

HB

382

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

Date of Committee Action: 2/6/96

The FINANCE Committee considered:

HB 382

HOUSE BILL NO. 382

EXTEND BOARD OF DISPENSING OPTICIANS

"An Act extending the termination date of the Board of Dispensing Opticians; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 382 (STA) [] the same title [X] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____

[X] fiscal note(s) DCED

[] zero fiscal note(s) _____

[] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard J. Foster</i>	Foster	X			
<i>Mark P. Kelly</i>	Hanley	X			
<i>Edm. Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin	X			
<i>Sean R. Parnell</i>	Parnell	X			
<i>Vic Kohring</i>	Kohring	X			
<i>Ben S. Gussendorf</i>	Gussendorf	X			
<i>Mike Davarre</i>	Davarre	✓			
<i>Tony Brown</i>	Brown	✓			
<i>Gene Therriault</i>	Therriault	X			

CHAIR'S SIGNATURE *Mark P. Kelly* *Richard J. Foster*

FISCAL NOTE

No. 1

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: HB 382
(H) Publish Date: 1/16/96

Revision Date: _____
Title: An Act extending the termination date of the
Board of Dispensing Opticians: _____
Sponsor: Representative James
Requestor: Representative James

Department: Commerce and Economic Development
BRU: Occupational Licensing
Component: Operations
COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING EXPENDITURES						
PERSONAL SERVICES	7.3	7.3	7.3	7.3	7.3	7.3
TRAVEL	1.0	1.0	1.0	1.0	1.0	1.0
CONTRACTUAL	1.4	1.4	1.4	1.4	1.4	1.4
SUPPLIES	0.1	0.1	0.1	0.1	0.1	0.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.8	9.8	9.8	9.8	9.8	9.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	48.3	5.3	48.3	5.3	48.3	5.3

FUND SOURCE	(Thousands of Dollars)					
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
*002 Federal Receipts						
*003 GF Match						
*004 General Fund						
*005 GF/Program Receipts						
*006 GF/MHTIA						
Other: *091 Designated PR	9.8	9.8	9.8	9.8	9.8	9.8
TOTAL	9.8	9.8	9.8	9.8	9.8	9.8

Estimate of any current year (FY 96) cost: \$ 14.4

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)
 HB 382 extends the Board of Dispensing Opticians to June 30, 2000. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$14.4. Fees were adjusted in May 1995 to cover full costs of the program over a two-year period and will be reviewed again prior to the next renewal.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: January 10, 1996
 Date: 1-11-96

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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JUNEAU, ALASKA 99811-0806
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DATE: January 24, 1996
TO: Walt Wilcox, Aide
Representative Jeannette James
FROM: Catherine A. Reardon, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development
SUBJECT: Sunset Extension Bills

JAN 24 1996
Rep. Jeannette James

I spoke with Randy Welker, the Legislative Auditor, to clarify a few points in his January 17 memo and sunset audits. I hope this information assists your effort to incorporate all audit recommendations into the bills.

On page 1 of his memo, Mr. Welker recommends clarifying Alaska Statute (AS) 08.71.145 regarding licensure of opticians by credential. Mr. Welker explained to me that he suggests amending that statute to specifically mention all the requirements in Regulation 12 AAC 30.100. Page 8 of the optician audit discusses this suggested language.

On page 2 of his memo, Mr. Welker recommends amending AS 08.20.140 to codify the current practice of requiring all chiropractic applicants to take the state exam. Repeal of the AS 08.20.140 and AS 08.20.120(b) will achieve Mr. Welker's goal, because all applicants would then have to satisfy the requirements of AS 08.20.12(a).

On page 2 of his memo, Mr. Welker recommends that the Legislature amend the optician statute to clarify whether employees of optometrists who provide optician services must be licensed opticians. This is a subject of substantial controversy between optometrists and opticians. The Division of Occupational Licensing believes that the current law requires optometrists' employees to be licensed opticians; however, directly addressing the issue in statute would certainly resolve the ongoing dispute.

Finally, Mr. Welker's memo recommends amending the law to give the Division of Occupational Licensing authority to impose civil fines for unlicensed activity. Mr. Welker explained that he is recommending this authority be granted for all division licensing programs, not just the optician program. The creation of a new section in AS 08.01 modeled after AS 08.48.295 (architects, engineers and land surveyors) would achieve this goal. Licensing boards should impose the fines in programs which have boards. The division should impose fines in programs it directly administers.

