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HOUSE COMMITTEE REPORT

(7)

Date referred: 2/17/88

FURTHER REFERRALS:

HESS
Finance

DATE: 3-1-88

The Labor & Commerce Committee has considered HB 532

"An Act relating to the regulation of optometrists; extending the termination date of the Board of Examiners in Optometry; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

David Douley
[Signature]
[Signature]
[Signature]

David Douley
 Chairman's signature

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HHESS

3-17-88

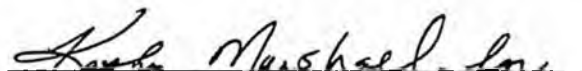
8:30 a.m.

HB 532: An Act relating to the regulation of optometrists; extending the termination date of the Board of Examiners in Optometry; and providing for an effective date.

The Board of Examiners in Optometry is presently in its sunset year and scheduled to terminate on June 30, 1988. HB 532 proposes to extend the board to June 30, 1992 and makes various amendments throughout AS 08.72, primarily to amend "certificate" and "certificate of registration" to read license. These changes are proposed in response to Recommendation No. 1 from the Legislature's Budget and Audit Committee performance report which suggested that the board repeal the obsolete language in its statutes in order to make them more clear and relevant.

The board has preliminarily addressed the issue of mail order companies selling contact lenses in Alaska, as identified in Recommendation No. 2 of the performance report, and continues to further study the issue.

The performance report found that the board is necessary to protect the public's health, safety and welfare. It has done so by establishing minimum educational and experience requirements and in a careful review of all applications to determine the eligibility of the applicants. The department concurs with the report's findings and supports reestablishment of the board.


J. Anthony Smith, Commissioner
Department of Commerce and Economic
Development

Date: 2/29/88

JS/dg10041o-4
022988a

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to the regulation of BRU: Occupational Licensin
optometrists; extending the term, date...
 Sponsor: House Labor & Commerce Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The bill extends the Board of Examiners in Optometry to June 30, 1992 and makes amendments throughout A3 08.72 primarily to amend 'certificate' and 'certificate of registration' to read 'license', a result of Recommendation No. 1 of the Budget and Audit Committee Performance Report. Funding for the Board is included in the department's FY 89 operating budget request.

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
 Division: Occupational Licensing Date: 2/29/88

Approved by Commissioner: J. Anthony Smith Date: 2/29/88
 Agency: Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

A PERFORMANCE REPORT
ON THE BOARD OF
EXAMINERS IN OPTOMETRY

July 1, 1983 - June 30, 1987

Audit Control Number

08-1312-88-R

Commissioner, Department of
Commerce and Economic
Development

J. Anthony Smith

Deputy Commissioner, Department
of Commerce and Economic
Development

John Williams

Members of the
Board of Examiners in Optometry

Chairman
Secretary
Member
Member
Member

John Demske, O.D.
Robert O'Connell, O.D.
Jeffrey Gonnason, O.D.
John Lounsbury, O.D.
Carole L. Richmond

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

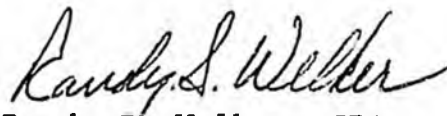
December 31, 1987

Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "Sunset" review of the Board of Examiners in Optometry.

At the request of the Chairman, during Fiscal Year 1988 budget deliberations, the Audit Division's budget was revised to reflect certain changes in the organization of the Committee's two Divisions. The revised budget of the Audit Division reflected efficiencies that might be obtained by utilizing the staff of the Legislative Finance Division on selected audit assignments during the interim.

As a result, the audit of the Board of Examiners in Optometry was conducted and this report has been prepared by the Legislative Finance Division. We feel this report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.



Randy S. Welker, CPA
Acting Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUGH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

November 3, 1987

Members of the Legislative Budget
and Audit Committee:

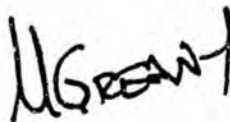
In accordance with the provisions of Title 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE BOARD OF
EXAMINERS IN OPTOMETRY

July 1, 1983 - June 30, 1987

Audit Control Number

08-1312-88-R



Mike Greany, Director
Division of Legislative Finance

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Examiners in Optometry for the past four fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Examiners in Optometry should be reestablished. The law now specifies that the Board will terminate June 30, 1988, and has one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licensee.
3. Interviews with the license examiner.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Offices, Attorney General's Office, and the Ombudsman's Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's opinions applicable to the professional board.

