

HB

534

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/17/88

FURTHER REFERRALS:

HESS  
Finance

DATE: 3-1-88

The Labor & Commerce Committee has considered HB 534

"An Act relating to regulation of dispensing opticians and dispensing optician apprentices; extending the termination date of the Board of Dispensing Opticians; 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:**

*Dave Douley*  
 \_\_\_\_\_  
*Ellis*  
 \_\_\_\_\_  
*H. Turner*  
 \_\_\_\_\_  
*John J. ...*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
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*Dave Douley*  
 \_\_\_\_\_  
 Chairman's signature

HB 534: An Act relating to regulation of dispensing opticians and dispensing optician apprentices; extending the termination date of the Board of Dispensing Opticians; and providing for an effective date.

The Board of Dispensing Opticians is presently in its sunset year and scheduled to terminate on June 30, 1988. HB 534 proposes to extend the board to June 30, 1992 and amend various sections of AS 08.71 to address the concerns identified in the Legislature's Budget and Audit Committee performance report regarding apprentices and continuing competency requirements.

The amendment proposed in the new bill regarding apprentices clarifies that all dispensing optician apprentices who wish to obtain the 6,000 training hours required in order to take the licensing examination must first be registered with the board as an apprentice prior to commencing that apprenticeship. The board will then be able to better monitor the activities of the individuals claiming to be apprentices.

The bill also amends AS 08.71.130(d) to delete the specific reference to the number of continuing competency hours required for renewal of a license. This will allow the board flexibility to adjust the number or required hours as needed.

The department supports the continuation of the board and concurs with the Legislature's Budget and Audit Committee performance report recommendation that the board be reestablished.

*Kathy Marshall for*  
\_\_\_\_\_  
J. Anthony Smith, Commissioner  
Department of Commerce and Economic  
Development

Date: 2/25/88

JS/dg10041o-1  
022988b

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act relating to regulation of BRU: Occupational Licensing  
dispensing opticians & disp. opt. apprentices...  
 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 Dispensing Opticians to June 30, 1992 and amends AS 08.71 to address the concerns regarding apprentices and continuing competency requirements as stated in Recommendation No. 1 of the Budget and Audit 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)

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

HL+C

3-1-88

1:30pm.



Official Business

**COMMITTEE:**

HOUSE LABOR & COMMERCE

**DATE:** March 1, 1988

**SIGN-IN**

**Subject of meeting:**

- HB 531 An act extending the termination date of the Board of Chiropractic Examiners,
- HB 532 An act extending the termination date of the Board of Examiners in Optometry
- HB 533 An Act extending the termination date of the Board of Public Accountancy.
- HB 534 An act extending the termination date of the Board of Dispensing Opticians
- ~~SJR 64 Relating to resident hire on U.S. Dept. of Defense projects at Amchitka Island~~

**NAME**                      **ADDRESS**                      **PHONE**                      **REPRESENTING**                      **DO YOU WANT TO TESTIFY?**

Harvey Sullivan	430 C St #201 Anchorage, AK 99501	276-2246	Alaska Optometric Association	yes.
Randall Burns	P.O. BOX D-4C Juneau, AK 99801	463-2535	Dir of Occupational Licensing - Commerce	YES
Steve White	P.O. Box K Juneau, AK 99801	465-3600	Dept. of Law	-
MICHAEL THILL	Cap. Rm 121 SEN ZHAROFF'S	4922	SEN ZHAROFF	YES
CH. SELMAN	@11 DOGWOOD ANCHORAGE ALASKA 99501	277-6332	CHARR	YES

A PERFORMANCE REPORT  
ON THE BOARD OF  
DISPENSING OPTICIANS

July 1, 1984 - June 30, 1987

Audit Control Number

08-1314-88-R

Commissioner, Department of  
Commerce and Economic  
Development

J. Anthony Smith

Deputy Commissioners, Department  
of Commerce and Economic  
Development

John Williams

Members of the  
Board of Dispensing Opticians

Gregg L. McClanahan  
Sharla S. Thomas  
William E. Reedy, Jr.  
Barbara J. May (Public)  
Donald R. Smith

# STATE OF ALASKA

## THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

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

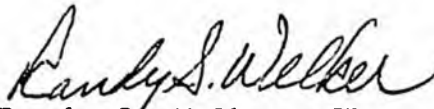
December 31, 1987

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 Dispensing Opticians.