CAR/cw1840.ol
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§ 08.71.110

§ 08.71.120

BUSINESS AND PROFESSIONS

§ 08.71.160

Sec. 08.71.120. Fees. The department shall set fees under AS 08.01.065 for examination, initial license, and license renewal. (§ 1 ch 45 SLA 1973; am § 5 ch 56 SLA 1980; am § 42 ch 37 SLA 1985)

Sec. 08.71.130. Renewal of license. (a) [Repealed, § 49 ch 94 SLA 1987.]

(b) [Repealed, § 49 ch 94 SLA 1987.]

(c) If the license remains lapsed for more than one year, the board may require the applicant to be examined under AS 08.71.090.

(d) Before a license may be renewed the licensee shall submit to the board evidence of continuing competence in optical dispensing as prescribed by regulations of the board. (§ 1 ch 45 SLA 1973; am § 6 ch 56 SLA 1980; am § 43 ch 37 SLA 1985; am § 3 ch 145 SLA 1986; am § 49 ch 94 SLA 1987; am § 3 ch 51 SLA 1988)

Cross references. — For license duration and further provisions relating to renewal, see AS 08.01.100.

Effect of amendments. — The 1987 amendment repealed subsections (a) and (b), concerning license renewal and lapsing and reinstatement of licenses. The 1988 amendment, effective May 26, 1988, deleted "of 30 hours" following "evidence" in subsection (d).

Sec. 08.71.140. Display of license. A licensed dispensing optician shall conspicuously display a personal license issued under this chapter in any place that the licensed dispensing optician transacts business. (§ 1 ch 45 SLA 1973)

Sec. 08.71.145. Licensure by credentials. A person with a valid license as a dispensing optician from another state, territory, district, or possession of the United States shall be issued a license without examination for those professional areas in which the person is licensed upon payment of any fee and documentation that the board may require by regulation. (§ 7 ch 56 SLA 1980)

repealed in HB 382 (STA)
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 AS 08.71.110, 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 or serve under a licensed dispensing optician as an apprentice. An apprentice shall register with the department before beginning employment or service as an apprentice, shall be designated as such in the records of the board, and shall be in training and under the direct supervision of a licensed physician, optometrist, or

D

1/30/96

HOUSE COMMITTEE REPORT

(7) Date RETURNED to Committee: January 24, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-30-96

The STATE AFFAIRS Committee considered:

HB 382

HOUSE BILL NO. 382

EXTEND BOARD OF DISPENSING OPTICIANS

"An Act extending the termination date of the Board of Dispensing Opticians; and providing for an effective date."

recommends it be replaced with the following committee substitute CSAB 382(S+A) [] the same title [X] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

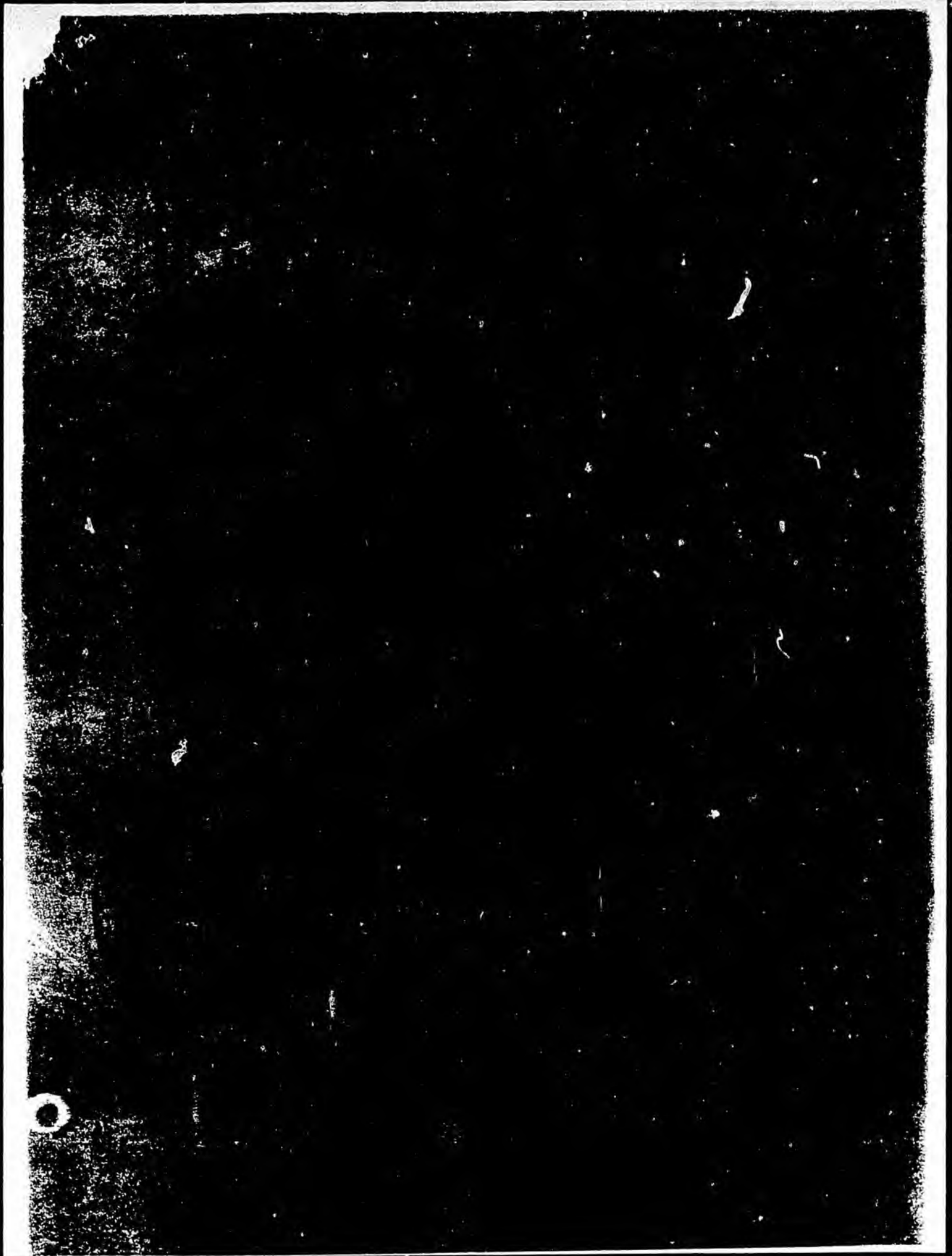
ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [X] fiscal note(s) CED 1/16/96

