not less than 75 per cent and a grade of not less than 60 per cent in any one category of the National Association of Board of Pharmacy Standard Examinations for licensure or an equivalent examination given by the board. (§ 89 ch 194 SLA 1955; am § 2 ch 24 SLA 1968; am § 6 ch 206 SLA 1972; am § 1 ch 50 SLA 1974)

**Effect of amendment.** — The 1974 amendment, at the end of the section, substituted the language beginning "any one category" and ending "examination given by the board" for "each of the following subjects on the examination: jurisprudence, chemistry, mathematics,

pharmacy, pharmacology and related subjects, and in the discretion of the board, oral theory and practical pharmacy."

**Legislative committee report.** — For report on ch. 50, SLA 1974 (HB 588), see 1974 House Journal, p. 311.

**Sec. 08.80.130. Re-examination.** An applicant unsuccessful in his initial examination may take a second examination within one year without further application and upon payment of the re-examination fee. If the applicant fails to take a second examination within one year, he must submit a new application for any examination. (§ 8 ch 194 SLA 1955; am § 7 ch 206 SLA 1972)

**Sec. 08.80.140. License by endorsement.** The board may register without examination an applicant who has been certified as a registered pharmacist by the National Association of Boards of Pharmacy, if the applicant meets the requirements of § 110(1) — (4) of this chapter. (§ 8 ch 194 SLA 1955; am § 3 ch 24 SLA 1968; am § 3 ch 72 SLA 1969; am § 8 ch 206 SLA 1972)

**Sec. 08.80.150. Temporary registration.** The board shall issue a temporary license to an applicant applying for registration as a pharmacist under § 140 of this chapter upon written or oral examination before a member of the board and certification by the member to the secretary of the board that the applicant is competent to receive a temporary license. The temporary license is valid for three months, or until the next regular meeting of the board, whichever is longer. A temporary license is not renewable, but at the discretion of the issuing board member may be extended for a period not to exceed 60 days, and an applicant may not receive more than one temporary license. An applicant whose registration has been denied by the board is not eligible to receive a temporary license. (§ 9 ch 194 SLA 1955; am § 9 ch 206 SLA 1972)

**Sec. 08.80.155. Emergency permit.** (a) The board may in its discretion grant an emergency permit to a pharmacist for the purpose of providing coverage in a pharmacy which is temporarily without the services of a pharmacist due to death, illness or other emergency circumstances.

(b) A pharmacist applying under (a) of this section must submit proof that he holds a license in good standing in a state recognized by the National Association of Boards of Pharmacy, and pay the fee required under § 160 of this chapter.

(c) A permit issued under this section is valid for a period not to exceed 60 days. (§ 10 ch 206 SLA 1972)

**Sec. 08.80.160. Fees.** The following fees shall be imposed under this chapter when applicable:

(1) examination fee . . . . .	\$50
(2) re-examination fee . . . . .	15
(3) reciprocity investigation fee . . . . .	25
(4) biennial pharmacist license fee . . . . .	50
(5) temporary license fee . . . . .	10
(6) wholesale drug dealer biennial license fee . . . . .	50
(7) retail pharmacy biennial license fee . . . . .	50
(8) pharmacy intern registration fee . . . . .	10
(9) emergency permit fee . . . . .	10
(10) hospital pharmacy biennial license fee (in and out-patient) . . . . .	50
(11) hospital drug room biennial license fee (inpatient) . . . . .	25
(12) nursing home and related facilities biennial license fee for inpatient dispensing . . . . .	25
(13) shopkeepers biennial permit fee . . . . .	10
(14) license amendment or replacement fee . . . . .	2

(§ 10(a) ch 194 SLA 1955; am § 4 ch 24 SLA 1968; am § 11 ch 206 SLA 1972)

**Sec. 08.80.170. Examination fee.**

Repealed by § 7 ch 24 SLA 1968.

**Sec. 08.80.180. Temporary registration fee.**

Repealed by § 7 ch 24 SLA 1968.

**Sec. 08.80.190. Renewal fee.**

Repealed by § 7 ch 24 SLA 1968.

**Sec. 08.80.200. Wholesale dealer license fee.**

Repealed by § 7 ch 24 SLA 1968.

**Sec. 08.80.210. Retail dealer license fee.**

Repealed by § 7 ch 24 SLA 1968.

**Sec. 08.80.220. Prescription department required for issuance of license.** The board shall issue a license to operate a pharmacy only to an establishment which operates a bona fide prescription department. (§ 10 ch 194 SLA 1955)

**Sec. 08.80.230. Sanitary conditions required for issuance of license.** Failure to have proper sanitary appliances and to maintain orderly and sanitary premises are grounds for refusing a license to a pharmacy. (§ 10 ch 194 SLA 1955)

**Sec. 08.80.240. Form and display of registration certificate and license.** The registration certificate and license shall be in the form, and issued in the manner prescribed by the board. The license and certificate shall be conspicuously displayed in the premises for which issued or in which the licensee is employed. (§ 10 ch 194 SLA 1955)

**Sec. 08.80.250. Renewal of lapsed registration.** A previously licensed pharmacist who has not been registered for a period of three years or more shall take an oral examination before the board and satisfy it of his competence before the renewal of his registration. He may take a written examination if he desires. (§ 10 ch 194 SLA 1955; am § 5 ch 24 SLA 1968)

**Sec. 08.80.260. Grounds for refusing or revoking a license.** The board may refuse to issue, or may suspend or revoke a license to practice pharmacy for any of the following grounds:

(1) conviction of a felony or conviction of a misdemeanor involving moral turpitude;

(2) selling, bartering, or making available, morphine, cocaine or other narcotic to a person addicted to the use of drugs except upon prescription issued by a licensed physician;

(3) drug addiction;

(4) intemperance in the use of alcohol;

(5) violation of this chapter;

(6) conduct or habits inconsistent with professional standards;

(7) conviction of selling federal legend drugs without prescription of a licensed physician, surgeon, dentist or veterinarian;

(8) falsely stating in any license application that the applicant has not been convicted of or is not presently charged with any violation of pharmacy, liquor or narcotic laws;

(9) violation of regulations pertaining to the provision of adequate security for dangerous drugs. (§ 14 ch 194 SLA 1955; am § 6 ch 24 SLA 1968; am § 12 ch 206 SLA 1972)

Cited in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

ALR and C.J.S. references. — What amounts to conviction within statute making conviction a ground for refusing or

cancelling license or special privilege, 113 ALR 1179.

28 C.J.S. Druggists §§ 2 to 5; 53 C.J.S. Licenses § 44.

**Sec. 08.80.265. Limits or conditions on license; discipline.** (a) In addition to action under § 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should

be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 28 ch 102 SLA 1976)

### Article 3. Duties of Licensed Pharmacists.

Section	Section
270. Report of employee	310. Record of sales
280. Responsibility for goods sold	320. Pharmacist required
290. Affixing of label	330. Licensed pharmacist as manager
295. Substitution	340. Who may prepare prescriptions
297. Prescription prices available to consumer	350. Technical aids required
300. Record of prescriptions	360. Sale of dangerous materials
	365. Partial closure of pharmacy

**Sec. 08.80.270. Report of employee.** (a) An owner or manager of a pharmacy shall report to the board at the time the board directs, but not more often than twice each year, the names of all pharmacists employed in his pharmacy.

(b) An owner or manager of a pharmacy shall forward to the board a change of employee notice within 10 days of hiring or dismissing a pharmacist. (§ 11(a) ch 194 SLA 1955; am § 13 ch 206 SLA 1972)

**Sec. 08.80.280. Responsibility for goods sold.** An owner, or, if the owner is not a licensed pharmacist, a manager of a pharmacy, is responsible for the quality of drugs, chemicals and other medicines sold or dispensed by him, except those sold in the original packages of the manufacturer, and except those articles and preparations known as patent or proprietary medicines. (§ 11(b) ch 194 SLA 1955)

C.J.S. reference. — 28 C.J.S. Druggists  
§§ 6, 11 to 13

**Sec. 08.80.290. Affixing of label.** At the time of dispensing a prescription, there shall be affixed to the container of a prescription, a label bearing the name and address of the pharmacy compounding the prescription, the serial number of the prescription, the name and directions of the prescriber, the name of the patient, the date of dispensing, and the initials of the registered pharmacist who compounded the prescription. In addition a pharmacist shall indicate on the drug container the name and strength of the drug contained in it, unless specifically directed otherwise by the prescribing physician, osteopathic physician, dentist or veterinarian. If a drug is a mixture of pharmacologically active substances, only the name of the mixture need be indicated on the container, or in the absence of a name, the term

"physician's mixture" may be used. (§ 11(c) ch 194 SLA 1955; am § 14 ch 206 SLA 1972)

**Sec. 08.80.295. Substitution.** (a) Except as limited by (b) and (c) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent and meets the standards of (f) of this section. Upon substitution the pharmacist shall notify the purchaser and the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs shall specify in writing or by oral communication whether or not the pharmacist may substitute a drug under (a) of this section. Written specification may be accomplished either by (1) the physician personally initialing or checking the appropriate box on a prescription order form labeled "DISPENSE AS WRITTEN" or "SUBSTITUTION ALLOWED"; or (2) by handwriting on the prescription order. If the physician fails or neglects to give written specification, the prescription shall be dispensed as written. If the person communicating the specification does so orally, the pharmacist shall indicate that fact in handwriting on the written copy of the prescription order.

(c) Preprinted prescription order forms used by a person authorized to prescribe drugs shall contain boxes labeled "DISPENSE AS WRITTEN" and "SUBSTITUTION ALLOWED" to be checked or initialed by the person issuing the prescription.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) For a period of two years following September 16, 1976, every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Under Alaska law a therapeutically equivalent but less expensive drug may, in some cases, be substituted for the drug prescribed by your doctor. Please consult your pharmacist or physician." The printing on the sign shall be in block letters not less than one inch in height.

(f) If a person authorized to prescribe drugs is temporarily unavailable, the pharmacist may, if he cannot supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as he notifies the author of the prescription at an early opportunity. The pharmacist in all cases of substitution, except when specifically indicated to the contrary by the prescriber, shall relate the nature of the change to the purchaser.

(g) A pharmacist may not substitute a product under the provisions of this section unless it has been manufactured with the following minimum good manufacturing standards and practices:

(1) maintain quality control standards equal to those of the Food and Drug Administration;

(2) comply with regulations promulgated by the Food and Drug Administration;

(3) mark products with identification code or monogram;

(4) label products with expiration date;

(5) provide reasonable services to accept returned goods that have reached their expiration date;

(6) maintain 24-hour resources for product information where practicable and financially feasible;

(7) maintain recall capabilities for unsafe or defective drugs;

(8) shall not refuse to sell to any properly licensed pharmacy.

(h) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen. (§ 15 ch 206 SLA 1972; am § 2 ch 187 SLA 1976)

**Effect of amendment.** — The 1976 amendment rewrote this section.

**Sec. 08.80.297. Prescription prices available to consumer.** A pharmacist shall disclose the price of filling any prescription when requested by the consumer. (§ 3 ch 187 SLA 1976)

**Sec. 08.80.300. Record of prescriptions.** Each pharmacy shall maintain a record of every prescription compounded or dispensed. The record shall be kept for a period of not less than five years, and shall be open at all times to inspection by the board, its members, agents or employees, and by the medical doctor who issued the prescription. (§ 11(d) ch 194 SLA 1955)

**C.J.S. reference.** — 28 C.J.S. Druggists §§ 6, 9, 10.

**Sec. 08.80.310. Record of sales.** (a) The owner, or, if the owner is not a licensed pharmacist, the manager, of every drug store, shall maintain in his place of business a record in which sales of the following items shall be entered: the compounds and salts of arsenic and mercury (calomel excepted); caustic hydrates of sodium and potassium; the concentrated mineral acids; hydrocyanic acids and their salts; yellow

phosphorous; the essential oils of pennyroyal, tansy and savine; croton oil, aconite; carbolic acid; and the poisonous alkaloids or alkaloidal salts.

(b) The record shall state the quantity and date of purchase, the purpose for which it is to be used, and the name and address of the buyer. The record shall be available during hours of business and subject to inspection by the attorney general, a federal, state or municipal peace officer, acting within his area of jurisdiction, and an authorized agent of the board. A record of each sale shall be retained for a period of five years from the date of the sale. (§ 11(e) ch 194 SLA 1955; am § 16 ch 206 SLA 1972)

**Sec. 08.80.320. Pharmacist required.** (a) A pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty during the hours that the pharmacy is open for business.

(b) In communities which have one licensed pharmacy, the owner of the pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty, or on call, at all times that the pharmacy is open for business. (§ 11(f) (i) ch 194 SLA 1955; am § 17 ch 206 SLA 1972)

ALR and C.J.S. references. — chemical store, without registered  
Construction of statutes in relation to pharmacist, 74 ALR 1084.  
operation of drugstore, pharmacy or 28 C.J.S. Druggists § 6.

**Sec. 08.80.330. Licensed pharmacist as manager.** (a) If the owner of a pharmacy is not a licensed pharmacist, he shall place a licensed pharmacist, designated the manager, in full charge and control of the pharmacy. The manager shall insure compliance with all laws, rules and regulations governing the operation of the pharmacy. The licensed pharmacist shall immediately advise the board of his appointment as manager.

(b) No license may be issued to a pharmacy unless there is a licensed registered pharmacist in charge whose name appears on the face of the license. (§ 11(g) ch 194 SLA 1955; am § 18 ch 206 SLA 1972)

**Sec. 08.80.340. Who may prepare prescriptions.** No person except a licensed pharmacist or a licensed intern pharmacist under the direct supervision of a licensed pharmacist may compound and dispense the prescription of a physician. However, this section does not limit the authority of a licensed medical doctor to compound and dispense medicinal preparations. (§ 11(h) ch 194 SLA 1955; am § 19 ch 206 SLA 1972)

**Sec. 08.80.350. Technical aids required.** Each licensed pharmacy shall have on the premises a copy of the most recent revision of the "United States Dispensatory" or "Remington's Practice of Pharmacy" or both the "National Formulary" and the "United States Pharmacopoeia." In addition, each pharmacy shall have sufficient technical equipment to properly compound prescriptions and

pharmaceutical preparations. No license may be issued until the requirements of this section are met. (§ 11(j) ch 194 SLA 1955; am § 20 ch 206 SLA 1972)

**Sec. 08.80.360. Sale of dangerous materials.** Drugs or medical supplies which contain poisonous, potent, habit-forming or deleterious ingredients shall be dispensed only by a licensed pharmacist. At the time of the sale, the pharmacist shall make the nature of the drug or medical preparation known to the purchaser. (§ 11(k) ch 194 SLA 1955)

**C.J.S. reference.** — 28 C.J.S. Druggists  
§§ 6, 8 to 13.

**Sec. 08.80.365. Partial closure of pharmacy.** A pharmacy or pharmacy drug department which is open for business at times different than the remainder of the store or building in which the pharmacy is located shall

(1) be accessible to the remainder of the store or building only through an entrance which is capable of being locked;

(2) be advertised by the methods described in §§ 420 and 430 of this chapter only if the signs or symbols are attached or located within the portions of the store or building where the pharmacy is located;

(3) be locked during nonbusiness hours; and

(4) have all keys to the pharmacy or drug department in the possession of a pharmacist, licensed and registered under this chapter. (§ 21 ch 206 SLA 1972)

#### Article 4. Unlawful Acts.

Section	Section
370. Vending machine sales prohibited	420. Certain advertising prohibited
380. Issuance of shopkeepers permits	430. Use of pharmacy symbols prohibited
390. Pharmacists required in hospitals and clinics	440. Denial of examination or license
400. Practice of medicine not affected	450. Disciplinary action
410. Use of term "pharmacist" prohibited	460. Violation

**Sec. 08.80.370. Vending machine sales prohibited.** No mechanical device or vending machine wherever located, may be used to dispense a drug, medicine or preparation containing poison. (§ 12 ch 194 SLA 1955)

**C.J.S. reference.** — 28 C.J.S. Druggists  
§§ 6, 11 to 13.

**Sec. 08.80.380. Issuance of shopkeepers permits.** The board shall, upon proper application and payment of the required fee, issue a shopkeepers permit to sell substances or preparations not of a poisonous nature, in the original unbroken packages only. These remedies shall be

sold under restrictions and regulations as the board may adopt. The board may include in shopkeeper permits permission to sell other remedies not prohibited by law. (§ 12 ch 194 SLA 1955; am § 22 ch 206 SLA 1972)

**Sec. 08.80.390. Pharmacists required in hospitals and clinics.** (a) A hospital, clinic, nursing home, infirmary or related facility which dispenses drugs for outpatient treatment shall have a licensed pharmacist in charge of the dispensary, except that prescriptions may be compounded and dispensed by or under the supervision of the prescribing physician.

(b) The board shall issue a license to a hospital drug room, nursing home drug room or related facility which dispenses drugs from bulk supply for inpatient treatment, providing the facility employs a licensed pharmacist on a continual or consultant basis. (§ 12 ch 194 SLA 1955; am § 23 ch 206 SLA 1972)

**Sec. 08.80.400. Practice of medicine not affected.** This chapter does not affect the practice of medicine by a licensed medical doctor, and does not limit him in supplying a patient with any medicinal preparation or article which he considers proper. (§ 12 ch 194 SLA 1955)

**Sec. 08.80.410. Use of term "pharmacist" prohibited.** It is unlawful for a person to assume or use the title "pharmacist," or any variation of the title, or to hold himself out to be a pharmacist, without being registered. (§ 13(a) ch 194 SLA 1955)

**Sec. 08.80.420. Certain advertising prohibited.** (a) It is unlawful for a person to use or exhibit the title "pharmacist," "assistant pharmacist," or "druggist," or the descriptive term "pharmacy," "drug store," "drug sundries," or other similar title or term containing the word "drug," in any business premises, or in an advertisement through the media of press, or publication, or by radio or television, unless the business has a licensed pharmacist in regular and continuous employment.

(b) A person may not advertise in any manner, prices, percentiles of prices or discounts for drugs requiring a prescription. (§ 13(b) ch 194 SLA 1955; am § 24 ch 206 SLA 1972)

**Sec. 08.80.430. Use of pharmacy symbols prohibited.** It is unlawful for a person to display in a place of business the characteristic pharmacy symbol of bottles, or globes, which are colored or contain colored liquids unless the business has a pharmacist licensed and registered under this chapter on duty under § 320 of this chapter. (§ 13(c) ch 194 SLA 1955; am § 25 ch 206 SLA 1972)

**Sec. 08.80.440. Denial of examination or license.** The board may deny an applicant the opportunity to be examined, may deny a license to an applicant who has successfully completed the prescribed examination, or may deny a license to an applicant for registration by

reciprocity, or institute proceedings to suspend, revoke or otherwise terminate a registration, but only upon the basis of a specific complaint. Complaints shall be in the form of an affidavit and shall be filed in duplicate with the secretary of the board. (§ 15 ch 194 SLA 1955)

**Sec. 08.80.450. Disciplinary action.** The board may consider a complaint based upon the alleged violation of any provision of this chapter, and may by a majority vote of a quorum dismiss the complaint, reprimand a licensee, or take other punitive action as the nature of the facts warrant. Orders issued by the board shall be in writing, signed by a majority and filed with the secretary of the board. The accused shall receive an authenticated copy of the order. (§ 17 ch 194 SLA 1955)

**Sec. 08.80.460. Violation.** (a) A person who violates a provision of this chapter for which no punishment is provided is guilty of a misdemeanor and is punishable by a fine not to exceed \$1,000, or by imprisonment for a period not to exceed three months or by both.

(b) A person who violates the provisions of § 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62). (§ 19 ch 194 SLA 1955; am § 26 ch 206 SLA 1972; am § 4 ch 187 SLA 1976)

**Effect of amendment.** — The 1976 amendment added subsection (b).

**C.J.S. references.** — 28 C.J.S. Druggists §§ 6, 11 to 13; 53 C.J.S. Licenses §§ 56 to 71.

## Article 5. General Provisions.

Section	Section
470. Construction	480. Definitions
475. Exception	490. Short title

**Sec. 08.80.470. Construction.** Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of the Uniform Narcotic Drug Act (AS 17.10) or the Alaska Food, Drug and Cosmetic Act (AS 17.20). (§ 20 ch 194 SLA 1955)

**Sec. 08.80.475. Exception.** This chapter does not apply to the safe storage, preservation, dispensing, or control of drugs in any federally operated hospital or institution. (§ 1 ch 49 SLA 1974)

**Legislative committee report.** — For report on ch. 49, SLA 1974 (HB 589), see 1974 House Journal, p. 312.

**Sec. 08.80.480. Definitions.** As used in this chapter, unless the context otherwise requires,

(1) "board" means the Board of Pharmacy;

(2) "drug" or "drugs" means drugs or medical supplies which contain poisonous, potent, habit-forming or deleterious ingredients, or medicines containing ingredients which may be considered dangerous or harmful if taken in overdose;

(3) "medical supplies" means items for the cure or treatment of disease or injury which do not require prescription by a physician and which do not contain poisonous, potent, habit-forming or deleterious ingredients, or an ingredient which may be considered dangerous or harmful if taken in overdose;

(4) "owner" means the owner of a place of business for wholesaling, retailing, compounding or dispensing drugs, medicines or poisons;

(5) "pharmacy" includes "drug store" and "pharmacy or drug department" and means a place of business in which physicians' prescriptions are compounded or dispensed and in which drugs and medicines are compounded or dispensed;

(6) Repealed by § 11 ch 53 SLA 1973.

(7) "recognized college of pharmacy" means a college, school or department of pharmacy whose entrance requirements and courses of study are approved by the National Association of Boards of Pharmacy;

(8) "manager" means a licensed pharmacist in charge of a pharmacy or drug store, or of a pharmacy or drug department, where the owner is not a licensed pharmacist;

(9) "retail" means sale to the ultimate user;

(10) "retail pharmacist" means a person who sells to the ultimate user;

(11) "sell" means to possess in violation of the intent of this chapter, exchange, barter, give away or otherwise dispose of;

(12) "wholesale" means sale by a manufacturer, wholesale dealer, distributor, or jobber to a person who sells, or intends to sell, directly to the user;

(13) "wholesale drug dealer" means a manufacturer, wholesale dealer, distributor or jobber;

(14) "bulk supply" means drugs in original containers not labeled as required by § 290 of this chapter;

(15) "drug room" means an area provided only for the proper and safe storage, preservation and control of bulk supply drugs and which is under the responsibility of a continuously employed or consultant pharmacist;

(16) "hospital pharmacy" means and includes a pharmacy, licensed by the board, located within any hospital, institution or establishment which maintains and operates organized facilities for the diagnosis, care and treatment of human illness and provides for the obtaining, storage and

dispensing of drugs to both inpatients and outpatients and which is under the responsibility of a staff pharmacist;

(17) "outpatient dispensing" means dispensing drugs for administration outside of the hospital pharmacy's control;

(18) "prescription department" means that section of a business in which prescriptions for medications are compounded, filled and dispensed by a licensed pharmacist;

(19) "shopkeeper" means a retail dealer who sells over the counter medicinal preparations in original unbroken packaging which do not require a prescription for dispensing. (§ 2 ch 194 SLA 1955; am §§ 27 — 29 ch 206 SLA 1972; am § 11 ch 53 SLA 1973)

**Effect of amendment.** — The 1973 amendment repealed paragraph (6).

**Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

**Sec. 08.80.490. Short title.** This chapter may be known as the Pharmacy Act. (§ 1 ch 194 SLA 1955)

**CHAPTER 52.  
BOARD OF PHARMACY**

**Article**

1. Internship
2. Hospital Pharmacies
3. General Provisions

**ARTICLE 1.  
INTERNSHIP**

**Section**

10. Record of experience of pregraduate and postgraduate pharmacy intern
20. Training requirements for pharmacy intern
30. Intern experience in a hospital
40. Internship in government-operated institutions

**12 AAC 52.010. RECORD OF EXPERIENCE OF PREGRADUATE AND POSTGRADUATE PHARMACY INTERN.** A pharmacy intern shall submit a record of his intern experience every three months on a form provided by the board. The form must be certified by a pharmacist, licensed and registered under AS 08.80.110, who supervises the pharmacy intern's work. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

**12 AAC 52.020. TRAINING REQUIREMENTS FOR PHARMACY INTERN.** (a) A pharmacy intern shall

(1) write one comprehensive outline for each 40 hours of employment, of at least 300 words about a pharmaceutical preparation, drug or specialty in the notebook required under (b) of this section until he has accumulated 500 hours of internship; pharmacy interns with 500 or more hours of internship need not comply with this requirement;

(2) record the prescriptions or chart orders filled in the notebook required under (b) of this section and personally fill at least at the rate of 100 prescriptions per 40 hours worked after completion of 1,000 hours of internship;

(3) observe the dispensing and recording of sales of controlled substances as those substances are defined by federal and state laws and regulations;

(4) study the method of controlled substance inventory in compliance with federal and state laws and regulations; and

(5) make out official order forms, except for signature, for the purpose of controlled substances.

