

SB

175

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/22/05

FURTHER:

REPORTED OUT
APR 28 2005
SENATE FINANCE
COMMITTEE

DATE TURNED
IN TO OFFICE: 29 April 2005

Finance Committee considered

SENATE BILL NO. 175

SB 175 DISPENSING OPTICIANS

"An Act relating to dispensing opticians, to dispensing optician apprentices, to the Board of Dispensing Opticians, and to the practice of dispensing opticianry; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 175 (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

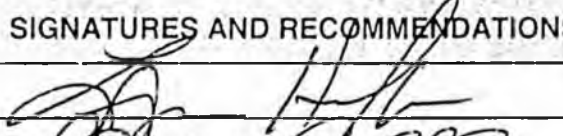
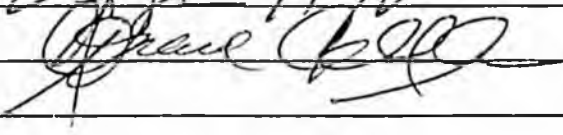
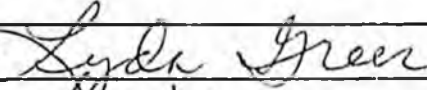
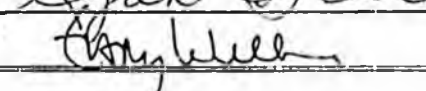
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
DCCED	4/14/05			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
	✓			
COCHAIR: 	✓			
COCHAIR: 	✓			

THE
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FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 175(L&C)
() Publish Date: 4/22/05

Revision Date/Time (Note if correction):
Title Dispensing Opticians
Sponsor Labor & Commerce
Requester Senate Labor & Commerce
Dept. Affected: Commerce
RDU Occupational Licensing (117)
Component Occupational Licensing
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services		3.7	3.7	3.7	3.7	3.7
Travel		0.0	0.0	0.0	0.0	0.0
Contractual		1.3	1.3	1.3	1.3	1.3
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	5.0	5.0	5.0	5.0	5.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	5.0	5.0	5.0	5.0	5.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	5.0	5.0	5.0	5.0	5.0
TOTAL	0.0	5.0	5.0	5.0	5.0	5.0

Estimate of any current year (FY2005) cost: 5.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 175 amends the licensing statutes for Dispensing Opticians by transferring authority for licensing from the Board to the Department. The costs shown above reflect direct costs of licensing that are already included in the FY 2006 Operating Budget request. Although a Board currently exists, the Board has not generated any costs such as travel. Therefore, the amount already in the FY 2006 Operating Budget is not expected to change. New funds are not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone: (907) 465-2144
Division: Occupational Licensing Date/Time: 4/14/05 6:13 PM
Approved by: Edgar Blatchford, Commissioner Date: 4/14/2005
Agency: Commerce, Community, and Economic Development

AMENDMENT

adopted

OFFERED IN THE SENATE
TO: CSSB 175(L&C)

Sponsored by Sen. Green

- 1 Page 2, line 18:
- 2 Delete "the contact lens registry"
- 3 Insert "an [THE CONTACT LENS REGISTRY]"
- 4
- 5 Page 2, line 27:
- 6 Delete "the national opticianry competency"
- 7 Insert "an [THE NATIONAL OPTICIANRY COMPETENCY]"
- 8
- 9 Page 3, line 1, following "documentation":
- 10 Insert "of"

page 2, line 21:

Delete "may"

Insert shall

page 2, line 30

Delete "may"

Insert shall

Page 3, line 15:

delete "and"

insert or

CS FOR SENATE BILL NO. 175(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to dispensing opticians, to dispensing optician apprentices, to the
2 Board of Dispensing Opticians, and to the practice of dispensing opticianry; and
3 providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 08.01.010(16) is repealed and reenacted to read:

6 (16) regulation of dispensing opticians under AS 08.71:

7 * Sec. 2. AS 08.71.055 is amended to read:

8 Sec. 08.71.055. Powers and duties. The department [BOARD] shall have
9 the following powers and duties:

10 (1) to issue licenses to applicants;

11 (2) to renew licenses;

12 (3) to hold hearings and order disciplinary sanctions against a person
13 who violates this chapter or the regulations of the department [BOARD];

14 (4) to supply forms for applications, licenses, and other needed

documents;

(5) to keep a record of all proceedings open to the public, including the name of each license applicant and each licensee;

(6) to enforce the provisions of this chapter and adopt or amend regulations necessary to make these provisions effective.

* Sec. 3. AS 08.71.080 is amended to read:

Sec. 08.71.080. License required. A person may not act as a dispensing optician in the state unless the person is licensed under this chapter. A license shall be issued for (1) a [THE] dispensing optician for [OF] contact lenses, [OR] (2) a [THE] dispensing optician for [OF] other lenses, eyeglasses, [SPECTACLES, ARTIFICIAL EYES,] and their appurtenances, or (3) both. The department [BOARD] shall by endorsement on the license designate for which aspect of dispensing opticianry the license is issued.

* Sec. 4. AS 08.71.090 is amended to read:

Sec. 08.71.090. Examination requirement. To be licensed to act as a dispensing optician for [DISPENSE] contact lenses, a person, unless eligible for licensing under AS 08.71.145, shall provide documentation [DOCUMENT] to the department [BOARD] that the person has passed an [THE CONTACT LENS REGISTRY] examination that the department requires by regulation [OFFERED BY THE NATIONAL CONTACT LENS EXAMINERS] with a score acceptable to the department. For this purpose, the department shall adopt an examination established by a nationally recognized professional organization for contact lens examiners. To [BOARD. IN ORDER TO] be licensed to act as a dispensing optician for [DISPENSE] other lenses, eyeglasses, [SPECTACLES, ARTIFICIAL EYES,] and their appurtenances, a person, unless eligible for licensing under AS 08.71.145, shall provide documentation [DOCUMENT] to the department [BOARD] that the person has passed an [THE NATIONAL OPTICIANRY COMPETENCY] examination that the department requires by regulation [OFFERED BY THE AMERICAN BOARD OF OPTICIANRY] with a score acceptable to the department [BOARD]. For this purpose, the department shall adopt the examination established by a nationally recognized professional

Amendment #1

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1 organization for dispensing opticians examiners. An applicant for licensure in both
 2 areas shall provide documentation of [DOCUMENT] having received a score #1
 3 acceptable to the department [BOARD] on both examinations. The department
 4 [BOARD] shall, by regulation, establish the scores that will be acceptable for the
 5 examinations described in this section.

6 * Sec. 5. AS 08.71.110(a) is amended to read:

7 (a) The department [BOARD] may issue a license to a person who

8 (1) has [HAD EDUCATION EQUIVALENT TO FOUR YEARS
 9 ATTENDANCE AT] a high school diploma or its equivalent;

10 (2) has [EITHER]

11 (A) completed at least 2,000 [1,800] hours of training for
 12 eveglasses or at least 2,000 hours of training for contact lenses as an
 13 apprentice after registering with the United States Department of Labor
 14 [DEPARTMENT] as an apprentice; or <

15 (B) been engaged for at least 2,000 [1,800] hours as a
 16 dispensing [PRACTICING] optician in eveglasses or at least 2,000 hours as
 17 a dispensing optician in contact lenses in good standing in a state, territory,
 18 district, or possession of the United States;

19 (3) has passed the applicable examination required under
 20 AS 08.71.090 with a score acceptable to the department [BOARD];

21 (4) has passed a course designated in the department's [BOARD'S]
 22 regulations as being acceptable; and

23 (5) has paid the required license fee.

24 * Sec. 6. AS 08.71.130(c) is amended to read:

25 (c) If a [THE] license remains lapsed for more than one year, the department
 26 [BOARD] may require the applicant to retake and successfully pass again the
 27 applicable examination or examinations required under AS 08.71.090.

28 * Sec. 7. AS 08.71.130(d) is amended to read:

29 (d) Before a license may be renewed, the licensee shall submit to the
 30 department [BOARD] evidence of continuing competence in optical dispensing as
 31 prescribed by regulations of the department [BOARD].

1 * Sec. 8. AS 08.71.145 is amended to read:

2 Sec. 08.71.145. Licensure by credentials. A person with a valid license as a
3 dispensing optician from another state, territory, district, or possession of the United
4 States with licensing requirements substantially equivalent to or higher than those of
5 this state shall be issued a license under this chapter for those professional areas in
6 which the person is licensed in the other jurisdiction upon payment of any fee and
7 documentation that the department [BOARD] may require by regulation.

8 * Sec. 9. AS 08.71.145 is amended by adding new subsections to read:

9 (b) In addition to licensing under (a) of this section, the department may issue
10 a license to a person to act as a dispensing optician with respect to eyeglasses and
11 lenses, other than contact lenses, and their appurtenances, if the person satisfies the
12 requirements that the department establishes by regulation to protect the public interest
13 and if the person pays the appropriate fee and submits the documentation that the
14 department may require by regulation. For the purposes of this subsection, the
15 department may adopt the designations of a nationally recognized professional
16 organization for dispensing opticians examiners.

17 (c) In addition to licensing under (a) of this section, the department may issue
18 a license to a person to act as a dispensing optician with respect to contact lenses and
19 their appurtenances if the person satisfies the requirements that the department
20 establishes by regulation to protect the public interest and if the person pays the
21 appropriate fee and submits the documentation that the department may require by
22 regulation. For the purposes of this subsection, the department may adopt the
23 designations of a nationally recognized professional organization for contact lens
24 examiners.

25 * Sec. 10. AS 08.71.160 is amended to read:

26 Sec. 08.71.160. Dispensing optician's apprentice. (a) To satisfy
27 apprenticeship training required by AS 08.71.110(a), a [A] person may be
28 employed by [OR SERVE UNDER] a licensed physician, optometrist, or dispensing
29 optician as an apprentice for dispensing optician tasks. An apprentice shall register
30 with the United States Department of Labor [DEPARTMENT] before beginning
31 employment [OR SERVICE] as an apprentice under this subsection [, SHALL BE

1 DESIGNATED AS SUCH IN THE RECORDS OF THE BOARD,) and shall be in
 2 training under the regular supervision of the [A] licensed physician, optometrist, or
 3 dispensing optician. An [NOTWITHSTANDING AS 08.71.180, A REGISTERED]
 4 apprentice registered with the United States Department of Labor may perform
 5 dispensing optician tasks that are delegated by and performed under the regular
 6 supervision of the licensed physician, optometrist, or dispensing optician and may use
 7 the title "dispensing optician apprentice."

8 (b) Not [NO] more than four [TWO] apprentices may be under the direct
 9 supervision of one licensed dispensing optician at the same time.

10 * Sec. 11. AS 08.71.170 is amended to read:

11 Sec. 08.71.170. Prohibited conduct. The department [BOARD] may
 12 revoke or suspend the license of a dispensing optician, or the licensee may be
 13 reprimanded or otherwise disciplined when the department [BOARD] finds, after a
 14 hearing, that the licensee

15 (1) secured a license through deceit, fraud, or intentional
 16 misrepresentation;

17 (2) engaged in deceit, fraud, or intentional misrepresentation in the
 18 course of providing professional services or engaging in professional activities;

19 (3) advertised professional services in a false or misleading manner;

20 (4) has been convicted of a crime that [WHICH] affects the licensee's
 21 ability to continue to practice competently and safely;

22 (5) intentionally or negligently engaged in or permitted the
 23 performance of patient care by persons under the licensee's supervision that [WHICH]
 24 does not conform to minimum professional standards regardless of whether actual
 25 injury to the patient occurred;

26 (6) continued to practice after becoming unfit due to

27 (A) professional incompetence;

28 (B) addiction or severe dependency on alcohol or other drugs

29 that [WHICH] impairs the licensee's ability to practice safely;

30 (C) physical or mental disability;

31 (7) engaged in lewd or immoral conduct in connection with the

1 delivery of professional service to patients;

2 (8) participated in the division, assignment, rebate, or refund of fees to
3 a physician or optometrist in consideration of patient referrals; or

4 (9) advertised the services of any other segment of the healing arts.

5 * Sec. 12. AS 08.71.180 is amended to read:

6 Sec. 08.71.180. **Practicing without a license.** A person may not practice as a
7 dispensing optician without a license issued under this chapter or while the person's
8 license is suspended or revoked. A person who knowingly violates this section is
9 guilty of a class b misdemeanor. In this section, "knowingly" has the meaning
10 given in AS 11.81.900.

11 * Sec. 13. AS 08.71.200 is amended to read:

12 Sec. 08.71.200. **Contact lenses.** Contact lenses shall be fitted in conjunction
13 with and under the supervision of a licensed physician or an optometrist using [AND
14 WITH] a written contact-lens fitting authorization that (1) shows the powers of the
15 sphere and the cylinder and axis location; (2) includes an authorization to fit; and
16 (3) states a requirement that the patient must return to the person who
17 prescribed the contact lenses for a final evaluation after the fitting has been
18 completed [PRESCRIPTION SHOWING THAT THE PRESCRIPTION MAY BE
19 FILLED FOR CONTACT LENSES AND REQUIRING THAT THE PATIENT
20 RETURN TO SEE THE PRESCRIBING PHYSICIAN OR OPTOMETRIST]. In no
21 case may contact lenses be prepared by neutralizing a person's eyeglasses. Duplicate
22 contact lenses may be dispensed, mailed to, or otherwise delivered to a patient
23 from a written contact lens prescription that shows the exact specifications and
24 parameters needed to exactly duplicate the patient's previous contact lenses.
25 Notwithstanding other provisions of this section, contact lenses may not be
26 provided to a patient at a time that is after the expiration of the most recent
27 prescription for the patient unless authorized in writing or orally by the person
28 who issued the prescription [OR SPECTACLES].

29 * Sec. 14. AS 08.01.050(d)(3); AS 08.03.010(c)(9); AS 08.71.010, 08.71.020, 08.71.040,
30 08.71.240(1); and AS 44.62.330(a)(22) are repealed.

31 * Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION PROVISIONS: GENERAL. The department shall carry out the
3 functions of the board on and after July 1, 2005. Litigation, hearings, investigations, and
4 other proceedings pending on July 1, 2005, continue in effect and may be continued or
5 completed by the department. Licenses, certificates, orders, and regulations issued or adopted
6 by the board and in effect on July 1, 2005, remain in effect for the term issued or until
7 revoked, amended, vacated, or repealed by the department. In this section, "board" and
8 "department" have the meanings given in AS 08.71.240.

9 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 TRANSITION PROVISIONS: EFFECT ON CURRENT APPRENTICES.
12 Notwithstanding AS 08.71.110(a), as amended by sec. 5 of this Act, a person who is in an
13 apprentice program under AS 08.71.160, as that section exists before the effective date of this
14 Act, may satisfy the requirements of AS 08.71.110(a), as that section exists before the
15 effective date of this Act, instead of AS 08.71.110(a), as amended by sec. 5 of this Act, in
16 order to become a dispensing optician licensed under AS 08.71, as that chapter is amended by
17 this Act, in this state. In this section "dispensing optician" has the meaning given in
18 AS 08.71.240.

19 * Sec. 17. This Act takes effect July 1, 2005.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 28 April 2005 TIME: 4:45 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please

CS SB 175 (FIN) 24-LS0828\F

Bannister

Plus 1 amendment - attached

Thx

Mindy



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement SB 175 Dispensing Opticians

The legislature created the Board of Dispensing Opticians in 1973 to regulate the practice of opticianry and administer the optician licensing practical examination. In 2002 the legislature repealed the requirement for a practical examination, and legislative auditors then determined that the remaining functions of the board could be more efficiently handled by the Division of Occupational Licensing. So this bill will follow that recommendation and create a smooth transition of oversight from the board to the department.

This bill sunsets the Board of Dispensing Opticians (BDO) and transfers authority for regulating opticians to the Division of Occupational Licensing in the Department of Community and Economic Development. It will continue to license dispensing opticians. It will increase from 2 to 4 the number of apprentices that can work under one licensed optician, optometrist, or medical doctor, allowing for more individuals to enter into the profession. The bill will simplify licensure for opticians wanting to practice in Alaska to do so.

This bill will transfer the administration of the optician's apprenticeship program from the state to the US Department of Labor. USDOL administers a number of apprenticeship programs and the Division of Occupational Licensing will use its standards and requirements as guidelines for issuing licenses to qualified opticians.

We see all these changes as positive moves for the industry, by maintaining quality through licensing and ensuring consumer protection for Alaskans who need eyewear services in our state.

Sponsor Statement



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: LABOR & COMMERCE

Current Version: SB 175

Contact: Jane Alberts, 465-4843

Fact Sheet for: Senate Bill 175

Short Title: DISPENSING OPTICIANS

Summary:

- Sunsets the Board of Dispensing Opticians (BDO) and transfers authority for regulating opticians to the Division of Occupational Licensing in the Department of Commerce, Community and Economic Development.
- Continues licensing for dispensing opticians.
- Increases from 2 to 4 the number of apprentices that can work under one licensed optician, optometrist, or medical doctor.
- Simplifies the process for opticians from other states to be licensed in Alaska.
- Transfers administration of the optician's apprenticeship program from the state to the Department of Labor. USDOL administers a number of apprenticeship programs.

Benefits:

- Keeping the licensure component for opticians protects the consumer purchasing eyeglasses and contacts by ensuring a level of expertise and education within the industry.
- Assists the opticians in a smooth transition from board oversight to the Department of Occupational Licensing.
- Allows more people to enter the profession by increasing the number of allowable apprentices from 2 to 4.

Background:

- The legislature created the Board of Dispensing Opticians in 1973 to regulate the practice of opticianry and administer the optician licensing practical examination. In 2002 the legislature repealed the requirement for a practical examination, and legislative auditors then determined that the remaining functions of the board could be more efficiently handled by the Division of Occupational Licensing. This bill implements that recommendation and creates a smooth transition of oversight from the board to the department.



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Committee Substitute for SB 175/F Dispensing Opticians

VERSION F makes these changes to the bill:

- Page 3, lines 10-11 and 14 –15. Changes hours needed from 1800 to 2000. This change in hours is being made to coincide with the requirements of the U. S. Department of Labor's apprenticeship programs for contact lenses and eyeglasses. Meeting these requirements is necessary because this bill transfers the administration of the optician's apprenticeship program from the Division of Occupational Licensing to the U.S. Department of Labor (page 3 lines 11-12).
- Page 6, Line 28. AS 08.01.010(16) was removed under the repeals section because Section 1 of this bill (page 1 line 5-6) has already repealed and reenacted AS 08.01.010(16).