[] zero fiscal note(s) [] zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Jeannette James	JAMES	✓			
Brian Porter	Porter	✓			
John Green	Green	✓			
John Twan	TWAN	✓			
Caren Robinson	ROBINSON	✓			
Ed Willis	WILLIS	✓			
Sid Ogan	Ogan			✓	
		(6)		(1)	

CHAIR'S SIGNATURE Jeannette James

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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September 29, 1995

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF DISPENSING OPTICIANS

September 29, 1995

Audit Control Number
08-1435-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(8), the Board of Dispensing Opticians is scheduled to terminate on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Dispensing Opticians should be reestablished. The regulation and licensing of qualified dispensing opticians is of benefit in protecting the public's health, safety, and welfare. We recommend that the legislature extend the Board of Dispensing Opticians until June 30, 2000.

The audit was conducted in accordance with generally accepted government auditing standards using criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section on page one.

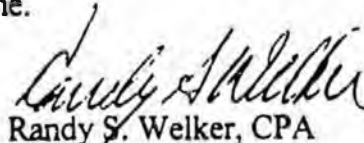

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

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. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 44.66.010(11) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documentation of licensees.
3. Minutes of board meetings and division correspondence files.
4. Attorney general's opinions applicable to professional boards.

In addition we conducted interviews with Division of Occupational Licensing staff, and with selected licensed dispensing opticians, including the current chair of the board.

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ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established under the provisions of Title 8, Chapter 71 of Alaska Statutes. The board consists of five members appointed by the governor and subject to legislative confirmation. Four members must be dispensing opticians and one a public member. Board members serve staggered terms of four years.

The board regulates the practice of opticianry. 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 the standards of professional opticianry practice.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated dispensing opticians' statutes or regulations.

Board of Dispensing Opticians
(As of June 30, 1995)

Alicia Musser - Chairperson
Patricia Hedges-Gajdos
Cynde Oleck

note - two seats, including the public member seat are vacant

From a commercial perspective, the licensed dispensing optician is, compared to other professional groups, somewhat uniquely situated. The optician provides services that also can be provided by two other licensed professionals — optometrists and ophthalmologists (the latter being a licensed physician specializing in care of the eyes). State law specifies that the rights, privileges, and obligations of dispensing opticians are designed not to "*limit or restrict a licensed physician or optometrist from the practices enumerated*" in the dispensing optician statutes. Additionally, statute provides that "*each licensed physician and optometrist has all the rights and privileges which may accrue under [statute] to a dispensing optician licensed [under state law].*"

Opticians provide services to the public that also can be provided by individuals associated and supervised by optometrists and ophthalmologists. Some opticians work independently while others are employed by, or in some other way affiliated with, optometrists and ophthalmologists. As discussed further in this report, these unique commercial relationships and circumstances have contributed to allegations of widespread unlicensed activity along with confusion as to the extent that unlicensed individuals are required to be supervised by licensed professionals.