(b) A pharmacy intern must record in a suitable notebook the experience he has gained to show he has met the training requirements outlined in (a) of this section. The notebooks will be reviewed and considered by the board in determining whether or not a pharmacy intern has met the training requirements in (a) of this section. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

**12 AAC 52.030. INTERN EXPERIENCE IN A HOSPITAL.** Pharmacy intern experience in a hospital must be obtained in a hospital pharmacy licensed as an inpatient and outpatient hospital pharmacy as defined in AS 08.80.480(16). (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

**12 AAC 52.040. INTERNSHIP IN GOVERNMENT-OPERATED INSTITUTIONS.** The completion of an internship served in a pharmacy not licensed by the board but operated in an institution established by the state will be sufficient to meet the requirements set out in AS 08.80.110(5) if the following conditions are met:

(1) the applicant has served his internship under the supervision of a pharmacist licensed by the state; and

(2) supervising pharmacist certifies that the pharmacy in which the internship was completed meets all of the requirements set out by federal law and regulation, the Alaska Statutes, and this chapter. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4) and (5)  
AS 08.80.110(5)

**ARTICLE 2.  
HOSPITAL PHARMACIES**

**Section**

100. Preparation of list of noncontrolled legend drugs

- 110. Prepackaging noncontrolled legend drugs
- 120. Labeling prepackaged noncontrolled legend drugs
- 130. Supervision of prescribing physician; procedure for delivery to patient of prepackaged, noncontrolled legend drugs
- 140. Pharmacist in charge of hospital pharmacy

**12 AAC 52.100. PREPARATION OF LIST OF NONCONTROLLED LEGEND DRUGS.** The licensed pharmacist or licensed consultant pharmacist in charge of a hospital pharmacy or drug room, in consultation with the hospital's medical staff, shall prepare a list of noncontrolled legend drugs which may be delivered to outpatients receiving emergency treatment when a licensed pharmacist is not on duty and the prescribing physician is not present. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)  
AS 08.80.390

**12 AAC 52.110. PREPACKAGING NON-CONTROLLED LEGEND DRUGS.** Licensed pharmacists may prepackage noncontrolled legend drugs identified on the list prepared under sec. 100 of this chapter. There shall be no more than six doses of the drug in each prepackaged container. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)  
AS 08.80.390

**12 AAC 52.120. LABELING PREPACKAGED NONCONTROLLED LEGEND DRUGS.**

(a) Drugs prepackaged under sec. 110 of this chapter must be labeled by the pharmacist at the time of packaging.

(b) The prescription label or unit dose package label must contain

(1) a blank space for the name of the patient;

(2) a blank space for the name of the prescribing physician;

(3) the name of the drug;

(4) the strength of the drug;

(5) the expiration date of the drug, if applicable;

- (6) the lot number of the drug;
- (7) the date of prepackaging;
- (8) a blank space for the date of delivery to patient;
- (9) a prescription number;
- (10) initials of the pharmacist who prepackaged the drug;
- (11) the name and address of the hospital;
- (12) directions to the patient or, if not predetermined, a blank space for special instructions of the prescribing physician; and

(13) a blank space for the name or initials of the person delivering the drug. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)  
AS 08.80.390

**12 AAC 52.130. SUPERVISION OF PRESCRIBING PHYSICIAN; PROCEDURE FOR DELIVERY TO PATIENT OF PREPACKAGED, NONCONTROLLED LEGEND DRUGS.** (a) If a licensed pharmacist is not on duty, emergency room personnel may deliver noncontrolled legend drugs, prepackaged in accordance with secs. 100-120 of this chapter, to a person receiving emergency outpatient treatment on receiving on order from a licensed physician. The physician's order may be by written or telephonic communication. No more than one prepackaged container of the same drug may be delivered to a person receiving emergency outpatient treatment, unless more than one package is required to sustain the patient until the first available pharmacist is on duty in the community.

(b) When delivering drugs under this section, the person doing so shall

(1) complete the label affixed to the container with all required information except that the name and strength of the drug may be deleted on order of the prescribing physician; and

(2) prepare a record of delivery which includes all of the information listed in sec. 120 of this chapter.

(c) The record prepared under (b)(2) of this section shall be given to the pharmacist in charge of the hospital pharmacy at the beginning of the pharmacist's next duty day.

(d) This section does not authorize other than emergency room personnel on a hospital's staff to deliver noncontrolled legend drugs to outpatients receiving emergency treatment.

(e) This section does not authorize the delivering of controlled legend drugs by any person not authorized by law to dispense controlled legend drugs. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)  
AS 08.80.390

**12 AAC 52.140. PHARMACIST IN CHARGE OF HOSPITAL PHARMACY.** (a) The pharmacist in charge of the hospital pharmacy shall within a reasonable time record all drugs delivered to outpatients under sec. 130 of this chapter in the pharmacy record book maintained for the recording of all medication delivered from the emergency room under this chapter.

(b) The entry made under (a) of this section must include logging the prescription number and all information required by the record of delivery prepared under sec. 130(b)(2) of this chapter and must be shown as a completed prescription.

(c) The pharmacist in charge of the hospital pharmacy shall determine what constitutes an adequate supply of prepackaged, noncontrolled legend drugs for use under the provisions of this article. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)  
AS 08.80.390

### ARTICLE 3. GENERAL PROVISIONS

#### Section 900. Definitions

**12 AAC 52.900. DEFINITIONS.** In this chapter unless the context otherwise requires

(1) "board" means the Board of Pharmacy;

(2) "state" means the State of Alaska;

(3) "completed prescription" means the prescribed drug has been delivered to the patient, on a physician's order, that blank spaces on the label have been filled in, and a record of doing so has been given to the pharmacist so he may file the prescription as required by law;

(4) "deliver to patient" means completing the blank spaces on the label of the prepackaged drug and actually handing the package to the patient, or the patient's representative;

(5) "dose" means the amount of medication that is to be given at one specific time, as determined by the physician;

(6) "emergency room personnel" means those employees of a hospital who are designated by the administrator of the hospital, or by the personnel committee of the hospital, to be employed in the emergency room of the hospital for the purpose of administering emergency treatment to patients;

(7) "noncontrolled legend drug" means any drug that bears on the label the legend, "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN," but not drugs that have been classified as "CONTROLLED SUBSTANCES" under the Federal Controlled Substances Act of 1970 (21 USC Section 801 et seq.);

(8) "pharmacy record book" means a book kept for the sole purpose of logging all information pertinent to the delivery of noncontrolled legend drugs under secs. 100-140 of this chapter;

(9) "physician's order" means an order given to the emergency room personnel by a physician licensed to practice in Alaska or recognized by the hospital as a physician who may practice medicine in the hospital;

(10) "prepackage" means placing in a container that meets federal and state qualifications as a legal container, not more than six doses of a noncontrolled legend drug and affixing a label to the container that includes all of the information required under sec. 120 of this chapter;

(11) "present" means physically present in the emergency room of the hospital with the patient. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4)  
AS 08.80.390

IX

STATE OF ALASKA  
Board of Nursing Home Administrators  
(October, 1978)

Findings

Legislation creating the Board of Nursing Home Administrators was enacted in 1975 in response to federal legislation mandating that eligibility for Medicaid and/or Medicare funds be contingent on State licensure of the institutional administrator. There are currently 28 licensed practitioners in the State, excluding hospital administrators, and administrators of government or military facilities who are exempt. Also exempt are administrators of the Alaska Pioneers' Homes although some hold licenses.

No evidence has been shown which would indicate that licensing of this profession by a State board is in the best interests of the public. In view of the initial reason for creation of the Board, the nature of the profession and the absence of evidence reflecting general public protection, it is advocated that the Board of Nursing Home Administrators be allowed to terminate and that the administrative agency assume responsibility for examining and licensing applicants.

Should reestablishment of the Board be determined to be in the public interest, recommendations are made throughout this report the implementation of which is felt to be desirable in its continued operation.

I. General Information

A. Regulated Parties

1. Nursing Home Administrators

B. Statutory Definition of Regulated Parties

"(6) 'nursing home administrator' means a person who manages, supervises, or is in general charge of a nursing home, even though the duties are shared with another person; a member of a board of directors of a nursing home is an administrator only if he also serves in the administrative capacity defined in this paragraph." (AS 08.70.180)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Jane Hanna, RN (Chairman)	ends October 1, 1980
Roberly R. Potter, (Admin.)	ends October 1, 1979
Donna M. Stephens (Admin.)	ends October 1, 1980
Sister Patrick Mary	ends October 1, 1978
Unappointed public member	

2. Representation:

Profession = 3  
Public = 1 (2 provided)

3. Qualifications:

"The board consists of five members: two nursing home administrators licensed under this chapter and practicing in the state, a registered nurse licensed in the state, and two persons from the general public." (AS 08.70.020(a))

D. Licensing Data

Currently Licensed

in-State	24
out-of-State	<u>5</u>
Total	29

E. Fees

1) examination	\$25.00
2) investigation	25.00
3) annual license	50.00

F. Board Revenues and Expenditures

	FY '75*	FY '76	FY '77	FY '78
Receipts	-	\$1,100.00	\$2,000.00	\$1,875.00
-refunds				45.00
Total	-	1,100.00	2,000.00	1,830.00
Expenditures				
Per Diem	-	366.00	534.50	397.50
Transportation	-	383.42	241.94	489.65
Phone	-	25.60	12.79	14.80
Printing,				
Advertising				
& Postage	-	537.89	898.61	241.71
Fees & Services	-	630.00	610.00	490.00
Rents, Leases,				
Other	-	-	192.00	70.00
Total	-	\$1,942.91	\$2,489.84	\$1,703.66
Surplus	-	-	-	126.34
Deficit	-	842.91	489.84	-

\* Created in 1975

(EXCLUDING DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	0	0	0
1976	0	0	0
1977	0	0	0
1978	1	0	0
(through June)			

Pending: 1

The sole complaint received and still pending consists of a protest over termination and allegations of nursing malpractice between a nurse and a nursing home administrator. None were received by the Office of the Ombudsman and none were received from the public.

H. Qualifications

No specific training for this profession is provided or generally required by all states. Requirements usually take the form of college coursework with emphasis on business or health administration, or on administrative experience.

## II. Criteria and Analysis

- A. To what extent has the Board of Nursing Home Administrators operated in the public interest?

The operation of the Board and licensing of administrators by the Board has not been shown to protect the public interests. Whether or not an administrator is licensed has no effect per se on the direct health and welfare of consumers. Rather, other facility personnel are responsible for the health and well being of its users while the administrator "manages, supervises, or is in general charge..." It undoubtedly is desirable to employ persons with health care and administrative knowledge. It is also likely that employers will hire those persons with the most desirable qualifications.

A review of agency and license files indicates a number of inconsistencies in the operation of the Board. Should it be continued, steps need to be taken to insure consistent application of Board statutes, regulations and policies.

There are numerous instances of material missing from files that routinely is required in the application and licensing process. Missing documents include character references, renewal applications and information, certification of continuing education compliance, education transcripts, examination materials and results, and approval (or denial) of the Board regarding licensure and/or relicensure. Only 14 of 25 administrators licensed for 1978 were formally approved for relicensure by the Board at its regular meeting, three without documentation of continuing education. Several files were found of qualified applicants who successfully completed examination but who are not licensed. There is no evidence to indicate that these licenses were approved or issued, or lapsed, or that the applicant subsequently refused or was refused licensure.

A National Association of Board of Nursing Home Administrations, Inc. examination is utilized as allowed by AS 08.70.050(2), 110(1), 120 and 12 AAC 46.010-030. Examinations are generally given twice each year, are proctored by the administrative agency, and may be scheduled in separate locations for convenience of applicants. Grading is done by the national board and an average of 75% is the minimum passing score set by the Alaska Board. Applicant records reveal that applicants have, on occasion, been approved for and passed the examination prior to completion of the application file. This practice should be discontinued and applicants approved for examination only after the necessary materials have been received by the administrative agency.

Although much documentation is absent, the Board has apparently licensed only by examination and never by endorsement as authorized by .110(3). A request for a reciprocity agreement from another state was denied because "provisions in the law only address licensure by examination or endorsement." Availability of practitioners is one measure of public service. However, in this instance, availability of practitioners depends on job openings and there is a limited market for this service within the State.

Board regulations stipulate that prior to January 1, 1978, applicants must have one year of administrative experience. From that date and through December 31, 1979, applicants must have an associate degree in administration from an accredited college. None of the five persons licensed through June of 1978 met this qualification. Subsequent to December 31, 1979, applicants will be required by Board regulation to have a baccalaureate degree in health care administration or a degree in business administration and one year of experience in a health care facility. This requirement appears to be overly restrictive considering the functions of an administrator and, again, the right of an employer to hire a person he deems qualified.

Annual relicensure and continuing competency documentation are required by statute. These requirements on an annual basis are considered to be excessive. It is recommended that relicensure be established on a biennial basis and that continuing competency requirements be deleted from the statutes. Documentation of education compliance is absent from files in many cases. Acceptable courses are supposed to be approved by the Board on an individual course basis prior to licensee participation. There is little evidence that this has been done. Lengthy Board regulations outline responsibilities of the "educational arm" and activities which are not acceptable for compliance with renewal requirements. However, there is no specific list of courses or particular criteria to guide the applicant in selecting suitable activities which will be acceptable. Some licensees have discovered too late that they and the Board have disagreed on what is acceptable with the result that renewals are refused.

In the absence of public protection evidence, restrictive applicant qualifications and mandatory continuing competency requirements are determined to be superfluous. Considering the primary reason for licensure, eligibility for federal health care funds, examination and licensure by the administrative agency would be adequate to serve that purpose. It is noted, as previously, that examinations are nationally formulated and graded, are written in nature and are already being proctored by the administrative agency. Standard reasonable qualifications, such as a two-year degree, a nursing degree, or administrative experience, may be established to guide the agency in examining and licensing appropriately.

If the Board of Nursing Home Administrators is to be reestablished, every effort should be made to insure that the public has representation. This Board has never had the two public members which were authorized by the Legislature at its creation. Public interests are not served by inadequate participation in professional board activities.

Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable lay members is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."<sup>1</sup> Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members."

Fees allowed by statute should be reviewed and established within realistic bounds. It is suggested that an investigation fee may be inappropriate particularly in view of the fact that endorsement is not utilized. National examination costs are \$20 each without administration expenses. A separate fee for provisional licensure should be considered.

The statutorily required annual report on goals and activities of the Board and profession has not been submitted.

There is no evidence of compliance with 12 AAC 46.020(d) which requires a written statement of need from the prospective employer of an applicant for a provisional license. There also is no evidence of compliance with 12 AAC 070(1) requiring a sworn statement of "good moral character" as a condition of license renewal. 12 AAC 46.030(d) requiring a new application if a candidate fails to pass the examination within two years of initial application has not been complied with in at least one instance.

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 9.

- B. To what extent has the operation of the Board of Nursing Home Administrators been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Existing statutes, regulations and policies of the Board are more than adequate to accomplish the primary reason for licensing members of this profession. Operation of the Board has not been impeded with the exception of annual renewal and annual continuing education requirements which are felt to serve little purpose. Efficient operation in compliance with statutes and regulations has been impeded by the Board itself through inconsistent and restrictive policies as previously cited.

The Board of Nursing Home Administrators has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes. It is recommended, however, that the present fee structure be reviewed.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

Only one complaint has been received by the administrative agency concerning this profession. This complaint, received in 1978, concerned an administrator and a nurse and is still pending. It is primarily due to the fact that no other complaints were received that this Board has encountered no difficulty with follow through by the administrative agency as have other boards. During the past year two investigator

positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and subsequent appropriate action with emphasis on magnitude of offense as it relates to matters of public safety and concern.

C. To what extent has the Board of Nursing Home Administrators recommended statutory changes which are generally of benefit to the public interest?

It must be remembered that statutes concerning this Board have only been in effect since July 1, 1975. Changes since that time have been minor "housekeeping" amendments.

The Board itself has recommended no statutory changes whether of public benefit or otherwise.

D. To what extent has the Board of Nursing Home Administrators encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Interest has been from members of this or a related profession. Notices of pending meetings and new or changing regulations

are published in major newspapers in the State. Public interest and participation regarding the Board has been at least partially restricted by the absence since the creation of the Board of one public member.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may partially mitigate public disinterest. Because regulation does not serve to protect the public, concern regarding public interest or disinterest may be considered irrelevant.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Nursing Home Administrators processed and resolved?

No complaints were received which were directed at the Board or its individual members. Only one has been received concerning a licentiate and is still pending.

F. To what extent does the Board of Nursing Home Administrators present qualified applicants to serve the public?

Inconsistencies in application of licensing and renewal requirements which do not function to serve public or licensee interests have been enumerated elsewhere in this report. Pending regulatory qualifications which will mandate that applicants have a baccalaureate degree in business administration and one year of administrative experience in a health care facility are unduly restrictive qualifications which would eventually result in licensure of a small elite interest group from which an employer would be forced to choose regardless of any other considerations. "Qualified" applicants in this profession do not serve the public directly but instead supervise the facility and personnel that do.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Nursing Home Administrators in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for four other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Nursing Home Administrators issues licenses on the basis of education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Nursing Home Administrators to better serve the interests of the public?

If the Board is determined to function in the best interests of the public, some statutory changes would be desirable. Continuing education requirements should be deleted from the statutes. Renewal of licenses should be on a biennial basis rather than annually. Fees charged should be reviewed with consideration given to raising the examination fee, deleting the investigation fee, and including a fee for provisional licensure.

The Board should review the future licensure qualifications it has established by regulations and consider qualifications which are realistic and allow reasonable licensure. The Board should consistently and equally apply statutes and its own regulations in licensing and relicensing.

Board and administrative expenses outweigh the revenues collected through regulation of nursing home administrators. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations and the costs of Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses. Additionally, the need for protecting the public from financial and/or physical harm has not been demonstrated nor is the expense of regulation justified by this criteria.

### III. Conclusion

Licensure of nursing home administrators is required as a condition of eligibility for federal Medicaid funds. This is the sole reason for State licensure of nonexempt facility administrators.

### IV. Summary of Recommendations

- A. The Board of Nursing Home Administrators should be allowed to terminate on June 30, 1979. The functions of examination and licensure should be assumed by the administrative agency.

Applicant qualifications and conditions for licensure should be established by statute as a guideline for the agency.

- B. If the Board of Nursing Home Administrators is determined to function in the public interest and is reestablished, the following recommendations are made:

1. The Board and the administrative agency should insure adequate documentation of board activities and related files. (See discussion on p. 6)

2. The Board should apply statutory and regulatory provisions with respect to initial licensure and relicensure and do so uniformly. (See discussion on p. 7)
3. The Board should establish reasonable and nonrestrictive educational and experience requirements for applicants. It should also enforce requirements that are established. (See discussion on p. 7)
4. Relicensure should take place biennially rather than annually. Annual renewal is considered to be unnecessary and cumbersome to administer for the applicant, the Board, and the agency. (See discussion on p. 8)
5. Mandatory continuing education requirements should be deleted as being superfluous in the regulation of nursing home administrators. This subject is more appropriately a concern of the administrator and/or his/her employer. (See discussion on p. 8)
6. The Board should be allowed to function with a full membership. An excessive ratio of professional members on any board is not a desirable situation from the standpoint of a Sunset review concerned with public participation and knowledgeability. It is also recommended that members not serve consecutive terms unless initially appointed to an unexpired vacancy but may be reappointed following a term of absence. (See discussion on p. 8)
7. The Board, in conjunction with the administrative agency, should be given the authority to review fee structure and establish appropriate fees. (See discussion on p. 9)

8. The Board should prepare and submit an annual report to the Governor and Legislature as required by statute.  
(See discussion on p. 9)

## Chapter 70. Nursing Home Administrators.

Section	Section
10. Creation of Board of Nursing Home Administrators	90. Application
20. Membership board; source of appointments; term of office	110. Licensing
30. Election of officers	120. Examination
40. Board meetings: Quorum	130. Provisional licenses
50. Duties and powers of the board	140. Expiration and renewal
60. Expenses	150. Fees
70. Applicability of Administrative Procedure Act	160. Unlawful acts
80. License required	170. Penalties
	180. Definitions
	190. Facilities operated by religious organizations

**Sec. 08.70.010. Creation of Board of Nursing Home Administrators.** There is established the Board of Nursing Home Administrators. (§ 1 ch 123 SLA 1975)

Legislative committee report. — For [Judiciary] am H), see 1975 House Journal, report on ch. 123, SLA 1975 (HCSSB 132 p. 1221.

**Sec. 08.70.020. Membership board; source of appointments; term of office.** (a) The board consists of five members: two nursing home administrators licensed under this chapter and practicing in the state, a registered nurse licensed in the state, and two persons from the general public.

(b) Board members are appointed by the governor.

(c) Board members serve staggered terms of three years or until their successor is appointed, except that a member appointed to a vacated term serves the duration of that term. On the first board two members serve one-year terms, two members serve two-year terms, and one member serves a three-year term. (§ 1 ch 123 SLA 1975; am § 1 ch 77 SLA 1977)

Effect of amendment. — The 1977 amendment, in subsection (a), substituted "two nursing home administrators" for "one nursing home administrator" and deleted "a physician licensed in the state" following "registered nurse licensed in the state."

**Sec. 08.70.030. Election of officers.** The board shall annually elect a chairperson and a vice-chairperson from its members. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.040. Board meetings: Quorum.** The board shall meet at least semiannually. A majority of the board constitutes a quorum. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.050. Duties and powers of the board.** (a) The board shall

(1) adopt standards for licensing nursing home administrators to insure that licensees have knowledge and experience in health care and institutional administration necessary for competent administrators, and update the standards when necessary;

(2) examine, license, and renew the licenses of qualified persons;

(3) establish procedures to insure that licensees continue to uphold the board's standards; revoke, suspend, or refuse to renew licenses of persons who fail to uphold the standards;

(4) adopt criteria for educational programs for persons preparing for the licensing examination and for the continuing education of licensees; review the educational programs available in the state and accredit the programs meeting the criteria;

(5) keep a record of its proceedings and submit annual reports to the governor and the legislature.

(b) The board may adopt regulations necessary for the performance of its duties and to meet the requirements of Title 19 of the Social Security Act, the federal rules promulgated under it, and other federal requirements. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.060. Expenses.** Board members serve voluntarily, except that members are entitled to the travel expenses and per diem allowed by law. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.070. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 123 SLA 1975)

**Sec. 08.70.080. License required.** Only a licensed nursing home administrator may manage, supervise, or be generally in charge of a nursing home unless excepted by this chapter. Only a nursing home which is supervised by a licensed nursing home administrator may operate in Alaska unless specially excepted by the board. This section does not apply to the Alaska Pioneers' Homes. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.090. Application.** Applicants shall file applications with the Department of Commerce and Economic Development on forms provided by the department. Information requested on the forms shall be given under oath. (§ 1 ch 123 SLA 1975; am § 50 ch 218 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the first sentence.

**Sec. 08.70.110. Licensing.** (a) The board shall license

(1) applicants who pass the written examination administered by the board and meet the standards established by the board under § 50 of this chapter;

(2) persons licensed under emergency regulations 7AAC 12.045 promulgated in Register 51, July 8, 1974, who have practiced as administrators since licensing.

(b) The board may issue a license without examination to a person holding a current license as a nursing home administrator from another jurisdiction, if the board finds that the standards for licensing in the other jurisdiction are substantially equivalent to those in this state, and the person is otherwise qualified. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.120. Examination.** The purpose of the examination is to test the applicant's knowledge of the health and safety standards of the state and his experience in the practice of health care. The board determines the content, scope, format, and grading procedure. Examinations shall be given at least annually, at the time and place chosen by the board. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.130. Provisional licenses.** (a) A provisional license may be granted without examination to a person who meets the standards adopted by the board under § 50 of this chapter and who is needed to fill a vacancy in an administrative position.

(b) The provisional license is valid for six months and is nonrenewable. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.140. Expiration and renewal.** (a) A nursing home administrator's license expires on December 31 of the year issued.

(b) An administrator may apply for renewal of his license by submitting an application for renewal to the board; application forms for renewal are provided by the department.