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 Dispensing Opticians 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  
POUCH WF-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

November 20, 1987

Members of the Legislative Budget  
and Audit Committee:

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

A PERFORMANCE REPORT  
ON THE BOARD OF  
DISPENSING OPTICIANS

July 1, 1984 - June 30, 1987

Audit Control Number

08-1314-88-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 reviewed the activities of the Board of Dispensing Opticians for the past three 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 Dispensing Opticians should be reestablished. The law now specifies that the Board will terminate June 30, 1988, and have 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 licensees.
3. Interviews with the license examiners.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, 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 professional boards.

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## ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established by the 1973 Session Laws of Alaska. This regulatory board consists of five persons; four dispensing opticians and one public member, appointed by the Governor. Board members serve staggered terms of four years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (DOL). DOL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help to the Board.

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 necessary and desirable to enforce statutes.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated dispensing optician statutes or regulations.

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## REPORT CONCLUSION

### Policy Issues

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

### Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have been evaluated to determine if licensing is needed are:

Does the unlicensed practice pose a serious risk to the consumer's life, health, safety, or economic well-being?

Can the potential users be expected to properly evaluate the qualifications of those offering services?

Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioner, higher cost of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

1. In the area of eye glass wear, the potential for injury by an optician is very remote. However, improper fit of contact lenses can cause headaches, nausea, eye infection, or permanent restriction of vision from corneal abrasion.
2. Reductions in the Consumer Protection Agency's funding have decreased the essential functions of this agency to a bare minimum. Therefore, the Board is needed to protect the public through responding to consumers' complaints and taking proper action by revoking or suspending licenses when appropriate.

3. The dispensing opticians' statutes require the consumer to return to an optometrist or an ophthalmologist to check on the fit of their contact lenses. Unfortunately, some clients never return to verify the correctness of the fit. As mentioned earlier, an ill-fitted contact lens can cause injury. Thus, it is important to have experienced and qualified dispensing opticians to fit the contact lenses correctly. The Board provides this service by establishing minimum experience requirements that provide reasonable assurance that persons licensed are qualified.

In our opinion, the Board of Dispensing Opticians should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare.

The following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, vague, restrictive, or unnecessary. Examples of what we found are as follows:

1. AS 08.71.130 (d) and 12 AAC 30.050 set out continuing competency requirements. These requirements were based on quadrennial licensing. In 1987, legislation was passed, Chapter 94 SLA 87, which changed the licensing renewal time frame, for all boards, to biennial. This supersedes the existing regulation in place. Therefore, continuing competency requirements need to be revised proportionately, i.e. reducing required hours from 30 hours to 15 hours.
2. AS 08.71.150 allows the State to license by reciprocity. However, none of the other 21 states, who statutorily require licensure of the practice of dispensing opticians, has granted Alaska reciprocity rights. Furthermore, licensure by credentials accomplishes the same purpose. This statute is not necessary as recommended in the prior Legislative Audit review of June 30, 1984.
3. AS 08.71.200 sets out dispensing opticians' constraints for issuing contact lenses. The language used is not specific enough and should be further defined to explain what is meant by "contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or optometrist". This problem was noted by the Governor's working group on combining Boards of Optometry and Dispensing Optician, the previous Legislative Audit review of June 30, 1984, and the Attorney General's office.
4. 12 AAC 30.110 (a) sets out the requirement for apprentice registration with the Department of Commerce and Economic Development, in that, "Before starting an apprenticeship under AS 08.71.160 the, apprentice shall register with the department on a form approved by the Board. No hours of apprentice training before registration will be counted towards the 6,000 hours requirement in AS 08.71.110 (a)."

During our examination, we reviewed several licensing files to determine if statutory and regulatory requirements were being met. Four of the files tested did not have an apprentice registration form on file. If the Board feels that this regulation is not needed then it should revise 12 AAC 30 110(a) accordingly. Otherwise, this regulation should be complied with.

AS 08.71.055 provides that the Board shall exercise general control over dispensing opticians. This cannot be done effectively without clear and concise statutes and regulation. Thus, the review of statutes and regulations for obsolescence, vagueness, and restrictiveness should continue and appropriate changes should be proposed where necessary.

