

**ALASKA LEGISLATURE**

**1391**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996**

**HB**

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# Audit Report

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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
BOARD OF CHIROPRACTIC EXAMINERS

September 6, 1995

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Audit Control Number:

08-1434-96

Division of Legislative Audit

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

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## 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 each legislative chamber. 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 \$5 billion a year. As legislators and administrators try increasingly to allocate state revenue 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.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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September 6, 1995

Members of the Legislative Budget  
and Audit Committee:

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

### A SPECIAL REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF CHIROPRACTIC EXAMINERS

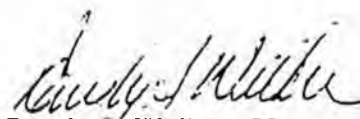
September 6, 1995

Audit Control Number  
08-1434-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report, we assess the operations and performance of the Board of Chiropractic Examiners utilizing the criteria set out in AS 44.66.050(c). The criteria relates to assessing the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(8), the Board of Chiropractic Examiners is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Chiropractic Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Chiropractic Examiners until June 30, 2000.

The audit was conducted in accordance with generally accepted government auditing 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 section of this report.

  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Chiropractic Examiners. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(8) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

### Objectives

Our specific audit objectives were:

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

### Scope and Methodology

We reviewed the board activities and licensing functions for the years FY 92 through FY 95. The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

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

**Board of Chiropractic Examiners  
(As of August 1, 1995)**

**William F. Risch, D.C. Chair**

**Patricia Conners-Allen, D.C.**

**Trevor Ireland, D.C.**

**LeRoy D. Nordstrom, D.C.**

**(Vacant), Public Member**

As discussed in Recommendation No. 2, since January of 1995 the public member seat on the board has been vacant.

## ORGANIZATION AND FUNCTION

The Board of Chiropractic Examiners was established under the provisions of Title 8, Chapter 20 of Alaska Statutes. The board consists of five members appointed by the governor and subject to legislative confirmation. Four members must be chiropractors and one member must be appointed from the general public. Board members serve staggered terms of four years.

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

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling the standards of professional chiropractic practice.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when an individual has violated chiropractic statutes or regulations.

By statute an applicant may be licensed by passing the examination given by the board or by credentials. For credentials, an applicant must provide proof of licensure in another jurisdiction with requirements that are essentially equivalent to Alaska's. Both types of applicants must meet specified educational requirements, and pass all parts of an examination administered by the National Board of Chiropractic Examiners.

### Division of Occupational Licensing

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

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## REPORT CONCLUSIONS

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

The Board of Chiropractic Examiners has consistently been found to satisfy a public purpose and has demonstrated its ability to conduct business satisfactorily. Deficiencies found have been relatively minor, and are further discussed in the Findings and Recommendations section of this report.

Alaska Statute 08.03.010(c)(8), requires that the Board of Chiropractic Examiners be terminated on June 30, 1996. Under AS 08.03.020 the board has a one-year period to administratively conclude its affairs. Based upon our review of the board's performance, it is recommended that the next termination date for sunset review should be June 30, 2000.

Our recommendation for a four year extension is linked to the suggested legislative action set out in Recommendation No. 1. In the recommendation, we suggest the legislature clarify statutory language which allows for licensure by credential. As reflected by subsequent discussion, we make this recommendation despite concerns that such action may appear to lead to more restrictive entry into the chiropractic profession.

Our concerns were alleviated by our review of examination results which indicated that the current board's policy of denying licenses by credential did not result in unduly restricted entry into the profession. If the legislature adopts our recommendations related to credential provisions in statute, we believe the board should be limited to only a four year renewal period. By limiting the renewal period, a more timely review of examination practices would automatically be triggered. Such a review will allow our agency to address concerns that licenses continued to be issued in a fair and reasonable manner, even after current practice has been codified in statute.

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**LICENSURE AS A CHIROPRACTOR IN ALASKA REQUIRES  
APPLICANTS TO PASS BOTH A NATIONAL AND  
STATE EXAMINATION**

The Board of Chiropractic Examiners requires applicants for licensure to successfully complete both national and state examinations. The national examination is made up of three parts. Additionally, the state board requires that applicants also pass a physiotherapy examination. Both of these national examinations are administered through the auspices of the National Board of Chiropractic Examiners.