(c) A person whose license has expired for a period of 12 months or more must apply for a license and be examined in the same manner as an applicant who has not been licensed before. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.150. Fees.** The following fees shall be imposed under this chapter when applicable:

- (1) examination fee . . . . . \$25
- (2) investigation fee for persons applying for a license under § 110 (b) of this chapter . . . . . \$25
- (3) annual license fee . . . . . \$50

(§ 1 ch 123 SLA 1975)

**Sec. 08.70.160. Unlawful acts.** No person may

- (1) sell or fraudulently obtain or furnish a license or aid another in doing so;
- (2) practice as a nursing home administrator under cover of a license illegally or fraudulently obtained;
- (3) practice as a nursing home administrator or use in connection with his name a designation tending to imply that he is a nursing home administrator unless licensed under this chapter;
- (4) practice as a nursing home administrator during the time his license issued under this chapter is suspended or revoked; or
- (5) otherwise violate this chapter. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.170. Penalties.** A person convicted of violating a provision of this chapter is punishable by a fine of not more than \$500, or by imprisonment for not more than one year, or by both. (§ 1 ch 123 SLA 1975)

**Sec. 08.70.180. Definitions.** In this chapter

- (1) "board" means the Board of Nursing Home Administrators;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "license" means the certificate awarded by the board to a qualified person which entitles him to be a nursing home administrator in this state;
- (4) "licensee" means a person who has been granted a license to be a nursing home administrator in this state by the board;
- (5) "nursing home" means a facility which is operated in connection with a hospital or in which nursing care, intermediate care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery within the state for the accommodation of convalescents or other persons who are not acutely ill but who do require skilled or intermediate nursing care and related medical services; the term "nursing home" is restricted to those facilities the purpose of which is to provide skilled or intermediate nursing care and related medical services for a period of not less than 24 hours a day to individuals admitted because of illness, disease or physical or mental infirmity;
- (6) "nursing home administrator" means a person who manages, supervises, or is in general charge of a nursing home, even though the duties are shared with another person; a member of a board of directors of a nursing home is an administrator only if he also serves in the administrative capacity defined in this paragraph. (§ 1 ch 123 SLA 1975; am § 51 ch 218 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

**Sec. 08.70.190. Facilities operated by religious organizations.** Nothing in this chapter or the regulation under this chapter is to be construed as requiring a person who applies for a license as administrator of a facility operated by a religious organization relying on spiritual means alone for healing to have skills in medical techniques or educational qualifications which are not in accord with the care and treatment provided in the facility. (§ 1 ch 123 SLA 1975)

CHAPTER 46.  
BOARD OF NURSING HOME  
ADMINISTRATORS

Section

- 10. Qualifications of applicant for initial license
- 20. Application for initial license
- 30. Examination of applicant
- 40. Continuing education required for license renewal
- 50. Accreditation of nonacademic continuing education program
- 60. Activities not eligible for nonacademic continuing education accreditation
- 70. Application for license renewal
- 900. Definitions

12 AAC 46.010 QUALIFICATIONS OF APPLICANT FOR INITIAL LICENSE. (a) To be eligible for an initial license as a nursing home administrator, a person must be

- (1) at least 19 years of age;
- (2) of sound physical and mental health;
- (3) a high school graduate or the equivalent; and
- (4) of good moral character.

(b) In addition to the requirements of (a) of this section, a person applying for a license

(1) before January 1, 1978, must have one year of administrative experience;

(2) after December 31, 1977, must possess an associate degree in administration from an accredited college; and

(3) after December 31, 1979, must possess a

(A) baccalaureate degree in health care administration from an accredited college; or

(B) baccalaureate degree in business administration from an accredited college and have one year of administrative experience in a health care facility. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(1) and (b)

12 AAC 46.020. APPLICATION FOR INITIAL LICENSE. (a) A person applying for an initial license as a nursing home administrator shall submit

(1) a completed application form;

(2) a written statement from a physician attesting to the fact that his or her physical and mental health is adequate to enable him or her to satisfactorily perform the duties involved in nursing home administration; and

(3) after December 31, 1977, an official transcript from his or her college of graduation.

(b) A person applying for an initial license by examination shall submit the documents in (a) of this section, accompanied by the examination fee required by AS 08.70.150(1), at least 30 days before the date of a scheduled examination, in order to be scheduled for that examination.

(c) In addition to the requirements of (a) of this section, a person applying for an initial license without examination shall submit

(1) evidence that he or she has passed the licensing examination for nursing home administrators of the Professional Examination Service or the National Association of Boards of Nursing Home Administrators, Inc. with a score of at least 75 percent;

(2) a copy of his or her current nursing home administrator license from another jurisdiction; and

(3) the investigation fee required by AS 08.70.150(2).

(d) In addition to the requirements of (a) of this section, a person applying for a provisional license shall submit a written statement from his or her prospective employer of the circumstances of his or her need to fill a vacancy in an administrative position. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(b) AS 08.70.110(b)  
AS 08.70.090 AS 08.70.130(a)

12 AAC 46.030. EXAMINATION OF APPLICANT. (a) The examination required by

AS 08.70.110(a)(1) is the examination prepared and graded by the National Association of Boards of Nursing Home Administrators, Inc.

(b) A score of 75 percent is required to pass the examination.

(c) The examination is offered semiannually in May and November.

(d) A person who fails to pass the examination within two years of submitting his or her application for licensure shall submit a new physician's statement required by sec. 20(a)(2) of this chapter, along with a new application form. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(b)  
AS 08.70.120

**12 AAC 46.040. CONTINUING EDUCATION REQUIRED FOR LICENSE RENEWAL.** (a) Continuing education required to maintain licensure as a nursing home administrator is at least

(1) one semester hour academic credit from an accredited college in a subject relevant to health care administration; or

(2) two continuing education units from the sponsoring organization of a nonacademic continuing education program approved by the board.

(b) Continuing education required by (a) of this section must be earned during the calendar year immediately preceding the year for which license renewal is being requested. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(3) and (b)

**12 AAC 46.050. BOARD ACCREDITATION OF NONACADEMIC CONTINUING EDUCATION PROGRAM.** (a) In order for a nonacademic continuing education program to be accredited by the board, the sponsoring organization must

(1) have an identifiable educational arm with designated professional staff empowered to administer and coordinate an organized schedule of continuing education programs;

(2) maintain, through its educational arm,

administrative control of all program elements to assure that both the immediate educational objectives and the requirements of this subsection are met;

(3) provide or arrange, through its educational arm, for appropriate educational facilities, library and reference materials and all necessary instructional aides and equipment consistent with the educational content, format and objectives of each learning experience;

(4) maintain a permanent individual record of participation and make the record readily available to each participant upon request;

(5) plan the program or activity in response to the educational needs of nursing home administrators, including the opportunity for input by representatives of nursing home administrators, as well as by other knowledgeable individuals having content expertise and an appreciation of the educational objectives to be met;

(6) prepare a clear statement of rationale, purposes and goals for each educational activity before the initiation of the program;

(7) directly involve qualified instructional personnel in conducting the educational activity;

(8) establish specific performance requirements for the award of continuing education units to participants before offering the program;

(9) include sufficient detail in participant registration to provide the necessary information for a permanent record of individual participation;

(10) use evaluation procedures determined during the planning process to measure the effectiveness of the program design and operation; and

(11) include in program administration a system for verification of satisfactory completion of the activity by each participant and for providing an approved list of those awarded continuing education units to the office responsible for preparing and maintaining permanent records for individual participants.

(b) An application for accreditation of a continuing education program must state the

(1) manner in which the sponsoring organization meets the requirements of (a) of this section; and

(2) starting date of the program.

(c) A sponsoring organization must apply to the board for accreditation of a continuing education program at least 60 days before the starting date of the program. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(4) and (b)

**12 AAC 46.060. ACTIVITIES NOT ELIGIBLE FOR NONACADEMIC CONTINUING EDUCATION ACCREDITATION.** The board will not accredit, for nonacademic continuing education,

(1) a program leading to a high school equivalency certificate or diploma;

(2) a program dealing with such internal topics as indoctrination in rights, benefits and responsibilities; organizational structure; on-the-job methods, processes or procedures;

(3) committee activities;

(4) conferences, delegate assemblies or similar meetings for policymaking purposes;

(5) meetings and conventions of societies and associations unless educational activities programmed independently and held concurrently with these meetings meet the requirements of sec. 50(a) of this chapter;

(6) participation in programs delivered through the media such as television, radio and newspapers unless these presentations are an integral part of an educational program which meets the requirements of sec. 50(a) of this chapter;

(7) attendance at lecture series, cultural performances, entertainment or recreational meetings or activities and participation in travel groups unless these activities are an integral part of a larger educational program which meets the requirements of sec. 50(a) of this chapter;

(8) on-the-job training, apprenticeships and other work experience unless structured as part of a planned educational experience which meets the requirements of sec. 50(a) of this chapter;

(9) independent writing of articles or research reports or the presentation of papers outside a planned educational program which meets the requirements of sec. 50(a) of this chapter;

(10) individual, self-directed studies or other forms of independent learning experiences which are not subject to later verification by testing for the acquisition of cognitive or affective skills;

(11) noneducational activities of associations and professional societies, which may otherwise be used to qualify for professional and occupational group membership or certification; or

(12) a program involving less than 10 contact hours of instruction. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(4) and (b)

**12 AAC 46.070. APPLICATION FOR LICENSE RENEWAL.** A person applying for renewal of his or her license as a nursing home administrator shall submit to the department

(1) a completed license renewal application form including a sworn statement that he or she has not violated the provisions of sec. 900(5) of this chapter;

(2) proof of meeting the continuing education requirement of sec. 40 of this chapter in the form of an official college transcript or a letter from the sponsor of a continuing education program, whichever is appropriate; and

(3) the annual license fee required by AS 08.70.150(3). (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(2) and (3) and (b)

**12 AAC 46.900. DEFINITIONS.** In this chapter

(1) "accredited college" means an institution

that meets the accreditation standards set forth by the Northwest Association of Schools and Colleges or its equivalent;

public health center, and community mental health center and a facility for the mentally retarded. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(b)

(2) "board" means the Board of Nursing Home Administrators;

(3) "continuing education unit" means 10 contact hours in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction;

(4) "department" means the Department of Commerce and Economic Development;

(5) "good moral character" means that a person

(A) has not paid, given, caused to be paid or given or offered to pay or to give a commission or other valuable consideration for solicitation or procurement, either directly or indirectly, of nursing home patronage or has accepted such a payment;

(B) has not committed acts of misconduct in the operation of a nursing home including but not limited to fraud, deceit, or misrepresentation in his capacity as a nursing home administrator;

(C) is not addicted to or dependent upon the use of alcohol, morphine, cocaine or other drugs recognized as producing an abnormal effect;

(D) has not been convicted of a felony relative to work as a nursing home administrator; or

(E) has not engaged in conduct that demonstrates unfitness to practice as a nursing home administrator;

(6) "health care facility" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care of two or more nonrelated individuals suffering from illness, disease, injury or deformity, or a place devoted primarily to providing obstetrical or other medical or nursing care for two or more nonrelated individuals and includes a convalescent home, nursing home, a

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STATE OF ALASKA  
Board of Nursing  
(October, 1978)

Findings

Members of the nursing profession are responsible for a wide range of health care including treatments and therapeutic measures, administration of medications, and direct patient care, under the supervision and prescription of a licensed physician or dentist. Special provisions may be instituted which would allow for independent medical practice by qualified practitioners. The Board of Nursing has the responsibility for establishing and evaluating educational standards of institutions.

Dissolution of the Board and governmental deregulation would significantly and adversely affect the quality of health care provided to and received by the general public. Lack of control could result in financial loss, physical injury or death. Additionally, with the abrogation of complaint and enforcement responsibility, unqualified practitioners would be virtually unhindered in practice. Regulation of this profession, by State government and through a State Board, is considered to be in the best interests of the public.

I. General Information

A. Regulated Parties

1. Licensed Professional Nurses (registered)
2. Licensed Practical Nurses (vocational)

B. Statutory Definition of Regulated Profession

"(5) 'practice of professional nursing' means the performance for compensation of observation, care and counsel of the ill, injured, or infirm, or the maintenance of health or prevention of illness of others, the supervision and teaching of personnel; or the administration of medications and treatments prescribed by a licensed physician or dentist which require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social science; but the foregoing do not include acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures unless authorized by regulations promulgated jointly by the State Medical Board and the Board of Nursing and as implemented by the Board of Nursing."

"(6) 'practice of practical nursing' means the performance for compensation of selected acts in the care or prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgment and knowledge required in professional nursing."

"(9) 'advanced nurse practitioner' means a registered professional nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures as authorized by regulations promulgated under (5) of this section." (AS 08.66.410)

C. Nature and Composition of Board

1. Board members and terms:

Five-year term (members may not serve more than two consecutive terms unless filling an unexpired vacancy of two years or less).

Eileen Montano, R.N. (Chairman)	ends March 31, 1981
Norma J. Frank, R.N.	ends March 31, 1979
Marjorie Van Kooten, R.N.	ends March 31, 1978
Betty Irwin Hodo, R.N.	ends March 30, 1980
Carol Ann Verga, R.N., A.N.P.	ends March 31, 1982
Kandace Henry	ends March 31, 1980
Erna Rasmussen	ends March 31, 1981

2. Representation:

Profession = 5  
Public = 2

3. Qualifications:

"One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing education, one nurse at large, and two persons who have no direct financial interest in the health care industry." (AS 08.68.010)

"The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment." (AS 08.68.060)

D. Licensing Data

Currently licensed:

R.N.	in-State	=	2,240
R.N.	out-of-State	=	<u>362</u>
	Total		2,602

L.P.N.	in-State	=	588
L.P.N.	out-of-State	=	<u>114</u>
	Total	=	702

(Through September, 1978)

E. Fees

Professional or Registered Nursing

1. application	\$20.00
2. examination	20.00
3. endorsement	20.00
4. biennial renewal	15.00

Practical or Vocational Nursing

1. application	\$15.00
2. examination	15.00
3. endorsement	15.00
4. biennial renewal	15.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	30,433.00	55,021.00	41,731.00	73,312.37
- Refunds	<u>385.00</u>	<u>375.00</u>	<u>984.00</u>	<u>1,046.50</u>
Total	30,048.00	54,646.00	40,747.00	72,265.87
Expenditures				
Per Diem	3,721.74	5,165.75	4,321.50	8,195.68
Transportation	2,654.17	3,962.57	3,293.07	6,815.61
Phone	875.37	380.75	206.58	445.99
Printing, Advert., and Postage	1,832.30	1,552.32	1,784.46	1,181.20
Fees & Services	1,482.67	2,113.54	2,429.00	2,687.09
Rents, Leases, Other	286.60	757.05	571.92	772.98
Executive Officer (Salary & Benefits)	<u>24,220.27</u>	<u>26,400.27</u>	<u>32,339.29</u>	<u>23,807.99</u>
Total	<u>35,073.12</u>	<u>40,332.41</u>	<u>44,945.82</u>	<u>43,906.54</u>
Surplus	-	14,313.59	-	28,359.33
Deficit	5,025.12	-	4,198.82	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	0	0	0
1976	8	1	1
1977	8	1	0
1978	0	0	0
(through June 30)			

Pending: 15

One complaint was received by the Office of the Ombudsman from an applicant who alleged that s/he was unfairly denied licensure by endorsement. This complaint was determined to be unsupported in fact. A case involving drug abuse and related charges was acted upon by authorities. Other complaints received included: (1) practicing without a license, (2) dispensing drugs without appropriate authorization, (3) misrepresentation, and (4) practicing beyond scope of authority, such as practicing midwifery without a license to do so.

H. Qualifications

1. Registered Nurse: Practitioners must have completed high school and from two to four years of nurse training. All states require successful completion of examination prior to initial licensure.
2. Licensed Practical Nurse: Practitioners must have completed a training program, usually one year, and must pass an examination prior to initial licensure.

## II. Criteria and Analysis

### A. To what extent has the Board of Nursing operated in the public interest?

The statutory duties of the Board include adoption of necessary rules and regulations, approval of educational curricula and adoption of educational program standards, accrediting of appropriate programs, and examining, licensing, and renewing licenses of qualified individuals.

Two methods of assuring licentiate competency are education and training evaluation. Nursing programs within the State are thoroughly reviewed by the Board prior to accreditation. Academic and clinical content must meet established criteria and must continue to do so. Continued evaluation is accomplished through survey visits by the Board and submission of annual reports related to faculty, students and current curriculum. Programs meeting all requirements are given full accreditation, new programs that have yet to fulfill all requirements are given provisional accreditation status, and those with demonstrated problems in compliance are given conditional accreditation for a one-year period. Because content and criteria of nursing programs nationwide are similar and because all states require examination for licensure, educational qualifications for out-of-State applicants present few problems.

Examinations for professional and practical nurses consist of the State Board Test Pool Examination (SBTPE). These tests are constructed, provided and graded by the National League for Nursing, Inc. under contract with the National Council of State Boards of Nursing. Elaborate procedures for test security exist and must be adhered to by states participating, which is all states but one. Examinations are administered nationwide simultaneously, that is, on the same date, at the same time, and in the same manner. Only the acceptable passing score varies among states. Candidates in Alaska must score at least 350 in

each area of the examination, may be reexamined in one or two failed areas, and must repeat theory and practice if unable to successfully complete the examination a third time. Alaska will proctor the examination for other states.

Standard training, education and examination criteria operate in the public interest by assuring minimum competency and validity of competency requirements. Public interests are further served by the utilization of reasonable opportunities for entry into the profession. Several Board policies operate to provide such opportunities. For instance, it was noted that the Board has on occasion assumed the responsibility for locating special refresher training for candidates who failed the examination.

Temporary permits are issued routinely to allow apparently qualified individuals to practice pending licensure. Applicants for endorsement may be issued a temporary permit valid for a period not to exceed four months by which time all endorsement materials should have been received. Candidates for examination may receive a temporary permit which is valid until the results of the next examination are published. Temporary permit provisions are felt to advance the public interests by allowing expeditious entry into the profession. There does appear, however, to have been some problems when graduates from foreign schools applied for licensure. One such applicant was notified that she would be eligible for examination but would not be granted a temporary permit. Other applicants were refused permits because they had "graduated from foreign schools" or because they had "not had U.S. employment." AS 08.68.210(b) provides for the issuance of permits to any candidate for examination who is otherwise qualified. The Board should apply permit provisions to foreign graduates as well as to all other eligible qualified applicants.

Documentation also indicates that potential licentiates have been notified that their applications are incomplete because they lack such items as four reference letters, but such requirements are not statutory or regulatory prerequisites. It would be advisable for the Board to adopt regulations governing application procedures and materials so that such requirements may be enforced.

All applicants for endorsement who qualify on the basis of training and who have achieved a minimum score of 350 in all test areas are eligible for licensure in Alaska. Only in a few instances are such individuals required to be reexamined, notably, if test security had been broken at the time of initial examination, a rare occurrence. Because California utilizes (after January 1, 1974) a State constructed L.P.N. examination, its recent L.P.N licensees are a routine exception.

Practitioners with lapsed or inactive licenses who have been inactive for a period of five years or more may apply for reinstatement. However, if the Board has reason to believe it necessary, it may require additional training or supervised work to assure competency of the individual. Continuing competency of current licensees is not a requirement at the present time. In view of the importance of proficiency in nursing and the likelihood that programs could be established within the State, it is recommended that continuing education be instituted as a condition of relicensure. This should be accomplished by statutes as should any exceptions that may be acceptable. The Board should then designate qualifying programs or courses.

With few exceptions, the Board of Nursing has operated in the public interest through its statutes, regulations and policies. Entry into the profession is facilitated by standardized qualifications and requirements of nurse candidates, and by nonrestrictive licensing practices.

B. To what extent has the operation of the Board of Nursing been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The functions of the Board have not been particularly impeded by existing statutes, regulations and policies. As previously noted, however, the Board should make every effort to apply temporary permit provisions uniformly and should adopt regulations concerning application procedures. Continuing competency requirements should be designated upon which continued licensure would be contingent.

Although 27% of those nurses regulated by the Board are Licensed Practical Nurses, this group is not represented in Board membership. The inclusion of one practical nurse is recommended.

In July of 1976 some candidates were denied examination due to inadequate facilities, i.e., not enough room for all those applying. Adequate facilities and resources should be provided to help prevent a recurrence of this type of situation.

The Board and the administrative agency should have the authority to establish reasonable fees which would cover the costs of examination and licensing. Present fees are not adequate to cover transportation and per diem expenses and the total costs of Division of Occupational Licensing administrative overhead.

The Board of Nursing usually schedules three to four business meetings each year. Additional meetings and public hearings are held when necessary. Budgetary allowances should take into consideration these factors.

Support functions for the Board are largely the responsibility of its executive officer who: (1) performs administrative duties, (2) carries out Board regulations and policy decisions, and (3) assists in conducting examinations, educational programs, preparation of minutes and other Board administrative work. Further support staff is provided by a licensing examiner, who is also responsible for two other boards, and two clerical positions in Anchorage shared by this and two other units. Because of this support staff, little difficulty has been encountered with record keeping or maintenance of forms, files and board documents. Annual reports required by statute have been submitted each year and contain comprehensive information on the activities of the Board and the status of the profession.

The Board of Nursing has experienced the same difficulties as have all other boards and commissions under the jurisdiction of the administrative agency with respect to investigative services. During the past year two investigator positions remained vacant. As a result, one of these positions was abolished by the Legislature. One position in Anchorage was recently filled. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce laws enacted for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Nursing recommended statutory changes which are generally of benefit to the public interest?

Recent health care legislation pertaining to the Nursing Board statutes included: (1) public membership on the Board, (2) Medical Indemnity provisions, (3) applicability of the Administrative Procedure Act, and (4) general "housekeeping" items.

There are no recent records of statutory amendments proposed by the Board that would be specifically of direct benefit to the public. There are, however, numerous instances of regulatory changes designed to upgrade the profession and the efficiency of the Board. For example, recent regulations promulgated under AS 08.68.410(5) which will authorize independent practice by Advanced Nurse Practitioners are at this writing scheduled for public hearing. It is in the public interest to promulgate and adopt regulations and policies which will provide opportunities for entry into the profession and increased availability of services.

D. To what extent has the Board of Nursing encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of interest and participation concerning Board activities and services has come from this and related professions. The Board is sensitive to all input, however, very little general public interest has been demonstrated. Public concern is expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers within the state but appear to elicit minimal response from the public at large. It may also be that members of the public are

somewhat reluctant to involve themselves in areas which they see as being technical or scientific in nature. A technical and professional "barrier" acts to deter public knowledgeability and participation.

The Board has not taken any overt action to inform the public or solicit its response outside of the professional sphere. Positive steps, such as public service radio announcements, could be taken to increase public awareness.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>1</sup>

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Nursing processed and resolved?

One complaint was received by the Office of the Ombudsman. This unsupported charge alleged that the Board had unfairly denied licensure. Other complaints related to drug abuse allegations, practicing without a license, and practicing outside of the licensee's scope of authority. Sixteen complaints of this nature were received by the administrative agency during the last three and one-half year period. In this same

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<sup>1</sup>Shimberg, B. and Roeder, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

period one was referred to litigation and two were closed. At the time of this writing, fifteen cases remain open in agency files. The administrative agency will continue to review and update its complaints and investigative services to all boards and commissions coming under its jurisdiction.

A review of reading files maintained by the administrative agency indicates that public and professional inquiries are handled thoroughly and expeditiously through the mechanism of the Board's executive officer and clerical support.

F. To what extent does the Board of Nursing present qualified applicants to serve the public?

With few exceptions as previously noted, the Board makes every effort to present qualified practitioners to the public. The use of standard examinations and educational criteria to assure competency combined with utilization of temporary permit and endorsement procedures encourages entry into the profession and enhances availability of practitioners.

Every effort is made by the Board to insure the quality of in-State institutional education and training. Individual Board members have taken it upon themselves to provide assistance to applicants who require additional theory and practice. Only in the area of temporary permits for applicants for examination who graduated from foreign schools has nonconformance with statutes been indicated which may have restricted entry of some individuals into practice.

Mandatory continuing education requirements are recommended as an additional method of assuring that licensees continue to be qualified after initial licensure.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Nursing in its own activities, and its area of activity or interest?

Board staff consists of the support services of an executive officer, a licensing examiner and two shared clerical positions, all of whom are employed by the Division of Occupational Licensing, are hired through the State personnel system, and are subject therefore to affirmative action requirements.

The Board of Nursing issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary or other changes necessary to enable the Board of Nursing to better serve the interests of the public?

Representation on the Board should specify the inclusion of an L.P.N. Mandatory continuing competency requirements should be delineated, as should possible exemptions, and the Board should then define acceptable educational compliance. Temporary permit provisions should be applied uniformly to all qualified applicants. Authorization should be given to the administrative agency and the Board to establish a reasonable fee structure. AS 08.68.310 should be clarified to read that "graduates of an accredited nursing program are eligible for examination." No statutory language now exists which would clarify the "good samaritan" principle as it relates to nursing. Application materials and procedures should be delineated in Board regulations.

### III. Conclusion

Continuation of the Board of Nursing and State regulation of the nursing profession are determined to be justified in terms of public health, safety and welfare.