Recommendation No. 2

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

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 lenses. 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 properly fit the eye can cause headaches, nausea or permanent restriction of vision from corneal abrasions.

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 or dispense contact lens in Alaska, whether it is the initial sale of a contact lens or a replacement of the 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 to address those areas we were able to cover during our examination.

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

A. The Board has held meetings and exams at least once a year.

B. The Board has passed regulations concerning grading criteria and continuing competency 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.

Reductions in the agency budget have prevented the Board from meeting more than once a year. The Board should at least meet twice a year to perform tasks set forth by the statute.

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 not repealed or amended obsolete or unnecessary regulatory requirements (see Recommendation No. 1.)

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, meetings, and regulation changes. 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.

The Board has published notices of its meetings in Anchorage, Fairbanks, and Juneau.

- 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.

According to the Division of Occupational Licensing's files, there have been approximately 9 investigation cases in the past few years. Twelve complaints were filed against one dispensing optician with the Consumer Protection Office in Anchorage. No complaints were filed with the Office of Ombudsman, Human Rights Commission, and Equal Employment Opportunity.

- 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.

A. In the past three years, the number of currently licensed opticians has increased from 63 to 80.

B. The Board has established licensure by credential which helps ensure more qualified applicants.

- 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.

There have not been any violations of statutes or regulations pertaining to affirmative action requirements. Licenses are awarded based on the applicant's qualifications.

- 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 Recommendations.

APPENDIXES

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APPENDIX A

BOARD OF DISPENSING OPTICIANS  
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES  
For Fiscal Year 1987  
(Unaudited)  
(Note 1)

Average Revenue (Note 2)	\$4,308
Expenditures (Note 3)	<u>9,158</u>
Excess of Expenditures Over Revenues	<u>\$4,850</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 were renewed quadrennially. Because of the renewals, revenues varied 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 DISPENSING OPTICIANS  
SCHEDULE OF ESTIMATED REVENUES  
COMPARED WITH BUDGETED EXPENDITURES  
For Fiscal Year 1988  
(Unaudited)  
(Note 1)

Average Revenue (Note 2)	\$ 4,440
Expenditures (Note 3)	<u>10,207</u>
Excess of Expenditures Over Revenues	<u>\$ 5.767</u>

Schedule 1  
Types of Revenues  
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Application Fee	\$ 20	With application
Examination Fee	\$ 50	With application
Reexamination Fee	\$ 50	With application
Initial License Fee	\$200	Before licensure
Renewal Fee	\$200	Every four years
Late Renewal Fee	\$ 20	If over 60 days after renewal date

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

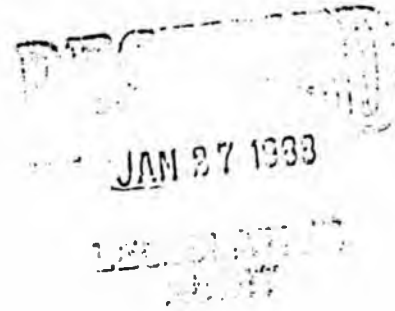
STEVE COWPER, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

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

OFFICE OF THE COMMISSIONER

January 20, 1988



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 letter is written in response to the Budget and Audit Committee's (hereinafter "Committee") audit report of its sunset performance review of the Board of Dispensing Opticians. 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 reviewed the statutes and regulations governing the practice of dispensing opticianary and has found a number of instances where the work of the Board of Dispensing Opticians could be more clear, concise, or consistently applied. The Department concurs with the Committee's findings and will, in cooperation with the Legislature's sunset review process, attempt to correct the problems detailed in the audit report.

### 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 Optometry Board 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 during this session to correct the current rather muddled enforcement provisions vis-a-vis mail order contact lens.

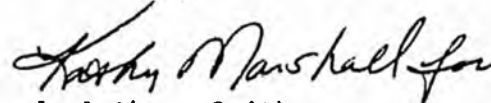
Mr. Randy Welker

-2-

January 20, 1988

The Department appreciates the Committee's decision to continue the Board of Dispensing Opticians. We believe a decision to either sunset the Board or combine the Board with the Optometry Board, as has been recommended in the past, would be detrimental to the public interest; therefore, we concur in the Committee's recommendation to maintain the Board as currently configured.

Sincerely,



J. Anthony Smith  
Commissioner

JAS/RPB/mst0470D  
011988c