Some applicants, licensed in other jurisdictions, fail to meet the State's *essentially equivalent* standard because they were licensed without having to pass part three of the national examination and/or the physiotherapy examination. State regulation provides that an applicant can substitute an examination from another state for part three or the physiotherapy section if the applicant can demonstrate that the test is equivalent. As discussed in Recommendation No. 1, to date the board has yet to recognize any other state's examination as being equivalent.

**The state examination includes written, oral, and practical components**

The state examination involves a written test of Alaska Statutes related to the ethical and legal requirements involved with the practice of chiropractic in the State. Additionally, the examination also involves a written test on the administration, safety procedures, analysis, and interpretation of x-rays. As might be expected, applicants licensed in other jurisdictions have not met these criteria, and accordingly, even if they meet all the requirements of the other phases, they cannot achieve the State's *essentially equivalent* standard. The written examination also covers clinical practice and evaluates the applicant's competency in this area.

The state examination also includes a demonstration of an applicant's ability to properly apply chiropractic techniques using one of a number of different methods. In addition to demonstrating what is termed manipulative technique, the applicant must also demonstrate their competency in the area of physiotherapy, physical diagnostic skills, and interpretation of x-rays. Even though an individual, licensed in another state, may have passed a similar practical examination as a condition of licensure, the board still requires the applicant to pass this phase. Unlike the national examination phase, the applicant does not receive "credit" for successful completion of any one segment of the state examination. Rather, all applicants regardless of any previous license status, must demonstrate their practical technical proficiency to the satisfaction of the board.

After successfully completing all phases of the licensing examination the applicant is required to sit for a formal interview with the board and respond to typically routine questions regarding their background and experience. The interview process is generally a routine formality for the applicant.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should consider amending state law related to what the statutes term as "licensure by credentials" for chiropractors.

Alaska Statute (AS 08.20.140) provides for a process by which applicants may be licensed as chiropractors without taking the state examination. The statute provides that the Board of Chiropractic Examiners may issue a license if an applicant can satisfactorily demonstrate they were licensed in another jurisdiction that imposed requirements *essentially equivalent* to the State's current licensing standards.<sup>1</sup>

For the past four years reviewed, no applicant has received a license without taking the state examination. In practice, the board essentially deals with all applicants the same way, regardless whether or not the individual may have been licensed as a chiropractor in another jurisdiction. The board scrutinizes each applicant's training, experience, and examination credentials in making its licensing determination. The board gives credit to examination testing, training, and experience that may have been obtained in another jurisdiction by an individual practicing as a licensed chiropractor. However, the board has historically held that no applicants, licensed in other jurisdictions, meet the *essentially equivalent* requirements.

The board seems to have made this determination by considering licensing requirements, in their entirety. To be licensed as a chiropractor in Alaska, an applicant, after documenting they meet the necessary qualifying education and experience requirements must then successfully complete both the national and state examinations. These examination requirements, as described in the inset on the opposite page, are applied to all applicants, and invariably result in everyone needing to successfully complete at least one examination.

The multiplicity, and to some degree the uniqueness, of examination requirements for licensure in the State has rendered the licensure by credential statute meaningless. The statute serves to falsely suggest that an applicant could obtain licensure in Alaska based solely on their licensure in another jurisdiction, as long as the other jurisdiction had *essentially equivalent* standards. However, because of the extensive and state-specific nature

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<sup>1</sup> Specifically, AS 08.20.140 provides

*The board may issue a license without examination to an applicant presenting satisfactory proof of possession of a license or certification of registration in good standing in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of the applicant's license were essentially equivalent to those in this chapter. [emphasis added]*

Alaska's requirements, as a practical matter no other jurisdiction's requirements can meet the equivalency standard.

We would typically look in askance on such practices and requirements that seem to be unduly rigorous. Such extensive requirements can serve as an unfair barrier to entry into the profession — protecting the professional interests of current licensees at the expense of the public interest. We are given further pause by the apparent intent of the legislature that licensure be available to applicants from other jurisdictions. This intent can be reasonably inferred from AS 08.20.140 which provides for a process whereby licenses could be obtained without examination. We have been traditionally skeptical about board actions and functions that seemingly have the effect of eviscerating original statutory intent.