### IV. Summary of Recommendations

The Board of Nursing and State regulation should be reestablished for another four-year period. The following recommendations are made:

1. The Board should apply temporary permit provisions uniformly to all qualified applicants. (See discussion on p. 8)
2. Application procedures and necessary materials should be defined by Board regulations. (See discussion on p. 9)
3. Mandatory continuing competency requirements, and exemptions, should be imposed by statute and the Board should promulgate and adopt regulations which define acceptable qualifying education. (See discussion on p. 9)
4. A statutory amendment should be made that would specifically include an L.P.N. in board membership. (See discussion on p. 10)
5. Budgetary allowances need to be considered so that adequate meeting scheduling, testing facilities, and support services may be provided as necessary.
6. Authority should be given to enable the board and the administrative agency to establish reasonable fee structures. (See discussion on p. 10)

## Chapter 68. Nursing.

### Article

1. Board of Nursing (§§ 08.68.010 — 08.68.150)
2. Examination and Licensing (§§ 08.68.160 — 08.68.275)
3. Nursing Education Programs (§§ 08.68.280 — 08.68.330)
4. Unlawful Acts (§§ 08.68.340 — 08.68.390)
5. General Provisions (§§ 08.68.400 — 08.68.410)

### Article 1. Board of Nursing.

#### Section

10. Creation and membership of Board of Nursing
20. Term of office
30. Limitation on term of service
40. [Repealed]
50. Removal from office
60. Qualifications of board members
70. Election of officers
80. Meetings

#### Section

90. Quorum
100. Duties of board
110. [Repealed]
111. Executive officer of board
- 120 — 130. [Repealed]
140. Applicability of Administrative Procedure Act
150. Expenses

**Sec. 08.68.010. Creation and membership of Board of Nursing.** There is created a Board of Nursing, consisting of seven members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, one nurse at large, and two persons who have no direct financial interest in the health care industry. (§ 3 ch 90 SLA 1957; am § 1 ch 67 SLA 1973; am § 15 ch 102 SLA 1976)

**Effect of amendments.** — The 1973 amendment rewrote the second sentence.

The 1976 amendment substituted "seven members" for "five members" in the first sentence and "one nurse at large, and two persons who have no direct financial interest in the health care industry" for

"and one at large" at the end of the second sentence.

**Am. Jur. and C.J.S. references.** — 41 Am. Jur., Physicians and Surgeons, §§ 14, 23 to 69.

70 C.J.S. Physicians and Surgeons, §§ 1, 8, 10, 69.

**Sec. 08.68.020. Term of office.** Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 3 ch 90 SLA 1957; am § 16 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment rewrote this section.

**Sec. 08.68.030. Limitation on term of service.** A board member may not serve more than two consecutive terms. Time served in filling an unexpired vacancy of two years or less is not considered a term. (§ 3 ch 90 SLA 1957)

**Sec. 08.68.040. Source of appointments.**

Repealed by § 46 ch 102 SLA 1976.

Editor's note. — The repealed section derived from § 3, ch. 90, SLA 1957.

**Sec. 08.68.050. Removal from office.** The governor may remove any board member for neglect of duty required by law, or for unprofessional or dishonorable conduct after a fair and impartial hearing. (§ 3 ch 90 SLA 1957)

**Sec. 08.68.060. Qualifications of board members.** The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment. (§ 4 ch 90 SLA 1957; am § 17 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

**Sec. 08.68.070. Election of officers.** The board shall annually elect a chairman and secretary-treasurer from among its members. (§ 5 ch 90 SLA 1957)

**Sec. 08.68.080. Meetings.** The board shall meet at least once a year. (§ 5 ch 90 SLA 1957)

**Sec. 08.68.090. Quorum.** A majority of the board constitutes a quorum. (§ 5 ch 90 SLA 1957)

**Sec. 08.68.100. Duties of board.** The board shall

(1) adopt rules and regulations necessary to make this chapter effective and when necessary, additions to or changes in rules and regulations of the board by a quorum vote by mail, those additions to or changes in the rules and regulations which are made by mail and the vote on them to be entered in the minutes of the board at its next meeting;

(2) make available, upon request, copies of this chapter and the regulations adopted for administering it;

(3) approve curricula and standards for educational programs preparing persons for licensing and provide for surveys of these programs in the state at the times it considers necessary;

(4) accredits educational programs which meet the requirements of this chapter and the standards of the board, and deny or withdraw accreditation from educational programs for failure to meet board standards;

(5) examine, license, and renew the licenses of qualified applicants, and conduct hearings upon charges and administer oaths to persons giving testimony at hearings;

(6) keep a record of its proceedings, and submit annual reports to the governor and the legislature. (§ 6(1) (2) (3) ch 90 SLA 1957)

**Sec. 08.68.110. Appointment of executive officer.**

Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.68.111. Executive officer of board.** (a) The Department of Commerce and Economic Development, in consultation with the Board of Nursing, shall employ a licensed, registered nurse, who is not a member of the board, to serve as executive officer of the board.

(b) The executive officer shall be a nurse having a bachelor's degree or higher, currently licensed in the state and with not less than five years of active nursing experience, of which not less than two years within the preceding five years has been in an administrative or a teaching capacity in an accredited institution acceptable to the board. If a licensed professional nurse holding a bachelor's degree is not available to fill the position of executive officer, the board may waive the requirement for a bachelor's degree and appoint a licensed professional nurse possessing other qualifications in education and administrative experience which the board considers acceptable. However, the appointee shall complete the requirements for the award of a bachelor's degree in four years after appointment to the position of executive officer. Annually, the appointee shall offer the board evidence of satisfactory progress toward award of a bachelor's degree. If after the annual review the board believes that the appointee has not made satisfactory progress toward award of a bachelor's degree, the department may dismiss the appointee, notwithstanding the provisions of AS 39.25.170.

(c) The executive officer shall:

(1) perform the administrative duties as required by the statutes and the department,

(2) carry out regulations and policy decisions, consistent with law, made by the Board of Nursing, and

(3) assist the board in the conducting of examinations, educational programs, preparation of minutes and other board administrative work.

(d) Repealed by § 1 ch 129 SLA 1974. (§ 1 ch 47 SLA 1967; am § 1 ch 81 SLA 1969; am § 2 ch 67 SLA 1973; am § 1 ch 129 SLA 1974; am § 49 ch 218 SLA 1976)

**Effect of amendment.** — The 1973 amendment added the second, third, fourth and fifth sentences of subsection (b).

The 1974 amendment repealed subsection (d).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in subsection (a).

**Sec. 08.68.120. Bond.**

Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.68.130. Disposition of fees.**

Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.68.140. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62).

**Sec. 08.68.150. Expenses.** Members of the board are entitled to the per diem and travel expenses allowed by law. (§ 7 ch 90 SLA 1957)

**Article 2. Examination and Licensing.**

**Section**

- 160. License required
- 165. Malpractice insurance
- 170. Qualifications of professional nurse applicants
- 180. Qualifications of practical nurse applicants
- 190. License by examination
- 200. License by endorsement
- 210. Temporary permits
- 220. Fees

**Section**

- 230. Use of title and abbreviation
- 240. Nurses licensed or holding temporary permits under previous law
- 250. [Repealed]
- 251. Lapsed licenses
- 260. Inactive nurses
- 270. Grounds for denial, suspension or revocation
- 275. Limits or conditions on license; discipline

**Sec. 08.68.160. License required.** A person practicing or offering to practice professional or practical nursing in the state shall submit evidence that he is qualified to practice, and shall be licensed under this chapter. (§ 1 ch 90 SLA 1957)

**Sec. 08.68.165. Malpractice insurance.** If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance

on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 18 ch 102 SLA 1976)

**Sec. 08.68.170. Qualifications of professional nurse applicants.** An applicant for a license to practice professional nursing shall submit to the board on forms and in the manner prescribed by the board, written evidence, verified by oath, that the applicant has completed an approved four year high school course of study or the equivalent as determined by the appropriate educational agency, and has successfully completed (1) a professional nursing education program accredited by the board; or (2) a professional nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state at the time the applicant graduated; or (3) a professional nursing education program accredited by the National League for Nursing at the time the applicant graduated. (§ 8 ch 90 SLA 1957; am § 2 ch 129 SLA 1974; am § 1 ch 105 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "in another state or territory" for "outside the state" in item (2).

The 1976 amendment substituted "outside the state" for "in another state or territory" in item (2).

**Sec. 08.68.180. Qualifications of practical nurse applicants.** (a) An applicant for a license to practice practical nursing shall submit to the board on forms prescribed by the board written evidence, verified by oath, that the applicant has completed the tenth grade or its equivalent as determined by the appropriate educational agency, is not less than 18 years of age, and has successfully completed (1) a practical nursing education program accredited by the board; or (2) a practical nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state.

(b) A qualified student of the Mt. Edgecombe School of Practical Nursing who was graduated before January 1, 1959, and had eighth

grade pretraining is eligible for a license. (§ 9 ch 90 SLA 1957; am § 3 ch 129 SLA 1974; am § 2 ch 105 SLA 1976)

**Effect of amendments.** — The 1974 amendment substituted "in another state or territory" for "outside the state" in item (2) of subsection (a). The 1976 amendment substituted "outside the state" for "in another state or territory" in item (2) of subsection (a).

**Sec. 08.68.190. License by examination.** The applicant shall pass a written examination in the subjects which the board prescribes. The board shall issue a license to an applicant who passes the examination to practice professional nursing or practical nursing provided the other qualifications outlined in §§ 170 and 180 of this chapter are also met. The board shall conduct examinations annually and as often as it considers necessary. (§ 10 ch 90 SLA 1957)

**Sec. 08.68.200. License by endorsement.** The board may issue a license by endorsement to practice professional nursing or to practice practical nursing, whichever is appropriate, to an applicant who is licensed as either a professional nurse or a practical nurse under the laws of another state or territory, if in the opinion of the board the applicant meets the qualifications required for licensing in the state, and meets the requirements of either § 170 or § 180 of this chapter, whichever is applicable. (§ 11 ch 90 SLA 1957; am § 1 ch 37 SLA 1970; am § 4 ch 129 SLA 1974)

**Effect of amendment.** — The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" near the middle of the section.

**Sec. 08.68.210. Temporary permits.** (a) The board may issue a temporary permit, nonrenewable and valid for a period not exceeding four months, to an applicant for a license by endorsement if he

(1) submits proof satisfactory to the board that he is currently licensed in another state or territory,

(2) meets the requirements of either § 170 or § 180 of this chapter, whichever is applicable, and

(3) pays the required fee.

(b) The board may issue a nonrenewable permit to an applicant for license by examination if he meets the qualifications of § 170 or § 180 of this chapter, whichever is applicable, and pays the required fee. The permit will be valid for a period not extending beyond the time when the results are published of the first examination the applicant is eligible to take after the permit is issued. (§ 11 ch 90 SLA 1957; am § 2 ch 37 SLA 1970; am § 5 ch 129 SLA 1974)

**Effect of amendment.** — The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" in paragraph (1) of subsection (a).

**Sec. 08.68.220. Fees.** The following fees shall be imposed under this chapter when applicable:

- (1) for professional or registered nursing
    - (A) application fee . . . . . \$20
    - (B) license by examination fee . . . . . 20
    - (C) license by endorsement fee . . . . . 20
    - (D) biennial license renewal fee . . . . . 15
  - (2) for practical or vocational nursing
    - (A) application fee . . . . . \$15
    - (B) license by examination fee . . . . . 15
    - (C) license by endorsement fee . . . . . 15
    - (D) biennial license renewal fee . . . . . 15
- (§ 13 ch 90 SLA 1957; am § 1 ch 80 SLA 1960; am § 5 ch 94 SLA 1968; am § 2 ch 81 SLA 1969; am §§ 3, 4 ch 37 SLA 1970)

**Sec. 08.68.230. Use of title and abbreviation.** (a) A person licensed to practice professional nursing in the state may use the title "licensed professional nurse," "registered nurse," and the abbreviation "R.N."

(b) A person licensed to practice practical nursing in the state may use the title "licensed practical nurse," or "licensed vocational nurse," and the abbreviation "L.P.N." or "L.V.N." (§ 14 ch 90 SLA 1957)

**Sec. 08.68.240. Nurses licensed or holding temporary permits under previous law.** A person holding a license to practice professional or practical nursing in the state under prior law is considered licensed as a professional or practical nurse. (§ 15 ch 90 SLA 1957)

**Sec. 08.68.250. Renewal of license.**  
Repealed by § 3 ch 81 SLA 1969.

**Editor's note.** — The repealed section derived from § 16, ch. 90, SLA 1957; § 2, ch. 80, SLA 1960; § 7, ch. 94, SLA 1968.

**Sec. 08.68.251. Lapsed licenses.** A lapsed license may be reinstated if it has not remained lapsed for more than five years. If the license is lapsed for more than five years and the board has reason to believe that the person applying for reinstatement of his license no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board may require the applicant to take and pass the examination given under § 190 of this chapter or complete a refresher course approved by the board. (§ 3 ch 81 SLA 1969; am § 6 ch 129 SLA 1974)

**Revisor's note (1969).** — In ch 81 SLA 1969 this section was numbered AS 08.68.250.  
**Effect of amendment.** — The 1974

amendment added "or complete a refresher course approved by the board" to the end of the second sentence.

**Sec. 08.68.260. Inactive nurses.** A licensed nurse may apply to be placed on inactive status. An inactive nurse may engage in the practice of nursing by submitting an application for renewal and the current biennial renewal fee to the board and receiving a renewal certificate. If the board has reason to believe that the applicant for a renewal certificate no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board may require the applicant to take and pass the examination given under § 190 of this chapter or complete a refresher course approved by the board. (§ 16 ch 90 SLA 1957; am § 2 ch 80 SLA 1960; am § 4 ch 81 SLA 1969; am § 7 ch 129 SLA 1974)

**Effect of amendment.** — The 1974 amendment added "or complete a refresher course approved by the board" to the end of the third sentence.

**Sec. 08.68.270. Grounds for denial, suspension or revocation.** The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, suspend or revoke the license of a person who

(1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;

(2) has been convicted of a felony;

(3) has been convicted of a crime involving moral turpitude;

(4) is habitually intoxicated or is addicted to the use of narcotics;

(5) has impersonated a professional or practical nurse;

(6) is guilty, in the opinion of the board, of negligence which has resulted in serious injury to a patient;

(7) is mentally ill or mentally incompetent;

(8) is guilty of unprofessional conduct;

(9) has wilfully or repeatedly violated any of the provisions of this chapter;

(10) is considered by the board to be professionally incompetent. (§ 20 ch 90 SLA 1957; am § 8 ch 129 SLA 1974)

**Effect of amendment.** — The 1974 amendment added paragraph (10). C.J.S. references. — 53 C.J.S. Licenses § 44; 70 C.J.S. Physicians and Surgeons § 16.

Cited in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

**Sec. 08.68.275. Limits or conditions on license; discipline.** (a) In addition to action under § 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 18 ch 102 SLA 1976)

### Article 3. Nursing Education Programs.

Section	Section
280. Nursing education program prohibited unless accredited	310. Accreditation
290. Application for accreditation	320. Denial of accreditation
300. Survey and accreditation by the board	330. List of accredited programs

**Sec. 08.68.280. Nursing education program prohibited unless accredited.** No person, institution or agency may conduct a nursing education program for professional or practical nurses unless the program is accredited by the board. (§ 18 ch 90 SLA 1957)

**Sec. 08.68.290. Application for accreditation.** An institution desiring to conduct a nursing education program to prepare professional or practical nurses shall apply to the board and submit evidence that (1) it is prepared to carry out the curriculum approved by the board for professional nursing or for practical nursing, as the case may be, and that (2) it is prepared to meet other standards established by law and by the board. (§ 17 ch 90 SLA 1957)

**Sec. 08.68.300. Survey and accreditation by the board.** The board shall designate the executive officer, a board member, or a consultant to survey the institution applying for accreditation to determine if the standards and requirements required by law and the board are met. The board may survey a nursing education program in the state at any time. Written reports of the surveys shall be filed with the board and retained by it. (§ 18 ch 90 SLA 1957)

**Sec. 08.68.310. Accreditation.** If, in the opinion of the board, the nursing education program meets the requirements established by the board, the board shall accredit it as an approved nursing education program for professional or practical nurses. The graduates of an accredited nursing program are eligible for licenses. (§ 18 ch 90 SLA 1957)

**Sec. 08.68.320. Denial of accreditation.** The board may deny, revoke or suspend accreditation of a nursing education program if it determines that required standards are not being maintained. (§ 18 ch 90 SLA 1957)

**Sec. 08.68.330. List of accredited programs.** The board shall prepare, maintain, and from time to time publish a list of accredited nursing education programs in the state. (§ 19 ch 90 SLA 1957)

### Article 4. Unlawful Acts.

Section	Section
340. Violations	370. Application for injunction
350. Punishment for misdemeanor	380. Issuance of injunction
360. Unlicensed practice a public nuisance	390. Remedy not exclusive

**Sec. 08.68.340. Violations.** It is a misdemeanor for a person to

(1) sell or fraudulently obtain or furnish a nursing diploma, license renewal or record, or aid or abet therein; or

(2) practice nursing under cover of a diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or by fraudulent representation; or

(3) practice or offer to practice nursing without a license, except when rendering necessary aid to the ill, injured or infirm in an emergency, or to knowingly employ a person without a license to practice nursing; or

(4) use in connection with his name a designation tending to imply that he is a licensed nurse unless he is licensed; or

(5) practice nursing during the time his license is lapsed, suspended or revoked; or

(6) conduct a nursing education program unless the program has been accredited by the board; or

(7) violate any provision of this chapter. (§§ 1, 22 ch 90 SLA 1957; am § 9 ch 129 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted "or to knowingly employ a person without a license to practice nursing" in paragraph (3). **C.J.S. references.** — 53 C.J.S. Licenses §§ 62 to 65; 70 C.J.S. Physicians and Surgeons § 8.

**Sec. 08.68.350. Punishment for misdemeanor.** A person who violates § 340 of this chapter is punishable by imprisonment for not less than 10 days nor more than one year, or by a fine of not less than \$10 nor more than \$500, or by both. (§ 22 ch 90 SLA 1957)

**Sec. 08.68.360. Unlicensed practice a public nuisance.** The practice of professional or practical nursing for compensation by a person who is not licensed, or whose license is suspended, or revoked, or expired, is declared to be inimical to the public welfare and to constitute a public nuisance. (art VIII ch 90 SLA 1957)

**Sec. 08.68.370. Application for injunction.** The board may, apply for an injunction in a competent court to enjoin a person not licensed or whose license is suspended or revoked, or expired, from practicing professional or practical nursing. The court may issue a temporary injunction enjoining the defendant from practicing professional or practical nursing. (art VIII ch 90 SLA 1957)

**Sec. 08.68.380. Issuance of injunction.** If it is established that the defendant has been, or is practicing professional or practical nursing without a license or has been or is practicing nursing after his license has been suspended, or revoked, or has expired, the court may enjoin the defendant from further practice. (art VIII ch 90 SLA 1957)

**Sec. 08.68.390. Remedy not exclusive.** If a person violates an injunction issued under this section, he may be punished for contempt

of court. The injunction proceeding is in addition to other penalties and remedies provided in this chapter. (art VIII ch 90 SLA 1957)

## Article 5. General Provisions.

### Section

400. Exceptions to application of chapter

410. Definitions

**Sec. 08.68.400. Exceptions to application of chapter.** (a) This chapter does not apply to

(1) a qualified nurse licensed in another state employed by the United States Government or a bureau, or agency, or division of the United States Government while in the discharge of his official duties;

(2) nursing service given temporarily in the event of a public emergency or disaster;

(3) the practice of nursing by a student enrolled in a nursing education program accredited by the board when the practice is in connection with the student's course of study; or

(4) the practice of nursing by a nurse enrolled in an approved refresher course.

(b) For purposes of this section the word "nurses" includes professional and practical nurses, and "nursing" means professional and practical nursing. (art IX ch 90 SLA 1957; am § 10 ch 129 SLA 1974)

**Effect of amendment.** — The 1974 amendment added paragraph (4) to subsection (a).

**Sec. 08.68.410. Definitions.** As used in this chapter

(1) "board" means the Board of Nursing;

(2) "licensed professional nurse" is equivalent to the common title registered nurse;

(3) "licensed practical nurse" is equivalent to the title licensed vocational nurse;

(4) "practical nursing" also means vocational nursing;

(5) "practice of professional nursing" means the performance for compensation of observation, care and counsel of the ill, injured, or infirm, or the maintenance of health or prevention of illness of others, the supervision and teaching of personnel; or the administration of medications and treatments prescribed by a licensed physician or dentist which require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social science; but the foregoing do not include acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures unless authorized by regulations promulgated jointly by the State Medical Board and the Board of Nursing and as implemented by the Board of Nursing;

(6) "practice of practical nursing" means the performance for compensation of selected acts in the care or prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgment and knowledge required in professional nursing;

(7) an "accredited nursing education program" is a program having curricula and standards which meet the requirements established by the board;

(8) "endorsement" is the licensing or registering of an applicant without examination through the acceptance of a license or registration issued by any state or territory after a comprehensive examination which is equivalent to the examination offered in this state, and providing the applicant meets all other qualifications required by law;

(9) "advanced nurse practitioner" means a registered professional nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures as authorized by regulations promulgated under (5) of this section. (§ 2 ch 90 SLA 1957; am § 5 ch 37 SLA 1970; am § 3 ch 67 SLA 1973; am §§ 11, 12 ch 129 SLA 1974)

**Effect of amendments.** — The 1973 amendment added the language beginning "unless authorized" to the end of paragraph (5).

The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" near the middle of paragraph (8) and added paragraph (9).

## CHAPTER 44. BOARD OF NURSING

### Article

1. Nursing Education of Professional Nurses
2. Nursing Education of Practical Nurses
3. Examination and Licensure
4. Advanced Nurse Practitioner
5. General Provisions

### ARTICLE I. NURSING EDUCATION OF PROFESSIONAL NURSES

### Section

10. Purpose of accreditation
20. Types of accreditation
30. Survey
40. Establishment of school of professional nursing
50. Discontinuance of program
60. Organization of schools
70. Budget
80. Student clinical experience
90. Faculty
100. Qualifications of director and professional nursing instructors
110. Records
120. School catalogue
130. Curriculum requirements
140. Reports

12 AAC 44.010. PURPOSE OF ACCREDITATION. The purpose of accreditation is

(1) to assure the safe practice of nursing by setting minimum requirements for the conduct of school of professional nursing that prepares the nurse practitioner;

(2) to assure the graduate of their eligibility for admission to the licensing examination for professional nurses in Alaska; and

(3) to encourage within school of professional nursing self-evaluation and study for growth, development and improvement of its program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100  
AS 08.68.290

12 AAC 44.020. TYPES OF ACCREDITATION. (a) Full accreditation is

granted a school of professional nursing that has met the requirements as set forth in secs. 10 - 140 of this chapter.

(b) Provisional accreditation is granted a school of professional nursing that has not been in operation long enough to fulfill the standards of accreditation of secs. 10 - 140 of this chapter.

(c) Conditional accreditation is granted a school of professional nursing which has failed to maintain minimum standards and has been notified that it must meet the requirements of the board within one year from date of notice. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.109(1),(3) and (4)  
AS 08.68.290

12 AAC 44.030. SURVEY. (a) The completed application for provisional accreditation shall be submitted to the board when the school of professional nursing is ready for a survey visit.

(b) A survey of each school of nursing, including affiliations and extended campus facilities, is required for the purpose of full accreditation and shall be made by one or more representatives of the board and may include a faculty member from an established professional nursing program.

(c) Each school of professional nursing shall permit periodic surveys by the board or their designated representative for the purpose of determining compliance with accreditation standards.

(d) Prior to a survey visit, specific information will be requested by the board.

(e) The information supplied by the school and the written report of the survey will be given to the board. The report and recommendations of the board will be sent to the administrator of the controlling body and the delegated nurse administrator of the program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1),(3) and (4)  
AS 08.68.300

12 AAC 44.040. ESTABLISHMENT OF SCHOOL OF PROFESSIONAL NURSING. (a) Any university or college wishing to establish a school of professional nursing shall inform the

board in writing during the initial planning period.

(b) There shall be information on the availability of clinical facilities and job opportunities for graduates. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1),(3) and (4)  
AS 08.68.300

**12 AAC 44.050. DISCONTINUANCE OF PROGRAM.** When a school of professional nursing plans on discontinuing its program it shall

(1) notify the board in writing as soon as the decision is made;

(2) give assurances that the educational standards shall be maintained until the last class has graduated or that adequate provisions are made for the transfer of students unable to complete the program; and

(3) make provision for the preservation of students' records. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)

**12 AAC 44.060. ORGANIZATION OF SCHOOLS.** (a) There shall be a clear statement of philosophy which shall be filed with the board.

(b) The school of professional nursing shall be an integral part of an accredited institution of higher learning. There shall be a plan of organization and administration of the school of professional nursing with an organization diagram available to all persons concerned with the school of professional nursing. This chart shall indicate responsibilities and lines of communication and show how individuals and units within the school of professional nursing stand in relation to one another and to such groups as the board of control and clinical facilities. The relationships may be direct, advisory, contractual, coordinating or cooperative in nature. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

**12 AAC 44.070. BUDGET.** (a) The financial statement of a school of professional nursing shall be submitted annually to the board and must include assets and liabilities, allowance for

fiscal year for faculty salaries, administrative positions, laboratory equipment, maintenance, capitol improvement, library.