Division of Occupational Licensing

The Division of Occupational Licensing (OccLic), Department of Commerce and Economic Development provides administrative and investigative assistance to the Board of Dispensing Opticians. This assistance is funded by licensing and application fees as appropriated by the legislature. Administrative assistance includes budgetary services and functions such as: collection of fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, or in response to a complaint, OccLic may conduct an investigation if it appears a person has engaged in or is about to engage in a practice over which OccLic has authority. OccLic can issue an order that a person stop the practice, bring an action on Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In our opinion, the Board of Dispensing Opticians should be reestablished. The regulation and licensing of qualified professionals is of benefit to the protection of 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 to practice. Also, assurance that those licensed act in a competent manner is provided by investigation of complaints and revocation or suspension of licenses when appropriate.

Although we determined the Board of Dispensing Opticians has demonstrated that it serves a public purpose, we do have concerns regarding certain aspects of its administrative operations. We discuss our concerns more extensively in both the Findings and Recommendations, and Analysis of Public Need sections of this report.

Alaska Statute 08.03.010(c)(11) requires that the Board of Dispensing Opticians be terminated on June 30, 1996. Under AS 08.03.020 the board has a one-year period to administratively conclude its affairs. We recommend that legislation extend the termination date for the board to June 30, 2000.

In making this recommendation we have departed from the trend began last year in our sunset review reports. In those reports we recommended longer extension periods for occupational licensing regulatory boards. This change reflected our view that the administration of most licensing boards was such that limited benefit would be provided by more frequent sunset reviews. We recommended, and the legislature adopted, ten year extensions for the various occupational licensing boards that were due to sunset on June 30, 1995.

In this instance, we recommend that the legislature return to a more limited, four year sunset review cycle. Our recommendation reflects concerns that we have regarding certain aspects of the board's performance. These concerns are discussed further in two sections of this report — Findings and Recommendations and Analysis of Public Need. As discussed in the Findings and Recommendation section, we suggest the legislature consider making certain changes to the statutes governing the Board of Dispensing Opticians. If the suggested changes are made, a review of operations conducted in preparation of a 2000 sunset date would provide an opportunity to assess the impact of any adopted statutory and administrative changes.

Essentially, in this instance we believe there is a prospective benefit to reevaluating the operations of the Board of Dispensing Opticians through the sunset review process. Accordingly, we recommend the legislature extend the board to 2000, consider the recommended statutory changes, and set in a motion a process by which the impact of these actions can be evaluated after three years of implementation.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should amend the statutes related to the licensing of opticians without examination.

Currently, under the statutes related to the Board of Dispensing Opticians, provision is made for individuals to be licensed without having to pass the State's practical examination. Provision is made through two different, although somewhat related, methods — reciprocity and credentials.

Reciprocity

Current statute permits an individual to be licensed as a dispensing optician if they have been practicing in another jurisdiction which has "*requirements for licensing and gives reciprocal rights equivalent*" to those of Alaska.¹ In practice, this provision has proven inapplicable, since Alaska has not entered into any reciprocal agreements with any other state. In the 1991 sunset report prepared by the Legislative Finance Division, it was recommended that this statute be repealed altogether since it was not effectively providing reciprocal licensure. During the audit period, the board issued no licenses through reciprocity.

Currently, the Department of Law (DOLaw) is analyzing this statute. DOLaw is informally advising that reciprocity may be allowed even in the absence of a formal agreement. As we understand it, the Department of Law points to the construction of the statute saying that reciprocal rights need only be equivalent and not necessarily memorialized in a formal agreement.

Credentials

Alaska law also permits an individual to be licensed without examination as an optician through a credentials process. State law (AS 08.71.145) provides that an individual with a valid license from another jurisdiction "*shall be issued a license without examination upon payment of fees and documentation that the board may require by regulation*" [emphasis added]. The board has issued several licenses over the past three years under this statutory provision.

¹The full statutory reference, at AS 08.71.150 states that

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 AS 08.71.110, shall be licensed by the board without examination.

AS 08.71.110, referenced in the statute, sets out the specific qualifications that an individual must have to apply for taking the optician licensing examination.

In its FY 93 Annual Report, the board endorsed the recommendation made in a prior sunset review that the reciprocity statute be repealed. The board also proposed the deletion of the credentials exception to licensure without an examination set out in AS 08.71.145.²

In our view, the legislature provided for licensure by reciprocity and credentials as a means to allow qualified individuals fair and reasonable access to the profession. Accordingly, we typically adopt a skeptical perspective of board actions and practices that serve to undermine statutory intent.