Sectional Description
SB 175 Dispensing Opticians
(updated 4/22/05)

Section 1 – changes the authority of the Division of Occupational Licensing from regulating the Board of Dispensing Opticians (hereafter “board”) to regulating dispensing opticians.

Section 2 – technical changes replacing “Board” with “department”, thereby implementing the transfer of authority from the board to the division.

Section 3 – drafting stylistic changes and technical amendments – “board” to “department.”

Section 4 – allows the department to rely on nationally-recognized tests to determine if an applicant has met the qualifications of the chapter.

Section 5 – clarifies the educational requirements for licensure by stating that an applicant must have a high school diploma or its equivalent; delineates the practical training or work experience for licensure; and additional technical amendments.

Section 6 – drafting stylistic changes and a technical amendment – “board” to “department.”

Section 7 – technical amendments – “board” to “department.”

Section 8 – technical amendment – “board” to “department.”

Section 9 – adds statutory authority for the division to adopt regulations to allow a person from another state to be licensed as an optician, if they have a professional designation conferred by a nationally recognized professional organization

Section 10 – (a) transfers administration of the optician apprenticeship program to the US Department of Labor. (b) increases from two to four, the number of apprentices that can work under a license.

Section 11 – technical amendments – “board” to “department” and “which” to “that.”

Section 12 – adds “knowingly” standard to violation of practice act provision.

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(2) a person acts “knowingly” with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is

unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance

Section 13 – clarifies the requirements for the prescription, fitting, and sale of contact lenses.

Section 14 – repeals AS 08.01.050(d)(3) which allows the board to request the department to contract with public agencies and private professional organizations to provide assistance and treatment to persons licensed by the board who abuse alcohol, other drugs, or other substances; AS 08.03.010 (c)(9) which establishes the sunset date of the board; AS 08.71.010 which creates the board; AS 08.71.020 which establishes the membership of the board; AS 08.71.040 which sets parameters for the election of officers of the board; AS 08.71.240(1) that defines “board” in chapter 08.71; AS 44.62.330(a)(22) which requires that meetings of the board be conducted in accordance with the Administrative Procedures Act.

Section 15 – transitional language that provides for continued regulation of the optician professions as the regulatory authority passes from the board to the department.

Section 16 – transitional language provides the opportunity for individuals to complete the state administered apprenticeship program in which they are currently registered. New apprentices will register in a program administered by the US Department of Labor.

Section 17 – the effective date provides a smooth transition between the Board of Dispensing Opticians sunsetting on June 30, 2005 and the department assuming the regulation of dispensing opticians on July 1, 2005

To all Legislators of the State of Alaska:

I am an optician who has previously worked in a non-licensed state as a dispensing optician and as an optician in a licensed state. In that time I have seen many differences in the training of opticians and the care of the consumer.

- **The care of the consumer was lacking in the non-licensed state because of the absence of training.**
In the non-licensed state, I worked at a national corporate store where there was no training done. I was handed a job and left alone to do it; only briefly familiar with what I was suppose to do. In the licensed state I also worked at a national corporate store where a formal training program was required as well as the state apprenticeship requirements. I was never left alone and always had a licensed optician there to assist.
- **Verifications of prescriptions were never a done.**
In the non-licensed state they never taught us to verify prescriptions nor did they make it a priority to teach us, causing the consumer and the optician to be only hopeful that they were receiving the correct prescription.
- **I was called an "optician" after receiving only basic retail training, receiving only minimum wages.** I then moved to a licensed state that required education. I was able to go to night school for optics in order to help me pass the state-licensing exam. For the knowledge I acquired, my starting salary was forty percent more than the non-licensed state, allowing me to now own my first home.
- **The retail price for eyeglasses and contact lenses were identical.** Licensing for opticians made no difference in the retail price paid by consumers for the exact same eyeglasses. In the Non-licensed state not only did wages suffer but also the quality of care provided to the consumer.

I moved to a licensed state because I wanted to take my retail job and transform it to a professional career. The only way I was going to accomplish that, and be paid appropriately, was to move where opticians are viewed and educated as professionals. I then chose to move to Alaska because it too is a licensed state. Here I can continue my optical education and perhaps someday specialize in contact lenses. However now, licensing itself is being debated. I moved from a non-licensed state to licensed state to pursue my professional career only to find that perhaps it may once again be just another retail job. If that were to happen I may have to once again consider moving to where my profession is respected.


Shana K Pickford

ABOC, NCLEC

Matt Morookian, ABOM
7401 Florence Cir.
Anchorage AK 99507
1-907-276-1021

Dear Alaska State Legislator:

Regarding the subject of licensing opticians I am writing to implore you to keep licensing a requirement as well as implementing a 2000 to 3000 hour apprenticeship requirement* . License and renewal fees always cover all of the costs**.

I operated my own independent retail optical store in California for over twenty years. There, passing the American Board of Opticianry entry level exam was the only requirement to be permanently certified. Few opticians had a good educational foundation to begin with and far too few invested in ABO certified continuing education once they were certified.

I encountered daily clients who suffered from misinformation about what to expect from their prescription, their particular lens design, their frame fit, and lens options they had chosen at some other supplier. I commonly observed glasses that were below standard due to poor measuring, poor grinding and fabricating and poor fitting. Lenses that conformed to the doctor's prescription (a fact that was always emphasized by the "optician") may have still provided uncomfortable or even unacceptable vision for a myriad of other reasons. The deliverer was often not sufficiently knowledgeable to identify the problem and craft a solution. The client would often be convinced that their result was normal and would therefore tolerate what should not (or at least need not) have been tolerated.

The history of licensing laws in Alaska has allowed me to observe a refreshing difference in the result consumers' get in their glasses and contact lenses. The competence of Alaskan opticians and the improved products that clients receive as the natural result is both appropriate, reasonable and what consumers expect.

Another issue of concern is the education that fills the vacuum when license based education is lost - corporate based education (indoctrination.) Opticians so trained will get maximized emphasis on choices that pertain to profit and minimal or no objective knowledge on issues that conflict with corporate goals.

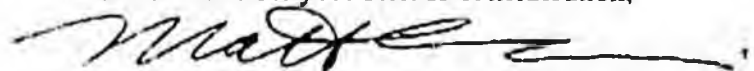
Properly trained and knowledgeable opticians can always offer clients the best and appropriate options. They will avoid incorrect or poor choices, clearly explain the merits and ramifications of various product choices and know to explore possible causes of and solutions to visual distress in new glasses or contact lenses (which often are related to aspects other than the prescription itself!)

We get our hair cut by trained and licensed people (we then leave the shop with...less hair!) Consumers deserve no less from providers of eyewear prescriptions.

Please do not let mandatory licensing end in Alaska. Were that to happen, the quality of glasses and contact lenses in Alaska would on the whole diminish greatly.

Alaskan consumers would suffer the greatest loss.

Sincere thanks for your serious consideration,



Matt Morookian, ABO certified Master Optician

- I believe there is a federal program in place, prepared to oversee this.
- ** For clarification, contact me or board member Larry Harper, also at 1-907-276-1021.

Public Opinion Message

Mat-Su Legislative Information Office (LIO)
 660 E Railroad Ave Wasilla AK 99654 • Phone: 376-3704 Fax: 376-6180

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

From: Please PRINT the information below. This form must be signed by the sender.

Mr. / Ms. / Mrs.	First name	M.I.	Last name	Dr. / Mr. / Ms.
Mrs	Randi	L	Wright	
Group affiliation (if appropriate)				Phone number (Area)
State of Alaska Dispensing Optician Apprentice				907 376 0835
Mailing address				Zip code
PO Box 520724 Big Lake, AK				99652
Residence (street address if different from mailing address)				Zip code
13666 Klutina Dr Big Lake, AK				99652
Email address				Date
Randi Wright				4-27-05

To: Put a ✓ in the appropriate box(es).

Committees		House members		Senate members	
H or S					
<input type="checkbox"/>	Community & Regional Affairs (cra)	<input type="checkbox"/>	Anderson (ade)	<input type="checkbox"/>	Bunde (bun)
<input type="checkbox"/>	Finance (fin)	<input type="checkbox"/>	Berkowitz (ber)	<input type="checkbox"/>	Cowdery (cwy)
<input checked="" type="checkbox"/>	Health, Ed., & Social Services (hes)	<input type="checkbox"/>	Chenault (che)	<input checked="" type="checkbox"/>	Davis (dav)
<input type="checkbox"/>	Judiciary (jud)	<input type="checkbox"/>	Ciasna (cia)	<input type="checkbox"/>	Dyson (dys)
<input checked="" type="checkbox"/>	Labor & Commerce (l&c)	<input type="checkbox"/>	Coghil (cog)	<input type="checkbox"/>	Ellis (eli)
<input type="checkbox"/>	Resources (res)	<input type="checkbox"/>	Crawford (cra)	<input type="checkbox"/>	Eaton (eat)
<input type="checkbox"/>	Rules (ria)	<input type="checkbox"/>	Crott (cro)	<input type="checkbox"/>	French (fre)
<input type="checkbox"/>	State Affairs (sta)	<input type="checkbox"/>	Dahlstrom (dal)	<input type="checkbox"/>	Green (gre)
<input type="checkbox"/>	Transportation (tra)	<input type="checkbox"/>	Elkins (eln)	<input checked="" type="checkbox"/>	Guest (gue)
<input type="checkbox"/>	Other:	<input type="checkbox"/>	Foster (fos)	<input type="checkbox"/>	Haffner (haf)
<input type="checkbox"/>	Other:	<input checked="" type="checkbox"/>	Gara (gar)	<input type="checkbox"/>	Huggins (hug)
		<input type="checkbox"/>	Gardner (gas)	<input type="checkbox"/>	Kooken (koo)
		<input checked="" type="checkbox"/>	Gallo (gal)	<input type="checkbox"/>	Olsen (ols)
		<input type="checkbox"/>	Gruenberg (gru)	<input type="checkbox"/>	Robinson (rob)
		<input type="checkbox"/>	Guttenberg (gt)	<input type="checkbox"/>	Seaton (sea)
		<input type="checkbox"/>	Harris (har)	<input type="checkbox"/>	Samuels (sam)
		<input type="checkbox"/>	Hawker (haw)	<input type="checkbox"/>	Seaton (sea)
		<input type="checkbox"/>	Holm (hol)	<input type="checkbox"/>	Slatzke (slz)
		<input type="checkbox"/>	Joule (jou)	<input type="checkbox"/>	Thomas (thm)
		<input type="checkbox"/>	Kapsner (kap)	<input type="checkbox"/>	Weybrauch (weh)
				<input type="checkbox"/>	Wilson (wil)

Subject: Fill out the boxes below OR enter a Subject.

HB or SB	Bill number	and check one:	<input checked="" type="checkbox"/> Support	OR	enter a general Subject
SB	175		<input type="checkbox"/> Oppose		(LIO staff may modify)
			<input type="checkbox"/> Amend		

Message: Your PRINTED message cannot exceed 50 words or contain any vulgar language.

To	get	rid	of	State
licensing	for	opticians	would	do
a	great	diservice	to	our
patients	work	wear	glasses	and
contacts.				

SB 175

Public Opinion Message

Mat-Su Legislative Information Office (LIO)
508 E Redwood Ave West Anchorage AK 99504 • Phone: 376-3763 Fax 376-6180

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

From: Please PRINT the information below. This form must be signed by the sender.

Mr./Ms./Mx.	First name	Initials	Last name	Date
Mrs	Diana	L	Council	
Occupation (if applicable)				
Licensed Optician = State of Alaska				
Mailing address				Zip code
11707 E Loretta Circle Palmer Alaska				99645
Address (if not same as mailing address)				
Same				
E-mail address				Date
Diana L. Council				7-27-05

To: Put a ✓ in the appropriate box(es).

Committees	House members	Senate members
<input type="checkbox"/> H 901	<input type="checkbox"/> Anderson (ada)	<input checked="" type="checkbox"/> Kelly (kai)
<input checked="" type="checkbox"/> Community & Regional Affairs (cra)	<input type="checkbox"/> Bertelsen (ber)	<input checked="" type="checkbox"/> Kerkula (ker)
<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Chensell (che)	<input checked="" type="checkbox"/> Kohring (koh)
<input type="checkbox"/> Health, Ed., & Social Services (hes)	<input type="checkbox"/> Cleane (cle)	<input checked="" type="checkbox"/> Kollner (kol)
<input type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Coghill (cog)	<input checked="" type="checkbox"/> Ledoux (leu)
<input type="checkbox"/> Labor & Commerce (l&c)	<input type="checkbox"/> Crawford (cra)	<input checked="" type="checkbox"/> Lynn (lyn)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Croft (cro)	<input checked="" type="checkbox"/> McClure (mcc)
<input type="checkbox"/> Rules (ru)	<input type="checkbox"/> Dahlgren (dal)	<input checked="" type="checkbox"/> Meyer (mey)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Eitene (eit)	<input checked="" type="checkbox"/> Meeks (mee)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Foster (fos)	<input checked="" type="checkbox"/> Neuman (neu)
<input type="checkbox"/> Other:	<input type="checkbox"/> Gars (gar)	<input checked="" type="checkbox"/> Olson (oll)
<input type="checkbox"/> Other:	<input type="checkbox"/> Gardner (gar)	<input checked="" type="checkbox"/> Rasmus (ras)
	<input type="checkbox"/> Gale (gal)	<input checked="" type="checkbox"/> Ratzberg (rat)
	<input type="checkbox"/> Gruenberg (gru)	<input checked="" type="checkbox"/> Salvo (sal)
	<input type="checkbox"/> Gullenberg (gul)	<input checked="" type="checkbox"/> Sarnelle (sar)
	<input type="checkbox"/> Harris (har)	<input checked="" type="checkbox"/> Seaton (sea)
	<input type="checkbox"/> Hewler (hew)	<input checked="" type="checkbox"/> Skille (skl)
	<input type="checkbox"/> Heim (hei)	<input checked="" type="checkbox"/> Thomas (tho)
	<input type="checkbox"/> Jovic (jov)	<input checked="" type="checkbox"/> Weyrauch (weh)
	<input type="checkbox"/> Kasper (kas)	<input checked="" type="checkbox"/> Wilton (wit)

Subject: Fill out the boxes below OR enter a Subject.

HB or SB	Bill number	and check one:	<input checked="" type="checkbox"/> Support	OR	enter a general Subject (LIO staff may modify):
SB	175		<input type="checkbox"/> Oppose		
			<input type="checkbox"/> Amend		

Message: Your PRINTED message cannot exceed 50 words or contain any vulgar language.

YOU	Need	a	Licensed	Optician
To	fill	a	Doctors	prescription
without	Licensing	who	will	put
integrity	and	responsibility	on	the
line	In	most	instances,	Blind
is	forever.	The	need	for
glasses	or	Contacts	is	a
medical	Necessity.	Treat	it	as
Such.		Thank	you.	

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 4/14/05

FURTHER: Finance

Date of 5-Day Notice: 3/31/05
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 4/22/05

Labor and Commerce Committee considered SENATE BILL NO. 175

SB 175 DISPENSING OPTICIANS

"An Act relating to dispensing opticians, to dispensing optician apprentices, to the Board of Dispensing Opticians, and to the practice of dispensing opticianry; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 175 _____ (LEC)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DCEd		✓			1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		Do PASS	Do NOT PASS	NO REC	AMEND
Davis	<i>Bettye Davis</i>	X			
Ellis	<i>[Signature]</i>			X	
Seekins	<i>Kalpy Seekins</i>	✓			
B. Stevens	<i>Ben Stevens</i>	X			
Bunde	CHAIR: <i>[Signature]</i>	✓			

Audit Report

DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DISPENSING OPTICIANS
SUNSET REVIEW

October 2, 2003



Audit Control Number:

08-20022-03

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site <http://www.legaudit.state.ak.us/>

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Representative Mike Hawker
Representative Beth Kerttula
Representative Vic Kohring
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Senator Lyda Green (alternate)

DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA
Legislative Auditor

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Juneau, AK 99811-3300

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(907)561-1445, Anchorage
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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300

Juneau, AK 99811-3300

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legaudit@legis.state.ak.us

October 2, 2003

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DISPENSING OPTICIANS
SUNSET REVIEW

October 2, 2003

Audit Control Number
08-20022-03

This audit was conducted as required by AS 44.66.050 and under 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)(9), the Board of Dispensing Opticians is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Dispensing Options should not be extended. As discussed in the Report Conclusions section, various changes made in the opticianry statutes in 2002 have led to a situation that makes the board's long-term viability problematic. We recommend the legislature consider a registration process for opticians, but not extend the termination date and allow the board to go into its one-year wrap-up period.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson 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, we have reviewed the activities of the Board of Dispensing Opticians (BDO) to determine if the termination date for the board should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if BDO should be reestablished. Currently, AS 08.03.010(c)(9) specifies that BDO will terminate on June 30, 2004. If no action is taken by the legislature, the board will have one year from that date to conclude its administrative operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed opticians.
4. To assess and report on the board's response to legislative concerns regarding use of, and alternatives to, a practical examination for licensing applicants as opticians.
5. To assess and report on actions taken in response to legislative concerns about charging licensees adequate licensure fee, to cover the operating expenses of board.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulations related to the licensing of Dispensing Opticians and the registration of optician apprentices.
- Files and documentation related to individuals licensed as dispensing opticians and dispensing optician apprentices.
- Files and documentation related to individuals who applied for licensure as a dispensing optician.
- Minutes of board meetings, budget documents, and annual reports related to, or issued by, BDO.
- Annual reports issued by the board.
- Complaints filed with the Division of Occupational Licensing.

Additionally, we conducted interviews with Division of Occupational Licensing staff, a program manager with the U.S. Department of Labor, and members of the board, including the current board chair.

ORGANIZATION AND FUNCTION

Alaska Statute 08.71.010 establishes the Board of Dispensing Opticians (BDO). The board consists of five members, specified in statute to be made up of four licensed opticians and one public member appointed by the governor.

The board regulates the practice of Opticianry. BDO sets the minimum standards to practice in Alaska by:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none">1. Registering dispensing optician apprentices.2. Licensing opticians through examination or credentials.3. Establishing, amending, or eliminating regulations that affect the standards of professional opticianry practice.4. Taking disciplinary actions in accordance with the Administrative Procedures Act when a person has violated dispensing opticians' statutes or regulations. | <hr/> <p><u>BOARD OF DISPENSING OPTICIANS</u>
<i>(As of June 30, 2003)</i></p> <p>James D. Rothmeyer, Optician, Chair</p> <p>Larry E. Harper, Optician</p> <p>David G. Matthews, Optician</p> <p>Roberta (Bohbie) Rawcliffe, Public Member</p> <p>Cindy S. Tidd, Optician</p> <hr/> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Licensed dispensing opticians, from a commercial perspective, are 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 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 affiliated with optometrists or ophthalmologists.