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ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry is a regulatory board consisting of five members appointed by the Governor; four optometrists and one public member. Board members serve staggered terms of four years.

The Board regulates the practice of optometry. The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling optometry practices.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated optometry statutes or regulations.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting the practices are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so that the potential impact on policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation of suspension of licenses where appropriate.

The Findings and Recommendation Section (see pages 7-8), describes areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

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FINDINGS AND RECOMMENDATION

Recommendation No. 1

The Board should support the repeal of obsolete language in the statutes to make them more clear and relevant.

In our review of optometry law, it was observed that some terms in the statutes are vague and obsolete. For example, Alaska statute 08.72.120 states in part; "It is unlawful for a person to practice, or attempt, or offer to practice, optometry without first obtaining a certificate of registration...". However, to practice optometry a "certificate of registration" is not a requirement.

The "certificate of registration" relates to a 1949 statute that required the filing of these certificates with the clerk of the superior court in the judicial district the optometrist practices. The "certificate of registration" was repealed in some statute sections by chapter 37 of SLA 1986. Nevertheless, some sections of optometry law still refer to the requirement of a certificate.

In a April 22, 1987 memorandum to the Governor concerning statute revisions, the attorney general recommended that the reference to "certificate of registration" in sections; 08.72.120 and 08.72.150 should be replaced with the term "license". In section 08.72.191, the term "certificates" should be replaced with "licenses". To be licensed as a optometrist is the only requirement to practice optometry. Therefore, to continue the referencing of a "certificate of registration" in the statutes is confusing and obsolete.

Recommendation No. 2

To insure the public is adequately protected, the Board and Division of Occupational Licensing (DOL) should address the issue of mail order companies selling contact lens.

When contact lenses are purchased from a licensed ophthalmologist, optometrist, or dispensing optician; the consumer is provided with professional training in how to care for the eye and the contact lens. Additionally, the licensed professional conducts an on-site evaluation to determine if the contact lens properly fits the eye. A contact lens that does not proper fit the eye can cause a headache, nausea or even a permanent restriction of vision due to corneal abrasion.

However, a new sales technique has developed in the last few years. Mail order companies are selling and dispensing replacement contact lenses. It is our interpretation of the law, and is the attorney general's office view, that only

licensed ophthalmologists, optometrists and dispensing opticians have the legal authority to sell and dispense contact lenses in Alaska, whether it is the initial sale of a contact lens or a replacement of lens.

Additionally, mail order consumers are at a disadvantage in attempting to judge the fit of contact lenses purchased by mail. As previously stated, a contact lens that does not fit properly can cause injury to the eye.

Considering the potential for public harm, we believe the issue of mail order companies selling and dispensing replacement contact lenses should be addressed by the Board and DOL.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission or program has operated in the public interest.
 - A. The Board has enforced the laws for issuing licenses in a uniform and consistent manner.
 - B. The Board has held meetings and administered examinations in accordance with statutory requirements.
- II. 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.
 - A. The Board has received assistance from DOL relative to the drafting of legislation and regulatory changes.
 - B. The Board has received legal assistance from the Attorney General's Office.
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

The Board has partially succeeded in its endeavors to amend and repeal obsolete language in the optometry law.
- IV. 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.

The Board has published public notices of all examinations, and meetings. The Board has not actively solicited comments on its effectiveness.

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

Public notices of proposed regulations are published in major newspapers. Public comment on proposed regulations, both written and oral, are considered at Board meetings.

- VI. 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.

The Office of the Ombudsman, Attorney General and DOL do not have any outstanding consumer complaints regarding the Board of Optometry.

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

Prior to granting a license to practice, the Board is required to determine if the applicant is qualified. The Board reviews all applications to make the determination of eligibility. The Board issued 26 licenses from FY84 through FY87. The number of optometrists currently licensed is 77.

- VIII. 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.

According to the Office of Equal Employment Opportunity, no complaints were filed against the Board from FY84 through FY87.

- IX. 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.

Please refer to the previous section, Findings and Recommendation.