However, from our review of this board's licensing activities, we determined that the board has not been acting to unduly or unfairly restrict licensure. Over the past four years the board has issued more than 40 licenses, and the rate of success for applicants is almost 50 percent. In cases where an individual did not pass the jurisprudence section of the state examination, the board allowed applicants to retake the examination upon arrangement with the board's licensing examiner. In our view, these statistics suggest that the board has not been overly restrictive in its application of licensing requirements.

As discussed in the inset on page six, the State requires applicants that may be licensed in another jurisdiction to demonstrate their practical proficiency, even though they may have done so in an essentially equivalent process as a condition of original licensure. We believe it is reasonable for the board to satisfy itself that prospective practitioners can adequately and appropriately perform the day-to-day practical requirements of their profession.

Accordingly, we recommend the legislature consider either amending or repealing AS 08.20.140. By doing so, the legislature could more clearly set out the actual requirements and expectations involved in the licensing of chiropractors. Repeal would eliminate the expectation and possible confusion on the part of applicants who may be licensed by other jurisdictions regarding what they must do to be licensed in Alaska.

A preferable remedy may be for the legislature to codify more specifically in statute the requirements for licensure. Such a statutory amendment could state that any applicant must successfully complete certain relevant national examinations; the necessary state examinations; and, a practical demonstration and examination in front of board members. By codifying current practice in statute, the legislature could provide both clear notice of licensing requirements and standards, while also guarding against possible abuses by future boards.

*Handwritten notes:*  
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...may

Recommendation No. 2

The Office of the Governor should arrange for appointments to the public member seat on the Board of Chiropractic Examiners to be made in a more timely manner.

Alaska Statute 08.20.020 provides that one member of the general public be appointed to serve on the Board of Chiropractic Examiners. The public member sits with four licensed chiropractors on the State's regulatory and oversight board.

The public member board seat has been vacant since January of 1995. It was also vacant from March of 1991 to July of 1992, and from January of 1994 through March of 1994. Of the fifty-one months from March of 1991 to June of 1995, the seat was vacant approximately twenty-five months. In that time, the board held five meetings without the benefit of the presence of the required board member.

This lack of public representation on the board defeats the intent behind the board membership statutory requirement. It fosters the possibility that the board will be more insular and self-serving in its actions and makes the board less accountable to the public at large.

As of the date of this report no new public member has been appointed. We recommend that if at all possible, the seat be filled before the next scheduled meeting.

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## ANALYSIS OF PUBLIC NEED

### Limited Analysis

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

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

The board has served the public by examining and licensing qualified applicants, and by proposing changes to statutes and regulations in order to enhance the quality of chiropractic care in Alaska.

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

The board was instrumental in the passage of legislation permitting the establishment of a peer review committee to review complaints concerning the reasonableness or appropriateness of care provided, fee charges, or the costs of services rendered by licensees.

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

The board has served the public by examining and licensing qualified applicants and by proposing changes in regulation that are necessary to enforce state statutes and enhance the quality of chiropractic care in Alaska.

Appointments to the public member board seat were not made in a timely manner. This seat has been vacant since January 1995. It was also vacant from March 1991 through July 1992 (16 months), and it was vacant from January 1994 through March 1994. For further discussion, see Recommendation No. 2.

Alaska Statute 08.20.140 states that licensure by credential may be extended to applicants who present proof of current licensure in other states, and who have met requirements essentially the same as those which exist in Alaska. The board has held that no tests equivalent to the state exam, or equivalent to part three of the national written exam exist. Therefore, as a practical matter, all applicants are required to take these tests to be licensed in Alaska. For further discussion, see Recommendation No. 1.

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

The board was instrumental in the passage of legislation establishing a peer review committee to review complaints concerning the reasonableness or appropriateness of care provided, fees charged, or the costs of services rendered by licensees.

The board supports implementation of Locum Tenens statutes and regulation of chiropractic technicians. Adoption of a Locum Tenens measure would provide easier access to licensed chiropractors from other states to practice in Alaska on a temporary basis. This would permit professionals from other states to practice, perhaps in a substitute capacity for a licensed chiropractor within the State.

The board also supports inclusion of chiropractors in the Impaired Physician's Act as found in AS 08.01.050(d). This statute allows occupational licensing to contract with public or private agencies to provide assistance and treatment to persons licensed by the board, who abuse alcohol, drugs, or other substances. Currently, professionals not covered under this act are monitored by personnel in the investigative unit of the Division of Occupational Licensing. Contracting with agencies specializing in the treatment of alcohol and drug abuse will afford those professionals a better chance for recovery and will ultimately result in more stable professional care offered to the public.