(b) In addition to the information required in (a) of this section, a school of professional nursing applying for initial, provisional accreditation shall submit a proposed budget for five years which includes projected amounts and sources of funding, and an analysis of projected disbursements. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

**12 AAC 44.080. STUDENT CLINICAL EXPERIENCE.** (a) Assignment of students for clinical experience shall be the responsibility of the director of the school of professional nursing and the faculty.

(b) Each school of professional nursing shall include in its curriculum student experience in meeting the physical, emotional and social needs of people of all ages in health and illness for nursing care.

(c) If there is more than one professional nursing program having clinical experience simultaneously within the same clinical area, each group shall have separate instructors.

(d) In student clinical experience, the clinical instructor-student ratio may not exceed 1:12 at any given time. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

**12 AAC 44.090. FACULTY.** The administration and teaching staff shall consist of

(1) a director of the school of professional nursing;

(2) nursing instructors prepared in the major broad areas of current nursing practice. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

**12 AAC 44.100. QUALIFICATIONS OF DIRECTOR AND PROFESSIONAL NURSING INSTRUCTORS.** (a) The director of a school of professional nursing shall be a professional nurse and have at least a master's degree in education or nursing, including coursework in curriculum development and counseling, and at least one

year of experience either in instruction or administration of nursing education.

(b) Instructors who are responsible for the development and implementation of curriculum in one of the specialty areas shall have a master's degree in nursing, and have at least one year of clinical nursing experience in that area.

(c) Instructors who supervise nursing practice in a school of professional nursing shall have at least a baccalaureate degree in nursing and have at least one year of clinical nursing experience in the area in which they are teaching. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.110. RECORDS. The school of professional nursing shall provide for

(1) pre-admission and current records for each student, including information as to the student's knowledge and skills related to the practice of professional nursing; and

(2) the official transcript of each student. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)  
AS 08.68.300

12 AAC 44.120. SCHOOL CATALOGUE. In the catalogue of the accredited institution there shall be a current official statement, developed by the nursing faculty, describing the nursing program, which includes

(1) a statement of the philosophy and objectives of the school of professional nursing;

(2) admission and graduation policies and procedures;

(3) the curriculum, course description, and list of faculty members; and

(4) description of physical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.130. CURRICULUM REQUIREMENTS. Baccalaureate and associate degree programs shall comply with the following minimum curriculum requirements:

(1) biological and physical sciences

(A) academic faculty prepared in these areas shall provide this instruction;

(B) subject matter shall relate to structure and function of the human body;

(2) behavioral and social sciences

(A) academic faculty prepared in these areas shall provide this instruction;

(B) subject matter shall include principles of psychology, communications, growth and development, and interpersonal relationships;

(3) nursing science

(A) the school of professional nursing shall provide instruction and clinical experience in the major broad areas of current nursing practice;

(B) it shall provide instruction in allied subjects such as community health, pharmacology, nutrition and diet therapy, history and trends in nursing and professional responsibilities;

(C) theory and laboratory experience shall be concurrent to enable students to develop basic skills in professional nursing;

(D) throughout the program the student shall have experience applying the principles learned by working with the health team in providing nursing services and health education to people of all ages. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)  
AS 08.68.290

12 AAC 44.140. REPORTS. By July 1 of each year, schools of professional nursing shall submit to the Board of Nursing reports related to faculty, students and current curriculum as follows:

(1) written job descriptions and qualifications for each category of faculty;

(2) names, educational qualifications, and titles of all nursing faculty members;

(3) a count of students admitted, withdrawn, transferred and graduated on forms provided by the board;

(4) a copy of the catalogue;

(5) course outlines for all nursing courses;

(6) budget information required in sec. 70 of this chapter; and

(7) a copy of any written agreement between the school of professional nursing and clinical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.300

## ARTICLE 2. NURSING EDUCATION OF PRACTICAL NURSES

### Section

- 150. Purpose of accreditation
- 160. Types of accreditation
- 170. Survey
- 180. Establishment of school of practical nursing
- 190. Discontinuance of program
- 200. Organization of schools
- 210. Budget
- 220. Student clinical experience
- 230. Faculty
- 240. Qualifications of director and practical nursing instructors
- 250. Records
- 260. School catalogue
- 270. Curriculum requirements
- 280. Reports

12 AAC 44.150. PURPOSE OF ACCREDITATION. The purpose of accreditation is

(1) to assure safe practice of nursing by setting minimum requirements for the conduct of school of practical nursing that prepares the practical nurse;

(2) to assure the graduates of their eligibility for admission to the licensing examination for practical nurses in Alaska; and

(3) to encourage within school of practical nursing self-evaluation and study for growth,

development and improvement of its program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100  
AS 08.68.290

12 AAC 44.160. TYPES OF ACCREDITATION. (a) Full accreditation is granted a school of practical nursing that has met the requirements as set forth in secs. 150 – 280 of this chapter.

(b) Provisional accreditation is granted a school of practical nursing that has not been in operation long enough to fulfill the standards of accreditation of secs. 150 – 280 of this chapter.

(c) Conditional accreditation is granted a school of practical nursing which has failed to maintain minimum standards and has been notified that it must meet the requirements of the board within one year from date of notice. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.109(1)(3)(4)  
AS 08.68.290

12 AAC 44.170. SURVEY. (a) The completed application for provisional accreditation shall be submitted to the board when the school of practical nursing is ready for a survey visit.

(b) A survey of each school of nursing, including affiliations and extended campus facilities, is required for the purpose of FULL accreditation and shall be made by one or more representatives of the board and may include a faculty member from an established practical nursing program.

(c) Each school of practical nursing shall permit periodic surveys by the board or their designated representative for the purpose of determining compliance with accreditation standards.

(d) Prior to a survey visit, specific information will be requested by the board.

(e) The information supplied by the school and the written report of the survey will be given to the board. The report and recommendations of the board will be sent to the administrator of

the controlling body and the delegated nurse administrator of the program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)(4)  
AS 08.68.300

**12 AAC 44.180. ESTABLISHMENT OF SCHOOL OF PRACTICAL NURSING.** (a) Any college wishing to establish a school of practical nursing shall inform the board in writing during the initial planning period.

b) There shall be information on the availability of clinical facilities and job opportunities for graduates. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)(4)  
AS 08.68.300

**12 AAC 44.190. DISCONTINUANCE OF PROGRAM.** When a school of practical nursing plans on discontinuing its program it shall

(1) notify the board in writing as soon as the decision is made;

(2) give assurances that the educational standards shall be maintained until the last class has graduated or that adequate provisions are made for the transfer of students unable to complete the program; and

(3) make provision for preservation of students' records. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)

**12 AAC 44.200. ORGANIZATION OF SCHOOLS.** (a) There shall be a clear statement of philosophy which shall be filed with the board

(b) The school of practical nursing shall be an integral part of an accredited institution of higher learning. There shall be a plan of organization and administration of the school of practical nursing with an organization diagram available to all persons concerned with the school of practical nursing. This chart shall indicate responsibilities and lines of communication and show how individuals and units within the school of practical nursing stand in relation to one another and to such groups as the board of control and clinical facilities. The relationships may be direct, advisory,

contractual, coordinating or cooperative in nature. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

**12 AAC 44.210. BUDGET.** (a) The financial statement of a school of practical nursing shall be submitted annually to the board and must include assets and liabilities, allowance for fiscal year for faculty salaries, administrative positions, laboratory equipment, maintenance, capital improvement library.

(b) In addition to the information required in (a) of this section, a school of practical nursing applying for initial, provisional accreditation shall submit a proposed budget for five years which includes projected amounts and sources of funding, and an analysis of projected disbursements. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

**12 AAC 44.220. STUDENT CLINICAL EXPERIENCE.** (a) Assignment of students for clinical experience shall be the responsibility of the director of the school of practical nursing and the faculty.

(b) Each school of practical nursing shall include in its curriculum, student clinical experience in the areas of medical, surgical, obstetrical, psychiatric and pediatric nursing.

(c) If there is more than one nursing program having clinical experience simultaneously within the same clinical area, each group shall have separate instructors.

(d) In student clinical experience, the clinical instructor-student ratio may not exceed 1:12 at any given time. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

**12 AAC 44.230. FACULTY.** The administration and teaching staff shall consist of

(1) a director of the school of practical nursing; and

(2) nursing instructors in each specialty area, medical, surgical, obstetrical, psychiatric and pediatric nursing. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

**12 AAC 44.240. QUALIFICATIONS OF DIRECTOR AND PRACTICAL NURSING INSTRUCTORS.** (a) The director of a school of practical nursing shall have at least a baccalaureate degree in nursing, including coursework in curriculum development and counseling, and at least one year of experience either in instruction or administration of nursing education and one year clinical nursing experience in the areas in which he is teaching.

(b) Instructors who teach in a school of practical nursing shall be registered nurses with a bachelor's degree who have at least one year of clinical nursing experience in the area in which they are teaching. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

**12 AAC 44.250. RECORDS.** The school of practical nursing shall provide for

(1) pre-admission and current records for each student, including information as to the student's knowledge and skills related to the practice of practical nursing; and

(2) the official transcript of each student. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)  
AS 08.68.300

**12 AAC 44.260. SCHOOL CATALOGUE.** In the catalogue of the accredited institution there shall be a current official statement, developed by the nursing faculty describing the nursing program, which includes

(1) a statement of the philosophy and objectives of the school of practical nursing;

(2) admission and graduation policies and procedures;

(3) the curriculum, course description, and list of faculty members; and

(4) description of physical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

**12 AAC 44.270. CURRICULUM REQUIREMENTS.** The program for a school of practical nursing shall comply with the following minimum requirements:

(1) the school of practical nursing shall provide instruction and clinical experience in medical, surgical, obstetrical, pediatric and psychiatric nursing;

(2) the school of practical nursing shall provide instruction in those basic principles of the physical, social and behavioral sciences which relate to the practice of practical nursing;

(3) the school of practical nursing shall provide instruction in basic concepts of nutrition, pharmacology, communications, history and trends in nursing, and vocational responsibilities;

(4) theory and laboratory experience shall be concurrent to enable students to develop basic skills in practical nursing; and

(5) throughout the program the student shall have experience applying all principles learned by working with the health team in providing basic bedside care to patients. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)  
AS 08.68.290

**12 AAC 44.280. REPORTS.** By July 1 of each year, schools of practical nursing shall submit to the board reports related to faculty, students, and current curriculum as follows:

(1) written job descriptions and qualifications for each category of faculty;

(2) names, educational qualifications, and titles of all nursing faculty members;

(3) a count of students admitted, withdrawn, transferred and graduated, on forms provided by the board;

(4) a copy of the catalogue;

(5) course outlines for all nursing courses;

(6) budget information required in sec. 210 of this chapter; and

(7) a copy of any written agreement between the school of practical nursing and clinical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.300

**ARTICLE 3.  
EXAMINATION AND LICENSURE**

**Section**

- 290. Application for examination
- 300. State board examinations
- 310. Licensure of graduates of foreign schools of nursing
- 320. Temporary permits

**12 AAC 44.290. APPLICATION FOR EXAMINATION.** (a) All applicants for license by examination in Alaska shall

(1) make written application on forms provided by the board for permission to be admitted to the licensing examination;

(2) pay the required fee;

(3) provide the board with a complete certified transcript of her nursing education; and

(4) submit a letter of recommendation for examination from the director of the school of nursing.

(b) Application, fee, and all credentials shall be on file in the board office not later than six weeks prior to the date of the examination. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)  
AS 08.68.190

**12 AAC 44.300. STATE BOARD EXAMINATIONS.** (a) Candidates shall write the State Board Test Pool Examination.

(b) Registered nurse candidates who receive a standard score of 350 or above in each area of the examination will be issued a license by the Board of Nursing.

(c) Registered nurse candidates who fail one or two areas of the examination need repeat only the areas failed. Candidates who fail three or more areas of the examination shall repeat the entire examination.

(d) Licensed practical nurse candidates who receive a standard score of 350 or above will be issued a license by the Board of Nursing.

(e) Licensed practical nurse candidates who fail the examination shall repeat said examination.

(f) After the third failure both registered nurse and licensed practical nurse candidates shall be required to repeat, at an accredited school of nursing, the theory and practice in the areas failed. The candidate shall provide proof of having fulfilled this requirement. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(i) and (5)  
AS 08.68.190

**12 AAC 44.310. LICENSURE OF GRADUATES OF FOREIGN SCHOOLS OF NURSING.** (a) Applicants shall submit all required documents accompanied by certified English translations if the original documents are not in English.

(b) Unless otherwise provided by this section, nurses who have received nursing education outside the United States shall write the State Board Test Pool Examination.

(c) Applicants who have successfully completed the State Board Test Pool Examination elsewhere shall be licensed by endorsement.

(d) If licensed in Canada as a result of passing the national Canadian examination, and having received a score of at least 350 on each part of the examination, an applicant may receive a license by endorsement in the manner provided by AS 08.68.200. If the examination did not include all subjects included in the State Board Test Pool Examination, the applicant will be required to examine in those subjects. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.190  
AS 08.68.200  
AS 08.68.210(a) and (b)

**12 AAC 44.320. TEMPORARY PERMITS.** A temporary nonrenewable permit may be issued to an applicant who has taken the State Board Test Pool Examination one time and the results are pending. This permit will be valid until the results of this examination are published. (Eff. 10/14/72, Reg. 43; am 6/27/76, Reg. 58)

Authority: AS 08.68.100(1) and (5)  
AS 08.68.200  
AS 08.68.210(a) and (b)

**ARTICLE 4.**  
**ADVANCED NURSE PRACTITIONER**

**Section**

**322. Nurse-midwife**

12 AAC 44.322. NURSE-MIDWIFE. (a) A person may not practice or offer to practice as a nurse-midwife in Alaska or use a title or initials signifying that he or she is a nurse-midwife unless authorized to do so by the board.

(b) An applicant for authorization to practice as a nurse-midwife must meet the following requirements:

(1) apply on forms provided by the board;

(2) at the time of application, provide written evidence of an established collaborative relationship with a physician or physicians appropriate to the area of practice, at least one physician who must be certified by the American Board of Obstetrics and Gynecology or eligible for certification by that board;

(3) pay a fee of \$25, which must accompany the application;

(4) be currently licensed to practice as a professional nurse in Alaska;

(5) be certified by the American College of Nurse-Midwives; and

(6) within the five years before application have

(A) practiced nurse-midwifery on a continuing basis at least one year; or

(B) completed a basic nurse-midwifery program approved by the American College of Nurse Midwives.

(c) A person authorized to practice as a nurse-midwife by the board shall immediately report in writing to the board any change in conditions or terms in his or her collaborative relationship.

(d) A nurse-midwife may

(1) manage all in- and out-patient care of a

low-risk obstetrical patient, which includes the prescription of necessary medical therapeutic or corrective measures, or those patients who meet criteria established by an advisory committee jointly appointed by the board and the State Medical Board; and

(2) provide family planning services.

(e) A nurse-midwife may not

(1) continue to manage a patient if abnormal conditions or complications are apparent or known to exist, except that emergency measures may be performed, if necessary, after summoning a physician but before arrival of a physician;

(2) perform deliveries except within a hospital licensed under AS 18.30.101 - 18.30.130 unless prevented from doing so by unusual or emergency circumstances.

(f) The executive officer of the board will prepare and transmit to the Alaska Board of Pharmacy a listing of all nurse-midwives. The listing will contain

(1) the name and Drug Enforcement Administration number, if issued, of each nurse-midwife;

(2) the beginning and ending dates of the nurse-midwife's authority to prescribe; and

(3) any limitations on the prescribing authority of the nurse-midwife.

(g) The executive officer of the board will notify the Alaska Board of Pharmacy within 24 hours of a termination or any other change in the prescribing authority of the nurse-midwife and the reason for the action.

(h) The authority to practice as a nurse-midwife will be denied, revoked or suspended in accordance with AS 08.68.270 and provisions of this chapter. (Eff. 6/27/76, Reg. 58; am 2/8/78, Reg. 65)

Authority: AS 08.68.100(1) and (5)  
AS 08.68.111  
AS 08.68.410(5)

**ARTICLE 5.  
GENERAL PROVISIONS**

**Section**

- 330. License renewal
- 340. Reinstatement of a suspended license
- 350. Reinstatement of a revoked license
- 360. Change of name
- 370. Definitions

**12 AAC 44.330. LICENSE RENEWAL.** (a) All licenses shall be renewed biennially by June 30. Notice of renewal with inventory questionnaire will be mailed to every currently licensed nurse on or before May 1 of every even-numbered year.

(b) Any licenses not renewed by June 30 will be automatically canceled by July 1 or placed on the inactive list at the request of the licensee.

(c) To retain legal recognition as a nurse-midwife, a license must be renewed biennially by June 30 with

(1) a fee of \$20 accompanying the renewal application;

(2) evidence of meeting any existing educational requirements for continued certification by the American College of Nurse-Midwives. (Eff. 10/14/72, Reg. 43; am 6/27/76, Reg. 58)

Authority: AS 08.68.100(1) and (5)

**12 AAC 44.340. REINSTATEMENT OF A SUSPENDED LICENSE.** A suspended license may be reinstated at the termination of suspension only if the requirements in the suspension order have been met. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)

**12 AAC 44.350. REINSTATEMENT OF A REVOKED LICENSE.** (a) One year after revocation of a license the licensee may apply to the board in writing for reinstatement of a license.

(b) The applicant for reinstatement may be requested to appear before the board.

(c) The board may request the applicant to work under supervision for a specified length of

time in an agency approved by the board as a condition for temporary reinstatement of license.

(d) The applicant shall be responsible for providing a written evaluation from the employing agency regarding his performance and will be evaluated by the board to determine whether or not the license shall be reinstated. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)

**12 AAC 44.360. CHANGE OF NAME.** The name of a licensed nurse shall be changed on the records when a request is made in writing and accompanied by one of the following:

(1) affidavit form supplied by the board;

(2) certified copy of marriage certificate; or

(3) certified copy of court ruling. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)

**12 AAC 44.370. DEFINITIONS.** As used in this chapter

(1) "board" means Alaska Board of Nursing;

(2) "shall" indicates a mandatory requirement,

(3) "may" indicates permission at the discretion of the board;

(4) "school" or "program" means a division in a college or university which is responsible for preparing persons for practice of professional or practical nursing;

(5) "clinical facility" means any facility which provides laboratory experience for the education of students in a school of professional or practical nursing;

(6) "accreditation" means the approval granted a school of professional or practical nursing which has met the minimum requirements of the board;

(7) "baccalaureate program" is conducted in a senior college or university and is an academic department, division, school or college of the

senior college or university, which prepares persons for a baccalaureate degree in nursing;

(8) "associate degree program" includes general academic and nursing courses, is conducted within a community or junior college, and prepares persons for an associate degree in nursing;

(9) "collaborative relationship" is a working relationship between a nurse and a physician which utilizes their respective areas of expertise to meet the common goal of providing comprehensive care for the patient;

(10) "manage" means select and perform those measures essential to the effective execution of care and treatment regimens;

(11) "low-risk obstetrical patient" is a person who meets the following criteria:

(A) general good health;

(B) no major medical disorders, such as diabetes, heart disease, epilepsy, kidney disease, blood dyscrasia;

(C) no previous major obstetrical complications;

(D) parity under six;

(E) not presenting during the course of pregnancy symptoms of toxemias, hydramnios, placenta previa or abruptio, malposition of fetus, multiple pregnancy;

(F) vital signs remaining within normal curve;

(G) labor progressing according to normal curve;

(H) no prolonged rupture of membranes;

(I) no anesthesia, required or desired, other than pudendal or local; and

(J) acceptance of management of care by a nurse-midwife. (Eff. 10/14/72, Reg. 43; am 6/27/76, Reg. 58)

Authority: AS 08.68.100(1)  
AS 08.68.410(5)

Editor's Note: All old regulations adopted by the Board of Nursing, Sections 1000 - 1090, were repealed as of 10/14/72. Check Register 3, June 1961, for the old regulations.

XII

STATE OF ALASKA  
Medical Board  
(October, 1978)

Findings

The need for regulating the medical profession in the public interest is self evident. As stated in 37 ALR Annotated 676: "Careful preparation is required of one who enters the medical profession. No one has, or ought to have, the right to practise (sic) medicine who does not possess the necessary skill and learning. The physician must not only be able to detect readily the presence of disease, but also to ascertain its nature or character and to prescribe appropriate remedies for its cure. Many may have occasion to consult a physician, but few are able to determine his qualifications. Reliance in this respect must therefore be placed upon an assurance, usually in the form of a license granted by competent authority. Consideration for the protection of society has led many states to exclude from the practice of medicine those who upon an examination have been found not qualified therefor." (1924)

I. General Information

A. Regulated Parties

1. Physicians
2. Podiatrists
3. Chiropodists
5. Acupuncturists
6. Physician Assistants (pending)
7. Paramedics (pending)

B. Statutory Definition of Regulated Profession

"(2) 'practice of medicine' or 'practice of osteopathy' means

- (A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or
- (B) the public display of one's name and the letters 'M.D.,' 'M.B.' or 'D.O.' or the words 'physician' or 'osteopath' or 'osteopathic physician,' or 'osteopathic surgeon,' or 'osteopathic physician and surgeon,' or a specialist designation such as 'surgeon' or 'dermatologist,' 'psychiatrist,' or the like; or
- (C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or
- (D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction of disease, bodily injury, deformity, or defect..."

"(6) 'acupuncture' means a medical practice to cure disease or relieve pain, alter function or induce anesthesia by piercing portions of the body with needles;"

"(7) 'physician-trained mobile intensive care paramedic' means a person who

(A) has successfully completed the advanced first aid course prescribed by the board;

(B) is trained by a licensed physician

(i) to carry out all phases of cardio-pulmonary resuscitation,

(ii) to administer drugs under written or oral authorization of a licensed physician,

(iii) to administer intravenous solutions under written or oral authorization of a licensed physician; and

(C) has been examined and certified as a physician-trained mobile intensive care paramedic by the board or by the board's designated representatives;"

"(9) 'practice of podiatry' means the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma; the use of preparations, medicines, and drugs as are necessary for the treatment of these ailments; the treat-

ment of the local manifestations of systemic diseases as they appear in the hand and foot, except that

- (A) a patient shall be concurrently referred to a physician or osteopath for the treatment of the systemic disease itself;
- (B) general anaesthetics may be used only in colleges of podiatry approved by the State Medical Board and in hospitals approved by the joint commission on the accreditation of hospitals, or the American Osteopathic Association; and
- (C) the use of X ray or radium for therapeutic purposes is not permitted." (AS 08.64.380)

C. Nature and Composition of the Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Hilbert J. Henrickson, M.D. (Chairman)	ends April 31, 1982
Jeffrey A. Partnow, M.D.	ends November 6, 1980
Thomas J. Harrison, M.D.	ends July 8, 1980
Thomas Stengl, M.D.	ends January 12, 1980
Winthrop Fish, M.D.	ends April 21, 1981
Janette P. Adasiak	ends August 13, 1980
Hugh Geilert	ends January 19, 1981

2. Representation:

Profession = 5

Public = 2

3. Qualifications:

The Board shall consist of "five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry." (AS 08.64.010)

D. Licensing Data

Current active licenses:

in-State = 387  
out-of-State = 72  
total = 459  
(through May, 1978)

E. Fees

1. application	\$ 25.00
2. license by examination	125.00
3. endorsement or waiver	100.00
4. temporary permit	25.00
5. locum tenens permit	25.00
6. biennial renewal, active	100.00
7. biennial renewal, inactive	25.00
8. reexamination	75.00
Part I	\$15.00
Part II	20.00
Part III	40.00
Parts I and II	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$61,097.00	\$14,510.00	\$62,545.00	\$18,203.75
- refunds	<u>35.00</u>	<u>25.00</u>	<u>522.00</u>	<u>652.50</u>
Total	61,062.00	14,485.00	62,023.00	17,551.25
Expenditures				
Per Diem	1,276.00	1,618.75	1,844.50	2,251.50
Transportation	1,765.67	2,335.56	2,199.13	2,695.36
Phone	202.95	108.26	255.96	589.28
Printing, Adver. & Postage	700.94	637.46	1,079.30	490.50
fees & Services	216.30	804.20	368.65	225.00
Rents, Leases				
Other	<u>-</u>	<u>49.13</u>	<u>108.00</u>	<u>94.68</u>
Total	<u>4,161.86</u>	<u>5,553.36</u>	<u>5,855.54</u>	<u>6,346.32</u>
Surplus	56,900.14	8,931.64	56,167.46	11,204.93
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	6	0	0
1976	11	1	0
1977	20	2	0
1978	6	27	2
(through August, 1978)			

Pending: 13

These complaints involve allegations ranging from overcharging to drug abuse and malpractice resulting in death. At least 20 were filed with the administrative agency by members of the public at large, however, most of these concerned fees charged by the practitioner. Two additional complaints were received by the Office of the Ombudsman: one regarding a delay in investigating a grievance was justified and rectified, the other for failure to refund a license application fee which also was justified and rectified.