Department of Community and Economic Development (DCED), Division of Occupational Licensing (OceLic)

The Department of Community and Economic Development (DCED), Division of Occupational Licensing (OceLic), provides administrative and investigative assistance to the Board of Dispensing Opticians. This includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065 mandates DCED, with the concurrence of the board, to adopt regulations establishing the amount and manner of payment for application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers OccLic with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In 2002 the legislature extended the termination date of the Board of Dispensing Opticians (BDO) for only two years to June 30, 2004. This reflected the legislature's concern regarding various aspects of the board's operations and enabling statutes. These concerns were set out in both the 2002 legislation extending the termination date of the board and a letter of intent from the House Labor and Commerce Committee. We incorporated these issues into the scope of this sunset review and present conclusions regarding how the board responded to these specific legislative concerns.

As discussed in the box below, the legislature was concerned about the board not setting fees high enough to cover operating costs. Additionally, the legislature wanted BDO to research and report on options for conducting a practical examination for licensure as a dispensing optician.

Practical examination eliminated

A BDO subcommittee researched and analyzed alternatives for the practical examination. In addition to revising the state practical exam to make it more objective, the subcommittee reviewed other alternatives including the purchase of exam and grading services from a private sector contractor.

Eventually, consideration of these alternatives was abandoned. BDO essentially decided to acquiesce to the legislature's decision when it repealed the requirement of applicants to pass a practical examination for optician licensure. This action was taken as part of the 2002 sunset extension legislation. No final report was completed for submission to the Chair of the House Labor and Commerce Committee or the Legislative Auditor – as was required in the original letter of intent.

In place of the state practical exam, dispensing optician candidates now must pass, with a score acceptable to the board, the National Contact Lens Examiners (to dispense contacts) and the National Opticianry Competency exam (to dispense spectacles).

Legislature Concerned about Fees, Costs, and Examination Requirements

Section 1 of Chapter 58, SLA 2002 set out the following legislative findings and intent:

- a. The legislature finds that the Board of Dispensing Opticians has not collected sufficient fees to cover its costs and may not have been complying properly with AS 08.01.065(c).
- b. It is the intent of the legislature that during the next review of the board under AS 44.66.050, an analysis and determination be made about the extent to which the board is complying with AS 08.01.065(c) and what factors, if any, hamper the board's ability to cover its costs with fee collections.

A letter of intent issued by the House Labor Commerce Committee and attached to the legislation specified the:

*Board of Dispensing Opticians
research the options for conducting
a practical examination for licensure
as a dispensing optician. ...*

Despite large fee increases, BDO is currently, and prospectively will remain, in deficit

The board has been in a deficit position since FY 98. As reflected by the schedule on page 18 of this report, at the end of FY 03 the cumulative deficit was over \$22,000.¹

In recent years, relatively large increases in costs identified as "contractual" have had a significant impact to the continuing deficit. Most recently in FY03, BDO spent over \$3,800 for one-time examination fees to the National Academy of Opticianry and the Contact Lens Society of America. In the same fiscal year, the board spent almost \$3,000 on advertising and printing services which were primarily due to changes made in the regulations. Significant changes of this sort typify the unpredictable nature of contractual costs thus making fee setting difficult.

The department and board took action to reduce the cumulative deficit by increasing biennial licensing fees for both dispensing opticians and optician apprentices.² For the renewal period starting July 2003, fees for dispensing opticians and optician apprentices increased by \$210 (55%) and \$150 (300%), respectively. The FY 03 license renewal fees for opticians were \$590, up from the previous level of \$380. Prospectively, at this time BDO is facing renewal fees ranging from \$800-\$1,000 for the upcoming renewal cycle in June 2005 to eliminate the deficit and cover annual board operating costs.

Optimistically assuming that revenues for the next two years remain the same, and expenditures are reduced by 20%, BDO will still be facing a substantial continuing deficit at the end of the next biennial renewal period (2005). Given this conservative projection the Division of Occupational Licensing (OccLic), in conjunction with BDO, will need to increase fees to come into compliance with AS 08.01.065(c). For further discussion of this concern, see Recommendation No. 2.

Registration and reliance on national examination may be a viable licensing alternative

Under AS 44.66.050(d)(4) part of a sunset review is to provide "*an assessment of alternative methods of achieving the purposes of the program.*" In the prior audit we considered the

¹ Since licenses are renewed every two years, revenues generated by renewal fees alternate between high and low years. In license renewal years, the board does cover its operating costs, although the cumulative deficit continues. In the low revenue, non-renewal, years the costs are such that the deficit grows. Prior to the collection of biennial licensing renewal fees in FY 03, the board's cumulative deficit was \$38,700.

² The cumulative deficit decreased by approximately \$16,300 from FY 02 to FY 03.

merits of regulating opticians through a registration process and placing primary reliance on the successful completion of nationally recognized examinations to ensure competency.³

Most states do not “regulate” or license opticians at all. According to the Opticians Association of America, only 22 states license dispensing opticians.⁴ Texas has a voluntary registration program – which allows the individual to advertise as a “registered optician” if they have met certain established criteria related to competency.⁵ Such an approach may be a viable alternative for Alaska.

Under this approach an individual could advertise as being a registered optician, once they provided proof to OccLic that they had met the necessary testing and continuing education requirements. Presumably, such designation would have some commercial advantages, assuring consumers the practitioner had met an established standard of competency.

Changing over to a registration, rather than licensing, process would not necessarily result in the disappearance of the optician profession and its related services. The scope of practice for opticians, to a large extent if not completely, falls within the purview and scope of optometrist and ophthalmologist professions.⁶ Given such circumstances, jurisdictions in which opticians are not licensed or registered still have opticians working – often in conjunction with licensed optometrists.

Termination date for the board should not be extended

BDO is serving a public purpose by promoting the competent and safe practice of opticianry. The board does this by: establishing standards for licensed professionals; monitoring the manner in which they practice; and, has carried out these responsibilities in a satisfactory manner. A licensed optician provides enhanced quality control in the dispensing of spectacles and contact lenses. Having an individual with the training to evaluate the

³ The American Board of Opticianry (ABO) and the National Contact Lens Examiners are national, nonprofit organizations which conduct voluntary certification programs for dispensing opticians. The examination given by ABO measures the basic knowledge required to dispense eyeglasses safely and effectively. While there are no prerequisites to take the examination, the ABO comments that candidates with two to three years of full-time, board-based, hands-on experience, or with formal optical schooling, are more successful in passing the examination.

⁴ Information from the internet website maintained by the Opticians Association of America is at: <http://www.oaa.org/navbar/4oaa-members/8license/index.htm> (September 13, 2003)

⁵ An individual is allowed to register as an optician upon demonstrating they have seven classroom hours of recognized training prior to submitting a registration application and they had taken and passed, either or both, of the ABO examination or the National Contact Lens Examiners examination. See: <http://www.tdh.state.tx.us/hcqs/plc/optician.htm#requirements> (September 13, 2003)

⁶ This situation is explicitly recognized in state law at AS 08.71.230(1) which states no part of the optician licensing statute is to be construed as limiting or restricting “a licensed physician or optometrist from the practices enumerated in [the opticianry statutes], and each licensed physician and optometrist has all the rights and privileges which may accrue under [the statutes] to dispensing opticians....”

prescription of lenses – either eyeglasses or contact lens – and assisting in the proper fitting is a valuable, though not essential, service to the public.

As reflected in both the Auditor Comments and Findings and Recommendations sections of this report, the future operational viability of the board is questionable. In the long term, the number of new applicants seeking licensure as opticians may be reduced significantly due to creation of the optician assistant designation. Combined with fiscal instability involving operating costs, the long-term viability of the board is problematic. Given these concerns, we recommend the legislature not extend the termination date for the board.

In our view, the public can be adequately protected by competition in the marketplace, ongoing supervision of assistants, or professional standards already established for practicing opticians and ophthalmologists.

By not passing any extension legislation, BDO would go into a wrap-up phase. In the one-year wrap-up period, we recommend that the board formally recognize the U.S. Department of Labor (USDOL) apprentice program in regulation – as a means for individuals to continue training to be opticians – under the supervision of practicing opticians.

Additionally, during this wrap-up period, the legislature may want to consider putting a registration system in place. Such a process would allow individuals who have passed one or both of the national licensing examinations to show proof and obtain an “endorsement” from the State of Alaska – allowing them to advertise as a registered optician. The statute could require the optician to renew their registration every two years by showing proof they have obtained a required amount of continuing professional education.

AUDITOR'S COMMENTS

In 2002 the legislature, in the process of extending the termination date of BDO, made a small but important change to the opticianry statutes. The legislature created a statutory designation of optician assistant, in addition to the paraprofessional optician apprentice that was already recognized in law.

Previously, eyewear salespersons, termed stylists, had to register as an apprentice

The number of individuals registered as optician apprentices have always been very disproportionate to the number of apprentices who eventually sought licensure as opticians. In recent years, there have been almost 200 registered apprentices on record at the Division of Occupational Licensing (OccLic); but, each year only four or five, at most, would apply to take the optician licensing examination.

This situation developed from the statutory requirement that all nonlicensed personnel, involved in fitting eyewear in optical shops, had to be registered as an optician's apprentice. This registration was required whether the customer sales representative, or as they are often referred to as "stylists," worked for an optician, optometrist, ophthalmologist, or a large nationally-affiliated chain store. As a result, individuals who had little or no interest in becoming a licensed optician had to register as an apprentice.⁷

Key distinction between apprentices and assistants involve standards of supervision

BDO wanted to be sure apprentices were supervised appropriately. The general intent of this public policy was apprentices would someday be licensed opticians and it was important they be appropriately supervised by whatever professional was responsible for providing the oversight. Accordingly, BDO adopted specific requirements⁸ about supervision, requiring the professional involved:

- (1) be physically present at the same site as the apprentice at least once per day and not be absent for more than two hours while the apprentice is performing dispensing optician tasks;*

⁷ The statutory designation of an optician assistant has had an immediate impact on the number of individuals registering as a dispensing optician apprentice. In FY 00 through FY 02, the number of individuals registering as apprentices averaged 35 each year. In FY 03 the number of individuals registering as an apprentice decreased to eleven (11). The decrease of registered apprentices is substantial, but the financial impact will be minimal because of higher apprentice registration fees.

⁸ See regulations at 12 AAC 30.125.

(2) frequently observe and review performance of assigned tasks; and,

(3) ensure correct performance of assigned tasks.

These requirements, especially the regulation requiring the supervising professional to be physically present on the premises for a specific period of time, are much more restrictive than the standards applicable to the new optician assistant designation.

Under the 2002 amendments to the opticianry statutes, assistants must be supervised to the extent necessary to provide "*needed direction, control, consultation, instruction, evaluation and personal inspection of the work performed.*"⁹ This statutory language gives the supervising professional much more discretion in the supervision of assistants than they have under BDO regulations for apprentices.

Relaxed supervision standards may lead to less demand for opticians, devaluing licensure

Most licensed opticians in Alaska are employed by, or are a contractor with, other eye care professionals – optometrists and ophthalmologists. A current board member has estimated that as many as 80% of opticians work for, or in conjunction with, these other two eye care professionals. One reason that many of these opticians are employed in such settings is this arrangement allows an optometrist or ophthalmologist to meet supervision requirements for apprentices in the selling and fitting of eyeglasses and contact lenses.

Under the new state law, an optometrist or ophthalmologist can employ and designate stylists and customer service representatives as assistants while reasonably asserting they provide the necessary "*direction, control, consultation, instruction...*" over the phone, by e-mail, or with intermittent face-to-face contact. Such an arrangement eliminates the need to be physically present or to rely on another qualified supervising professional such as an optician. As a result, optometrists and ophthalmologists have less incentive to hire or contract with an optician.

Less demand and high licensing fees may lead to many opticians opting out of licensure

The creation of the optician assistant designation will likely serve to undercut the need for apprentices and, in the long run, may substantially reduce the number of people seeking to be licensed as a dispensing optician. The reduced supervision standards for assistants, coupled with the prospect of continued large increases in licensing fees, may lead to a situation where currently-licensed opticians no longer see the value of remaining licensed. Additionally, in the long term, such disincentives would further discourage interested individuals from enrolling in apprentice programs – further reducing the prospective number of individuals seeking licensure.

⁹These supervision standards are set out in state law at AS 08.71.240(4).

Optician license devaluation seems to have little adverse effect on public health and welfare

Given the scenario previously discussed, our overarching concern is what impact, if any, does the opticianry statute changes have on the health, safety, and welfare of the public. Based on the number and type of complaints often made to OccLic, there is no obvious direct impact. We reviewed investigative case-file summaries for both the Board of Dispensing Opticians and the Board of Optometric Examiners for FY 02 and FY 03. There is no evidence showing that a minimally-supervised assistant's services as being inferior to those services provided by licensed opticians or registered apprentices.

The harm that unlicensed opticians can potentially cause the public does not appear to warrant state licensure. The presence of licensed opticians and well-supervised apprentices can save the public from loss of time, money, and general aggravation involved with making return visits to a prescribing professional to remedy improperly fitted glasses. However, the avoidance of these costs, discomforts, and hassles does not necessarily warrant state licensure and oversight.

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FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (BDO), we believe it is important for the board to take the following two actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing.

When the 2002 legislature extensively revised the opticianry statutes, there were a few sections in the new statute that left inconsistent or vague requirements in place. We suggest BDO review these various sections of the statute. From this review, the board should develop proposed legislation to amend or delete these sections to better reflect current practices, regulations, and achieve the intended policy objectives. Specifically, we recommend review and revisions involving:

1. The amount of apprentice training hours necessary for licensure should be clarified. Currently, AS 08.71.110(a)(2)(A) states an individual must complete "*at least 1,800 hours of training as an apprentice...*" in order to qualify to receive a license from the board. In regulation, BDO specifies¹⁰ the individual complete a board-approved course, accumulate 1,800 hours of training, and pass the necessary examinations to be licensed in dispensing spectacles.

The regulations also state that in order for an individual to be licensed to dispense contact lenses they must complete an additional 1,800 hours and pass the relevant national examination. State law makes no distinction related to these endorsements. Under a plain reading of state law, an individual can be licensed as a dispensing optician with no reference to any limitation on what they can dispense and with 1,800 hours of apprentice training. This is not consistent with state regulation that requires 3,600 hours for full endorsement.

This discrepancy could lead to a situation where an individual, who met other licensing requirements including successful completion of required national examinations, can claim endorsements to dispense both contact lenses and spectacles after just 1,800 hours of apprentice training. The board could be open to legal action if it tried to enforce its regulatory requirements on such an individual. Since the change in the law, no one applying for licensure has challenged the board regarding this discrepancy.

As we recommended in the prior sunset review, the board, in conjunction with the legislature, reevaluated the reasonableness of the amount of apprenticeship training

¹⁰See regulations at 12 AAC 30.075.

necessary for licensure and significantly reduced the amount of apprentice training time required. Compared to the previous apprentice training requirement of 6,000 hours that the board had in place prior to FY 03 and the apprenticeship periods found in other jurisdictions, we agree the 3,600 hour requirement for both endorsements is a reasonable requirement.

The wording of the current statute does not clearly specify that 1,800 hours are required for each licensure endorsement. This leads to situations where the statute and the regulation are not congruently matched. The board should adopt language to clarify the apprenticeship training requirement, especially as it relates to the minimum number of training hours necessary for each type of endorsement.

2. Modification of apprentice registration requirements at AS 08.71.160. The creation of the optician assistant has had a significant impact on the opticianry profession. The impetus behind the change was to reduce the number of registered apprentices and associated board costs. The optician assistant position helped to accomplish those goals by segregating individuals who previously registered because it was a job requirement from those seeking professional licensure. The anticipated results from the statutory changes were evidenced by the immediate decrease in numbers of registered apprentices (66%) and a reduction of associated board costs, albeit slight. However, the continuing, apprentice registration requirements result in unnecessary administrative duties and costs to the board. This is especially true in light of the development of the U.S. Department of Labor (USDOL) optician apprenticeship program.

Since the 2002 legislative changes to the opticianry statutes, the board, in conjunction with USDOL officials, has developed and implemented a dispensing optician apprentice program. USDOL administers the program; the Opticians Association of Alaska is the sponsor. The program was designed specifically to meet Alaska's dispensing optician statutory and regulatory requirements. There are many advantages of the apprentice program including specific training guidance for individuals seeking licensure as a dispensing optician, better prepared optician candidates, and for employers, access to federal grants to help offset the cost of the apprentice. Currently, individuals must register with the state; however, USDOL registration and participation in the apprenticeship program is optional.

The board should modify the apprentice registration statute by adding a requirement in the opticianry regulations that apprentices register with USDOL and complete the optician apprenticeship program. Implementation of such changes will eliminate all administrative duties and costs to the board relating to apprentice registration. The USDOL program has been designed to meet the state's statutory and regulatory requirements. Additionally, the structure of the newly-designed apprentice program will facilitate a better prepared and more competent dispensing optician candidate. It should be a requirement that apprentices register with and participate in the USDOL program and the state requirement for apprentices to register should be eliminated.

3. Recognition, in statute, of a process to license individuals from other jurisdictions. Currently, an individual from another jurisdiction with licensing requirement experience that is less than Alaska requires, can only obtain licensure by participating in the state's apprenticeship process. This puts an undue burden on qualified individuals, new to the state, who worked in the profession for several years.

BDO has suggested that if individuals pass the American Board of Opticianry (ABO) master-level examination, the board would be willing to license these individuals to practice in Alaska. This testing is appropriate for individuals who possess dispensing optician experience gained in another jurisdiction that has licensing requirements less stringent than those required in Alaska.

Since more than half of the states do not license opticians, many individuals practicing in these states are often permitted to call themselves opticians by virtue of passing a national licensing examination. Because these individuals would not easily qualify for licensure in Alaska under the current statute, this represents a significant barrier for entry into the profession. Allowing these individuals to be licensed, by virtue of successfully completing the ABO advanced exam, BDO can make the profession more accessible while ensuring the individual possesses the necessary competence to practice.