*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 meetings and examinations were advertised in three Alaskan newspapers with adequate notice for interested individuals to attend or to make written comment.

Time was set aside to hear public testimony at all meetings.

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

Public notices of proposed regulations are published in major newspapers. As noted above, meetings were adequately advertised, and time was set aside for public testimony.

*The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or to the Ombudsman have been processed or resolved.*

No complaints were filed with the Ombudsman regarding chiropractic licensees.

Overall, the investigation of complaints against licensees received by the Division of Occupational Licensing is effective. While timeliness is a concern, given the circumstances surrounding the cases that have remained open for an extended period, progress is not unreasonably slow. Complaints are prioritized logically and handled accordingly.

During the period under audit, nineteen investigative cases were opened. Six of these cases involved allegations of fraud or misrepresentation. Three cases involved allegations of negligence, and two involved practice beyond the scope of ones license. One case was a sexual misconduct case and one dealt with violation of professional ethics. Two cases involved unlicensed practice, one involved criminal action, and the final three were license application problems. We reviewed a sample of nine cases. Additionally, we noted all cases that required board decision. All hearing officer's decisions were upheld by the board.

The licensing board appears to be willing to take effective licensing enforcement action, and to operate in a fair and objective manner.

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

Overall, the application process for chiropractic licensure appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Qualified applicants are readily licensed.

Adequate continuing education is required to maintain licensure. Continuing education credits are adequately monitored by the Division of Occupational Licensing to promote a high level of quality performance to the public.

*The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.*

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

*The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.*

As discussed in Recommendation No. 2, the significant portion of time the public member board seat was vacant represents a lack of public representation on the board.

The board's position that no test is equivalent to the state exam or to part three of the national exam causes AS 08.20.140 to be misleading. As discussed in Recommendation No. 1, the statute should be clarified to avoid confusion as to what are the board requirements for licensure by credentials.

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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November 30, 1995

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LEGISLATIVE AUDIT

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

Dear Mr. Welker:

Reference the Board of Chiropractic Examiners Preliminary Audit Report. Thank you for this opportunity to comment.

**Recommendation No. 1:**

The Legislature should consider clarifying state law related to what the statutes term as "licensure by credentials" for chiropractors.

As the board has not issued a license by credentials in more than four years, we concur that license by credentials provision in AS 08.20 is misleading to applicants. The board has been unable to determine equivalency of other jurisdiction exams and, therefore, all applicants have been required to sit for the entire Alaska examination.

**Recommendation No. 2:**

The Office of the Governor should arrange for appointments to the public member seat on the Board of Chiropractic Examiners to be made in a timely manner.

My department is not involved with board appointments; this recommendation will be passed along to the Governor's office for comment as applicable.

**Analysis of Public Need:**

We agree with your analysis of the need for licensing this profession. In our opinion, the board has performed its responsibilities in the best interest of the public.

**Examinations:**

With regards to page 6, relating to the exam categories, we would like

Mr. Randy S. Welker

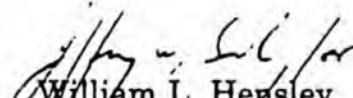
-2-

November 30, 1995

to clarify that under paragraph four, it is correct that the board previously gave a practical exam section which specifically covered physiotherapy and interpretation of x-ray; however, that portion of the exam was discontinued some time ago (approximately 1992). Current exam categories administered during the August 1995 exam were as follows:

<u>Exam</u>	<u>Passing Score</u>
X-ray Written Exam Section	75%
Jurisprudence Written Exam Section	75%
Oral Exam (six questions--applicant specific)	Pass/Fail
Manipulation Techniques (Applicant chooses one of three options)	75%

Sincerely,

  
William L. Hensley  
Commissioner

WLH/BG/yd730.ol

103195a

cc: Catherine Reardon, Director

bcc: Barbara Gabier, Program Coordinator

# *ALASKA CHIROPRACTIC ARTS*

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*William F. Risch, D.C.  
511 West 41<sup>st</sup> Avenue  
Suite 102  
Anchorage, Alaska 99503  
907-563-3839*

January 23, 1996

The Honorable Mark Handley  
Alaska State Legislature  
State Capital  
Juneau, Alaska 99801

RE: HR 404

Dear Representative Handley,

The chief objective of the Board of Chiropractic Examiners is to foster professional standards consistent with the best interests of the public. The best examples are the examination of properly credentialed candidates and our continued effort to protect the public by review of our Alaska statutes. House Bill 404 extends the existence of this board for another five year period. We would appreciate your support of this measure which will further the objectives of this board.