In this instance, however, we agree with the recommendation of the board and affirm the prior sunset review's recommendation regarding licensure by reciprocity. The current statute is essentially irrelevant and serves to primarily provide legal support for applicants who have been rejected and are predisposed to legally challenging the board's decision.

Although we believe the statutory provision for licensure by credential should be amended and clarified, we do not believe it should be repealed. The legislature made provision for licensure without examination to prevent the board from unduly restricting entry into the profession. Accordingly, a credential statute, clarifying the conditions for licensure without examination, better serves this legitimate public policy goal.

We recommend that the legislature set out in more specific statutory language the conditions for licensure without examination. As is done elsewhere in statute, we suggest a provision permitting licensing by credential in those instances where the applicant can provide satisfactory documentation that they are licensed in another jurisdiction where requirements and standards are essentially equivalent to those of Alaska. Such language would reflect the current standard being utilized by the board. Under regulation 12 AAC 30.100, applicants can be licensed without examination if they can demonstrate they have:

- a) passed an equivalent practical examination.
- b) passed the national examination (or an examination equivalent to the national examination),³ and,
- c) have received training equivalent to that of Alaska.

² The full statutory reference, at AS 08.71.145 states that

A person with a valid license as a dispensing optician from another state, territory, district or possession of the United States shall be issued a license without examination for those professional areas in which the person is licensed upon payment of any fee and documentation the board may require by regulation.

³The national examination is the National Opticianry Competency Examination and is administered by a private firm, Professional Testing Services.

According to the board's FY 93 Annual Report, only 14 of the 23 states that license opticians require that applicants successfully complete a practical examination. Under the equivalency requirement, applicants from these states would seem to be most likely, in the first instance, to qualify for licensure by credential. In the past, applicants licensed in Washington and Florida have been considered to meet Alaska's standards and accordingly, have been licensed by credential, without examination.

These circumstances indicate that such amending to the credential statute would not unduly jeopardize protection of the public. Likewise, clarification of the statute would serve to establish more clearly the intent of the legislature and better circumscribe the discretion of the board in providing for licensure without examination.

Recommendation No. 2

The legislature should consider adopting statutory changes to provide for more efficient and cost-effective control over unlicensed activity.

The investigative unit of the Division of Occupational Licensing is the agency primarily responsible for the enforcement of professional licensing laws. The unit utilizes legal processes set out in statute in carrying out its investigative and enforcement duties.

Unlicensed activity is a concern of the Board of Dispensing Opticians

As discussed in the Analysis of Public Need section, the incidence of what some eye care professionals view as unlicensed practice is of increasing concern. Opticians provide services to the public that also can be provided by individuals associated and supervised by optometrists and ophthalmologists. Some opticians work independently while others are employed by, or are in some other way affiliated with, optometrists and ophthalmologists. This unique commercial relationship has contributed to allegations of widespread unlicensed activity along with confusion as to the extent that unlicensed individuals are required to be supervised by licensed professionals.⁴

The Department of Law has advised the optometrists' licensing board that all individuals dispensing eyeglasses under its supervision should either be a licensed optician or a registered apprentice.⁵ Given the conclusions of this legal analysis, we received reports and complaints

⁴There are provisions in the statutes relating to both opticians and optometrists that acknowledge that services may be provided by non-licensed individuals under the supervision of the professional license holder. More specifically, optician statutes provide for what are termed registered apprentices and require applicants to serve an apprenticeship in order to sit for professional examination.

⁵In a July 1991 memorandum of advice from the Department of Law, the Division of Occupational Licensing was advised that individuals dispensing and fitting eyeglasses under the supervision of an optometrist still needed to be either a licensed optician or a registered apprentice. The attorney general has held this opinion even though statute specifies that the rights, privileges, and obligations granted to dispensing opticians are designed not to "limit or restrict a licensed physician or optometrist from the practices enumerated" in the dispensing optician statutes. Additionally, statute provides that "each licensed physician and optometrist has all the rights and privileges which may accrue under [statute] to a dispensing optician licensed [under state law]."

from dispensing opticians that there is extensive unlicensed activity. That is, numerous individuals are dispensing and fitting eyeglasses and contact lenses without a license — ostensibly under the supervision of licensed optometrists.⁶

Enforcement of unlicensed activity is low priority

In the context of risk to public health, unlicensed activity in the dispensing of eyeglasses poses a relatively minor threat. Although the threat of improperly fitted contact lenses is somewhat greater, the public health risk is still relatively small. Accordingly, local prosecuting attorneys assign the enforcement of optician licensing requirements a low priority. Likewise, given the many demands of various professions, the Division of Occupational Licensing's investigative unit is able to give limited attention to enforcement. However, the division may be able to more expediently shut down unlicensed practice through the use of civil penalties.