II. Criteria and Analysis

A. To what extent has the Medical Board operated in the public interest?

The Medical Board is statutorily directed to adopt regulations regarding abortion procedures and the registration and practice of physician assistants and physician-trained mobile intensive care paramedics. Board responsibilities include governing the licensing and practice of chiropractors, podiatrists, osteopaths and acupuncturists.

Most applicants for licensure in Alaska have a current license elsewhere and are seeking endorsement privileges. Those who have not successfully completed examination are administered a national examination, the

Federation Licensing Examination (FLEX), or appropriate portions. These FLEX examinations are given twice each year in all states at the same time and in the same manner. All applicants must have an oral interview with a member of the Board at which time a temporary permit is usually issued by the member unless there is a problem regarding the individual's qualifications or application. Graduates of medical colleges not accredited by the American Medical Association (AMA) must have been examined and certified by the Education Council on Foreign Medical Graduates or be licensed in another state, U.S. territory or Canada.

Another method by which physicians may practice in Alaska is the locum tenens permit. This is issued following an interview by a Board member to a physician licensed in another jurisdiction who wishes to substitute for an Alaska physician in his absence. Locum tenens permits are valid for 120 consecutive days.

Temporary permits are issued routinely to allow apparently qualified individuals to practice pending licensure. Permits are valid for eight months or until the Board meets to consider the application, whichever occurs first, and may be renewed by the Board one time only. Documentation of Board renewal is not contained in individual files or in meeting minutes even though there is a time lapse between permit expiration date and the effective date of initial licensure.

Utilization of all methods which allow entry into the profession operates in the public interest. Board regulations and policies are consistent with the goal of protecting the public by insuring qualifications and availability of practitioners.

Continuing education as a condition of relicensure, and exemption provisions, are required by AS 08.64.312. Regulations have been promulgated but are not yet in effect which delineate hours and methods of

compliance. Both the American Medical Association and the Alaska State Medical Association advocate continuing education as a means of keeping physicians up-to-date on current practices and technology. This too serves in the interests of public protection and welfare.

B. To what extent has the operation of the Medical Board been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Medical Board statutes are considered to be adequate in governing the profession. There are no real problems with existing regulations or Board policies in general.

A major impediment to Board operation is a lack of technical and clerical assistance partially due to a high turnover rate of personnel in the administrative agency. Three to five meetings are scheduled each year and are usually one day in length due to professional commitments of Board members. Although much is accomplished during meetings, priority items (i.e. three sets of pending regulations) consume a major portion of this time. For instance, the practice of podiatry has recently (1976) been placed under the Medical Board and although applications for licensure are pending, procedures and requirements have not yet been formulated. The requirement for submission of an annual report has not been complied with. Board members have not taken an oath of office as required by statute. Board minutes and files are lacking such documentation as Board approval for licensure and renewal of temporary permits. It is not felt that these deficiencies are so much a result of negligence as they are of lack of time and adequate administrative support. The administrative agency position which is responsible for support services to this Board is also responsible to two other professional boards with equally valid demands and priorities. Additionally, when the pending regulations go into effect, this Board will be examining, regulating and

licensing mobile intensive care paramedics and physician assistants and will be reviewing continuing education compliance and collaborative relationships between physicians and advanced nurse practitioners.

The Medical Board has experienced the same difficulties as other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of such potentially serious complaints as those received regarding the medical profession. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Medical Board recommended statutory changes which are generally of benefit to the public interest?

1976 amendments to Medical Board statutes included: addition on the Board of two public members to serve staggered terms, addition of podiatrists and the practice of podiatry under Board regulation, Medical Indemnity provisions, applicability of the Administrative Procedure Act, the right of a physician to administer laetrile at the patient's request, mandatory continuing education, and general "housekeeping items."

Specific statutory recommendations of direct benefit to the public have not been made by the Board.

- D. To what extent has the Medical Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of interest and participation concerning Board activities and services has come from this and related professions. The Board is sensitive to all input, however, very little general public interest has been demonstrated. Most public concern is expressed as a result of controversial issues or publicity, or by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State. It can be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical or scientific nature which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists, due to the nature of the occupation involved, which probably tends to deter public knowledgeability and participation.

The Board has not taken overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

Public interests are furthered by existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.<sup>1</sup>

E. How efficiently are public inquiries or complaints regarding the activities of the Medical Board processed and resolved?

No complaints were received against individual members of the Board or the Board as a whole.

Among complaints received against practitioners were charges relating to drug abuse, malpractice and negligence resulting in death. These cases are one to two years old and still pending largely due to the lengthy processes of litigation. As previously noted, this and all other boards have experienced some difficulty in timely and efficient receipt of investigative services. Also as previously noted, complaints of such a serious nature where health and life are in danger should be acted upon immediately. The administrative agency is addressing the matter of procedure and prioritization with emphasis on magnitude of offense as it relates to public welfare and safety.

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<sup>1</sup>Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- F. To what extent does the Medical Board present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Medical Board. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. Two examinations are given each year, for those who need examination, both in Alaska and nationwide. Applicants who demonstrate the required level of knowledge or qualifications are issued a license.

Provisions for endorsement, temporary permits, locum tenens permits and for licensure of foreign graduates function to encourage availability of health care in the State. Continuing education, licensure qualifications, and regulation of related health care providers function to enhance the quality of services to the public.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Medical Board in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System, and therefore, subject to affirmative action requirements.

The Medical Board issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Medical Board to better serve the interests of the public?

Present Medical Board statutes are considered to be generally adequate except that AS 08.64.030 regarding substitution of members should be reviewed for validity. Pending regulations should be finalized as soon as possible. The Board and the administrative agency should comply with statutory requirements such as submission of an annual report. Appropriate steps need to be taken to formalize qualification and application procedures for podiatry applicants.

A lack of specific and adequate support services for this Board has contributed to the length of time in which action is taken on Board business such as documentation and follow through on requests. The administrative agency position assigned to the Medical Board also is responsible to two other professional boards. There has been a turnover in personnel that has not enhanced efficient Board operation.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations and the Division of Occupational Licensing administrative overhead, such as staff salary, investigative services and litigation costs.

### III. Conclusion

The Medical Board and State regulation of the professions under its jurisdiction function to protect the public health, safety and welfare.

### IV. Summary of Recommendations

The Medical Board and State regulation should be reestablished for another four-year period. The following recommendations are made:

1. The Board should take formal action as a body on approvals for licensure and for extensions of temporary permits. This information should be recorded in meeting minutes and in Board files. (See discussion on p. 8)
2. The Board should take expeditious action on regulations now pending so that the intent of its statutes and policies may be in effect. (See discussion on p. 9)
3. The problem of providing adequate support services to this Board and possible administrative and budgetary implications should be considered. (See discussion on p. 9)
4. The Board should comply with statutory provisions such as those requiring an oath of office and an annual report on its activities. (See discussion p. 9)
5. The Board should take steps to formalize its requirements for podiatry applicants. (See discussion on p. 9)
6. The Board and the administrative agency should take positive steps to inform the public of Board and profession activities. (See discussion on p. 11)

## Chapter 64. Medicine.

### Article

1. State Medical Board (§§ 08.64.010 — 08.64.160)
2. Licensing (§§ 08.64.170 — 08.64.350)
3. Unlawful Acts (§ 08.64.360)
4. Miscellaneous Provisions (§§ 08.64.365 — 08.64.368)
5. General Provisions (§§ 08.64.370 — 08.64.380)

### Article 1. State Medical Board.

#### Section

10. Creation and membership of State Medical Board
20. State Medical Board term of office
30. Substitution of members
40. Removal of members
50. Oath of office
60. Seal
70. Officers
80. [Repealed]
90. Quorum
100. Power of board to adopt regulations

#### Section

105. Regulation of abortion procedures
107. Regulation of physician assistants and intensive care paramedics
110. Per diem and expenses
120. [Repealed]
130. Board records
140. Annual report to governor
150. [Repealed]
160. Applicability of Administrative Procedure Act

#### Sec. 08.64.010. Creation and membership of State Medical Board.

The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. (§ 35-3-82 ACLA 1949; am § 1 ch 148 SLA 1970; am § 11 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment added the language beginning "and two persons" to the end of the section and deleted the former second sentence, which read "Each member shall be chosen from a panel of three, for each vacancy, submitted to the Governor by the Alaska State Medical Association."

**Am. Jur., ALR and C.J.S. references.** — 41 Am. Jur., Physicians and Surgeons, §§ 7 to 69.

Validity of statute providing revocation of license of physician or surgeon, 5 ALR 94; 79 ALR 323.

Constitutionality of statute prescribing conditions of practicing medicine or

surgery as affected by question of discrimination against particular school or method, 16 ALR 709; 37 ALR 680; 42 ALR 1342; 54 ALR 600.

Grounds for revocation of license, 54 ALR 1504; 82 ALR 1184.

What offenses involve moral turpitude within statute providing grounds for denying license, 109 ALR 1459.

What amounts to conviction within statute making conviction ground for refusing license, 113 ALR 1179.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 ALR 1138.

70 C.J.S. Physicians and Surgeons § 1.

**Sec. 08.64.020. State Medical Board term of office.** Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time. (§ 35-3-82 ACLA 1949; am § 4 ch 107 SLA 1969; am § 12 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment added the second sentence.

**Sec. 08.64.030. Substitution of members.** (a) If impracticable, a member of the board residing in another judicial district is not obligated to attend meetings of the board.

(b) If a member is unavoidably prevented from attending a meeting of the board, the governor may appoint a substitute examiner to serve pro tem with the same duties and responsibilities as a regular member. (§§ 35-3-82, 35-3-84 ACLA 1949; am § 2 ch 148 SLA 1970)

**Sec. 08.64.040. Removal of members.** The governor may remove a member of the board for cause. (§ 35-3-84 ACLA 1949)

**Sec. 08.64.050. Oath of office.** Each member shall take an oath of office. The oath shall be filed and preserved in the division of occupational licensing of the department. (§ 35-3-83 ACLA 1949; am § 1 ch 77 SLA 1969; am § 1 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 amendment substituted "division of occupational licensing" for "central licensing section."

**Sec. 08.64.060. Seal.** The board shall adopt a seal. (§ 35-3-83 ACLA 1949)

**Sec. 08.64.070. Officers.** The board shall elect a president and secretary from among its members. The president and secretary may administer oaths. (§ 35-3-83 ACLA 1949; am § 2 ch 77 SLA 1969)

**Sec. 08.64.080. Meetings of board.**  
Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.64.090. Quorum.** Four members of the board constitute a quorum for the transaction of all business properly before the board. (§ 35-3-83 ACLA 1949; am § 3 ch 148 SLA 1970; am § 13 ch 102 SLA 1976)

**Effect of amendment.** — The 1976 amendment substituted "Four members" for "Three members" at the beginning of the section.

**Sec. 08.64.100. Power of board to adopt regulations.** The board may prescribe and establish rules and regulations necessary to carry into effect the provisions of this chapter. (§ 35-3-95 ACLA 1949)

**Sec. 08.64.105. Regulation of abortion procedures.** The State Medical Board shall adopt regulations necessary to carry into effect the provisions of AS 11.15.060 and shall define ethical, unprofessional or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions and establish procedures and set standards for facilities, equipment and care of patients in the performance of an abortion. (§ 2 ch 103 SLA 1970)

**Legislative committee report.** — For report on ch. 103, SLA 1970 (CSSB 527 (HWE)), see 1970 Senate Journal Supplement No. 10; 1970 House Journal Supplements Nos. 12, 13. Also refer to the following relevant reports on abortion bills: 1970 Senate Journal Supplements Nos. 1, 4 (re SB 411); 1970 House Journal Supplement No. 11 (re CSHB 776).

**Sec. 08.64.107. Regulation of physician assistants and intensive care paramedics.** The board shall adopt regulations regarding the registration of physician assistants and physician-trained mobile intensive care paramedics, and the medical services that each may perform, including but not limited to (1) the educational and other qualifications, (2) the application and registration procedures, (3) the scope of activities authorized, and (4) the responsibilities of the supervising or training physician. (§ 2 ch 101 SLA 1974)

**Sec. 08.64.110. Per diem and expenses.** The members of the board are entitled to per diem and expenses authorized by law. (§ 35-3-95 ACLA 1949)

**Revisor's note.** — This section was impliedly amended by § 1, ch. 130, SLA 1953, as amended by § 1, ch. 34, SLA 1960.

**Sec. 08.64.120. Coverage of funds and warrants for expenses.**  
Repealed by § 3 ch 59 SLA 1966.

**Sec. 08.64.130. Board records.** The board shall preserve a record of its proceedings, which shall contain the name, age, residence and duration of residence of each applicant for a license, the time spent by him in medical study, the place of medical study, and the year and school from which degrees were granted. The record shall also show whether the applicant was granted a license or rejected. (§ 35-3-84 ACLA 1949)

**Sec. 08.64.140. Annual report to governor.** The board shall report annually to the governor, furnishing an itemized account of all money received and disbursed, with a complete record of the proceedings of the board for the preceding year. (§ 35-3-84 ACLA 1949)

**Sec. 08.64.150. Bond of secretary-treasurer.**

Repealed by § 28 ch 77 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-84, ACLA 1949.

**Sec. 08.64.160. Applicability of Administrative Procedure Act.** The board shall comply with the Administrative Procedure Act (AS 44.62)

**Article 2. Licensing.**

Section	Section
170. License to practice medicine or osteopathy	275. Temporary permit for locum tenens practice
180. Application for license	280. Record of license
190. Contents of application	290. Examination fee
200. Qualifications of physician applicants	300 — 310. [Repealed]
205. Qualifications for osteopath applicants	311. Biennial license renewal
207. Qualifications for acupuncture applicants	312. Continuing education requirements
209. Qualifications for podiatry applicants	313. Inactive license
210. Examination required	315. Fees
215. Insurance required	320. Disposition of fees
220. Contents of examination and grading	325. Limits or conditions on license; discipline
225. Foreign medical graduates	330. Grounds for revocation of license
230. License granted	332. Automatic suspension for mental incompetency or insanity
240. License refused	334. Voluntary surrender
250. Licensure by endorsement	336. Duty of physicians to report
255. Interview required	340. Statement of grounds of refusal or revocation of license
260. Re-examination	350. Certification of revocation
270. Temporary permits	
272. Residency and internship	

**Sec. 08.64.170. License to practice medicine or osteopathy.** (a) No person may practice medicine, podiatry, osteopathy or acupuncture in the state unless he is licensed under this chapter, except that

(1) a physician assistant may examine, diagnose or treat persons under the supervision, control, and responsibility of either a physician licensed under this chapter or a physician exempted from licensure under § 370 of this chapter;

(2) a physician-trained mobile intensive care paramedic may render emergency lifesaving service; and

(3) a person licensed under AS 08.36 may perform acupuncture in the regular practice of dentistry, subject to the regulations of the Board of Dental Examiners.

(b) Repealed by § 4 ch 101 SLA 1974.

(c) A chiropractor practicing in the state on May 16, 1972 is exempt from this section.

(d) A podiatrist practicing in the state on March 26, 1976 is exempt from this section, and shall be issued a license without examination if application is made within one year of the effective date of this act. (§ 35-3-81 ACLA 1949; am § 4 ch 148 SLA 1970; am § 1 ch 5 SLA 1972; am § 1 ch 21 SLA 1974; am §§ 3, 4 ch 101 SLA 1974; am §§ 1, 2 ch 24 SLA 1976)

**Effect of amendments.** — The first 1974 amendment, in subsection (a), substituted "medicine, osteopathy or acupuncture" for "medicine or osteopathy" in the introductory language and added a sentence which has been designated by the revisor as paragraph (3).

The second 1974 amendment designated the provisions of subsection (a) as subsection (a)(1), added paragraph (2) of that subsection, and repealed subsection (b).

The 1976 amendment inserted "podiatry" in the introductory language of subsection (a) and added subsection (d).

**Legislative committee report.** — For report on ch. 5, SLA 1972 (SCS C.H.B 34), see 1971 House Journal, pp. 250, 251.

**C.J.S. references.** — 53 C.J.S. Licenses §§ 32 to 39; 70 C.J.S. Physicians and Surgeons §§ 8 to 14.

**Sec. 08.64.180. Application for license.** A person who desires to practice medicine, osteopathy or acupuncture in the state shall apply in writing to the department for a license. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 4 ch 143 SLA 1968; am § 3 ch 77 SLA 1969; am § 2 ch 21 SLA 1974)

**Effect of amendment.** — The 1974 amendment substituted "medicine, osteopathy or acupuncture" for "medicine or osteopathy."

**Legislative committee report.** — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836.

**Sec. 08.64.190. Contents of application.** The application shall state the name, age, residence, the duration of residence, the time spent in medical or osteopathy study, the place, year and school in which degrees were granted, and other information the board considers necessary. The application shall be made under oath. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 4 ch 77 SLA 1969)

**Sec. 08.64.200. Qualifications of physician applicants.** Except for foreign medical graduates as specified in § 225 of this chapter, each physician applicant shall

- (1) be of good moral character;
- (2) submit a certificate of graduation from a legally chartered medical school accredited by the Association of American Medical Colleges and the Council on Medical Education of the American Medical Association;
- (3) submit a certificate from a recognized hospital certifying that the applicant has satisfactorily performed the duties of resident physician or intern for a period of one year;

(4) not have a license to practice medicine in another state, province, or territory which is currently suspended or revoked for disciplinary reasons; and

(5) be a citizen of the United States or be lawfully admitted for permanent residence. (§ 55-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 1 ch 18 SLA 1963; am § 5 ch 77 SLA 1969; am §§ 5, 6 ch 148 SLA 1970; am § 1 ch 85 SLA 1972; am § 5 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 amendment added the exception to the beginning of the section and added paragraph (5).

**Legislative committee report.** — For report on ch. 77, SLA 1969 (CSHB 326 [Finance] am), see 1969 House Journal, p. 738.

**Sec. 08.64.205. Qualifications for osteopath applicants.** Each osteopath applicant shall meet the qualifications prescribed in § 200(1), (4) and (5) of this chapter and shall

(1) submit a certificate of graduation from the legally chartered school of osteopathy approved by the board;

(2) submit a certificate from a hospital approved by the American Medical Association or the American Osteopathic Association which certifies that he has satisfactorily completed and performed the duties of intern or resident physician for one year;

(3) take the examination required by § 210 of this chapter or be certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons. (§ 1 ch 56 SLA 1966; am § 6 ch 77 SLA 1969; am § 7 ch 148 SLA 1970; am § 6 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted the reference to § 200 (5) in the introductory language, inserted "the American Medical Association or" in paragraph (2), and substituted "or be

certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons" for "no waiver of this requirement for an osteopath applicant may be given" in paragraph (3).

**Sec. 08.64.207. Qualifications for acupuncture applicants.** Each acupuncture applicant shall meet all of the qualifications prescribed in § 200 of this chapter and shall meet those requirements of experience or education in the practice of acupuncture as may be required by the board. (§ 3 ch 21 SLA 1974)

**Sec. 08.64.209. Qualifications for podiatry applicants.** (a) Each applicant who desires to practice podiatry shall meet the qualifications prescribed in § 200(1) and (4) of this chapter and shall

(1) submit a certificate of graduation from a legally chartered school of podiatry approved by the board;

(2) take the examination required by § 210 of this chapter; the State Medical Board shall call to its aid a podiatrist of known ability who is licensed to practice podiatry to assist in the examination and licensure of applicants for a license to practice podiatry,

(3) meet other qualifications of experience or education which the board may require.

(b) The provisions of §§ 180 — 190, 220, and 230 — 380 of this chapter relating to the practice of medicine or osteopathy apply to the application procedure, testing, and practice of podiatry, as appropriate. (§ 3 ch 24 SLA 1976)

**Sec. 08.64.210. Examination required.** (a) The applicant shall take examinations in subjects the board considers necessary, unless excused under provisions of § 250 of this chapter.

(b) The application for examination shall be submitted to the board at least 40 days before the examination date. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 7 ch 77 SLA 1969; am § 8 ch 148 SLA 1970)

**Sec. 08.64.215. Insurance required.** (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Medical Indemnity Corporation of Alaska against liability to patients for medical malpractice in limits of not less than \$200,000 per occurrence and \$600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first. (§ 14 ch 102 SLA 1976)

**Sec. 08.64.220. Contents of examination and grading.** (a) The board shall make the examination written and oral and sufficient to test the applicant's fitness to practice medicine or osteopathy.

(b) Repealed by § 27 ch 148 SLA 1970.

(c) The examinations, answers and scores shall be preserved and filed. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am §§ 8, 9 ch 77 SLA 1969; am §§ 9, 27 ch 148 SLA 1970)

**Sec. 08.64.225. Foreign medical graduates.** Applicants who are graduates of medical colleges not accredited by the American Medical Association or one of its agencies shall meet the requirements of § 200(1), (3), (4) and (5) of this chapter and must have passed an examination and be certified by the Education Council on Foreign Medical Graduates, or be licensed by examination in another state or territory of the United States or province of Canada. (§ 10 ch 77 SLA 1969; am § 10 ch 148 SLA 1970; am § 7 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted the reference to § 200 (5) near the middle of the section.

**Sec. 08.64.230. License granted.** (a) If the physician applicant passes the examination and meets the requirements of § 200 of this chapter, the board shall grant a license to him to practice medicine in the state.

(b) If the osteopath applicant passes the examination and meets the requirements of § 205 of this chapter, the board shall grant a license to him to practice osteopathy in the state.

(c) Each license shall be signed by the secretary and president of the board, and have the seal of the board affixed to it. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 11 ch 77 SLA 1969)

**Sec. 08.64.240. License refused.** If the applicant fails the examination, or is determined by the board to be morally or professionally unfit to practice medicine or osteopathy in this state, or fails to comply with any of the other requirements of this chapter, the board shall refuse to grant the license. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 12 ch 77 SLA 1969; am § 11 ch 148 SLA 1970)

**Sec. 08.64.250. Licensure by endorsement.** The board may waive the examination requirement and license by endorsement if the physician applicant meets the requirements of § 200 of this chapter, pays the required fee and has

(1) an active license from a board of medical examiners established under the laws of a state or territory of the United States or a province of Canada issued after thorough examination; or

(2) passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 13 ch 77 SLA 1969; am § 8 ch 69 SLA 1970; am § 12 ch 148 SLA 1970)

**Revisor's note (1970).** — Section 8, ch. 69, SLA 1970 and § 12, ch. 148, SLA 1970, both amended AS 08.64.250, making

changes not compatible with each other. The earlier enactment (ch. 69) made a technical change to remove an ambiguity;

it was superseded by the later enactment which made a substantive change that incidentally eliminated the source of the ambiguity. Since the earlier amendment never took effect it is not set out here.

**Legislative committee report.** — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

**Sec. 08.64.255. Interview required.** All applicants for a license under § 250 of this chapter shall be interviewed in person by at least one member of the board before a license will be issued. The interview shall be recorded, and, if the application is denied on the basis of the interview, the denial shall be stated in writing with the reasons for it, and the record shall be preserved. (§ 14 ch 77 SLA 1969; am § 13 ch 148 SLA 1970)

**Legislative committee report.** — For report on ch. 77, SLA 1969 (CSHB 326

[Finance] am), see 1969 House Journal, p. 738.

**Sec. 08.64.260. Re-examination.** (a) If the applicant fails the examination, he may, on the same application and payment of a re-examination fee, take another examination not less than six months nor more than two years after the date of the first examination. If the applicant fails a second examination, he may, after a year or more of further study or training approved by the board, make a new application for licensure.

(b) Applicants failing every portion of the examination shall retake the entire examination and pay the full examination fee.

(c) Applicants failing portions of part I or part II of the examination may retake the portions failed at a prorated fee prescribed in the regulations by the board.

(d) Applicants failing part III of the examination shall retake the entire part at a prorated fee prescribed in the regulations by the board. (§ 35-3-92 ACLA 1949; am § 15 ch 77 SLA 1969; am § 14 ch 148 SLA 1970)

**Sec. 08.64.270. Temporary permits.** (a) The board may issue a temporary permit to an applicant who meets the requirements of § 200 or 205 of this chapter and pays the required fee.

(b) A temporary permit is valid for eight months or until the board meets to consider the application, whichever occurs first.

(c) A temporary permit may be renewed at the board's discretion one time only. (§ 35-3-96 ACLA 1949; am § 16 ch 77 SLA 1969; am § 15 ch 148 SLA 1970; am §§ 2, 3 ch 85 SLA 1972; am § 8 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 amendment deleted "nonrenewable" preceding "temporary permit" and "for licensure by endorsement or by examination" following "applicant" in subsection (a), deleted "issued to an applicant for licensure by endorsement" following "temporary permit" in subsection (b), and rewrote subsection (c).