Recommendation No. 2

The Division of Occupational Licensing (OccLic), in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit.

As discussed in the report conclusions section of this report, it is clear another increase in opticianry licensing fees is necessary to eliminate the cumulative deficit and meet annual operating costs of the board. Licenses are renewed every two years; therefore, the revenue generated in the renewal year must be sufficient to fund most of the board's costs for the nonrenewal or subsequent year. The recent increase in licensing renewal fees for dispensing opticians and optician's apprentices appears to be sufficient to cover the board's costs for the two-year period. Depending on the amount of revenue collected in the nonrenewal year, the increase licensing fee may also reduce a small portion of the board's continuing deficit.

BDO members object to some of the charges made to the board by Department of Law (DOL). In recent years DOL charged BDO with litigation costs it incurred relating to a national contact lenses distribution case. BDO reports DOL pursued this matter unilaterally, with no direction or request from the board. Although these charges to the board may have been services not approved by the board, they do not contribute significantly to the cumulative deficit.¹¹ The major contributing factor to the deficit is board costs have exceeded license renewal fees without BDO instituting necessary fee adjustments to cover costs. As a result, the deficit has continued to grow for several years.

¹¹ In FY 00 and FY 01, there were no charges from the Department of Law. In FY 02 and FY 03, legal costs were approximately \$5,500 and \$1,100, respectively.

Without further increases to the renewal licensing fee for dispensing opticians, the cumulative deficit will remain and the board will likely meet annual operating costs – only.

Alaska Statute 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs for the occupation. We recommend that the board and OccLic review the regulatory costs and licensing fees to ensure that BDO licensing fees are sufficient eliminate the cumulative deficit and to meet annual operating costs.

ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). 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.

The Board of Dispensing Opticians (BDO), by implementation of prior audit recommendations, has operated in the public interest. The current BDO is responsive to outside suggestions and is conscientious of its fiduciary responsibilities. Further, BDO, in conjunction with USDOL, has developed and implemented an optician apprenticeship program. As discussed in Recommendation No 1 we encourage the board to mandate adoption of the USDOL apprenticeship program to replace the current state apprentice registration process.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Most of BDO's revenue is from certification, licensing, and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BDO receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the OccLic for revenues and expenditures associated with BDO. We did not audit this information, but present it below for general information purposes.

Alaska Statute 08.01.065(c) requires " ..that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." As the schedule on the next page reflects, the board was running a substantial deficit at the end of FY 03. As discussed in Recommendation No. 2, the Division of Occupational Licensing should increase fees substantially to bring BDO into compliance with state law.

State of Alaska
Board of Dispensing Opticians
Schedule of License Revenues and Board Expenditures
FY 00 - FY 03
(Unaudited)

	<u>FY 03</u>	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>
Revenue	\$ 46,500	\$ 17,300	\$ 32,700	\$ 11,800
Direct Expenses				
Personal Services	13,900	19,200	14,200	16,500
Travel	1,300	2,600	3,400	4,800
Contractual	9,300	8,900	2,900	2,300
Supplies	200	-	100	-
Equipment	-	-	-	-
Total Expenses	<u>24,700</u>	<u>30,700</u>	<u>20,600</u>	<u>23,600</u>
Indirect Expense	<u>5,500</u>	<u>3,800</u>	<u>4,900</u>	<u>5,000</u>
Total Expenses	<u>30,200</u>	<u>34,500</u>	<u>25,500</u>	<u>28,600</u>
Annual Surplus (Deficit)	<u>16,300</u>	<u>(17,200)</u>	<u>7,200</u>	<u>(16,800)</u>
Beginning Cumulative Surplus (Deficit)	<u>(38,700)</u>	<u>(21,500)</u>	<u>(28,700)</u>	<u>(11,900)</u>
Unallocated Administrative Indirect Revenue	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Ending Cumulative Surplus (Deficit)	<u>\$ (22,400)</u>	<u>\$ (38,700)</u>	<u>\$ (21,500)</u>	<u>\$ (28,700)</u>

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 that it has provided.

All of BDO's board meetings had time available for public comment.

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

BDO, while not necessarily endorsing the statutory changes made by the 2002 legislature, did work constructively with legislative staff to develop changes in state law related to the opticianry profession.

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

The location, date, and time of upcoming meetings and exams were advertised in Alaskan newspapers, as well as on the Board of Dispensing Opticians' web page with adequate time for interested individuals to attend or to submit written comment for review. The board's meeting agenda sets aside suitable time for the board to receive public comment. Minutes from the meetings of the board reflect public participation at various meetings.

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 victims' rights or the office of the ombudsman have been processed and resolved.

During the 48-month period from July 1, 1999 through June 30, 2003, OccLic opened eight investigative cases related to individuals certified by the board. None of the cases involved complaints made by clients or individuals from the general public. Six of the complaints were opened by OccLic as a result of a site visit/shop inspection. One of the complaints was made by an optometrist. Only one complaint appears to have originated from a member of the general public. Five of the complaints involved unlicensed practice by dispensing opticians, three of which were optician apprentices.

Of the seven cases closed as of the date of our review, two resulted in licensure action involving Memorandums of Agreement. Of the remaining cases, one was closed finding no violation, three were closed with warnings issued by BDO, and one by compliance. The one case not closed, as of the date of our review, is still being actively investigated even though it was opened in May 2001.

We have reviewed the nature and extent of complaints filed involving dispensing opticians. In our view OccLic, in conjunction with the BDO, has proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

There were no complaints filed with the Office of the Ombudsman or the Office of Victims' Rights for the period under review.

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

The table below summarizes licensing activity for the prior four fiscal years, listing the number of new licenses issued each year for each license type, as well as the total number of current certificates. The number of individuals registering as dispensing opticians has remained stable, while the number of apprentice registrants has decreased significantly as a result of Chapter 58 SLA 2002 (see discussion in both Auditor Comments and Report Conclusions section of this report).

	New Licenses Issued				Total Current Licensees/ Registrants
	FY 00	FY 01	FY 02	FY 03	
Dispensing Optician	2	3	3	4	107
Apprentice	40	32	34	11	191

Once an individual registers as an apprentice, they remain registered with OccLic indefinitely; there is no renewal requirement for the apprentice license. Apprentices are required to file any supervisory changes and submit the appropriate fee.

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.

We did not find any evidence that BDO 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 interest of the public and to comply with the factors enumerated in AS 44.66.050.

As discussed in Recommendation No. 1, legislation is needed to clarify various aspects of the opticianry statutes. Changes needing to be addressed:

1. The discrepancy between statute and regulation suggests that applicants may become licensed opticians with only 1,800 hours of registered practical experience. For an individual to be licensed as a dispensing optician with an endorsement to dispense both eyeglasses and contact lenses, they would need 3,600 hours of experience. Currently, this distinction is not made clear in state law.

2. The need for apprentices to continue registering with the Division of Occupational Licensing. With the creation of the optician assistant classification and establishment of an apprenticeship program administered by USDOL, the need for individuals to formally register as apprentices with the Division of Occupational Licensing is no longer necessary. Rather, as a condition for being licensed as a dispensing optician the statute should be modified to require applicants to complete a board-recognized apprenticeship program. Further, opticianry regulations should be developed requiring apprentices to register with USDOL and complete the optician apprenticeship program.
3. The need to recognize in statute a procedure available for individuals, who practiced as a dispensing optician in other states with licensing requirements less stringent than Alaska, to be licensed as dispensing opticians through the successful completion of a national "masters" examination.

As discussed in Recommendation No. 2, fees should again be increased to come into compliance with state law.

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Frank H. Murkowski, Governor

**Department of Community
and Economic Development**

Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800

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November 17, 2003

RECEIVED

NOV 17 2003

LEGISLATIVE AUDIT

Pat Davidson, Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Re: BOARD OF DISPENSING OPTICIANS – PRELIMINARY AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to comment on your preliminary audit report of the Board of Dispensing Opticians.

The department concurs with the findings in your report. Specifically, we share your concerns with viability of the board and support the recommendation that the board not be extended.

The department recommends the legislature amend the law to provide for mandatory registration of Dispensing Opticians, through a registration program administered by the department. We recommend the registration be for the Dispensing Optician level only and that apprentices not be registered.

FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (BDO), we believe it is important for the board to take the following actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing opticians.

The department concurs with the concerns raised in items 1-3 referenced under this recommendation. If the legislature decides to extend the termination of the board, the Board should be requested to assist with developing and proposing conceptual language

for legislation. However, we believe the legislature has the staff and expertise to draft legislation.

Recommendation No. 2

The Division of Occupational Licensing (OccLic), in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit.

The department recently increased the Dispensing Optician biennial license fee from \$380 to \$590. Although we concur that the board needs to be self-sufficient, we are concerned that as the fees continue to increase fewer licensees will chose to renew, thus creating a larger deficit. Licensing programs that show a significant deficit have been allowed to recoup the deficit over two biennial periods; this approach has provided incremental increase in fees and gives the profession time to reduce its operating costs where applicable. The department has attempted to apply this process consistently to all licensing programs, and will continue to work with professions in reducing their operating costs while also reducing their deficit. We believe by eliminating the board and creating a registration system administered by the department, reduction in operating costs can be realized.

We appreciate the thoroughness of your review and the opportunity to comment.

Sincerely,



Edgar Blatchford
Commissioner

Cc: Rick Urion, Director
Division of Occupational Licensing

RECEIVED
NOV 19 2003
LEGISLATIVE AUDIT

November 10, 2002

Pat Davidson, Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
P. O. Box 113300
Juneau, Ak. 99811-3300

Re: Audit Control Number 08-20022-03
Board of Dispensing Opticians Sunset Review
October 2, 2003

Dear Pat Davidson:

I received your Preliminary Audit Report and wish to thank you for an opportunity to respond.

Response to the recommendations in your October 29, 2003 letter follow:

- Recommendation No. 1 - "The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing." Item #1, #2 and #3 were addressed in my response, dated September 26, 2003, to the "management letter #1", dated September 18, 2003 from audit manager Mr. Jim Griffin. The legislative bill we propose (which was attached) would clarify these areas. This bill will be presented in the 2004 legislature.
- Recommendation No. 2 - "The Division of Occupational Licensing, in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit." The Schedule of License Revenues and Board Expenditures included in your report is information on FY2003 that had not been provided to the Board. I formally request a more detailed breakdown of FY2003 expenses and revenues. As to the recommendation, I refer to my response in my September 26, 2003 letter stating I do not believe there will need to be a substantial increase in licensing fees in 2005 because of cost cutting changes we are implementing and the passing of our 2004 legislative bill.

There are some short and long term consequences of de-licensing that should be considered:

- Short Term Consequences
 1. Licensed Opticians (spectacles). There is little likelihood that any portion of the present deficit, \$22,000, will be paid by individuals being de-licensed, or sunsetted. Economic revenue and activity from registration of apprentices will disappear as "entry"

into an occupation that has such a decreased level of economic opportunity with the prospect of wages being decreased by one half will no longer be attractive.

2. Licensed Opticians (contact lenses). This area will be addressed by another board member.

- Long Term Consequences

There are relative few licensed opticians in the State, approximately 100. These opticians and their families have enjoyed the opportunity to work for a "living wage". You mentioned the state of Texas voluntary registration program as a viable alternative for Alaska. I have enclosed a wage comparison report that shows Texas median wages for opticians to be 56% of what Alaska, a licensed state is. De-licensing will mean no longer having "portable credentials" that distinguishes an educated and trained professional from anyone off the street. It will devalue the occupation and effectively close the door on what has been an alternative occupation and trade for someone unable to obtain a college education.

- Comments

On page #7 footnote #3 your report states "The examination given by ABO measures the basic knowledge required to dispense eyeglasses safely and effectively." This is an opinion, not a fact, and it is an opinion not supported by this Board or the professional optical community. To rely on the written ABO exam alone for competency can be likened to relying on a written DMV test for competency to operate a motor vehicle. There is much more involved in the fitting and dispensing of spectacles and contact lenses than the current entry level written test from ABO or NCLE alone can evaluate.

- Conclusion

The State of Alaska has a skilled, educated and trained workforce providing professional services in the fitting and dispensing of spectacles and contacts. What is proposed by this Legislative Budget Audit is to dismantle this profession by de-licensing. I feel it is in the best interest of the public to maintain licensure of Dispensing Opticians. Thank you for your consideration.

Other board members may be responding to this preliminary audit report. My hard copy response will contain a copy of my response to "letter No. 1, dated September 26, 2003, for your reference. Thank you for your time and consideration.

Sincerely,



James Rothmeyer, Chair
Board of Dispensing Opticians.

2

September 26, 2003

Mr. Jim Griffin
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P. O. Box 113300
Juneau, Ak. 99811-3300

Re: Letter Sept. 18, 2003

Dear Mr. Griffin:

I received management letter No. 1 on September 23, 2003, thank you. I will try to respond as briefly and the best I can.

Just for clarification the Board does not set renewal fees. They are set by the Department of Commerce, Division of Occupational Licensing .

The notion that untrained, uneducated persons perform to the standards of practice as those who have spent hundreds of hours and thousands of dollars in educational courses and training , is in my opinion not a sensible argument.

Ensuring the individual dispenser/optician has the education and training to sort and select the appropriate and safe combination of eye wear and lenses from the complex and extensive variety of products on the market is not just a valuable service it is essential to the public's safety. This is amply documented by the numerous warnings and vision safety notices that are part of every set of lenses from optical laboratories. Concern for "vision safety" has never been more acute than now. The wide choices of sport, safety and dress eyewear can lead to mistakes and have caused the loss of sight (see attached documents). The need for educated and trained contact lens fitters and dispensers is even more important as permanent harm can be caused by patients not having professional advice regarding their contact lenses. (see attached)

The Board has reviewed the 2002 changes in statutes that were vague and inconsistent. The Board had a bill to remedy this in 2002. That bill never made it into the legislation because the lobbyist for the Opticians Association of Alaska thought the timing to introduce the bill was wrong and then it became too late in the legislative session for consideration. The Board will have this introduced in the 2003 legislation. (see attached draft).

The Board did research and give recommendations to the then licensing examiner and the Director of the Division of Occupational Licensing for a practical exam from a private sector contractor. One alternative, Dr. Ferguson's The Learning Curve could of been procured and administrated at no cost to the Department. This information was a part of the 2001 audit report (Sept. 2001). The "acquiescence" to the 2002 legislatures bill SB 270 (no practical) was the best alternative available to us at the time as we were told it would take at least 2 years and a large sum of money for a "request for proposal" bid for a practical test.

Deficit - The current deficit began in 1998 when the board was informed of an "accounting error" which caused a deficit. In the next two years our licensing examiner was new and spent probably more time than necessary getting up to speed. From documented time sheets, she spent about one half of her time on the apprentice program. In 2002, \$5,500 was billed to the Board by the Department of Law for litigation from a class action law suit regarding contact lenses. This constitutes 22% of our current deficit and these charges should be reversed. The Board has yet to received a breakdown of the \$9300.00 "contractual" charges for 2003.

RECOMMENDATIONS

I agree with your recommendations for clarifying training hours, licensing individuals from other jurisdictions and transferring apprentice registration and administration to the U.S.D.O.L. See attached "draft bill".

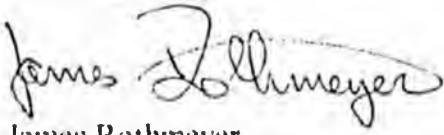
I feel that there is no need to increase licensing fees. I have been in contact with the licensing examiner, Denise Williams, and she states that if there is no apprentice program to administer, she will spend less than 5% of her time on BDO activities annually. With no other unforeseen bills from the Department of Law, this should bring our expenses to a manageable figure and reduce our deficit to the point we will be in compliance.

The Board respectfully request that you extend the Board of Dispensing Opticians for another 6 years. The Board has made great strides to comply with recommendations and work with the Optometrist and Ophthalmologists.

The fact that of the 83% of the licensed opticians in the state, renewed their license even with the increased fees, shows that the profession feels the need to hold themselves up to a higher standard of performance and education then stylists, assistants or sales persons. The Licensed Optician whether licensed in spectacles, contacts or in both is continually working to insure the health, safety and welfare of the public through education and training.

Thank you for your time and consideration.

Sincerely,



James Rothmeyer
Chair, Board of Dispensing Opticians

Corrected Copy

A BILL
FOR AN ACT ENTITLED

"An act relating to dispensing Opticians and dispensing Opticians apprentices"
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

-
-
- Section 08.71.080 License required is amended to read;
- Sec. 08.71.080 License required. A person may not act as a dispensing optician in the state unless that person is licensed under this chapter. A license shall be issued for (1) the fitting and dispensing of contact lenses, or (2) the fitting and dispensing of other lenses, eyeglasses, spectacles, artificial eyes and their appurtenances, or (3) both.

*Sec. 08.71.090. Examination requirement is amended to read;

Sec.08.71.090 Examination requirement. To be licensed to fit and dispense contact lenses, a person, unless eligible for licensing under AS 08.71.145, shall document to the board that the person has passed the contact lens registry exam offered by the National Contact Lens Examiners with a score acceptable to the board. In order to be licensed to fit and dispense other lenses, eyeglasses, spectacles, artificial eyes, and their appurtenances, a person, unless eligible for licensing under AS 08.71.145, shall document to the board that the person has passed the national opticianry competency examination offered by the American Board of Opticianry with a score acceptable to the board. An applicant for licensure in both areas shall document having received a score acceptable to the board on both examinations. The board shall by regulation, establish the scores that will be acceptable for the examinations described in this section.

*Section 1. AS08.71.110(a) is amended to read:

- (a) The board may issue a license to a person who
 - (1) has [HAD EDUCATION EQUIVALENT TO FOURS YEARS ATTENDANCE AT] a high school diploma or its equivalent;
 - (2) Has either
 - (A) completed at least 1,800 hours of training for spectacles and/or 1,800 hours for contact lenses as an apprentice after registering with the US Dept. of Labor as an apprentice; or
 - (B) been engaged for at least 1,800 hours practice as a dispensing optician in spectacles and /or 1,800

hours practice in contact lenses in a state, territory, district, or possession of the ~~United~~ States; ^{NOTE}

- (3) has passed the applicable examination required under AS08.71.090 with a score acceptable to the board;
- (4) has passed a course designated in the board's regulations as being acceptable; and
- (5) has paid the required license fee.