Sincerely,

William F. Risch, D.C.  
Chairman, Board of Chiropractic Examiners

cc. Representative J. James

NOTES TO DECISIONS

Cited in Territory of Alaska v. Hawkins, 9 Alaska 573 (1939).

Collateral references. — Scope of practice of chiropractic. 16 ALR4th 58.

Sec. 08.20.110. Application for license. A person desiring to practice chiropractic shall apply in writing to the board. (§ 35-3-26 ACLA 1949)

Sec. 08.20.115. Malpractice insurance. [Repealed. § 40 ch 177 SLA 1978.]

Sec. 08.20.120. Qualifications for license. (a) An applicant shall be issued a license to practice chiropractic if the applicant

- (1) has a high school education or its equivalent;
- (2) has successfully completed at least two academic years of study in a college of liberal arts or sciences or has engaged in the active licensed practice of chiropractic for three of the four years preceding the filing of the application;
- (3) is a graduate of a school or college of chiropractic that requires the completion of a minimum of 4,000 hours of formal education and training in order to graduate, including
  - (A) 150 hours of chiropractic philosophy or principles;
  - (B) 1200 hours of basic sciences, including anatomy, chemistry, physiology, and pathology;
  - (C) 1400 hours of preclinical technique, including diagnosis, chiropractic technique, and x-ray; and
  - (D) 700 hours of clinical training;
- (4) completes 120 hours of formal training in physiological therapeutics;

- (5) passes an examination given by the board; and
- (6) passes, to the satisfaction of the board, the parts of the examination of the National Board of Chiropractic Examiners required by the board.

*Repealed in HB464 (STP)*  
(b) The board may issue a license without examination to an applicant under AS 08.20.140. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955; am § 1 ch 91 SLA 1965; am § 25 ch 245 SLA 1970; am § 8 ch 32 SLA 1971; am § 1 ch 84 SLA 1972; am §§ 5, 6 ch 162 SLA 1980; am §§ 5, 6 ch 60 SLA 1988)

Effect of amendments. — The 1988 amendment repealed and reenacted subsection (a), which formerly related to the same subject matter.

Editor's notes. — Section 6, ch. 60, SLA 1988, repeals and reenacts (a) of this section, effective August 24, 1992. After that date, paragraph (a)(3) will read as

follows: "is a graduate of a school or college of chiropractic that

"(A) is accredited by or a candidate for accreditation by the Council on Chiropractic Education or a successor accrediting agency recognized by the board; or

"(B) if an accrediting agency under (A) of this paragraph does not exist, requires the completion of a minimum of 4,000 hours of formal education and training in order to graduate, including:

"(i) 150 hours of chiropractic philosophy or principles;

"(ii) 1200 hours of basic sciences, including anatomy, chemistry, physiology, and pathology;

"(iii) 1400 hours of preclinical technique, including diagnosis, chiropractic technique, and x-rays; and

"(iv) 700 hours of clinical training."

**Sec. 08.20.130. Examinations.** (a) Examinations for a license to practice chiropractic may be held in the time and manner fixed by the board.

(b) The examination may include practical demonstration and oral and written examination in those subjects usually taught in accredited chiropractic schools.

(c) A general average rating of 75 per cent is a passing grade on the examination.

(d) An applicant may take a reexamination within one year after failing the examination. (§ 35-3-27 ACLA 1949; am § 2 ch 91 SLA 1965; am § 13 ch 37 SLA 1985)

*Sec. 08.20.135. Associate. [Repealed, § 13 ch 162 SLA 1980.]*

*Repealed in HB 404 (SJR)*

**Sec. 08.20.140. Licensure by credentials.** The board may issue a license without examination to an applicant presenting satisfactory proof of the possession of a license or certificate of registration in good standing in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of the applicant's license were essentially equivalent to those in this chapter. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955; am § 8 ch 162 SLA 1980; am § 15 ch 6 SLA 1984)