**Sec. 08.64.272. Residency and internship.** For the limited purpose of doing residency or internship work, the board may issue a temporary permit to an applicant without examination if the applicant meets the requirements of § 200(1) and (2) of this chapter, pays the required fee, and has been accepted by an eligible institution in the state for the purpose of doing residency or internship work. (§ 16 ch 148 SLA 1970)

**Sec. 08.64.275. Temporary permit for locum tenens practice.** (a) A member of the board may grant a temporary permit to a physician or osteopath for the purpose of substituting for another physician or osteopath licensed in this state. The permit is valid for 120 consecutive days. If circumstances warrant, an extension of the permit may be granted by the board.

(b) A physician applying under (a) of this section shall pay the required fee and shall meet the requirements of § 200 of this chapter. In addition, he shall submit evidence of holding a license to practice medicine in a state or territory of the United States or in a province of Canada.

(c) An osteopath applying under (a) of this section shall pay the required fee and shall meet the requirements of § 205 of this chapter. In addition, he shall submit evidence of holding a license to practice in a state or territory of the United States or in a province of Canada.

(d) Within 10 days from the granting of the permit, the board member shall forward the fee to the department with a report of the issuance of the permit. (§ 17 ch 77 SLA 1969; am §§ 17 — 19 ch 148 SLA 1970)

**Sec. 08.64.280. Record of license.** (a) Before engaging in the practice of medicine or osteopathy, the licensee shall file the license or a certified copy of it with the clerk of the superior court in the judicial district in which he intends to practice medicine. The clerk shall file the certificate in his office and enter a memorandum of it in a book provided for that purpose containing the date of the license, the ground upon which it is issued, and the name and address of the licensee. The certificate and memorandum are open to public inspection.

(b) The clerk shall give the secretary of the board notice of all licenses recorded.

(c) If a licensee moves to another judicial district he shall file his license as provided in (a) of this section.

(d) Proof of failure to file the license is prima facie evidence of a violation of this chapter. (§ 35-3-91 ACLA 1949; am § 20 ch 148 SLA 1970)

**Sec. 08.64.290. Examination fee.** The examination fee shall be paid at the time of applying for examination. The board may refund the examination fee only if the applicant is unavoidably prevented from making the examination. (§ 35-3-86 ACLA 1949; am § 18 ch 77 SLA 1969)

**Sec. 08.64.300. Fee for license by reciprocity.**

Repealed by § 19 ch 77 SLA 1969.

*Editor's note.* — The repealed section derived from § 35-3-86, ACLA 1949.

**Sec. 08.64.310. Annual license fee.**

Repealed by § 20 ch 77 SLA 1969.

*Editor's note.* — The repealed section derived from § 35-3-87, ACLA 1949.

**Sec. 08.64.311. Biennial license renewal.** Licenses shall be renewed biennially. (§ 20 ch 77 SLA 1969; am § 21 ch 148 SLA 1970)

**Revisor's note (1969).** — In ch. 77, SLA 1969, this section was numbered AS 08.64.310.

**Sec. 08.64.312. Continuing education requirements.** (a) The Board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period. (§ 14 ch 102 SLA 1976)

**Sec. 08.64.313. Inactive license.** A licensee residing outside Alaska may renew his license as inactive. If he practices intermittently in Alaska, he may not hold an inactive license. (§ 21 ch 148 SLA 1970)

**Sec. 08.64.315. Fees.** The following fees are imposed under this chapter:

(1) application	\$ 25
(2) license by examination	125
(3) license by endorsement or waiver of examination	100
(4) temporary permit	25
(5) locum tenens permit	25
(6) license renewal, biennial, active	100
(7) license renewal, biennial, inactive	25
(8) license by reexamination	75

(§ 21 ch 77 SLA 1969; am § 22 ch 148 SLA 1970)

**Legislative committee report.** — For [Finance] am), see 1969 House Journal, p. report on ch. 77 SLA 1969 (CSHB 326 738.

**Sec. 08.64.320. Disposition of fees.** Fees collected by the board shall be deposited in the general fund. (§ 35-3-86 ACLA 1949)

**Sec. 08.64.325. Limits or conditions on license; discipline.** (a) In addition to action under § 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by speciality, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 14 ch 102 SLA 1976)

**Sec. 08.64.330. Grounds for revocation of license.** (a) A license may be revoked for failure to pay the license renewal fee prescribed in § 315 of this chapter. If the fee is not paid within the time provided, the department shall give written notice to the licensee that he is in default. Notice may be served on him personally or by registered mail addressed to his last known residence. If he fails to pay the fee within three months after notice of default, the secretary shall revoke his license on behalf of the board and notify the licensee of the revocation by mail or by personal service of the revocation.

(b) After a hearing, a license may be suspended, limited, revoked or annulled, or the licensee may be reprimanded, censured or disciplined by the board for (1) unprofessional or dishonorable conduct as defined in § 380(3) of this chapter, (2) professional incompetence, or (3) a violation of this chapter or a regulation adopted under it. (§ 35-3-89 ACLA 1949; am § 22 ch 77 SLA 1969; am § 9 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 [Finance] am), see 1969 House Journal, p. amendment rewrote subsection (b). 738.

**Legislative committee report.** — For report on: ch. 77, SLA 1969 (CSHB 326

**Sec. 08.64.332. Automatic suspension for mental incompetency or insanity.** Notwithstanding AS 44.62.330 — 44.62.640, if a person holding a license to practice medicine and surgery or osteopathy under this chapter is adjudged mentally incompetent or insane by any final order or adjudication by a court of competent jurisdiction or by voluntary commitment to an institution for the treatment of mental illness, his license shall be automatically suspended by the board. The suspension shall continue in effect until the licensee is found or adjudged by the court to be restored to reason or until he is determined to be restored to reason by a licensed psychiatrist approved by the board. (§ 10 ch 101 SLA 1974)

**Sec. 08.64.334. Voluntary surrender.** The board, at its discretion, may accept the voluntary surrender of a license. No license may be returned unless the board determines, under regulations established by it, that the licensee is competent to resume his practice. However, no license may be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician. (§ 10 ch 101 SLA 1974)

**Sec. 08.64.336. Duty of physicians to report.** (a) A physician who professionally treats a person licensed to practice medicine and surgery or osteopathy in this state for alcoholism or drug addiction, or for mental, emotional or personality disorders, shall report it to the board if he feels that the person may constitute a danger to the health and welfare of his patients or the public if he continues in practice. The report shall state the name and address of the person and the condition found.

(b) Upon receipt of a report under (a) of this section, the board shall investigate the matter and, upon a finding of reasonable cause, may appoint a committee of three qualified physicians to examine the licensee and report their findings to the board.

(c) If the board finds that the licensee is unable to continue to practice medicine and surgery or osteopathy with reasonable safety to his patients or the public, it shall initiate action to suspend, revoke, limit or condition his license to the extent determined necessary for the protection of the public. (§ 10 ch 101 SLA 1974)

**Sec. 08.64.340. Statement of grounds of refusal or revocation of license.** If the board refuses to issue a license or revokes a license, it shall file a brief and concise statement of the grounds and reasons for the action in the office of the secretary of the board and in the department. The statement, together with the written decision of the board, shall remain of record in the department. (§ 35-3-89 ACLA 1949; am § 23 ch 77 SLA 1969)

**Sec. 08.64.350. Certification of revocation.** When a license is revoked, the fact of revocation shall be certified by the secretary of the board to the clerk of the superior court in the judicial district where the license is on file. The clerk shall endorse the fact of revocation and the date of revocation on the face of the license or a certified copy of it which is on file. The same information shall be noted in the registry book provided for in § 280 of this chapter. (§ 35-3-94 ACLA 1949; am § 24 ch 77 SLA 1969)

### Article 3. Unlawful Acts.

#### Section

360. Penalty for practicing without a license or in violation of chapter

**Sec. 08.64.360. Penalty for practicing without a license or in violation of chapter.** Except for a physician assistant and a physician-trained mobile intensive care paramedic under § 170 of this chapter, a person practicing medicine or osteopathy in the state without obtaining and filing an appropriate license is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$100, or by imprisonment for not less than 10 days nor more than 90 days, or by both. Evidence that the defendant has failed to file a license with the clerk of the court is prima facie evidence that the defendant is not licensed. Each day of illegal practice is a separate offense. (§ 35-3-93 ACLA 1949; am § 25 ch 77 SLA 1969; am § 2 ch 5 SLA 1972; am § 11 ch 101 SLA 1974)

**Effect of amendment.** — The 1974 amendment inserted “and a physician-trained mobile intensive care paramedic” near the beginning of the first sentence.

**C.J.S. references.** — 53 C.J.S. Licenses §§ 44, 62 to 71; 70 C.J.S. Physicians and Surgeons §§ 24 to 30.

**Legislative committee report.** — For report on ch. 5, SLA 1972 (SCS CSHB 34), see 1971 House Journal, pp. 250, 251.

#### Article 4. Miscellaneous Provisions.

Section	Section
365. [Repealed]	367. Prescription or administration of laetrile by physicians
366. Liability for services rendered by a physician-trained mobile intensive care paramedic	368. [Repealed]

#### **Sec. 08.64.365. Physicians acting under emergency circumstances.**

Repealed by § 46 ch 102 SLA 1976.

**Editor's note.** — The repealed section derived from § 1, ch. 6, SLA 1962.

**Sec. 08.64.366. Liability for services rendered by a physician-trained mobile intensive care paramedic.** No act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency lifesaving service to a person who is in immediate danger of loss of life shall impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local governmental unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used

by the physician trained mobile intensive care paramedic. (§ 14 ch 101 SLA 1974)

**Sec. 08.64.367. Prescription or administration of laetrile by physicians.** (a) No physician may be subject to disciplinary action by the State Medical Board for prescribing or administering amygdalin (laetrile) to a patient under his care who has requested the substance unless the State Medical Board in a hearing conducted under the Administrative Procedure Act (AS 44.62) has made a formal finding that the substance is harmful.

(b) No hospital or health facility may interfere with the physician-patient relationship by restricting or forbidding the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient unless the substance as prescribed or administered by the physician is found to be harmful by the State Medical Board in a hearing conducted under the provisions of the Administrative Procedure Act (AS 44.62). (§§ 1, 2 ch 227 SLA 1976)

**Sec. 08.64.368. Permits for isolated areas.**

Repealed by § 27 ch 148 SLA 1970.

**Editor's note.** — The repealed section derived from § 3, ch. 93, SLA 1965.

## Article 5. General Provisions.

### Section

- 370. Persons not affected
- 380. Definitions

**Sec. 08.64.370. Persons not affected.** This chapter does not apply to

(1) officers in the regular medical service of the armed services of the United States or the United States Public Health Service while in the discharge of their official duties;

(2) a physician or osteopath, who is not a resident of this state, who is asked by a physician or osteopath licensed in this state to help in the diagnosis or treatment of a case;

(3) the practice of the religious tenets of a church;

(4) Repealed by § 13 ch 127 SLA 1974.

(5) a person while serving as a student, intern, resident physician, or fellow at a hospital, clinic, or medical facility in the state;

(6) a physician in the regular medical service of the United States Public Health Service or the armed services of the United States volunteering his services without pay or other remuneration to a hospital, clinic, medical office, or other medical facility in the state. (§ 35-3-97 ACLA 1949; am § 4 ch 93 SLA 1965; am § 26 ch 77 SLA 1969; am §§ 23, 24 ch 148 SLA 1970; am §§ 1, 2 ch 88 SLA 1972; am § 13 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment repealed paragraph (4).

**Legislative committee report.** — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 08.64.380. Definitions.** As used in this chapter

(1) "board" means the State Medical Board;

(2) "practice of medicine" or "practice of osteopathy" means

(A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or

(B) the public display of one's name and the letters "M.D.", "M.B." or "D.O." or the words "physician" or "osteopath" or "osteopathic physician", or "osteopathic surgeon", or "osteopathic physician and surgeon", or a specialist designation such as "surgeon" or "dermatologist", "psychiatrist", or the like; or

(C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or

(D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction of disease, bodily injury, deformity, or defect; or

(F) Repealed by § 1 ch 117 SLA 1971.

(3) "unprofessional or dishonorable conduct" means

(A) a violation of the provisions of AS 11.15.060 or regulations lawfully adopted by the State Medical Board concerning abortion procedures and practice;

(B) habitual overuse of alcoholic beverages or depressant, hallucinogenic or stimulant drugs, as defined in AS 17.12.150(3), or addiction to the use of narcotic drugs as defined in AS 17.10.230(13);

(C) conviction of an offense involving moral turpitude;

(D) advertising professional services to the public except for notice of opening, closing, or removing practice, and except for directories listing physicians in a community on a uniform and nondiscriminatory basis, containing only factual, truthful descriptions of physicians and their services;

(E) making untruthful or fraudulent statements in the application for examination, or deceiving or cheating during the examination for license, or procuring a license by deceit or fraud;

(F) violating the Controlled Substances Act (P.L. 91-513; 84 Stat. 1242) or any other federal law pertaining to medical practice and drugs;

(G) violating the principles of medical ethics of the American Medical Association and of the Alaska State Medical Association;

(4) Repealed by § 27 ch 148 SLA 1970.

(5) "department" means the Department of Commerce.

(6) "acupuncture" means a medical practice to cure disease or relieve pain, alter function or induce anesthesia by piercing portions of the body with needles;

(7) "physician-trained mobile intensive care paramedic" means a person who

(A) has successfully completed the advanced first aid course prescribed by the board;

(B) is trained by a licensed physician

(i) to carry out all phases of cardio-pulmonary resuscitation,

(ii) to administer drugs under written or oral authorization of a licensed physician,

(iii) to administer intravenous solutions under written or oral authorization of a licensed physician; and

(C) has been examined and certified as a physician-trained mobile intensive care paramedic by the board or by the board's designated representatives;

(8) "emergency lifesaving service" means medical assistance given to a person whose physical condition, in the opinion of a reasonably prudent person, is such that his life is endangered;

(9) "practice of podiatry" means the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma; the use of preparations, medicines, and drugs as are necessary for the treatment of these ailments; the treatment of the local manifestations of systemic diseases as they appear in the hand and foot, except that

(A) a patient shall be concurrently referred to a physician or osteopath for the treatment of the systemic disease itself;

(B) general anaesthetics may be used only in colleges of podiatry approved by the State Medical Board and in hospitals approved by the joint commission on the accreditation of hospitals, or the American Osteopathic Association; and

(C) the use of X ray or radium for therapeutic purposes is not permitted. (§§ 35-3-94, 35-3-38 ACLA 1949; am § 27 ch 77 SLA 1969; am § 3 ch 103 SLA 1970; am §§ 25 — 27 ch 148 SLA 1970; am § 9 ch 32 SLA 1971; am § 1 ch 117 SLA 1971; am § 4 ch 85 SLA 1972; am § 4 ch 21 SLA 1974; am §§ 12, 13 ch 101 SLA 1974; § 1 ch 127 SLA 1975; am § 4 ch 24 SLA 1976)

**Cross reference.** — As to malpractice actions, see AS 09.55.530 — 09.55.560.

**Effect of amendments.** — The first 1974 amendment added paragraph (6).

The second 1974 amendment added subparagraph (G) to paragraph (3) and added paragraphs (7) and (8).

The 1975 amendment added the language beginning "and except for directories

listing physicians" to the end of paragraph (3) (D).

The 1976 amendment added paragraph (9).

**Legislative committee report.** — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

**The statutory definition of practicing medicine or surgery** is very broad and within the literal meaning of the words

would include the practice of dentistry, optometry, podiatry, chiropractic, etc. By its very breadth the definition precludes a literal interpretation inasmuch as dentists, for example, have had a separate licensing procedure as long as have those who practice medicine or surgery. 1962 Op. Att'y Gen., No. 17.

**Prescription of drugs or medicine by chiropractor.** — It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Cited in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

CHAPTER 40.  
STATE MEDICAL BOARD.

Article

1. Licensing
2. Abortions
3. General Provisions

ARTICLE 1.  
LICENSING.

Section

10. License by endorsement
20. License by examination
30. Re-examination fees
40. Recognized hospital
50. Biographical data required

12 AAC 40.010. LICENSE BY ENDORSEMENT. An applicant for license by endorsement shall submit evidence satisfactory to the board that he has passed an examination in the medical and basic science subjects. (Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.250

12 AAC 40.020. LICENSE BY EXAMINATION. (a) The written examination will be the FLEX examination administered in Alaska.

(b) The oral examination required under AS 08.64.220 will be given in conjunction with the written examination.

(c) An applicant for license by examination must attain a FLEX weighted average of not less than 75 percent on his examination. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.100  
AS 08.64.220

12 AAC 40.030. RE-EXAMINATION FEES. The following fees will be charged for re-examination where applicable:

- |  |      |
|--|------|
| (1) Part I .....                                 | \$15 |
| (2) Part II .....                                | 20   |
| (3) Part III .....                               | 40   |
| (4) Part I and II by individual<br>subject ..... | 10   |

(Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.260

12 AAC 40.040. RECOGNIZED HOSPITAL. For the purpose of AS 08.64.200(3) a recognized hospital is one which has been approved for internship or residency training by the Council on Medical Education of the American Medical Association or the Canadian Medical Association. (Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.100  
AS 08.64.200

12 AAC 40.050. BIOGRAPHICAL DATA REQUIRED. (a) The department will request biographical data from the American Medical Association on each applicant for licensure by examination or endorsement, and no application will be considered complete until the form entitled "Biographical Data on Physicians" is on file.

(b) The department will request data from the United States Department of Justice, Bureau of Narcotics and Dangerous Drugs, on each applicant for licensure by examination or endorsement, and no application will be considered complete until the report is on file. (Eff. 8/29/73, Reg. 47)

Authority: AS 08.64.190

ARTICLE 2.  
ABORTIONS.

Section

60. Termination of pregnancy
70. Informed consent
80. Medical procedures
90. Evaluation
100. Consultation requirements
110. Abortion procedures
120. Standards for hospitals and facilities
130. Records
140. Limitation

12 AAC 40.060. TERMINATION OF PREGNANCY. Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under 18 years of age, in which case the request must be made by her parent or guardian. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 11.15.060(a)(3)  
AS 08.64.105

**12 AAC 40.070. INFORMED CONSENT.**

Unless otherwise provided in sec. 60, a written informed consent shall be obtained from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical sequelae of the procedure. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

**12. AAC 40.080. MEDICAL PROCEDURES.**

The patient shall be examined by a physician licensed in Alaska, and a written record of the patient's physical and emotional health shall be prepared before performing an abortion procedure as set out in sec. 110 of this chapter. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

**12 AAC 40.090. EVALUATION.**

The attending physician shall make an evaluation of the patient and an estimation of the duration of gestation based upon the patient's history, examination and test results. This information shall be recorded on the patient's chart. (Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.105

**12 AAC 40.100. CONSULTATION REQUIREMENTS.**

Abortions interrupting a pregnancy up to and including the twelfth week of gestation may be performed without consultation. Abortions performed after the twelfth week of gestation shall be preceded by consultation with another physician. The consultation shall include an opinion as to the preferred method of termination of pregnancy. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

**12 AAC 40.110. ABORTION PROCEDURES.**

During the second or third trimester of a pregnancy, acceptable procedures include dilatation and curettage, suction aspiration of the uterus, injection of pharmacological agents, hysterectomy and hysterotomy. The exact procedure to be used will depend upon the patient's total health, age, associated disease and pathology, and anomalies such as skeletal defects and other medical indications. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

**12 AAC 40.120. STANDARDS FOR**

**HOSPITALS AND FACILITIES.** (a) During the second or third trimester of a pregnancy, abortions shall be performed under sterile conditions. A bed and a registered nurse shall be available for a minimum recovery period of one-half hour. A registered nurse shall be present during the procedure.

(b) During the second or third trimester of a pregnancy, blood, blood derivatives, blood substitutes or plasma expanders shall be immediately available when an abortion is performed, and an operating room appropriately staffed and equipped for major surgery in accordance with regulations adopted under AS 18.20.060 shall be immediately available. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

**12 AAC 40.130. RECORDS.** During the second or third trimester of a pregnancy, the attending physician shall record a medical history, findings of the physical examination, operative report of the abortion procedure and pathology report as part of the clinical record to be maintained by the hospital or facility. The physician and hospital or facility shall treat the patient's identity and medical record as confidential information. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

**12 AAC 40.140. LIMITATION.** A fetus which has not developed beyond 150 days after the first day of the last menstrual period may be considered non-viable for purposes of AS 11.15.060(a). In the performance of an abortion after that date, the physician shall be guided by a reasonable judgment as to whether the fetus is viable in fact. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 11.15.060(a)  
AS 08.64.105

**ARTICLE 3.  
GENERAL PROVISIONS.**

**Section**

**150. Professional incompetence**

**160. Definitions**

**12 AAC 40.150. PROFESSIONAL INCOMPETENCE.** As used in AS 08.64.330(b),

"professional incompetence" means lacking in sufficient knowledge or skills or both, in that field of practice in which the physician concerned engages, to a degree likely to endanger the health of his patients. (Eff. 8/29/73, Reg. 47)

Authority: AS 08.64.330(b)

12 AAC 40.160. DEFINITIONS. In this chapter

(1) "department" means Department of Commerce;

(2) "pharmacological agents" means saline, glucose, prostaglandins and pitocin;

(3) "board" means State Medical Board;

(4) "FLEX examinations" means the written examinations prepared by the Federation of State Medical Boards of the United States. (Eff. 8/29/73, Reg. 47)

Authority: AS 08.64.100

XIII



# LAWS OF ALASKA

1977

Source

Chapter No.

CSHB 1 (Finance) am S

149

## AN ACT

Relating to the termination, continuation, or reestablishment of certain boards and commissions, and establishing a procedure for evaluation of agency programs and activities.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions.

\* Sec. 2. AS 08 is amended by adding a new chapter to read:

#### CHAPTER 03. TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS.

Sec. 08.03.010. TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS. (a) Boards listed in this subsection have a termination date of June 30, 1979:

- (1) Board of Chiropractic Examiners (AS 08.20.010);
- (2) Board of Dental Examiners (AS 08.36.010);
- (3) State Medical Board (AS 08.64.010);

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- (4) Board of Nursing (AS 08.68.010);
- 010); (5) Board of Dispensing Opticians (AS 08.71.-
- 010); (6) Board of Examiners in Optometry (AS 08.72.-
- 010); (7) Board of Pharmacy (AS 08.80.010);
- 010); (8) Board of Veterinary Examiners (AS 08.98.-
- (9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
- (10) Board of Nursing Home Administrators (AS 08.70.010);
- (11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

- 010); (1) Board of Public Accountancy (AS 08.04.-
- (2) Board of Barber Examiners (AS 08.12.010),
- (3) Collection Agency Board (AS 08.24.011);
- Examiners (4) Board of Hairdressing and Beauty Culture (AS 08.28.010);
- (5) Board of Electrical Examiners (AS 08.40.010),
- Engineers (6) State Board of Registration for Architects and Land Surveyors (AS 08.48.011);
- 54.010); (7) Guide Licensing and Control Board (AS 08.-
- (8) Board of Marine Pilots (AS 08.62.010);
- (9) Real Estate Commission (AS 08.68.011);
- (10) Board of Welding Examiners (AS 08.99.010),
- (11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

\* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 66. REVIEW OF THE ACTIVITIES OF AGENCIES,  
BOARDS AND COMMISSIONS.

Sec. 44.66.010. TERMINATION OF STATE BOARDS AND COMMISSIONS. (a) Boards and commissions listed in this subsection expire on the date set out after each:

- (1) Alcoholic Beverage Control Board (AS 04.05.010) -- June 30, 1979;
- (2) Alaska Transportation Commission (AS 42.07.011) -- June 30, 1979;
- (3) State Board of Parole (AS 33.15.010) -- June 30, 1980;
- (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, 1980;
- (5) Alaska Pipeline Commission (AS 12.05.010) -- June 30, 1981.

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

(c) A commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

Sec. 44.66.020. AGENCY PROGRAMS. (a) Agency programs and activities listed in this subsection which are specifically designated as provided in sec. 30 of this chapter are subject to termination during the regular legislative session convening in the month and year set out after each:

- (1) programs in the budget categories of general government, public protection, and administration of justice -- January, 1980;
- (2) programs in the budget categories of education and the University of Alaska -- January, 1981.
- (3) programs in the budget categories of health and social services -- January, 1982;
- (4) programs in the budget categories of natural resources management, development and transportation -- January, 1983.

(b) An agency program or activity designated in (a) of this section shall be subject to termination during the regular legislative session convening for years

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after the preceding review and may be subject to termination at any time upon the recommendation of the Legislative Budget and Audit Committee and the concurrence of the legislature as if under sec. 30 of this chapter.

Sec. 44.66.030. PROGRAM IDENTIFICATION. During the legislative session preceding each of the years set out in sec. 20 of this chapter, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year.