*Sec. 2 AS 08.71.145 is amended to read:

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 with licensing requirements substantially equivalent to or higher than those of this state shall, without further examination, be issued a license under this chapter for those professional areas in which the person is licensed in the other jurisdiction upon payment of any fee and documentation that the board may require by regulation.

*Sec.3 AS 08.71.145 is amended by adding a new subsection to read:

- (b) A person who is designated by the American Board of Opticianry as a Master Optician or as an individual certified as an Advanced Certified optician may be issued a license authorizing that person to be a licensed dispensing optician with respect to spectacles upon payment of the appropriate fee and submission of the documentation that the board may require by regulation.;
- (c) A person who is designated a Fellow of the Contact Lens Society of America, or who is designated by the National Contact Lens Examiners as an Advanced Certified Contact Lens Fitter may be issued a license authorizing that person to be a licensed dispensing optician with respect to contact lenses upon payment of the appropriate fees and submission of the documentation that the board may require by regulation.

*Sec. 4. AS. 08.71.160 (a) is amended to read:

(a) A person may be employed by [OR SERVE UNDER] a licensed Physician, optometrist, or dispensing optician as an apprentice for dispensing optician tasks. An apprentice shall register with the U.S. Department of Labor [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 under the supervision of the [a] licensed physician, optometrist, or dispensing optician. Notwithstanding AS 08.71.180, a registered apprentice may perform dispensing opticians tasks that are delegated by and performed under the regular supervision of the licensed physician, optometrist, or dispensing optician and may use the title "dispensing optician apprentice".

*Sec. 5 AS 08.71.200 is amended to read:

Sec. 08.71.200 Contact lenses. Contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist using [AND WITH] a written contact lens fitting authorization that (1) shows the powers of the sphere, cylinder and axis location; (2) includes an authorization to fit; and (3) states a requirement that the patient return to the prescriber for a final recheck after the contact fitting has been completed. [PRESCRIPTION SHOWING THAT THE PRESCRIPTION MAY BE FILLED FOR CONTACT LENSES AND REQUIRING THAT THE PATIENT RETURN TO SEE THE PRESCRIBING PHYSICIAN OR OPTOMETRIST]. In no case may contac. lenses be prepared by neutralizing a persons eyeglasses or spectacles. Duplicated contact lenses may be dispensed, mailed to, or otherwise delivered to a patient from a written contact lens prescription that shows the exact specifications and parameters needed to exactly duplicate the patients previous contact lenses. Notwithstanding other provisions of this section, contact lenses may not be provided to a patient at a time that is after the expiration of the most recent prescription for the patient unless authorized in writing or orally by the person who issued the prescription.

*Prescription
Physician or
Optometrist*

Evaluation

*Sec. 6 AS 08.71.230 is amended to read:

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

- (1) limit or restrict a licensed physician or optometrist from the practices enumerated in this chapter, and each licensed physician and optometrist has all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under it;
- (2) prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;
- (3) prohibit an unlicensed person from engaging in the sale of eyeglasses, spectacles, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any like articles which are completely preassembled and sold only as merchandise; however, the exemption in this paragraph does not authorize an unlicensed person to sell contact lenses of any type.
- (4) authorize or permit a licensee under this chapter to hold out as being able to, or to offer to, or to attempt by any means, to refract or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury.

"Duty To Warn" – A Growing Responsibility

It has been seven years since the Optical Laboratories

Association (OLA) issued its first "Duty To Warn" kit. To appreciate why this subject has become so important to the whole industry, it might help to review how laboratories first became involved in a problem that seems to be more a concern of those who deal directly with patients at the retail level.



When retail offices are involved in litigation resulting from broken eyewear, manufacturers and laboratories used in making the glasses are usually brought into the action so that, no matter who ends up with the blame, that person will be involved in the lawsuit. What brought "duty to warn" into prominence in recent years has been the emergence of polycarbonate as a viable lens material for dress eyewear.

The first recorded court case occurred in 1981 when a Wyoming rancher wearing photochromic lenses in a dress frame, sustained an injury while roping. No award was granted on the basis that polycarbonate was so new a product, it was only available from one source at the time the glasses were dispensed. The case did, however, alert the Optical Laboratories Association to the problem and their concern led directly to the development of the OLA "Duty To Warn" kit.

Since that time, polycarbonate lenses have matured and are now readily available in almost any type of lens design. At the same time, there has been additional litigation in which the courts consistently ruled that "failure to warn" patients about their options regarding lens materials justifies damage claims. This places a considerable burden on everyone dispensing eyewear to the public. The OLA is attempting to answer that concern with their program. They have just revised their kit and reissued it with a number of improvements and additions.

Among the new items included in the revised kit are the following:

Practitioner Forms. One of the most persistent requests from retail offices during the last few years

has been for office forms that would help establish that patients had been properly informed regarding lens materials. They particularly asked for a Patient Rejection Form. Three new practitioner forms are now included in the kit.

Refractionist's Duty and Script. A concise examination of the refractionist's obligations under "Duty To Warn" is provided along with a suggested script for the doctor to follow.

Dispenser's Duty and Script. Just as the refractionist has a "duty to warn", so do dispensers, whether they work in the refractionist's office or in an outside office. These duties are clearly outlined.

Lens Menu. The Lens Menu patient brochure is a key component in the "Duty To Warn" process. A sample Lens Menu and an order form are included.

Safety Warnings. Every pair of eyeglasses dispensed must be accompanied by a printed Safety Warning. Offices that order finished eyewear from an OLA laboratory usually receive this important form with each pair of finished eyewear they order. Offices doing their own edging have the obligation of providing their own Safety Warnings to pass on with the eyewear they dispense. Camera-ready artwork for each Safety Warning form (dress eyewear and safety eyewear) is part of the kit.

In-Office Edging. Edging lenses in a retail office imposes special responsibilities under the "Duty To Warn". In the eyes of the FDA and OSHA, these offices become the eyewear manufacturer and, as a consequence, assume the same legal responsibilities as laboratories. To help them meet these obligations, a brochure titled "Impact Testing of Ophthalmic Dress Lenses" is included in the kit.

A variety of other background material is also included so that retail offices have everything they need to set up a "Duty To Warn" process in their office. Today's economic climate makes compliance with the duty to warn process as important as maintaining proper fire insurance.

The OLA is making these kits available at minimal cost (\$14.95). They are available through most OLA laboratories. If you need information on OLA laboratories in your area, you may call 1-800-477-5652 for the names.

— Joe Brunetti

Informing The Patient

*An Increasingly Important
Professional Responsibility*

by

Pamela Joyce Miller, O.D., F.A.A.O., J.D.



Published as a public service
to the Eyecare Professions by the
Optical Laboratories Association

Informing The Patient — An Increasingly Important Professional Responsibility

by Pamela Miller, O.D., F.A.A.O., J.D.

It was not until the mid 1980's that this industry began to realize that there were some potential problems regarding the impact resistance of lens materials. The subject first arose when a Wyoming lawsuit was filed over a broken lens. The suit claimed one lens material was more impact resistant than any other and the company selling the glasses should have informed the patient about polycarbonate.

In that case, the patient was a cowboy wearing glasses while performing in a rodeo. While twirling a rope, his glasses broke and an eye injury resulted. Fortunately for the dispenser, the court ruled that, while the dispenser had a duty to inform the patient about polycarbonate, these lenses were not yet readily available or in general use at that time. The Court issued no award, but the subject did receive close attention from the industry. It illuminated a subject to which few eyecare professionals had given much thought.

The Optical Laboratories Association (OLA) immediately set up a study group to establish how laboratories and their customers could best deal with the legal, professional, moral and business issues involved. The result of this study was the development of a practical program to meet these new responsibilities of retailers and labora

ories.

The study concluded that dispensers and doctors have a legal and professional responsibility to make sure patients have all the information required to make an informed decision about lens materials and frames. Because of these legal responsibilities, the duty to warn must be part of every dispensing transaction. To help professionals comply with this new responsibility, the OLA published a "DUTY TO WARN" kit, with sections fully documenting the responsibilities of the doctor, the dispenser and the manufacturing laboratory. It provided specific details on how to discharge the professional's "duty to warn" and included sample forms for setting up a "Duty to Warn" system for retailers and for laboratories.

Issued in 1988, the OLA has distributed thousands of these guides through member labs and made them available to O.A.A. and A.O.A. members. That, however, was six years ago and concerns about the doctor/dispenser's responsibilities and "DUTY TO WARN" were gradually forgotten.

A recent lawsuit in Minnesota reminded the professions of the importance of this duty to warn patients regarding choice of lens material. A youngster suffered an eye injury while wearing conventional plastic lenses. The court ruled the retailer did not adequately inform the patient about a safer lens material. The award was for \$73,610.93.

The OLA has now revised the original "Duty to Warn" kit and again made it available through OLA members for \$14.95. One issue is clear. The only way to make sure every patient is properly informed regarding lens materials is to set up a standard office routine and follow it for every patient. The "Duty to Warn" kit provides camera ready copies of various forms to be used for this purpose. It's always best when the dispenser (*or doctor*) personally discusses the options for polycarbonate lenses with each patient. This is sometimes difficult and it only takes one omission to lay the groundwork for potential problems.

The OLA recently revised their popular "Lens Menu", an attractive four color patient brochure that explains each lens option available to persons ordering eyewear. This latest revision adds a powerful "Vision Safety Notice" to the back panel. Verbiage in this important section was taken in whole from the OLA "Duty to Warn" kit. Now, offices who provide the Lens Menu to each patient going through their office will be subtly reinforcing their professional responsibility to fully inform patients regarding lens materials.

The obligation to inform buyers of a product's inherent dangers is nothing new. Nearly every product today is accompanied by warnings of one type or another. When someone is involved in recommending a product, they assume certain liabilities based on those recommendations. It's important to remember that eyeglass manufacturers-

and/or laboratories cannot get their warning message to the purchaser until after the patient has selected a lens material and a frame.

Because of this, doctors and dispensers have a legal and professional responsibility to make sure patients understand the risks involved in wearing eyeglasses and the relative safety of each lens material or frame style. This doesn't mean every patient must order polycarbonate. It just means that each lens material must be explained, along with the relative risks of each material. It's important to establish a program in your office that makes sure every patient is fully informed about lens materials. Some offices take this so seriously they insist every patient sign a document indicating that they have been told about the safety issues involved. There is some question whether this really does much good and it does have the potential of upsetting some patients. The best procedure is to set up a standard routine that makes sure every patient is informed of safety issues with the doctor or dispenser noting on the patient's file that the patient was so informed.

Do this and you can be secure you are fulfilling your "duty to warn".

Pamela Joyce Miller holds a doctorate in both Optometry and Jurisprudence. She has a solo practice in Highland, California and is a widely known practice management consultant who lectures and publishes worldwide. She has authored over 100 articles, including THE VISION CARE ASSISTANT, a guide for new paraoptometrists, published by Vision Extension in Santa Ana, California.



LITIGATION YOU SHOULD KNOW ABOUT

by Pamela Joyce Miller, O.D., F.A.A.O., J.D.

January, 1981

January, 1981 saw one of the first significant cases involving Polycarbonate lenses. In essence, a Wyoming farmer, wearing photochromic lenses in a dress frame, suffered an injury resulting in a cataract, when his lens shattered during a roping accident. The basic claim was that the doctor should have prescribed polycarbonate lenses in view of the fact that the patient was involved in an active and dangerous endeavor. The jury concluded (*based on expert testimony*) that the accident would not have been prevented with polycarbonate lenses, although polycarbonate was a new product and only available from one source at the time of the dispensing.

1982

A 1982 case in Louisiana involved a high school student who suffered a severe eye and lower lid cut during a volleyball game, while wearing glass lenses. The patient claimed that no one had told him that scratched lenses had a greater propensity toward shattering. Although the case was settled, it was alleged that the dispenser failed to warn of the risks associated with wearing the glasses in sporting events. A claim for contribution against the school board was also filed by the dispenser (*to defray the costs of settlement*).

January, 1993

A January, 1993 jury ruling involved a Minnesota optical chain that failed to warn a customer sufficiently about his spectacle lens options. A 13 year old boy purchased a metal semi-rimless frame with CR 39 lenses in November, 1986. Some 6 months later, he was hit in the eye, and the lens shattered resulting in permanent eye damage. The case centered on the "FAILURE TO WARN" issue. The case resulted in a settlement (*not to exceed \$73,610.93*), with the amount and the jury proceedings sealed in the court records.

The Present

"Duty to Warn"

The trend is obviously toward an emphasis on the dispenser's or doctor's "duty to warn" or failure to advise a patient of their options. Greater responsibility is placed on patient education, informed consent, and documentation of the information given to a patient (*or the parent or guardian*).

Your Duty

You have a clear cut duty to the patient. A breach of that duty, which results in harm to the patient, could result an action for Negligence. The result may be lengthy and costly litigation against the dispenser, the laboratory, and the lens manufacturer. If you elect to have an in-office laboratory, your liability may be substantially increased.

Your Responsibility

In essence, the last person to work on the lens may be regarded as the manufacturer in a Product Liability case. The concept of professional responsibility is growing and with that growth comes your responsibility to document what was advised and provided to every patient.

o The continued impact resistance of your lenses depends on how well you protect them from physical shocks and abuse. For your own protection, scratched or pitted lenses should be replaced immediately.

o If your occupational or recreational activities expose you to the risk of flying objects or physical impacts, your eye safety requires special safety spectacles with safety lenses, side shields, goggles and/or a full face shield.

o Federal Regulation 29 CFR 1910.133 states that your employer shall make available eye protection suitable for your work, and that you shall use such protectors. For more information, consult your safety officer or supervisor.

Your vision specialist can provide more information and help you select the proper eyewear to meet these vision safety needs.

Sports Eyewear

Many sports present unique eye safety risks. Industrial safety eyeglasses are not designed to protect against these special risks. As a result, special eyewear designs have been developed for a number of sports. The standards for such eyewear vary according to the sport for which they are designed, so it is important to base your selection on how the eyewear will be used.

• The continued impact resistance of your lenses depends on how well you protect them from physical shocks and abuse. For your own protection, scratched or pitted lenses should be replaced immediately.

• If your occupational or recreational activities expose you to the risk of flying objects or physical impacts, your eye safety requires special safety spectacles with safety lenses, side shields, goggles and/or a full face shield.

Your vision specialist can provide more information and help you select the proper eyewear to meet these vision safety needs.

Sports Eyewear

Many sports present unique eye safety risks. Neither dress eyewear nor industrial safety eyewear are designed to protect against these special risks. As a result, special eyewear designs have been developed for a number of sports. The standards for such eyewear vary according to the sport for which they are designed, so it is important to base your selection on how the eyewear will be used.



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Merrifield, VA 22116-2000

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Dispenser: Safety spectacles with polycarbonate lenses must not be dispensed without this warning.

Important!

Read this notice before using your new safety eyewear.

Proper selection and use of eyewear is critical to your eye safety. No single pair of eyeglasses is best for all situations, so make sure you consider how your eyeglasses will be used before deciding whether to wear dress, safety or sports eyewear.

Vision Safety Notice:

• The polycarbonate lenses in these safety spectacles have been prepared in accordance with the order of your plant safety officer or vision specialist. The lenses meet or exceed American National Standard Z87.1 and the requirements of the Occupational Safety and Health Administration, but they are not unbreakable or shatterproof.

• If struck with sufficient force, the lenses can break into sharp pieces that can cause serious injury to the eye, or blindness. Even if the lenses do not break, the force of impact may cause the lenses or spectacle frame to contact the eye or surrounding area, causing injury.

• For tasks requiring additional impact protection, polycarbonate lenses should be used. Of all the materials that lenses can be made from, polycarbonate is the most impact resistant.

Dispenser: Dress eyewear must not be dispensed without this warning.

14

Important!

Read this notice before using your new eyewear.

Proper selection and use of eyewear is critical to your eye safety. No single pair of eyeglasses is best for all situations, so make sure you consider how your eyeglasses will be used before deciding whether to wear dress, safety or sports eyewear.

Vision Safety Notice:

- Your new eyeglasses are dress eyewear, not safety spectacles.
- The type and style of the spectacle frame is an important factor in determining how much protection your eyeglasses will provide. Many frames are fragile and are designed for appearance—not for protection.
- Your lenses meet or exceed American National Standard Z80.1 and FDA requirement 21 CFR Sec 801.410 for impact resistance, but they are not unbreakable or shatterproof. Of all the materials that lenses can be made from, polycarbonate is the most impact resistant.
- If struck with sufficient force, the lenses can break into sharp pieces that can cause serious injury to the eye, or blindness. Even if the lenses do not break, the force of impact may cause the lenses or spectacle frame to contact the eye or surrounding area, causing injury.

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Audit Report



DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT
ALASKA SUNSET PROCESS AND
SELECTED INVESTIGATIVE ISSUES

September 28, 2004



Audit Control Number:
08-30031-05

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site: <http://www.legaudit.state.ak.us/>

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ALASKA STATE LEGISLATURE

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November 22, 2004

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, COMMUNITY, AND ECONOMIC DEVELOPMENT ALASKA SUNSET PROCESS AND SELECTED INVESTIGATIVE ISSUES

September 28, 2004

Audit Control Number
08-30031-05

The purpose of this audit was to review Alaska's sunset process to assess the impact of sunset laws and to make recommendations for improvement. We also reviewed operations of the investigative unit within the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.

Government auditing standards require auditor to be "*free both in fact and appearance from personal, external or organizational impairments to independence.*" The recommendations made in this report would have an impact, albeit a minor impact, on the timing of work performed by the Division of Legislative Audit. Therefore, we must note the appearance of an organizational impairment to independence in this audit.

Except for the noncompliance with the independence standard identified in the prior paragraph, the audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

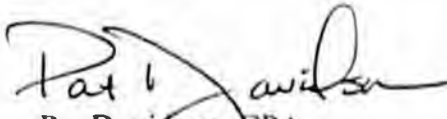

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of Alaska's sunset process and the investigative unit in the Department of Commerce, Community, and Economic Development (DCCED), Division of Occupational Licensing.

Objectives

The objective of the audit was to review the efficiency and effectiveness of Alaska's sunset process. Specifically:

- Determine if the standard extension period of four years is an efficient use of state resources.
- Review the existing termination dates for the boards, commissions, and agencies under Alaska's sunset laws to determine if the termination dates are evenly distributed.
- Make recommendations for updating the sunset process based on national trends and best practices.
- Identify organizations and programs that have sunset dates, but are not part of the formal sunset review process.
- Identify regulated occupations that are not covered by the formal sunset review process.
- Summarize the legislation and operational changes that have resulted from Alaska's sunset process.
- Evaluate the efficiency of the Division of Occupational Licensing's investigative unit.