Under the current statute related to the licensing of architects, engineers, and land surveyors a civil penalty of up to a \$5,000 fine can be levied against an individual who engages in unregistered or unauthorized practice.⁷ In discussions with the Division of Occupational Licensing's investigative unit, this provision has proven to be an effective means to closing down unlicensed activity. Although it has not been invoked, it has been proven to be an effective deterrent and appears to encourage timely compliance with cease-and-desist notices.⁸ In our view, adopting legislation to give the unit this authority at its discretion would be a cost-effective way to address unlicensed activity in all professions in a comprehensive, efficient manner.

⁶As a result, the value and necessity of obtaining an optician license in order to work is lessened. Individuals can continue to work under the supervision of optometrist, without obtaining the necessary license. This decreases the number of license holders, which has the effect of increasing license fees, which in turn lessens the incentive of individuals to maintain their license in good standing. From a commercial standpoint, due to lack of enforcement of licensing requirements, the dispensing optician license in many circumstances is meaningless.

⁷AS 08.48.295 provides for the following

(a) In addition to any other provision of law, if a person practices or offers to practice architecture, engineering, or land surveying in the state without being registered or authorized to practice in accordance with the provisions of this chapter, the board may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000 for each offense. In levying a civil penalty, the board shall set the amount of the penalty imposed under this section after taking into account appropriate factors, including the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other matters the board considers appropriate.

⁸A cease-and-desist order is often the first remedy sought by the investigation unit of the Division of Occupational Licensing. Essentially, such an order is a legal document that charges an individual with a certain violation of statute and requires them to stop the activity in question.

Accordingly, we suggest the legislature consider amending the central licensing statutes at AS 08.01.075(a)(8) to specify that civil fines may be imposed for violation of either general licensing statutes and regulations, in addition to violation of the statutes or regulations related to any given professional licensing board.

Recommendation No. 3

The board should improve the objectivity and consistency of the practical examination.

The board requires applicants for licensure to pass a national written examination and a practical examination to demonstrate sufficient ability to dispense optical products. The current practical examination is very subjective.

Five times in the past four years the scores given applicants for the practical examination have been challenged. In two of these instances, test scores were changed when re-graded, and in one of these cases the applicant went from a failing to a passing score.

The board acknowledges that the consistency and scoring procedures for the examination must be improved. The board has started work on developing an examination manual which should make the examination process more objective, more consistent, and less vulnerable to challenge. Unfortunately, the public board member, who was the most active individual in developing these changes, resigned in January 1995. It is our understanding that drafting of the manual has been set aside since that time.

We encourage the board to continue making the examination manual a priority, and recommend that the board assign the effort to a subcommittee of the board for further development.

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A ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of the board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

Although there has been some inconsistencies and defects in the administration of the State's practical examination, the board has served the public by examining and licensing qualified applicants. The board has also proposed changes to statutes and regulations in order to enhance the quality of opticianry care in Alaska.

The board has enforced the laws for ongoing license holders in a uniform and consistent manner. It has held regular meetings and examinations throughout the audit period in accordance with statutory requirements.

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.

Two board seats have been vacant since January of 1995. This causes a strain on the ability of others on the board to effectively fulfill the duties of the board. As of the date of this report, two seats remain unfilled — including the public member seat.

Due to budget constraints the board has been forced to cut back to one annual face-to-face meeting. While teleconference meetings have been held, most substantive administrative action and the state practical examination must be administered during the two-day annual face-to-face meeting. This has made it difficult for the board to complete all its tasks.

The nature of the opticianry industry also impedes the operation of the board. The industry is in a state of flux. Traditional optician shops are facing increased competition from chain store operations which often offer less expensive, allegedly lower quality eyeglasses. As discussed in Recommendation No. 2, these stores are often accused of using unlicensed, unsupervised employees. Investigation of unlicensed dispensing of eyeglasses is a low priority for the Division of Occupational Licensing's investigative unit due to the low level of health risk it represents to the public.