Sec. 44.66.050. LEGISLATIVE OVERSIGHT. (a) Before the termination, dissolution, continuation or reestablishment of a board or commission under AS 08.03.010 or sec. 10 of this chapter, or of an agency program under secs. 20 and 30 of this chapter, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board, commission, or agency program, and the members of the board or commission involved. The hearings may be joint hearings. The committee shall also consider the proposed budget of the board, commission, or agency program, prepared in accordance with AS 37.07.050(f), and the performance audit of the activities of the board, commission, or agency program, prepared by the legislative audit division as prescribed in AS 24.20.271(1). The committee may consider any other report of the activities of the board, commission or program, including but not limited to annual reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or general report of the manner of conduct of activities of the board, commission, or agency program prepared by the office of the ombudsman.

(b) During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

(c) A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors:

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or

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enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest,

(4) 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 which it has provided;

(5) the extent to which the board, commission or agency 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, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) 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; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

(d) As to each board, commission, or agency program assigned to it for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report shall contain a summary of the findings of the committee as to the compliance of the board, commission or program with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

(3) an identification of any other programs

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having similar, conflicting or duplicate objectives:

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

(e) The committee of reference may introduce a bill providing for the reorganization or continuation of the board, commission or agency program. No more than one board, commission, or agency program shall be continued or reestablished in any legislative bill, and the board, commission, or agency program shall be mentioned in the title of the bill.

Sec. 44.66.060. EXISTING CLAIMS. This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes.

\* Sec. 4. AS 24.20.271(1) is repealed and re-enacted to read:

(1) conduct a performance post-audit of boards and commissions designated in AS 44.66.010 and of those programs and activities of agencies subject to termination as determined in the manner set out in AS 44.66.020 - 44.66.040, and submit the audit, together with a written report, not later than the first day of the regular session of the legislature convening in each year set out with reference to boards, commissions or agency programs whose activities are subject to termination as prescribed in AS 44.66;

\* Sec 5. AS 37.07.050 is amended by adding a new subsection to read:

(f) Budget requests for boards and commissions and for those agency programs for the fiscal year following termination under AS 44.66.010 - 44.66.070 shall be prepared and submitted. The recommended appropriation request shall include:

(1) an identification of the objectives

intended for the program and the problem or need which the activities and operations of the board, commission or program is intended to address;

(2) an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of performance, effects, or accomplishments of the program and of the program or need which it was intended to address;

(3) a statement of the performance and accomplishments of the program in each of the last four completed fiscal years and of the costs incurred in the operation of the program;

(4) a statement of the number and types of persons affected by operation of the program;

(5) a summary statement, for each of the last three completed fiscal years, of the number of personnel employed in carrying out the program and a summary of the cost of personnel employed under contract in carrying out the program;

(6) an assessment of the effect of the program on the economy of the state;

(7) an assessment of the degree to which the overall policies of the program, as expressed in regulations adopted by the agency, board or commission and its decisions, meet the objectives of the legislature in establishing the program; and

(8) an analysis of the services and performance estimated to be achieved if the life of the agency, board or commission were to be continued.

\* Sec. 6. AS 37.07.090 is amended to read:

Sec. 37.07.090. PERFORMANCE REPORTING. (a) Each state agency shall submit a performance report to the division no later than September 1 for the preceding fiscal year. These reports shall be in the form prescribed by the division after consultation with the legislative finance division, and shall include

(1) an identification of the objectives intended for the program and the problem or need which the activities and operations of the board, commission or program is intended to address;

(2) an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of performance, effects, or accomplishments of the program and of the program or need which it was intended to address;

(3) a statement of the performance and accomplishments of the program in each of the last four completed fiscal years and of the costs incurred in the operation of the program;

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(4) a statement of the number and types of persons affected by operation of the program,

(5) a summary statement, for each of the last three completed fiscal years, of the number of personnel employed in carrying out the program and a summary of the cost of personnel employed under contract in carrying out the program;

(6) an assessment of the effect of the program on the economy of the state;

(7) an assessment of the degree to which the overall policies of the program, as expressed in regulations adopted by the agency, board or commission and its decisions, meet the objectives of the legislature in establishing the program; and

(8) an analysis of the services and performance estimated to be achieved if the life of the agency, board or commission were to be continued.

(b) The division shall summarize the performance reports and forward copies to each member of the legislature.

Approved by the Governor <sup>-8-</sup> June 18, 1977  
Actual Effective Date: September 16, 1977

## SUNSET CRITERIA

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) 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 which it has provided;

(5) the extent to which the board, commission or agency 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, commission or agency filed with it, with the department to which a board or commission is administratively

assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) 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; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

# ADVERTISING ORDER

## NOTICE TO PUBLISHER

1. PUBLISHER

INVOICE MUST BE IN TRIPPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISE-  
MENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.

A.O. NO.

AO-

DATE OF A.O.

August 14, 1978

DATES ADVERTISEMENT REQUIRED:

August 22 and 24, 1978  
3" by 5" with black border

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

BILLING ADDRESS:

Department of Commerce & Economic Development  
Division of Occupational Licensing  
Pouch D  
Juneau, Alaska 99811

**PUBLISHER**  
Alaska Advocate  
Anchorage Times  
Fairbanks Daily News Miner  
Ketchikan Daily News  
Sitka Sentinel  
Southeast Alaska Empire (Juneau)

**FROM**  
Department of Commerce & Economic Development  
Division of Occupational Licensing  
Pouch D  
Juneau, Alaska 99811

### ADVERTISEMENT

### STATE OF ALASKA PUBLIC NOTICE

### DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

The Department of Commerce & Economic Development hereby announces the initiation of a "sunset" review of all state health care boards.

The review is based upon "sunset" legislation enacted in 1977 in response to public dissatisfaction at the substantial increase in the number of state boards. All state health care boards will be terminated on June 30, 1979 unless definite public need and worthiness can be determined. These boards include:

- Chiropractic Examiners
- Dental Examiners
- Medical Board
- Nursing
- Examiners in Optometry
- Pharmacy
- Psychologist and Psychological Associates
- Veterinary Examiners
- Physical Therapists
- Dispensing Opticians
- Nursing Home Administrators

The public is invited and encouraged to assist the department and participate in this review process by submitting comments, in writing, to:

Department of Commerce & Economic Development  
Sunset Review  
Pouch D  
Juneau, Alaska 99811



H. Phillip Hubbard  
Commissioner

TO BE COMPLETED BY ORDERING DEPARTMENT										PAGE NO. 1 OF 1 PAGES	TOTAL ALL PAGES	\$
TRANS	DEPT.	DIV. A PRUG.	FUNCT.	SUB FUNCT.	OBJECT RECEIPT	HOW FUNCT.	PROJECT LEADIN	PER CENT OR ITEM NO				
										David Creekman REQUISITIONED BY	I HEREBY CERTIFY THAT THE UN-ENCUMBERED BALANCE IN THE APPROPRIATION CITED HEREON IS SUFFICIENT TO COVER THIS PURCHASE AND THAT THIS PURCHASE IS AUTHORIZED HEREUNDER.	
										Elaine Garrett DIVISIONAL APPROVAL		
										DATE ENTERED	CERTIFYING OFFICER	
											VOUCHER NUMBER	
									XII-11			

XII-12

FY '75	REVENUES			EXPENDITURES						
	Receipts	Refund	=Total	Transportation	Per Diem	Phone	Printing Advertising Postage	Fees & Services	Rents, Leases, Other	=Total
Board of Barber Examiners	4,545.00	20.00	4,525.00	968.81	638.75	30.90	200.63	--	70.00	1,909.09
Board of Chiropractic Examiners	1,205.00	--	1,205.00	--	--	--	85.98	--	75.00	160.98
Collection Agency Board	4,970.00	100.00	4,870.00	107.40	72.50	--	91.05	--	4.00	274.95
Board of Dental Examiners	11,040.00	100.00	10,940.00	130.40	--	209.30	172.30	--	50.00	562.00
Board of Electrical Examiners	24,537.00	2,033.00	22,504.00	577.40	430.00	120.00	389.75	--	--	1,517.15
Architects, Engineers and Land Surveyors	28,413.25	330.00	28,083.25	3,261.33	2,966.60	321.40	2,558.31	3,416.52	5.39	12,529.55
Hairdressing and Beauty Culture	15,500.00	95.00	15,405.00	1,136.71	2,128.75	286.80	694.38	339.50	375.00	4,961.14
Board of Marine Pilots	9,100.00	50.00	9,050.00	1,291.50	1,601.08	45.07	441.57	195.00	--	3,574.22
State Medical Board	61,097.00	35.00	61,062.00	1,765.67	1,276.00	202.95	700.04	216.30	--	4,161.86
Board of Nursing	30,433.00	385.00	30,048.00	2,654.17	3,721.74	875.37	1,832.30	1,482.67	286.60	10,852.85
Board of Dispensing Opticians	750.00	--	750.00	1,108.48	892.25	332.50	100.22	--	9.75	2,443.20
Board of Examiners in Optometry	2,190.00	110.00	2,080.00	722.15	558.00	20.50	25.40	50.00	400.00	1,776.05
Board of Pharmacy	5,570.00	25.00	5,545.00	345.20	551.25	218.00	495.58	120.00	--	1,730.03
Psychologists and Associates	1,580.00	10.00	1,570.00	168.90	35.00	207.45	39.11	56.00	--	506.46
Board of Public Accountancy	6,834.71	124.71	6,710.00	1,608.42	1,450.00	170.65	312.32	4,389.02	457.50	8,387.91
Real Estate Commission	72,535.00	5,889.00	66,646.00	2,189.37	1,798.50	637.86	2,426.51	8,118.62	--	15,170.86
Board of Veterinary Examiners	3,570.00	25.00	3,545.00	32.00	70.00	34.05	240.86	320.00	--	696.91
Nursing Home Administrators	(Created 1975)	--	--	--	--	--	--	--	--	--
Physical Therapy Board	750.00	--	750.00	--	--	16.20	--	35.00	16.30	67.50
Guide Licensing and Control	36,184.00	80.00	36,104.00	2,610.75	3,155.00	237.35	2,282.75	501.95	130.00	8,917.80
Board of Welding Examiners	--	--	--	466.00	1,435.00	1.50	155.61	--	11.43	2,069.54
Construction Contractors	173,429.00	255.00	173,174.00	2.50	77.50	232.35	1,184.35	--	--	1,496.70

FY '76

REVENUES

EXPENDITURES

	<u>Receipts</u>	<u>Refund</u>	<u>=Total</u>	<u>Transportation</u>	<u>Per Diem</u>	<u>Phone</u>	<u>Printing Advertising Postage</u>	<u>Fees &amp; Services</u>	<u>Rents, Leases, Ot..er</u>	<u>=Total</u>
Board of Barber Examiners	4,087.00	--	4,087.00	586.93	1,152.50	20.75	558.61	170.40	--	2,489.19
Board of Chiropractic Examiners	345.00	25.00	320.00	1,027.36	1,001.25	20.55	544.58	220.04	25.00	2,838.78
Collection Agency Board	4,164.00	--	4,164.00	--	--	--	--	--	--	--
Board of Dental Examiners	11,524.40	755.00	10,769.40	2,480.75	3,998.75	638.04	939.46	476.50	120.69	8,654.19
Board of Electrical Examiners	8,357.00	500.00	7,857.00	1,053.40	823.44	128.71	193.14	446.80	--	2,645.49
Architects, Engineers and Land Surveyors	101,502.00	125.00	101,377.00	4,879.28	5,719.75	166.49	3,020.76	4,054.98	35.50	17,876.76
Hairdressing and Beauty Culture	23,245.00	170.00	23,075.00	1,063.01	2,678.75	83.85	902.44	368.50	--	5,096.55
Board of Marine Pilots	990.00	--	990.00	865.50	1,313.75	32.98	501.29	--	--	2,713.52
State Medical Board	14,510.00	25.00	14,485.00	2,335.56	1,618.75	108.26	637.46	804.20	49.13	5,553.36
Board of Nursing	55,021.00	375.00	54,646.00	3,962.57	5,165.75	380.75	1,552.32	2,113.54	757.05	13,931.98
Board of Dispensing Opticians	2,720.00	--	2,720.00	494.23	846.25	95.53	212.88	63.70	15.75	1,728.34
Board of Examiners in Optometry	630.00	100.00	530.00	577.93	900.00	5.10	330.16	765.00	--	2,578.19
Board of Pharmacy	13,883.00	35.00	13,848.00	1,928.53	2,677.15	252.97	586.30	390.00	19.50	5,854.45
Psychologists and Associates	1,600.00	20.00	1,580.00	1,405.62	750.12	314.63	594.14	239.00	--	3,303.51
Board of Public Accountancy	21,437.00	660.00	20,777.00	2,399.90	2,051.53	131.26	897.75	6,773.90	71.15	12,325.49
Real Estate Commission	183,184.50	4,687.00	178,497.50	3,153.63	3,157.15	800.82	1,781.13	10,054.55	171.19	19,188.47
Board of Veterinary Examiners	705.00	--	705.00	355.15	493.00	88.45	230.34	540.00	--	1,706.94
Nursing Home Administrators	1,100.00	--	1,100.00	383.42	366.00	25.60	537.89	630.00	--	1,942.91
Physical Therapy Board	1,880.00	--	1,880.00	168.30	45.00	43.75	212.33	335.00	--	804.38
Guide Licensing and Control	39,054.64	254.64	38,800.00	2,913.37	5,213.88	382.99	966.17	300.00	293.90	10,070.31
Board of Welding Examiners	--	--	--	815.24	1,583.43	34.03	448.46	16.85	--	2,898.01
Construction Contractors	230,182.00	1,007.00	229,175.00	--	--	424.83	1,454.77	--	45.00	1,924.60

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FY '77

## REVENUES

## EXPENDITURES

	<u>Receipts</u>	<u>Refund</u>	<u>=Total</u>	<u>Transportation</u>	<u>Per Diem</u>	<u>Phone</u>	<u>Printing Advertising Postage</u>	<u>Fees &amp; Services</u>	<u>Rents, Leases, Other</u>	<u>=Total</u>
Board of Barber Examiners	5,005.54	35.00	4,970.54	583.61	1,714.50	74.20	425.96	115.00	--	2,913.27
Board of Chiropractic Examiners	1,910.00	--	1,910.00	1,128.58	1,000.00	19.51	174.67	--	54.24	2,377.90
Collection Agency Board	8,364.00	300.00	8,064.00	438.83	212.50	20.10	140.16	--	--	811.59
Board of Dental Examiners	14,707.00	270.00	14,437.00	1,493.10	3,471.16	588.88	657.30	50.00	140.35	6,400.79
Board of Electrical Examiners	28,759.00	400.00	28,359.00	1,884.37	2,793.28	312.50	2,202.07	362.85	340.25	7,895.32
Architects, Engineers and Land Surveyors	31,086.00	30.00	31,056.00	5,180.64	7,062.50	304.42	2,268.31	4,507.27	--	19,323.14
Hairdressing and Beauty Culture	22,248.00	285.00	21,963.00	1,752.03	2,700.00	61.73	818.79	486.50	125.00	5,944.05
Board of Marine Pilots	11,122.10	--	11,122.10	2,444.46	2,271.68	42.12	706.10	35.00	15.75	5,515.11
State Medical Board	62,545.00	522.00	62,023.00	2,199.13	1,844.50	255.96	1,079.30	368.65	108.00	5,855.54
Board of Nursing	41,731.00	984.00	40,747.00	3,293.07	4,321.50	206.58	1,784.46	2,429.00	571.92	12,606.53
Board of Dispensing Opticians	1,060.00	--	1,060.00	712.16	745.00	91.00	543.16	--	--	2,091.32
Board of Examiners in Optometry	2,800.00	175.00	2,625.00	613.07	837.50	40.30	179.16	50.00	200.00	1,920.03
Board of Pharmacy	8,384.00	135.00	8,249.00	1,508.28	2,216.67	140.55	320.23	330.00	139.50	4,655.23
Psychologists and Associates	1,700.00	150.00	1,550.00	530.85	443.33	122.24	866.01	407.00	--	2,369.43
Board of Public Accountancy	15,780.00	645.00	15,135.00	2,645.48	3,117.17	316.55	2,091.24	6,532.17	436.09	15,138.70
Real Estate Commission	129,017.00	9,484.00	119,533.00	3,213.48	5,230.50	1,334.13	4,281.35	15,500.47	89.00	29,648.93
Board of Veterinary Examiners	4,236.50	50.00	4,186.50	85.14	37.50	83.35	304.54	588.32	11.34	1,110.19
Nursing Home Administrators	2,000.00	--	2,000.00	241.94	534.50	12.79	898.61	610.00	192.00	2,489.84
Physical Therapy Board	1,455.00	--	1,455.00	86.64	125.00	74.52	242.52	145.00	--	673.68
Guide Licensing and Control	39,025.50	330.00	38,695.50	2,607.63	5,057.75	569.68	1,592.27	430.00	--	10,257.33
Board of Welding Examiners	--	--	--	1,151.11	1,711.40	90.08	1,907.80	58.60	--	4,918.99
Construction Contractors	202,492.50	6,854.00	195,638.50	--	--	420.30	1,228.00	8.70	82.75	1,739.75
Board of Mortuary Science	4,635.00	150.00	4,485.00	--	--	11.00	13.00	--	--	24.00

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FY '78

## REVENUES

## EXPENDITURES

	<u>Receipts</u>	<u>Refund</u>	<u>=Total</u>	<u>Transportation</u>	<u>Per Diem</u>	<u>Phone</u>	<u>Printing Advertising Postage</u>	<u>Fees &amp; Services</u>	<u>Rents, Leases, Other</u>	<u>=Total</u>
Board of Barber Examiners	4,410.18	10.00	4,400.18	723.22	1,297.75	84.30	228.49	300.00	300.00	2,933.75
Board of Chiropractic Examiners	1,070.00	--	1,070.00	1,815.32	1,835.00	65.98	370.55	107.63	23.59	4,218.07
Collection Agency Board	6,950.00	--	6,950.00	1,830.87	1,621.60	49.40	624.35	--	--	4,126.22
Board of Dental Examiners	6,040.24	70.00	5,970.24	3,371.97	3,202.50	741.07	394.74	914.20	151.40	8,775.88
Board of Electrical Examiners	15,912.14	475.00	15,437.14	2,232.23	2,412.75	712.90	1,217.32	--	91.22	6,666.42
Architects, Engineers and Land Surveyors	112,970.75	2,100.00	110,870.75	6,740.23	7,021.73	452.26	1,823.13	5,099.23	113.90	21,250.46
Hairdressing and Beauty Culture	22,237.00	416.00	21,821.00	1,086.96	2,133.41	127.75	405.70	347.50	411.00	4,512.32
Board of Marine Pilots	1,830.00	50.00	1,780.00	1,648.74	1,692.00	49.96	358.94	--	70.00	3,819.64
State Medical Board	18,203.75	652.50	17,551.25	2,695.36	2,251.50	589.28	490.50	225.00	94.68	5,346.32
Board of Nursing	73,312.37	1,046.50	72,265.87	6,815.61	8,195.68	445.99	1,181.20	2,687.09	772.98	20,098.55
Board of Dispensing Opticians	2,190.00	--	2,190.00	517.10	751.25	60.95	284.51	297.00	--	1,910.81
Board of Examiners in Optometry	795.00	--	795.00	2,306.22	1,991.84	67.70	488.65	50.00	800.00	5,104.41
Board of Pharmacy	16,547.00	65.00	16,482.00	1,712.80	2,016.67	215.74	313.19	100.00	543.00	4,901.40
Psychologists & Associates	2,780.00	100.00	2,680.00	1,933.63	2,385.25	138.51	660.29	500.00	20.00	5,637.68
Board of Public Accountancy	39,265.00	590.00	38,675.00	4,263.76	2,723.50	393.17	854.25	8,356.70	657.43	17,248.81
Real Estate Commission	299,849.00	14,214.08	285,634.92	4,079.75	6,035.89	1,687.91	4,622.51	20,517.25	1,234.61	38,177.92
Board of Veterinary Examiners	1,160.00	--	1,160.00	170.05	808.75	21.00	280.62	360.00	--	1,640.42
Nursing Home Administrators	1,875.00	45.00	1,830.00	489.65	397.50	14.80	241.71	490.00	70.00	1,703.66
Physical Therapy Board	3,132.00	--	3,132.00	516.51	475.00	107.95	371.13	275.00	--	1,745.59
Guide Licensing and Control	41,882.00	265.00	41,617.00	3,457.12	8,840.68	815.01	2,584.38	362.00	768.90	16,828.17
Board of Welding Examiners	--	--	--	1,020.43	1,564.25	196.75	200.82	--	--	2,982.25
Construction Contractors	333,575.40	680.00	332,895.40	--	--	681.76	2,130.78	--	--	2,812.54
Board of Mortuary Science	902.00	100.00	802.00	62.40	50.00	19.09	20.00	300.00	--	451.49

## Chapter 01. Centralized Licensing.

### Section

- 10. Applicability of chapter
- 20. Board organization
- 25. Public members
- 30. Quorum
- 40. Transportation and per diem
- 50. Administrative duties of department
- 60. Application for license
- 70. Administrative duties of boards

### Section

- 80. Department regulations
- 87. Powers and duties of department
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**Sec. 08.01.010. Applicability of chapter.** This chapter applies to the

- (1) Board of Public Accountancy;
- (2) Board of Barber Examiners;
- (3) Repealed by § 6 ch 32 SLA 1971.
- (4) Board of Chiropractic Examiners;
- (5) Board of Hairdressing and Beauty Culture Examiners;
- (6) Board of Dental Examiners;
- (7) Board of Electrical Examiners;
- (8) State Board of Registration for Architects, Engineers and Land Surveyors;
- (9) State Medical Board;
- (10) Board of Nursing;
- (11) Board of Examiners in Optometry;
- (12) Board of Pharmacy;
- (13) Real Estate Commission;
- (14) Board of Veterinary Examiners;
- (15) Board of Psychologist and Psychological Associate Examiners;
- (16) Collection Agency Board;
- (17) Board of Welding Examiners;
- (18) Board of Marine Pilots;
- (19) Board of Dispensing Opticians;
- (20) Guide Licensing and Control Board;
- (21) State Physical Therapy Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975; am § 1 ch 43 SLA 1977)

**Effect of amendments.** — The first 1973 amendment added paragraph (19).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (15).

The 1975 amendment added paragraph (20).

The 1977 amendment added paragraph (21).

**Editor's note.** — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly

transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

**Legislative committee reports.** — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

**Sec. 08.01.020. Board organization.** Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

**Sec. 08.01.025. Public members.** No public member of a board may:

- (1) be engaged in the occupation which the board regulates;
- (2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

**Sec. 08.01.030. Quorum.** A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

**Sec. 08.01.040. Transportation and per diem.** A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

**Sec. 08.01.050. Administrative duties of department.** (a) The department shall provide the following administrative and budgetary services when appropriate:

- (1) collect fees and issue receipts;
- (2) maintain records and files;
- (3) issue and receive application forms;
- (4) notify applicants of acceptance or rejection of applicants as determined by the board;
- (5) designate dates examinations are to be held and notify applicants;
- (6) publish notice of examination;
- (7) arrange space for holding examinations;
- (8) notify applicants of results of examinations;
- (9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
- (10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of \$2;
- (11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
- (12) compile and maintain current a register of licenses;
- (13) answer routine inquiries;
- (14) maintain files relating to individual licensees;
- (15) arrange for printing and advertising;
- (16) purchase supplies;
- (17) employ secretarial help when needed;
- (18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

**Effect of amendments.** — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted

"department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

**Sec. 08.01.060. Application for license.** All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

**Sec. 08.01.070. Administrative duties of boards.** Each board shall perform the following duties in addition to those provided in its respective law:

- (1) keep minutes and records of all proceedings;
- (2) hold a minimum of one meeting each year;
- (3) hold at least one examination each year;
- (4) request, through the department, investigation of violations of its laws and regulations;
- (5) prepare and grade examinations;
- (6) pass on qualifications of applicants for examination and license;
- (7) forward minutes of meetings to the department within 20 days;
- (8) forward results of examinations to the department;
- (9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

**Sec. 08.01.080. Department regulations.** The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

- (1) how an examination is to be conducted;
- (2) what is contained in application forms;
- (3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

**Sec. 08.01.087. Powers and duties of department.** (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976)

**Sec. 08.01.090. Applicability of the Administrative Procedure Act.** The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

**Effect of amendment.** — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

**Sec. 08.01.100. License renewal, lapse and reinstatement.** (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of \$10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

**Sec. 08.01.105. Penalty for improper payment.** An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

**Sec. 08.01.110. Definitions.** In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

**Effect of amendments.** — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

## Chapter 02. Miscellaneous Provisions.

### Section

- 10. Professional designation requirements
- 20. Limitation of liability for members of licensing boards

**Sec. 08.02.010. Professional designation requirements.** (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify

himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

**Sec. 08.02.020. Limitation of liability for members of licensing boards.** No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)