Scope and Methodology

Division of Legislative Audit conducts audits and issues audit reports in accordance with government audit standards. These standards require that the auditors be "*free both in fact and appearance from personal, external or organizational impairments to independence.*" During Alaska's sunset process the legislative committees of referral consider reports issued by the Division of Legislative Audit. Recommendations made in this report would have an impact, albeit a minor impact, on the timing of work performed by the Division of Legislative Audit. Therefore, we would not be considered to be free from the appearance of an organizational impairment to independence for recommendations made in this report.

Our review of the sunset process covers the 25-year period FY 78 through FY 04. The examination of the investigative unit focused on a five-year period FY 00 through FY 04.

Our evaluation involved review and analysis of the following documents:

Laws and regulations

- Relevant Alaska Statutes (AS), including AS 44.62, AS 44.66, AS 24.20, and AS 08.01 through AS 08.03
- Relevant section of the Alaska Administrative Code (AAC), including 12 ACC 02.010 through 02.990
- Sunset-related statutes for Delaware, Louisiana, Oklahoma, Tennessee, Maine, and Washington
- Occupational licensing-related statutes for Arizona, Colorado, Hawaii, Minnesota, Vermont, Virginia, Florida, and Washington

Reports, publications, and articles

- *Occupational Regulation* Minnesota Legislative Auditor, 1997
- *Sunset Review Process in Connecticut* 1998 report published by Connecticut's Legislative Program Review and Investigative Committee,
- *Sunset Laws: Limited lifespan for state agencies?* by Tony Licata,
- *Sunset, Sunrise, and Agency Audits* published in 2004 by the Council on Licensure, Enforcement and Regulation,
- *Sunrises without Sunsets – Can Sunset Laws Reduce Regulation?* by Vern McKinley published by the Cato Review of Business & Government,
- *Sunset – Still Effective After All These Years?* Talking points of Ken Levine, Assistant Director Texas Sunset Advisory Commission 2001,
- *Is the sun setting on the Texas sunset law?* by Dave McNeely published by the State Legislatures; 1994, and
- *A Short History of Sunsets* by Nadya Labi published by Legal affairs magazine January/February 2004.

Other documents

- Fifty-nine occupational licensing investigative case files,
- Occupational licensing investigative websites for Colorado, North Dakota, Montana, and Idaho,
- Annual reports for occupational licensing boards and nonoccupational regulatory agencies,

- Various newspaper articles and other publications from 1977 related to the passage of sunset legislation, and
- Legislative Audit sunset audits.

We also conducted interviews with the following individuals:

- Assistant attorney general assigned to occupational licensing investigative unit
- Occupational Licensing chief investigator
- Thirteen current occupational licensing investigators
- Two previous occupational licensing investigative supervisors
- DCCED staff programmer assigned to assist with the investigative case management system
- Previous Legislative Auditor
- Executive Director and staff of the Regulatory Commission of Alaska
- Executive Director of the Alcoholic Beverage Control Board
- Ombudsman
- Current and previous directors of the Division of Occupational Licensing
- Chief, Occupational Licensing
- Representatives from Alabama, Arizona, Arkansas, Colorado, Delaware, Kansas, Minnesota, Montana, and New Hampshire regarding sunset and/or sunrise programs
- Executive Administrator for the State Medical Board

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ORGANIZATION AND FUNCTION

Department of Commerce, Community, and Economic Development

Under the provisions of Title 44 of the Alaska Statutes, the Department of Commerce, Community, and Economic Development (DCCED) provides a wide range of services to private businesses, as well as aids in protecting the public through the regulation of certain industries. Development services provide general assistance and access to capital markets for businesses. Development services also coordinate numerous state loan programs and manage programs aimed at key economic sectors such as electric power generation, tourism, aerospace, mining, and fishing.

Division of Occupational Licensing

The Division of Occupational Licensing (OccLic) is organizationally located within DCCED. OccLic is responsible for issuing all business licenses and serves as the primary occupational licensing agency for the state. Additionally, OccLic regulates entry into professions and enforces performance standards to ensure Alaska consumers receive safe, competent services.

Occupational Licensing Boards

Licensing boards and commissions are responsible for establishing qualifications for entry into various professions. These entities have the authority to propose and adopt legislative amendments and regulations. The occupational licensing boards can also discipline licensed professionals for incompetent, unethical, or illegal behavior. All of the occupational licensing boards are subject to the sunset review process.

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BACKGROUND INFORMATION

History of sunset laws

Sunset laws began to be adopted by states in the 1970s as part of a national movement to increase the accountability of government and to reduce bureaucracy. Colorado was the first state to adopt sunset legislation in 1976. By the mid-1980s, a total of 36 states had adopted similar legislation.

Although sunset laws differ between states, their premise is the same. Each sunset state has a provision in law that requires periodic review to justify the continued existence of a particular law, administrative agency, or other governmental function. Termination of operations is automatic if the legislative body does not pass a bill to extend statutory authority. In theory, the sunset process provides routine redetermination of the need for some aspect of government – thereby making it more likely that growth of government is productive and deliberate. Sunset laws are one method that states have chosen to combat the problem of legal obsolescence (see Exhibit 1).

Professional literature indicates that states have had mixed levels of success with their sunset laws. Most articles, publications, and reports written about sunset conclude that it has not lived up to expectations. By 1990, six states had repealed their sunset laws and another six had suspended the process.¹

In 1998, Connecticut (one of six states that suspended their sunset law) performed a review of their sunset process. The report cited the following deficiencies that led other states to repeal or suspend their sunset laws:

- The process places excessive time demands on legislators and legislative staff;

¹Information taken from *Sunset, Sunrise, and Agency Audits* article published by the Council on Licensure, Enforcement and Regulation (CLEAR).

Exhibit 1

Legal Obsolescence

The term legal obsolescence is used to describe the reduced applicability and usefulness of a statute, regulation or agency. The Cato Review of Business & Government lists the following reasons for legal obsolescence:

- The problem or crisis that spawned the agency is short-term in nature, dissipated or ceased to be a problem
- Problems with particular solutions do not manifest themselves for decades, at which point interest groups that benefit from the status quo are well entrenched. For example, the Social Security system has proven itself unsound from an actuarial standpoint, largely due to the change in demographics since the 1930s.
- Regulations quickly become obsolete – fast paced technology or international competition quickly change the assumptions upon which the regulation is based.

Source: *Sunsets without Sunsets* by the Cato Review of Business and Government

- The process often requires legislators to choose between proposals that are modestly beneficial to all citizens but can be devastatingly negative to specific interest groups; and,
- Other forms of providing oversight have become more popular.

States differ when it comes to implementing sunset legislation

States differ on the scope of sunset legislation, the standard period for review, the criteria against which entities are evaluated, the types of entities subject to sunset, and the type/extent of legislative participation in the process.²

According to 2002 *The Book of the States*, there are 26 states with active sunset programs. Exhibit 2 summarizes the scope of sunset legislation for the 26 states. In terms of agencies reviewed, eight of the states, including Alaska, Texas, and Colorado, have comprehensive sunset programs. These states periodically conduct sunset reviews on administrative agencies, regulatory agencies, and/or provisions of law. Another nine states, only conduct sunset reviews on regulatory agencies. The other states have more selective/discretionary sunset laws; choosing what programs to review based on factors such as legislative interest, risk, and available resources. An additional 11 states have not enacted sunset legislation in the same sense as these 26 states but have included sunset clauses in selected programs or legislation.

<u>Exhibit 2</u>	
Scope of Sunset Legislation	Number of States with Active Sunset Programs
Comprehensive	8
Regulatory	9
Selective	8
Discretionary	<u>1</u>
Total	26

<u>Exhibit 3</u>	
Standard Period between Sunset Reviews	Number of States with Active Sunset Programs
4 years	4
6 years	3
10 years	8
12 years	1
Varies	2
Not Specified	<u>8</u>
Total	26

The standard period of time between sunset reviews varies between states from a low of four years to a high of 12. Exhibit 3 summarizes the standard extension period for the 26 states with active sunset programs. Alaska shares the shortest standard sunset period of four years with three other states. Eight of the states have periods of ten years and ten states do not have specific periods for the review or the period varies.

Most states have, embodied in their sunset legislation, criteria used to evaluate the merits of an agency or provision of law. Sunset criteria differ in number, focus, and detail but share similar characteristics. Most importantly, criteria are used to determine whether there is a continued public need for the entity being reviewed. Additionally, states typically have criteria for determining whether the agency being reviewed has effectively incorporated

² According to 2002 *The Book of the States Volume 34*, published by the Council of State Governments.

public participation, responded in a timely manner to complaints, efficiently accomplished its objectives, and complied with specific requirements such as affirmative action.

States also differ on the responsibility for sunset reviews. In some states, such as Alaska, the responsibility for conducting sunset reviews rests with a legislative agency. Others have staff within the executive branch perform the reviews. Many states use a self-evaluation report that agency management must complete and submit to the evaluation agency.

Legislative intent of Alaska's sunset law

The sponsoring legislator made the following comments regarding intent of the sunset law:

The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government.

The sunset law was intended to ensure that government growth in boards, commissions, and other agency programs was necessary and productive. This sentiment was widely supported during the 1977 legislative session. As a result, the legislation received broad-based support. However, there were concerns over the resulting workload for legislative and agency staff.

The sponsor of the sunset bill wanted to include a variety of executive branch departments, agencies, and programs under its provisions. Other legislators were concerned about including such programs because of the unknown workload implications. Ultimately, the sunset bill that passed made other agencies subject to the sunset process (AS 44.66.020) but listed none specifically. Rather, it allowed for a process by which programs could be added. To date, this option has not been used. Alaska's sunset program covers only specific state agencies, boards, and regulatory agencies.

Exhibit 4

Automatic Termination without Sunset

The following are five examples of commissions and programs that contain termination clauses in their enabling legislation but are not subject to the sunset legislative oversight process. Automatic termination, without sunset, occurs when a bill authorizing an entity/program has a section that repeals the enabling statutes as of a certain date. These programs typically go through a lobbying phase to encourage legislation to extend their life.

The difference between the following entities, and those subject to sunset, is the level of legislative review of the extension process. The sunset statutes mandate a hearing be held to take testimony from the public and other parties. Further, sunset statutes require no more than one board or commission can be mentioned in the title of a bill for the reorganization or extension. Conversely, entities with automatic termination can be extended without formal hearings and may be part of other legislation.

Commissions/programs with automatic termination include:

- Navigable Water Commission of Alaska
- Alaska Minerals Commission
- Alaska regional economic assistance program
- Reemployed retirees program
- State training and employment program

Alaska's experience with the sunset process

While the total numbers of entities subject to sunset have not changed dramatically (27 in 1977 compared to 30 in 2004), the organizations that make up the total have significantly changed. During this time period, seven occupational boards were added, seven were terminated, and two were merged into one board. Additionally, 16 nonoccupational boards and regulatory agencies were added, 11 were terminated, and two were merged into one.

Appendix B provides a summary of occupational boards that were subject to sunset as of June 30, 2004, those that were terminated since the law was passed; and, those that were added. Appendix C provides the same information for nonoccupational boards and regulatory agencies subject to sunset.

Since inception of the sunset law, entities have been subject to the sunset process over 150 times. The report conclusion section of this report addresses the extent to which sunset audit recommendations have been implemented.

Common misconceptions about the sunset process

The sunset process is not clearly understood by all public policy participants. Two of the most common "misconceptions" are listed below:

1. When an occupational board terminates, the licensing of the related professions also terminates: This is not true. When an occupational board terminates, licensing of the professions it regulates does not terminate. Statutes still require professions to be regulated but do not specifically address whether the responsibility for regulation transfers to the Department of Commerce, Community, and Economic Development (DCCED) – the state department typically responsible for regulating occupations. This creates uncertainty for licensees and a legal quagmire for DCCED, who is expected to take over regulation but may not have the legal authority to do so.
2. All boards, commissions, and councils are subject to sunset: This, also, is not true. With the exception of occupational licensing boards, there are no unique characteristics that identify an agency for sunset. Nonoccupational boards that are subject to sunset, as well as those not subject to sunset, share similar characteristics. For example, the Council of Domestic Violence and Sexual Assault and the Commission on Aging are subject to sunset, but the Advisory Board on Alcoholism and Drug Abuse and the Homeless Council are not.

Further, there is no unique characteristic that identifies the need for an occupation to be regulated by a board rather than DCCED. Currently, there are 14 occupational licensing programs administered by DCEED without the use of an occupational licensing board. (See Appendix D to this report for the listing)

Regulation of occupations divided between occupational licensing boards and DCCED

Occupations are regulated by either an occupational licensing board or directly by DCCED. Alaska statutes designate 21 occupational licensing boards and 14 occupations that DCCED directly regulates (Appendix B identifies the 21 occupational boards and Appendix D identifies the 14 occupations regulated directly by DCCED). Occupational boards are generally responsible for establishing regulations for its occupations, granting licensure, and taking disciplinary action. DCCED provides administrative support to occupational boards including general administrative assistance (purchasing and scheduling); communicating with licensees (license information, exam information); and, proving inspection, enforcement, and investigative resources.

Role of board members and experts in the occupational licensing investigative process

According to statutes and regulations, an occupational licensing board can be involved in an investigation at three different points in the investigative timeline. The board can:

- issue a summary suspension of a license;
- approve, deny, or modify a Memorandum of Agreement (MOA);³ and,
- act as an adjudicative authority after reviewing a Hearing Officer's decision.

Exhibit 5

Investigative Authority

Sec. 08.01.087. Investigative and enforcement powers of department.

(a) The department may, upon its own motion, conduct investigations to

- (1) determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010 ;

Individual board members are utilized by the investigative staff for technical assistance. However, board members that have reviewed evidence must recuse themselves in the event the full board is called upon to act in any of the three points mentioned previously.

The Department of Law has recommended that board members be prohibited from participating in the investigative process. This segregation is necessary, in order to maintain the boards' statutory role as impartial adjudicators.

When it is determined necessary by the Chief Investigator, the investigative unit will hire an expert. Experts are typically used when technical expertise is needed to help substantiate an alleged violation.

³ MOAs are agreements between the licensee and, either, DCCED (for occupations regulated without an occupational board) or a board. The terms of an MOA are negotiated by staff in the investigative unit and the respondent or the responder's attorney. Occupational licensing boards can modify terms of an agreement and request that the respondent agree to the new terms, or the board can accept the terms by signing the agreement.

Process for investigating occupational licensing complaints

DCCED's Division of Occupational Licensing (OccLic) has an investigative unit whose purpose is to investigate allegations of illegal or incompetent activity by licensees. The unit also investigates allegations of unlicensed occupational activity. The unit is composed of a chief investigator, 12 investigator IIIs, one investigator I, and an administrative clerk.

Each investigator is assigned to a primary occupation and serves as backup for other occupations. When the unit is contacted about a complainant, contact is routed to the assigned investigator. The investigator assigned to the pertinent occupation interacts with the complainant to gain an understanding of the alleged offense and determines whether the violation falls within OccLic's jurisdiction. If the complaint appears to be within OccLic's jurisdiction to investigate, the investigator will request a complaint form be completed and returned.

When complaints are filed with OccLic, they are forwarded to the primary investigator. It is each investigator's responsibility to officially open the case by entering the pertinent information into the investigative case management system.

OccLic does not hold complaints in a backlog until resources become available. Most investigators have more assigned cases than they can actively investigate. Investigators keep an inventory of assigned cases and make their own determination – subject to general priority guidance – as to which of their assigned cases to investigate.

The investigative unit does not use standard procedures when conducting investigations (except for a standard policy of assigning case priority levels). Investigators draw upon their previous investigative experience when conducting and documenting investigations. The extent and format of documentation reflects each investigator's previous training and experience. There is no standard means of informing a subject of an investigation that the investigation is being conducted. Further, there is no standard means of informing complainants of delays in the investigative process.

In addition to investigating complaints, investigators have the responsibility of monitoring compliance with disciplinary actions and/or memorandums of agreement. Typically, memorandums of agreements consist of fines, continuing education classes, and/or drug testing. However, occupational licensing boards and DCCED have imposed other requirements such as periodic psychological examinations.

Exhibit 6

Director Caseload Reduction Directive

During FY 03, OccLic's director instituted a caseload reduction project to reduce the inventory of cases. Investigators were directed to close cases that were over a year old and did not pose a serious threat to public safety. During FY 03 and FY 04, a total of 78 cases were closed under this project.

REPORT CONCLUSIONS

We conducted a review of Alaska's sunset process to assess the impact of Alaska's sunset laws and to make recommendations for improvement taking into consideration national trends and best practices.⁴ We also reviewed the investigative unit within the Department of Commerce, Community, and Economic Development (DCCED), Division of Occupational Licensing.

Operational, regulatory, and statutory improvements associated with over 25 years of sunset experience have been institutionalized by entities subject to sunset. Because of improvements, sunset reviews on a standard four-year cycle are no longer an efficient use of state resources. Detail conclusions regarding the sunset process are discussed in Section I below.

DCCED's investigation unit has increased protection of the general public and members of licensed professions by increasing the number of disciplinary actions taken. However, the unit's case management procedures are in need of significant improvement. Detailed conclusions regarding operations of DCCED's investigative unit are discussed in Section II beginning on page 17.

SECTION I – ANALYSIS OF ALASKA'S SUNSET PROCESS

Alaska's sunset process has been successful at identifying and correcting significant deficiencies. Consequently, sunset laws have evolved from a means of enacting change to the mechanism for monitoring continued operations. Entity operations have matured and warrant less frequent oversight.

The sunset review period should be lengthened to eight years to more efficiently use state resources. Sunset evaluation criteria can be improved by specifically requiring an analysis of effectiveness and efficiency and including a review for duplication of effort. Both recommended changes are consistent with national trends in sunset law.

Sunset laws in other states have changed significantly

Sunset laws in other states have changed significantly since first enacted nationally in the mid-1970s. The focus of sunset reviews during the early years was on eliminating government agencies. Many states were successful at eliminating unneeded agencies;

⁴ The Government Accountability Office defines best practices as "the processes, practices, and systems identified in public and private organizations that performed exceptionally well and are widely recognized as improving an organization's performance and efficiency in specific areas." We used best practices entitled *Carrying Out a State Regulatory Program* published by the National State Auditors Association in 2004 to help evaluate operations of DCCED's investigative unit.