Consistent with statute, Occupational Licensing has increased the biannual licensing fees from \$230 to \$385.⁹ There has been a substantial decline in the number of licensed opticians during the most current license renewal period. Informed observers we spoke with have speculated that many license holders may have come to see that the license is not worth it in view of the increase in fees. As discussed in the Organization and Function section, the structure of the vision care profession is such that an individual does not necessarily have to be licensed as an optician to legally dispense optical products.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board has recommended the repeal of AS 08.71.150, which provides for licensure by reciprocity. This was also recommended in the 1984 and 1991 sunset reports. It has been the board's contention that the statute was unnecessary since no other state offered reciprocity to Alaskan license holders. Licensure without examination can be achieved through what is termed licensure by credential. For further discussion of the issues involved in licensure by reciprocity and credentials, see Recommendation No. 1. As reflected by our analysis presented in that recommendation, we do not necessarily agree with all aspects of the board's position — however, we do feel this issue should be clarified in statute.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effective of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it provides.

All but one meeting was advertised in three Alaskan newspapers, with adequate notice for interested individuals to attend or to make written comment. One meeting was not advertised in the Juneau or Fairbanks papers. Two meetings, including this one were rescheduled. Therefore, cancellation notices were required to be published.

At each meeting, the public was encouraged to submit either oral or written testimony before the board.

⁹AS 08.01.065(c) requires that the Department of Commerce and Economic Development establish licensing fees so

. . . the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. . . . "regulatory costs" means costs of the department that are attributable to regulation of an occupation plus

(1) all expenses of the board that regulates the occupation if the board regulates one occupation; . . .

In order to comply with the requirements of the statute, the Division of Occupational Licensing raised the license fees for Dispensing Opticians more than two-thirds from \$230 to \$385 for the 1995 renewal.

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. As noted above, meetings were adequately advertised, and time was set aside for public testimony.

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 to the Ombudsman have been processed or resolved.

Overall, the investigation of complaints against licensees received by the Division of Occupational Licensing is effective. While timeliness is an issue, given the circumstances surrounding the cases that have remained open for an extended period, progress is reasonable. Complaints are prioritized appropriately and handled accordingly.

The licensing board appears willing to take effective licensing enforcement action, and to operate in a fair and objective manner. In only one instance was a case heard by a hearing officer. In that case, the hearing officer's proposed decision was upheld. While the board's willingness to enforce licensure laws is not in question, the efficiency with which it acts is in doubt. In two cases, licenses to dispense contact lenses were erroneously issued by the board. One applicant voluntarily returned the license, but another is resisting the rescission.

It is noteworthy that of the fourteen investigative cases opened from FY 92 through FY 95, only four involved allegations of misconduct by a licensed optician. Three of those four cases were closed with findings of no violation, or compliance. One case is still opened. More than 70% of investigative cases involved licensing application problems, unlicensed practice, or challenges to licensing examination scores. The remaining investigations involved applicant's complaints regarding examinations, allegedly unlicensed practice, and concerns involving applicant information.

The two complaints reported to the ombudsman were of a limited scope. The first involved an allegedly improper prescription and the refusal of the optician to correct the error. The ombudsman's investigator directed the complainant to file a formal complaint with the board.

The second complaint dealt with the refusal of the Division of Occupational Licensing to allow an applicant to sit for the examination because the application was received after the deadline. The ombudsman found that the deadline was set by statute and was due to national examination standards. However, the complainant was advised to appeal to the Board of Dispensing Opticians. Neither of these complaints is cause for concern as to the efficiency with which the board fulfills its mission.

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

Applicants to the board of dispensing opticians are licensed according to statute. Of the ten licenses tested, two minor errors were detected. Additionally, as discussed above, it was brought to our attention that two licenses for the dispensing of contact lenses were issued in error.

The written examination process adequately and fairly tests an applicants' basic knowledge. However, the state practical examination is highly subjective and subject to challenge. This raises concerns regarding the efficiency with which the board presents qualified applicants to serve the public. See Recommendation No. 3 for further discussion.

Fewer than half the states nationwide regulate opticians. Of the 23 states that do, only 14 require any type of practical examination. There is little if any apparent standardization among the practical tests given in different states. Given these facts, it also appears that Alaska is one of the most difficult states in the nation in which to obtain a license. This may be cause for concern about barriers to entry into the opticianry market. For further discussion, see Recommendation No. 1.

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.

No complaints regarding the Division of Occupational Licensing were received by the ombudsman. We did not find any evidence that the board was not complying with state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

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.

The board needs to meet more than once a year to be effective. At the present, the board has one two-day meeting annually. One day is needed to conduct the state practical examination. Not enough time is left to administer other board business effectively.

Vacant board seats must be filled in a more timely manner to ensure that the board functions properly. Currently, two seats have been vacant for more than six months. This leaves only three members to fulfill all board obligations. Low examiner/examinee ratios have been cited as one cause for problems with the state practical examination. A complete board, coupled with an additional meeting/examination would alleviate this problem.