APPENDIXES

(Intentionally left blank)

APPENDIX A

BOARD OF EXAMINERS IN OPTOMETRY
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES
For Fiscal Year 1987
(Unaudited)
(Note 1)

Average Revenue (Note 2)	\$ 4,651
Expenditures (Note 3)	<u>12,031</u>
Excess of Expenditures Over Revenues	<u>\$ 7,380</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is composed of license renewal fees. Licenses are renewed quadrennially. Because of the renewals, revenues vary substantially every fourth year. Therefore, we combined revenues collected in fiscal year 1984, 1985, 1986 and 1987; and calculated a total in order to obtain a representative amount of average annual revenues collected. Licensing fees were increased in November 1986 in response to legislative intent to make the Boards more self supporting. See Appendix B, Schedule 1 for the current fee schedule.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e. travel and per diem) and an allocation of direct and indirect costs of DOL. It should be noted, that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

APPENDIX B

BOARD OF EXAMINERS IN OPTOMETRY
SCHEDULE OF ESTIMATED REVENUES
COMPARED WITH BUDGETED EXPENDITURES

For Fiscal Year 1988
(Unaudited)
(Note 1)

Average Revenue (Note 2)	\$ 4,120
Expenditures (Note 3)	<u>13,410</u>
Excess of Expenditures Over Revenues	<u>\$ 9,290</u>

Schedule 1
Types of Revenues
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
License Application Fee	\$ 20	With application
Examination Fee	\$ 50	With application
Reexamination Fee	\$ 50	With application to reexam
License Fee	\$200	At initial quadrennial license period
License Renewal Fee	\$200	Every four years
Branch Office Registration Fee	\$ 20	At initial quadrennial license period
Branch Office Renewal Fee	\$ 20	Every four years

Note 1

The Division of Occupational Licensing (DOL) prepared the above Schedule of Estimated Revenues Compared with Budgeted Expenditures. The schedule is included for informational purposes only and has not been audited by us. Accordingly, we do not express an opinion on the Board's Schedule of Estimated Revenues Compared with Budgeted Expenditures.

Note 2

Revenues were estimated based upon the current licensing fees (See schedule 1) and projected license renewals and application fees for fiscal years 1988, 1989, 1990 and 1991. Because of a downward trend in Alaska's economy the projection for revenues includes a factor representing a 20% to 30% decline in the number licensed professionals.

Note 3

Expenditures consist of FY88 budgeted direct costs associated with board member activities (i.e. travel and per diem) and a allocation of direct and indirect costs of DOL. It should be noted that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

Note 4

This schedule represents the licensing fees currently in effect. Fees were raised in November 1986 in response to legislative intent to make the Boards more self supporting.

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STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

January 20, 1988

RECEIVED
JAN 27 1988

LEGISLATIVE
AUDIT

Mr. Randy Welker
Acting Legislative Auditor
Division of Legislative Audit
Budget and Audit Committee
P.O. Box W
Juneau, AK 99811-3300

Dear Mr. Welker:

This is written in response to the Budget and Audit Committee's (hereinafter "Committee") audit report of its sunset performance review of the Board of Examiners in Optometry. Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on the Committee's findings and recommendations.

Response to Recommendation No. 1.

The Committee has suggested that the board support a repeal of obsolete language in the optometry statutes. The Department supports this recommendation and will look to the legislative sunset review process to correct the confusing references contained in AS 08.72.

Response to Recommendation No. 2.

The Committee has raised the issue of mail order companies selling contact lens and the resultant public protection concerns. As the enclosed correspondence indicates, both the Department and the Board of Examiners in Optometry are aware of the issue and have preliminarily addressed the matter. The Division of Occupational Licensing will place this issue on the agenda of the next Optometry Board meeting and will approach the Department of Law for suggestions to recommend to the Legislature to correct the current, rather muddled enforcement provisions vis-a-vis mail order contact lens. This matter could be addressed in the legislation reestablishing the Optometry Board this second session of the Fifteenth Legislature.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/2/88

FURTHER REFERRALS: Finance

DATE: 3-17-88

The Health, Education and Social Services Committee has considered HB 532

"An Act relating to the regulation of optometrists; extending the termination date of the Board of Examiners in Optometry; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature]

Co Chairman's signature

[Handwritten signature]