Exhibit 7

Sunrise Laws Gain Popularity as Means of Limiting Growth of Government

Nationally, legislation called "sunrise law" has been adopted by many states. Sunrise is defined as the process by which an occupation or profession wishing to receive registration or licensure must propose the components of the legislation, along with cost and benefit estimates of the legislation. Sunrise attempts to limit the growth of government by requiring certain aspects of regulation be considered as part of the legislative decision-making process. Currently, there are 11 states with active sunrise programs.

Sunrise laws differ from sunset in that sunrise attempts to limit growth of government by preventing an unwarranted government agency or program. Conversely, sunset attempts to terminate unnecessary government agencies or programs. Proponents of sunrise law argue that it is less costly and more effective to increase the scrutiny at an agency's birth rather than try to enact its termination.

As with sunset programs, states have set up their respective sunrise programs differently and have experienced varying levels of success. States differ on what occupations are covered by sunrise law and to what degree interested parties must provide information. Some states have formal sunrise procedures that require questionnaires for applicant groups and a summary review of the questionnaire by an objective agency – both the questionnaire and the review must be considered by the legislature during the decision-making process. Other states have more informal procedures, while others make the process optional. A report on occupational licensing issued by the state of Minnesota's legislative auditor (Report # 99-05b Feb 3, 1997) concluded that state legislatures with formal procedures appear to be better informed during the occupational licensing process.

In this same report, Minnesota's legislative auditor highlighted Florida and Washington as two states with successful sunrise programs. Florida's sunrise statute covers proposals to regulate previously unregulated occupations but does not include increases in the scope of practice of occupations already licensed. Washington's law covers unregulated occupations and scope of practice proposals for health care professions. Additionally, Washington's sunrise law stipulates that when regulation is deemed necessary the legislature should enact the least restrictive form of regulation (for instance registration or certification rather than license).

Both Washington and Florida have been successful at limiting licensure through their sunrise programs. No groups of professionals have been licensed in Florida since the law was passed in 1991. In Washington, only one health care profession has been licensed since the law was passed in 1983.

A well-designed sunrise program can provide complete information for better decision making, thereby limiting unnecessary growth of government. However, the improvement is not without a cost. Similar to the sunset program, administration of the program, review, and deliberation would be a costly process.

however, not to the extent envisioned. The most common outcome of sunset reviews has been administrative and structural changes.⁵

The commitment to improve government through sunset legislation led 36 states to adopt sunset laws between 1976 and 1981, but the use of sunset laws began to fade in the mid-1980s. By 1990, only two additional states had adopted sunset laws, six states had repealed their sunset laws, and another six had suspended their programs. Some discontinued the sunset process due to funding shortages, while other states discontinued their programs because they were ineffective. As of 2002, 26 states continue to have active sunset review programs.

For those states that continue to utilize the sunset process, attention has shifted away from determining whether there is a continued public need for an agency, program, or law. Instead, reviews are becoming more focused on efficiency and effectiveness. Recommendations tend to reflect needed operational and regulatory improvements.

States have found it difficult to terminate agencies or provisions of law under the sunset process. Once established, agencies/programs/laws tend to have a number of people with a strong vested interest in maintaining the status quo. Terminations often result in a marginal benefit to the public but can have significant, negative consequences for a specific group. Political forces make it difficult to objectively terminate. As a result of the difficulty in terminating a program, sunrise laws have gained popularity as a means of limiting the growth of government. Sunrise laws are explained in Exhibit 7 on the opposite page.

The sunset process has contributed to operational improvements

Sunset review recommendations have resulted in significant operational, regulatory, and statutory changes to boards and regulatory agencies covered by the sunset law. The changes have improved and enhanced operations of Alaska's boards and regulatory agencies. We reviewed the degree to which sunset audit recommendations made by our division, during the years 1993 through 2003, were implemented. We limited our review to recommendations that could be implemented by a board/regulatory agency (operational and regulatory types of recommended changes) or by the legislature (statutory changes).

During the 11-year time period (FY 93 to FY 04), Legislative Audit made 176 statutory, operational, or regulatory recommendations in sunset audits, that could be implemented by either a board/regulatory agency or the legislature. Seventy-three percent of recommendations for nonoccupational boards and regulatory agencies were implemented or partially implemented. For occupational boards, eighty-three percent of recommendations were implemented or partially implemented. Exhibit 8 on the next page summarizes the degree of implementation by type of recommendation.

⁵ Information taken from *Sunset, Sunrise, and Agency Audits* published by the Council on Licensure, Enforcement and Regulation (CLEAR) 2004.

In summary, operational procedures, regulations, and statutes have been improved as a direct result of the sunset process. Consequently, the boards and regulatory agencies subject to sunset, are less at risk of operating in a manner contrary to the public's best interest.

Standard sunset extension period of four years is not an efficient use of state resources

Since the 1977 initiation of Alaska's sunset law, government accountability has become a more central part of public policy. Occupational boards submit annual reports which include: licensing statistics, goals and objectives of the next year, investigative unit summaries,

progress made on sunset audit recommendations, and recommendations for statutory or regulatory changes. The legislature has instituted an accountability program for state agencies that require reporting measures of accomplishments. These non-sunset mechanisms of oversight provide alternative ways for the legislature to review operations.

Resources devoted to the sunset process are not commensurate with the need for continued legislative oversight. As discussed earlier, improvements have been institutionalized by entities subject to sunset and alternative means of oversight were instituted. Monitoring of operations accomplished through the sunset process would become more efficient, if the standard period of review was lengthened. We recommend increasing the standard period for review to eight years.

This recommendation is supported by national trends. Alaska, along with three other states, has the shortest standard extension period of four years. Three states have a six-year standard and eight have a ten-year standard. The Background Information section of this report identifies the standard sunset review periods for other states with active programs.

Alaska's existing sunset criteria are similar to other states but could be improved

The sunset law includes nine criteria to be considered during the legislative oversight process. These nine criteria are used by Legislative Audit as evaluation criteria for every sunset audit. No changes to sunset criteria statutes have been made since first enacted in 1977. The nine criteria are listed in Appendix A of this report.

Exhibit 8

**Implementation of Audit Recommendations
1993 through 2003**

Nonoccupational Board/Regulatory Agency				
Type of Recommendation	Yes	Partial	No	Total
Statutory	6	1	10	17
Operational	37	5	8	50
Regulatory	1		1	2
Total	44	6	19	69

Occupational Board				
Type of Recommendation	Yes	Partial	No	Total
Statutory	27	3	10	40
Operational	53		8	61
Regulatory	5		1	6
Total	85	3	19	107

We compared Alaska's sunset criteria to five other states with similar comprehensive sunset programs.⁶ Sunset criteria used by Alaska are similar to the criteria used in other states. Our comparison also concluded that several states use criteria that Alaska does not have but may benefit from including in its laws. As discussed in Recommendation No. 1, the legislature should consider amending the sunset statutes to include the following criteria:

- *The extent to which the board, commission, or agency has effectively obtained its objectives and purposes and the efficiency with which it has operated.* This criterion reflects the national trend towards focusing sunset reviews on efficiency and effectiveness. This focus is consistent with efforts by the legislature to make government more accountable.
- *The extent to which the entity duplicates the activities of other government agencies or of the private sector.* This criterion gives legislators a means of evaluating whether government is duplicating government or is providing a service already available through the public sector. This criterion could serve as a basis for recommending sunset of existing agencies in the event that duplication is unjustified.

Schedule for sunset reviews should be restructured to make workload more manageable

The 24th Alaska Legislature will be considering legislation that extends 12 boards and commissions set to terminate under the sunset statutes. Typically, four to seven boards and/or commissions are due to terminate each year. The spike in this number of entities set to terminate is a result of extensions made over the previous years. The resulting 2005 workload will require additional commitment of staff resources and committee time.

Legislative Audit will be considering the impact on legislative resources when making recommendations for extension. It is our intent to recommend extension dates that smooth the workload. Such action will make the impact more manageable for future legislatures (See Appendix E).

SECTION II – ANALYSIS OF DCCED'S INVESTIGATIVE UNIT OPERATIONS

DCCED's investigative unit has difficulty in efficiently addressing its caseload. Case management is hampered by poor supervision of open caseloads, a lack of standards for completing critical aspects of the investigative process, and a prioritization policy that does not ensure cases are consistently addressed in a fair and equitable manner.⁷ Most findings

⁶ As discussed in the Background Information section of this report, there are currently 26 states with active sunset programs. Eight of the 26 are comprehensive in scope, including Alaska. By comparing Alaska's sunset criteria to five other comprehensive sunset programs, our review covered 75 percent of states with similar sunset programs.

⁷ Individuals that file a complaint with the investigative unit most likely assume their complaint will be addressed in the order in which it was received. Investigators manage their own inventory of cases under broad guidance to first address cases concerning public safety. When it comes to cases with the same priority level, investigators are not required to investigate cases on a first-in first-out basis.

noted during our review can be attributed to the need for improving case management procedures.

Inability to reduce the inventory of open investigative cases has been an ongoing problem

A large inventory of open cases has been a continual problem for the investigative unit. The unit had 586 open cases at the end of FY 93, compared to 530 open cases at the end of FY 04. The unit's inventory of open cases dipped to a low of approximately 450 in 1999 but increased to over 600 at the end of each year between FY 01 and FY 03. The large inventory of open cases slows down the unit's ability to address new complaints in a timely fashion.

The investigative unit has been unable to address the case inventory (thereby improving the timeliness of the investigative process) even though their staff has doubled since FY 93.⁸ Staff increased during the 11-year period, yet the inventory of cases did not significantly decrease. Increase in staff positions did lead to an increase in disciplinary actions,⁹ the number of cases opened, and the number of cases closed.

Investigators are limited in their ability to actively work cases. The number of cases an investigator can actively work varies based on the nature of complaints, complexity of the investigations, and priority set on other cases in an investigator's assigned caseload. Most investigators have a much larger caseload than they can investigate. The longer a case is open, the more difficult it is for investigators to find respondents, witnesses, and other forms of evidence. Further, older cases are more likely to be closed due to lack of investigative resources and lack of evidence.

Poor case management noted during review of investigative case files

While the investigative unit does a good job of monitoring compliance with ongoing disciplinary actions, we observed several deficiencies in the processing and management of the investigative unit's caseload. The operational deficiencies involve:

- inconsistent assignment of case priority levels,
- inappropriate delays in entering a case in the investigative computerized tracking system,
- extended periods of investigative inactivity,
- inadequate documentation to justify closure action,
- investigator reassignment, and
- instances of keeping cases open after an investigation is completed.

⁸ In FY 93 there were seven full-time equivalent investigator positions. This number increased to a high of 16 positions in FY 03. In FY 04, the unit had one investigator IV position, 12 investigator III positions, and one investigator I position for a total of 14 investigator positions.

⁹ Disciplinary actions usually involve one or more of the following: license suspension, license revocation, memorandum of agreement, or fines.

Most findings can be attributed to poor case management procedures. Poor case management procedures include inadequate supervision of investigators' inventory of assigned cases and a general lack of standards for critical aspects of the investigative process. Without adequate supervision of investigators' caseloads, periods of inactivity go undetected and older cases go unaddressed. The organizational structure and reporting relationships of the investigative unit contributes to the Chief Investigator's inability to adequately supervise his staff's open caseload. This is discussed in further detail below.

Critical aspects of the investigative process include complaint intake and assignment, investigation and documentation, drafting of closure documents, and enforcement. The investigative unit lacks standards for most of these areas. Investigators claim that prescribed standards would not be effective, because each investigation is unique. We acknowledge the unique circumstances involved in each investigation, however, general standards could be effective in ensuring investigations conform to predetermined expectations with regards to documentation and timeliness. For example, we noted in several instances, a delay between the conclusion of an investigation and the drafting of closure documents. Standard timelines would be helpful to clarify management's expectation regarding a reasonable timeframe for completing and submitting closure documents.

Organization of the investigative unit impedes productivity and restricts improvements

The investigative unit's organization and workload assignment procedures make it difficult to address the operational deficiencies through policy and procedure changes. The unit's organizational structure would limit the impact of improved procedures.

The Chief Investigator has the difficult task of supervising 14 positions (13 investigators and one clerical staff) and fulfilling the position's other time-intensive responsibilities. The unit has no midlevel supervisors.

Under this organizational structure, the Chief Investigator prioritizes his workday, working on the tasks that must get done such as; drafting accusations, editing closure documents, assisting with negotiations, working with the Department of Law, and interacting with the press, board members, and the general public. Less time-sensitive supervisory duties such as monitoring the status of investigators' open cases, evaluating the quality of investigative work (including level of documentation), and providing training receive little of the Chief Investigator's attention.

In summary, organization of the investigative unit impedes the ability to make procedural improvements. Recommendation No. 2, in the Findings and Recommendation section, addresses the need to make organizational changes as the first step to implementing improvements.

Investigative staff positions do not reflect complexity of investigative tasks

Almost all of the investigator positions (12 out of 14) are Investigator IIIs, yet the complexity of investigative tasks range from simple to complex. Consequently, the investigative unit has upper-level investigative positions doing tasks that would be more efficiently performed by a lower-level position or a paralegal. Productivity would be efficiently maximized in an organizational structure where duties being performed were commensurate with the experience and education of the position performing the task. This is further discussed as a basis for restructuring the investigative unit in Recommendation No. 2.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending sunset statutes.

From our review of Alaska's more than 25 years of experience with the sunset review process, we have developed three overarching recommendations for improving the sunset statutes. The legislature should consider amending the sunset statutes to:

1. Lengthen the standard sunset extension period from four to eight years: The need for legislative oversight no longer warrants sunset reviews on a standard four-year cycle. Most boards and regulatory agencies have been through the sunset process several times and have implemented many of the recommended improvements. As a result, the risk that boards/regulatory agencies are acting in a manner inconsistent with the public's best interest has decreased substantially.

Alaska Statute 08.03.020 provides procedures governing termination, transition, and continuation of occupational boards. Subsection (c) states:

A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010.

This statute does not preclude a longer extension period. However, because of this statute, it has been standard practice for the legislature to authorize an extension period of four years.

Alaska Statute 44.66.010 sets the maximum extension period for nonoccupational boards and regulatory agencies. Subsection (c) states:

A Commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

We recommend amending AS 08.03.020(c) and AS 44.66.010(c), making the standard period for reestablishment no longer than eight years, while giving the legislature discretion to make extensions for a shorter/longer period. An eight-year period reflects our central findings that boards/regulatory agencies warrant less-frequent legislative oversight. Lengthening the standard extension period to eight years will free up legislative committee time for consideration of other priorities and make the sunset process less time consuming for board/regulatory agencies and legislative staff.

2. Expand sunset evaluation criteria: Sunset evaluation criteria in state law do not explicitly include an overall assessment of: (1) efficiency and/or effectiveness of an agency; or, (2) duplication of effort with other state entities or the private sector. Efficiency is mentioned in Alaska statutes only in terms of the boards' ability to process complaints. Past actions by the legislature indicate that this is an important area for evaluation.

Additionally, the degree to which an agency's activities are duplicated by other state agencies, or the private sector, is a valid basis for recommending termination. State law at AS 44.66.050(d) indicates that duplication should be considered but sunset evaluation criteria do not specifically address this performance area.

Adding these criteria will make the sunset process more effective and enhance legislative oversight. States with similar sunset programs have sunset criteria that addressed these areas.

We recommend the legislature consider amending the sunset criteria statutes, AS 44.66.050(c), by adding the following criteria:

- The extent to which the board, commission, or agency has effectively obtained its objectives and purposes and the efficiency with which it has operated.
- The extent to which an entity duplicates the activities of other government agencies or of the private sector.

While efficiency and effectiveness are often part of sunset reviews, inclusion in statutory evaluation criteria would make sure these factors were consistently considered during the sunset process. Likewise, addressing the possibility of duplication of services would assist the legislature in making government more efficient overall.

3. Clarify responsibility for regulation, in the event an occupational licensing board terminates. Statutes do not specifically define how the regulating responsibility for professions will shift to another state agency, in the event an occupational licensing board terminates under the sunset provisions. Traditionally, the Department of Commerce, Community and Economic Development (DCCED) has assumed the responsibility for administering the regulated occupation after a board has terminated. However, the statutes do not clearly give DCCED the authority to do so.

We recommend the legislature consider amending central licensing statutes to address this uncertainty.

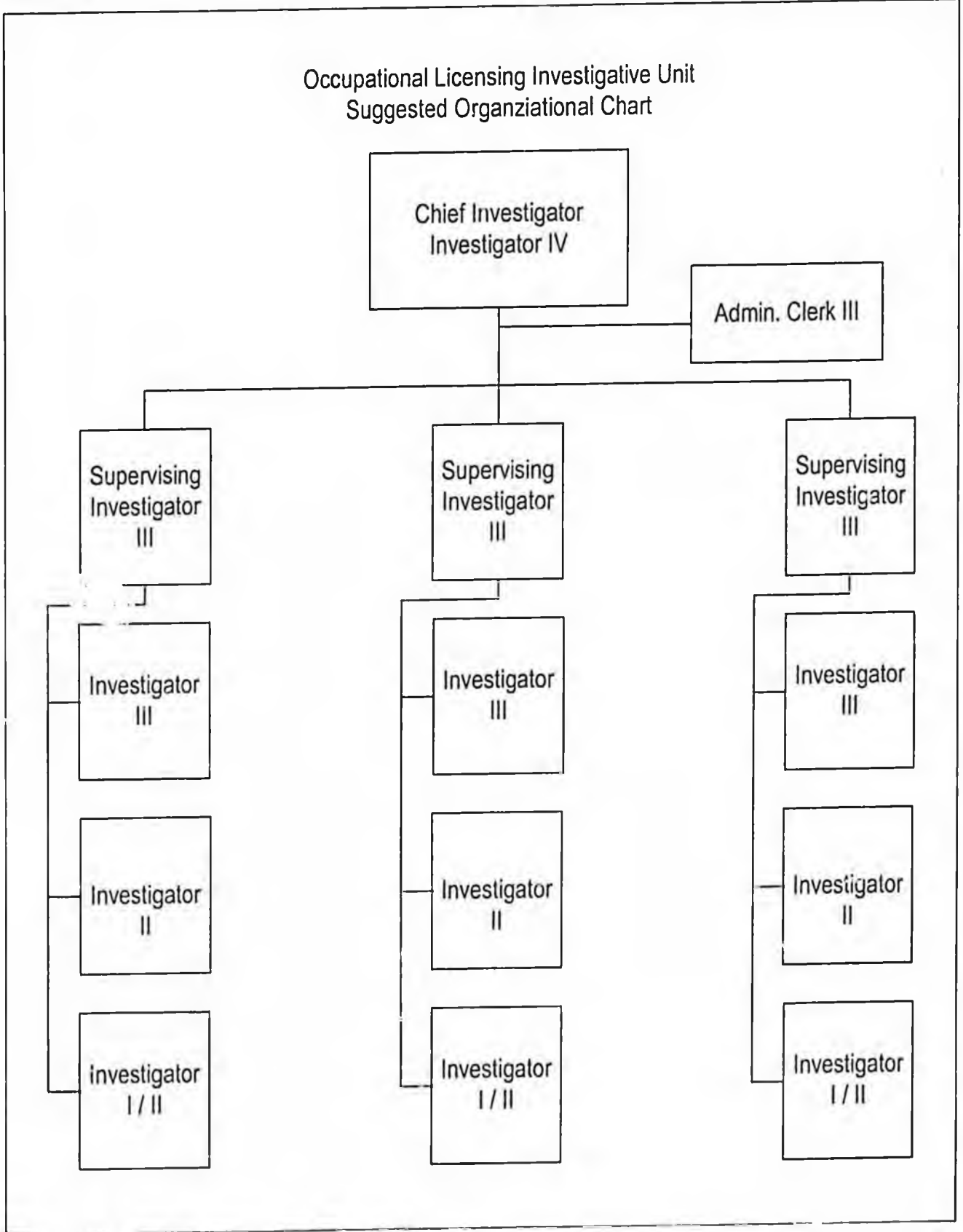
Recommendation No. 2

The director of the Division of Occupational Licensing (OccLic) should implement changes to address investigative inefficiencies and case management procedures.