The state practical examination must be more standardized. Lack of standardization has led to inconsistency in examination scoring. This is partially due to the low examiner/examinee ratios and partially due to the hurried manner in which board members are forced to grade examinations. The board had begun work on a testing manual, but the member most involved in the drafting of the manual resigned and the project has fallen by the wayside. More standardization is essential to reduce the number of challenges currently received to test scores and to better allow the board and occupational licensing to defend the scores that are given. See Recommendation No. 3 of the Findings and Recommendations section of this report.

Statutory changes are necessary to allow better enforcement against unlicensed activities. Unlicensed practice is common in the opticianry industry. Due to the nature of the service, and the demands on occupational licensing's investigators, prosecution of such matters is a low priority. Unlicensed practice is a class B misdemeanor in Alaska. Therefore, the penalty for unlicensed practice, as well as the risk of prosecution is low. Increasing the penalty for such practice would help deter. For further discussion see Recommendation No. 2.

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TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
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November 30, 1995

Mr. Randy S. Welker
Legislative Auditor
Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

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LEGISLATIVE AUDIT

Dear Mr. Welker:

Reference the Board of Dispensing Opticians Preliminary Audit Report. Thank you for this opportunity to comment.

Recommendation No. 1:

The Legislature should amend the statutes related to the licensing of opticians without examination.

We concur that license by credentials (AS 08.71.145) and license by reciprocity (AS 08.71.150) provisions should be repealed or clarified by the Legislature. These provisions have caused much concern over the past year, and the board has been involved in litigation as a result of the confusion. Regulations which were enacted several years ago relating to license by credentials have now been determined by the Attorney General's office to be beyond the scope of statutory authority.

As noted in your report, less than half the states regulate opticians. Some of the states that do have a licensing scheme in place may not require training prior to examination. Some require only a written exam and no practical examination, and still others may require training only. Under the current interpretation of license by credential and reciprocity provisions, a process is now in place whereby Alaska residents have a much harder time qualifying for a license (i.e., Alaska residents are required to complete an apprenticeship as well as national written and state practical examinations prior to licensure). Placing a higher burden of proving competency on Alaska applicants while simply accepting another jurisdiction's determination of competency without regard for the licensing requirements of that jurisdiction does not appear to be in the best interest of the public. If an Alaska applicant fails the Alaska exam, or for whatever reason does not qualify for a license under other provisions of AS 08.71, they could simply apply and receive a license in a jurisdiction where the requirements are less stringent and then apply for Alaska license under AS 08.71.145 or 150. Providing this type of loophole in our licensing scheme is not in the best interest of the public being served or in providing for equal treatment of Alaska optician applicants.

Recommendation No. 2:

The Legislature should consider adopting statutory changes to provide for more efficient and cost-effective control over unlicensed activity.

We concur with your analysis and have attempted to correct this concern by proposing statutory revisions during past legislative sessions.

In our opinion, unlicensed activity will continue to rise unless legislative action is taken regarding unlicensed activity penalty provisions. Licensees share in the cost of administering and enforcing the licensing program. As fewer individuals comply with the licensing requirements, there are fewer practitioners to which the enforcement costs are spread. The license fees will continue to increase potentially leading even more individuals to fail to renew their license. There is no particular incentive to comply with the licensing requirements when coworkers and competing businesses are not being forced to cease business or comply with licensure. Lack of ability to fine individuals for unlicensed activity only aggravates the casualness some industry's practitioners may have regarding licensure.

Recommendation No. 3:

The board should improve the objectivity and consistency of the practical examination.

We concur with this recommendation. As noted, the board also shares concerns with the examination process and with the limited opportunity available during meetings; they are attempting to resolve areas of concern.

Analysis of Public Need:

We concur with your comments under the analysis of public need. One comment which should be discussed, however, is related to the board's need to meet more frequently to conduct business (currently the board meets only once a year for one day). The costs of administering the program, including travel and per diem costs for the board, are borne by the licensees. We continue to have an increase in license fees since there is a decline in practitioners who are complying with licensure. Although the board can easily justify additional board meeting time, they are at that same time attempting to operate in a cost-efficient manner and keep travel and per diem costs at a minimum. Teleconference meetings have been held in the past, however, it can be difficult to accomplish complex tasks such as rewrite of examinations via teleconference. We will continue to explore cost-effective avenues for the board to accomplish the mandates of its position.

Sincerely,


William Hensley
Commissioner

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cc: Catherine Reardon, Director
Division of Occupational Licensing, DCED
bcc: Barbara Gabier, Program Coordinator