Investigative inefficiencies and poor case management procedures have hampered the performance of the investigative unit, thereby reflecting poorly on occupational boards', and DCCED's, effectiveness at regulating their respective professions. Review of 59 investigative cases identified the following:

- The priority code for 12 of 59 cases (20% of tested cases) was not assigned in a manner consistent with the unit's policy and procedure.
- In 11 of 59 cases (19% of tested cases), the investigator started working the case at least 14 days before it was opened in the case management system. Delays range from 15 to 679 days.
- There were 37 periods of inactivity exceeding 90 days in 24 cases (41% of tested cases). This excludes the periods of inactivity that were outside the control of an investigator (waiting for documents, cases at the Attorney General's office, and cases awaiting hearing).
- In the six cases using an expert witness (10 % of tested cases), three cases were delayed over 100 days awaiting receipt of the expert's opinion.
- In the nine cases that involved the Attorney General's office (15% of tested cases), five cases experienced delays of over 239 days awaiting action by the Department of Law. Two of the five cases were delayed over 360 days.
- There were four of 40 closed cases that lacked adequate documentation in the investigative file to justify the closure action.
- There was one delay of 179 days between the respondent requesting a hearing and the investigative unit notifying the hearing officer.
- There were 14 instances in nine cases (15% of tested cases) that had the investigator reassigned. One of the cases was reassigned four times during the course of the investigation.
- Five of the 59 cases (8% of tested cases) were left open even though the investigation had concluded. Investigators stated that cases remained open as a means of monitoring.
- One case selected for testing could not be located by OccLic's investigative unit.

Exhibit 9



The duty to investigate occupational licensing complaints is statutorily assigned to DCCED. The efficiency to which complaints are investigated is one of the evaluation criteria used in the sunset legislative oversight process. AS 44.66.050(c) requires the determination as to whether a board or commission has demonstrated a public need for its continued existence by taking into consideration a number of factors, including the following, as specified in AS 44.66.050(c)(6):

the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;

The ineffective, organizational structure of the investigative unit and poor case management procedures contributed to the findings noted above. Recommendations addressing the findings are twofold: (1) restructure the investigative unit's staff positions and reporting relationships; and, (2) based on the restructured organization, implement a number of procedural improvements.

1. Restructure the organization of the investigative unit

We recommend OccLic's director take action to reorganize the investigative unit. The Chief of Investigations cannot, both, effectively supervise 14 staff positions and carry out his other required duties. Without correcting this problem, the impact of any changes to policies and procedures will be limited.

OccLic's director should consider the addition of midlevel supervisors and the reclassification of several Investigator III positions to create a more hierarchical organizational structure. The organizational chart in Exhibit 9, on the opposite page, demonstrates how the investigative unit could be reorganized.

Such reorganization will alleviate much of the Chief Investigator's routine, daily supervisory responsibilities. It will allow for the successful implementation of procedural improvements such as detailed assessment and assignment of cases that maximizes the use of staff resources. These improvements are necessary to address the findings noted during our review of investigative case files.

Further, a hierarchical organizational structure is more capable of effectively dealing with turnover of investigator positions. Midlevel supervisors will be in a position to facilitate training and mentoring of new staff positions. Large scale turnover is imminent since many of the current investigators are at or nearing retirement age. The new structure should help mitigate the cost and disruption caused by staff turnover.

2. Change case assessment and assignment procedures

Once an improved hierarchical organizational structure is in place, the unit would benefit from a case assessment process whereby cases are assigned to investigative positions, based on expected complexity of the case and availability of investigative resources. Under this type of system, less-complex cases would be assigned to less-experienced entry-level investigators and more-complex cases would be assigned to more-experienced upper-level investigators. The assessment and assignment process would also consider the assignment of higher priority cases (those that could pose a public harm) to investigators with resources available to immediately address the case.

Most cases (70% of those opened during the past five fiscal years) are considered lower-level priority cases – priority three or four. Currently, lower-level cases are more prone to extended periods of inactivity and generally take longer to get through the investigative process. Assessing and assigning cases based on complexity and priority would help ensure that all cases move through the investigative process in a more timely fashion.

Assigning cases based on complexity does a much better job of matching the skills and experience of investigators to the tasks they are asked to perform. Less-complex tasks are performed by less-costly investigative positions, which is a more efficient use of state resources. Further, because cases are assigned based on available resources, the investigative process should endure fewer periods of inactivity, making the overall process more efficient and effective.

3. Implement improvements to case management procedures

Reorganization of the investigative staff positions, and implementation of a new case assessment and assignment process, are essential to the successful implementation of procedural improvements. We also recommend the following improvements to address investigative findings:

- a) ***Improve the monitoring of open investigations:*** Midlevel supervisors should conduct routine evaluations of investigator caseloads including the development of action plans to address effective closure of older cases.
- b) ***Timelines for completion should be made a part of contracts for expert services:*** To address the problem of untimely submission of expert analyses, mutually agreed upon timelines for completing the project should be made a part of contracts with experts.
- c) ***Develop and enforce standards for case file documentation:*** Standards are needed to ensure that case files provide comprehensive support for investigative outcomes.

Documentation should include all contacts made related to the investigation. Ensuring cases are well documented will help alleviate the inefficiencies associated with reassigning cases. Further, improved documentation will facilitate case file review.

- d) ***Develop and enforce expected timelines for completing aspects of the investigation:*** Timelines are necessary to clarify management expectations for opening cases, investigating cases, drafting closure documents, and if necessary, presenting closing documents for board consideration. Further, using standards for completion as a performance measure will help gauge productivity.

4. Implement other changes to increase efficiency and effectiveness

Other improvements should also be implemented to improve the investigative function including the following:

- a) ***Improve website to better filter complaints:*** Industry best practices¹⁰ recommend websites that encourage valid complaints and discourage invalid complaints. DCCED's current Occupational Licensing website does not provide enough information about the division's jurisdiction by occupation to effectively filter out nonjurisdictional complaints. Investigators often spend time communicating information to potential complainants that could, more economically, be communicated through the agency's website. We also recommend providing a detailed description of the investigative process and answers to frequently asked questions via the website to further reduce the need for investigators to communicate this information, thereby freeing up more time to focus on investigating open cases.
- b) ***Extend work schedule:*** Industry best practices allow for investigators to meet with people outside the standard business day. Prior to FY 04, several investigators worked four days a week coming in early and/or staying late. According to investigators, this schedule provided them with time before and/or after the standard work day for scheduling interviews. We recommend, reestablishing some form of a flexible schedule to provide for interaction with the public before/after the standard business day.
- c) ***Establish preset schedules for inspections:*** Industry best practices also identify a predetermined schedule for conducting inspections. Currently, the timing and frequency of inspections are left up to investigators. The investigative unit would benefit from a management approved schedule for conducting inspections that reflects a strategic use of available resources.

¹⁰ We compared industry best practices for carrying out a state regulatory program published by the National State Auditors Association in 2004 to DCCED's investigative unit operations.

We recognize the organizational changes suggested may be difficult to accomplish within the context of Alaska's personnel system and collective bargaining structure. As stated however, such a restructuring is central to the effectiveness of other recommended changes.

Recommendation No. 3

The director of the Division of Occupational Licensing should consider drafting a policy to guide investigators' use of board members during the investigative process.

Our review of case files found that consultation with board members was poorly documented and the degree they are involved in the investigative process was unclear. While most investigators seek out board member guidance in a significant number of cases, the unit does not have clear guidance on how to utilize board members in a manner that is consistent with legal guidance.

Most investigators routinely consult members of various occupational licensing boards for technical assistance including advice on case closures. Further, for all professions regulated by the State Medical Board, it is standard practice for case closures to be reviewed by a designated board member. We question whether the use of board members, in this type of advisory capacity, is consistent with legal guidance.

Statutes assign the responsibility for investigating occupational licensing complaints to DCCED. Most occupational licensing boards are subject to the state's Administrative Procedures Act (APA). Under APA, licensing boards are the ultimate arbitrator of administrative hearings, held in conjunction with sanctions against licensees, and are required to be impartial in that capacity. As such, the Department of Law has directed that board members not become involved with the investigative process – lest it compromise the impartiality of their adjudicative function.

Using board members to direct investigative activities of a case is an inadequate separation of duties. The risk of improperly using board members is heightened by the lack of an approved policy guiding the investigators. We recommend a standard policy and procedure be drafted and approved by the Attorney General's office to ensure the boards do not jeopardize their position in occupational licensing legal proceedings.

APPENDICES

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APPENDIX A

Alaska's Sunset Criteria

Alaska's criteria for reviewing boards and commissions, subject to sunset, are defined by AS 44.66.050(c) as noted below:

- (1) the extent to which the board, commission, or program has operated in the public interest;
- (2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
- (3) the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest;
- (4) the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
- (5) the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;
- (8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest; and
- (9) the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

APPENDIX B

Changes in Occupational Boards Subject to Sunset per AS 08.03.010

Terminated Boards	July 1, 1980 through June 30, 2004
Big Game Commercial Services Collection Agency Electrical Examiners Guide Licensing and Control Mechanical Examiners Nursing Home Administrators Welding Examiners	

Added Boards	July 1, 1977 through June 30, 2004
* Big Game Commercial Services Certified Direct-Entry Midwives Certified Real Estate Appraisers Marital and Family Therapy * Mechanical Examiners Professional Counselors Social Work Examiners	

Occupational Boards Subject to Sunset	As of June 30, 2004
Barbers and Hairdressers	Pharmacy
Certified Direct-Entry Midwives	Physical Therapy and Occupational Therapy
Certified Real Estate Appraisers	Professional Counselors
Chiropractic Examiners	Psychologists and Psychological Associate Examiners
Dental Examiners	Public Accountancy
Dispensing Opticians	Real Estate Commission
Governors of the Alaska Bar Association	Registration for Architects, Engineers, and Land Surveyors
Marine Pilots	Social Work Examiners
Marital and Family Therapy	Veterinary Examiners
Medical	
Nursing	
Optometry, Examiners in	

* Board has also been terminated.

APPENDIX C

**Changes in Nonoccupational Boards and Regulatory Agencies
Subject to Sunset per AS 44.66.010**

Terminated, Merged, or Renamed	July 1, 1980 through June 30, 2004
<p><u>Terminated:</u> Alaska Code Revision Commission Alaska Council on Science and Technology Alaska Renewable Resources Corporation Alaska State Fire Commission Alaska Tourism Marketing Council Alaska Transportation Commission Alaska Women's Commission Citizen's Foster Care Review Board Hazardous Substance Spill Technology Review Rural Development Council Tourism Coordinating Committee</p>	<p><u>Merged:</u> Alaska Public Utilities Commission <i>merged with the Alaska Pipeline Commission and renamed</i> Regulatory Commission of Alaska</p> <p><u>Renamed:</u> Older Alaskan Commission <i>renamed to</i> Alaska Commission on the Aging</p> <p>Citizens Review Panel for Permanency Planning <i>renamed to</i> Citizen's Foster Care Review Board</p>

Added	July 1, 1977 through June 30, 2004
<p>* Alaska Code Revision Commission * Alaska Council on Science and Technology * Alaska Renewable Resources Corporation Alaska Seismic Hazards Safety Commission * Alaska State Fire Commission * Alaska Tourism Marketing Council * Alaska Women's Commission Board of Storage Tank Assistance Citizen's Review Panel for Permanency Planning</p>	<p>Council on Domestic Violence and Sexual Assault * Hazardous Substance Spill Technology Review Older Alaskans Commission * Rural Development Council Special Education Service Agency Statewide Suicide Prevention Council * Tourism Coordinating Committee</p>

Nonoccupational Boards and Regulatory Agencies Subject to Sunset – As of June 30, 2004	
<p>Alaska Commission on Aging Alaska Seismic Hazards Safety Commission Alcoholic Beverage Control Board Board of Storage Tank Assistance Council on Domestic Violence and Sexual Assault</p>	<p>Regulatory Commission of Alaska Special Education Service Agency State Board of Parole Statewide Suicide Prevention Council</p>

• Agency has also been terminated.

APPENDIX D

DCCED-Regulated Occupations without a Board

<u>Name of Occupation</u>	<u>Statutory Reference</u>
Regulation of acupuncturists	AS 08.06
Regulation of audiologist and speech-language pathologists	AS 08.11
Regulation of big game guides and transporters	AS 08.54
Regulation of collection agencies	AS 08.24
Regulation of concert promoters	AS 08.92
Regulation of construction contractors	AS 08.18
Regulation of dietitians and nutritionists	AS 08.38
Regulation of electrical and mechanical administrators	AS 08.40
Regulation of agencies that perform euthanasia services (animals)	AS 08.02.050
Regulation of professional geologists	AS 08.02.011
Regulation of hearing aid dealers	AS 08.55
Regulation of morticians	AS 08.42
Regulation of the practice of naturopathy	AS 08.45
Regulation of nursing home administrators	AS 08.70

APPENDIX E

Schedule of Actual and Proposed Termination Dates

June 30, 2006

Board of Governors of the Alaska Bar Association
Board of Chiropractic Examiners
Board of Examiners in Optometry
State Physical Therapy and Occupational Therapy Board
Council on Domestic Violence and Sexual Assault

June 30, 2007

Board of Certified Direct-Entry Midwives
Board of Marine Pilots
State Medical Board
Alcoholic Beverage Control Board
Regulatory Commission of Alaska
Board of Storage Tank Assistance

June 30, 2008

Board of Parole
Real Estate Commission
Alaska Commission on Aging

June 30, 2009

Board of Public Accountancy *
State Board of Registration for Architects, Engineers, and Land Surveyors *
Board of Veterinary Examiners *
Statewide Suicide Prevention Council *

June 30, 2010

Board of Pharmacy *
Board of Social Work Examiners *
Board of Marital and Family Therapy *
Board of Professional Counselors *
Board of Psychologist and Psychological Associate Examiners *
Board of Certified Real Estate Appraisers *

June 30, 2011

Board of Nursing
Board of Dental Examiners *
Board of Barbers and Hairdressers *

June 30, 2013

Special Education Service Agency

Recommended for Termination

Board of Dispensing Opticians
Alaska Seismic Hazards Safety Commission

- * These are proposed sunset dates.

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OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

December 30, 2004

Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 30 2004
LEGISLATIVE AUDIT

RE: Sunset Process and Selected Investigative Issues

Dear Ms. Davidson:

Thank you for the opportunity to review and comment on the findings in your recent audit of the Sunset Process and the Investigative Unit for the Division of Occupational Licensing. Both of these audits were overdue and we greatly appreciate your initiative and thoughtful efforts. Our comments are as follows:

Recommendation No. 1

The legislature should consider amending sunset statutes.

The Department sees merit in many of your suggestions for statute changes and will work with you during the next legislative session to gain the desired results.

Recommendation No. 2

The Director of the Division of Occupational Licensing should implement changes to address investigative inefficiencies and case management procedures.

The Department basically agrees with your specific recommendations as follows:

1. Restructure the organization of the investigative unit
2. Change case assessment and assignment procedures
3. Implement improvements to case management procedures
4. Implement other changes to increase efficiency and effectiveness

We agree that various actions are necessary if we are to achieve our ultimate goal of a timely, efficient and fair investigative process. However, any changes will not come easily or quickly.

Through the director of the division, changes have been implemented over the past two years specific to structure and management with the investigations unit. The director will evaluate the success of these changes and make additional changes and modifications as necessary to continue to evolve the effectiveness of the investigation unit. These changes may include reinstating the investigators' flexible schedule under close management supervision to assure accurate and timely work accomplishments.

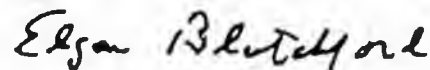
Recommendation No. 3

The director of the Division of Occupational Licensing should consider drafting a policy to guide investigators' use of board members during the investigative process.

The Department agrees there should be a policy regarding board members involvement in the investigative process, but we are unsure of what that policy should be. Several boards have asked about being exempt from the Administrative Procedures Act (APA) so that they could be more involved in the investigations. These board members are willing to give up their duties as adjudicators to better use their expertise in resolving complaints against others in their professions. They feel that their involvement would help eliminate unnecessary investigations, shorten the time required for closure and decrease the costs associated with investigations. While the APA has removed board members from the investigative process because of the potential problems with impartiality, it is a rather small percentage of the cases where board members actually become the adjudicators. This may be more of a "turf" battle than a legal issue. The division will make additional efforts in an attempt to resolve these conflicting issues and develop sound policy concerning board member involvement in investigative actions.

Again we appreciate the opportunity to comment and we especially appreciate your assistance in improving our services to the public.

Sincerely,



Edgar Blatchford
Commissioner

cc: Rick Urion, Director
Division of Occupational Licensing