*Sec. 08.20.150. Recording of license. [Repealed, § 7 ch 37 SLA 1986.]*

**Sec. 08.20.155. Professional designation.** Notwithstanding the provisions of AS 08.02.010 relating to specialist designations, a person licensed under this chapter may not designate a specialty unless the person has completed a postgraduate specialty program at an accredited school approved by the board and the person has passed a certification exam for the specialty approved by the board. All specialty designations must include the term "chiropractic." (§ 7 ch 60 SLA 1988)

HOUSE COMMITTEE REPORT

1/30/96  
Finance

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

FURTHER REFERRALS:

Date of Committee Action: 1-30-96

The STATE AFFAIRS Committee considered:

HB 404

HOUSE BILL NO. 404

EXTENDING BOARD OF CHIROPRACTORS

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

recommends it be replaced with the following committee substitute CS HB 404 (Sta) [ ] the same title [x] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)  
[ ] fiscal note(s) \_\_\_\_\_ [x] fiscal note(s) Commerce 1/16/96

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Janette James</i>	James	✓			
<i>Brian Porter</i>	Porter	✓			
<i>Green</i>	Green	✓			
<i>TUAN</i>	TUAN	✓			
<i>Caron Robinson</i>	ROBINSON	✓			
<i>Willis</i>	Willis	✓			
<i>OGAN</i>	Ogan			-	
		(6)		(1)	

CHAIR'S SIGNATURE *Janette James*

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

Date of Committee Action: 2/6/96

The FINANCE Committee considered:

HB 404

HOUSE BILL NO. 404

EXTENDING BOARD OF CHIROPRACTORS

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

recommends it be replaced with the following committee substitute CS HB 404 (STA) [ ] the same title [X] a new title

[ ] additional referral to \_\_\_\_\_ Committee [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) DCED [ ] fiscal note(s)

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Richard Foster	Foster	X			
Mark Hanley	Hanley	X			
Glen Mulder	Mulder	X			
Terry Martin	Martin	X			
Mark Parnell	Parnell	X			
Vic Kohring	Kohring	X			
Ben Gruesendorf	Gruesendorf	x			
Mike Navarre	Navarre	✓			
Tony Brown	Brown	✓			
Gene Theriault	Theriault	X			

CO CHAIR'S SIGNATURE Mark Hanley Richard Foster

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 404(STA)

Revision Date: \_\_\_\_\_  
 Title: An Act extending the termination date of the  
Board of Chiropractic Examiners;....  
 Sponsor: House Labor & Commerce  
 Requestor: House Labor & Commerce

Department: Commerce and Economic Development  
 BRU: Occupational Licensing  
 Component: Operations

COMPONENT SERIAL NO. 1844

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	18.2	18.2	18.2	18.2	18.2	18.2
TRAVEL	6.7	6.7	6.7	6.7	6.7	6.7
CONTRACTUAL	1.8	1.8	1.8	1.8	1.8	1.8
SUPPLIES	0.1	0.1	0.1	0.1	0.1	0.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	56.5	3.6	56.5	8.6	56.5	3.6
--------------------	------	-----	------	-----	------	-----

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	26.8	26.8	26.8	26.8	26.8	26.8
<b>TOTAL</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>

Estimate of any current year (FY 96) cost: \$ 32.7

**POSITIONS**

FULL-TIME					
PART-TIME					
TEMPORARY					

**ANALYSIS:** (Attach a separate page if necessary)

CSHB 404(STA) extends the Board of Chiropractic Examiners to June 30, 2002. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$32.7. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

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

Phone: 465-2144  
 Date: February 5, 1996  
 Date: 2-5-96

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**HB**

**404**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

SFC 4/26/96

DATE: 3/22/96

DATE TURNED INTO OFFICE: 4/26/96

The Finance Committee considered CS FOR HOUSE BILL NO. 404(STA)

Relating to the Board of Chiropractic Examiners.

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title
- House Bill:**
- same title
- technical change
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Carol E. Ziegler</i>	✓	<i>None</i>	✓		
<i>Bert Ward</i>	✓	<i>Edell E. Kelly</i>	✓		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>Rick Halford</i>	✓	Co-Chair:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

Commerce & Ec. Dev.	2/5/96		26.8

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

REPORTED OUT OF

SEC 2- 4/26/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Bill Version: CSHB 404(STA)

(H) Publish Date: 2/7/96

Revision Date: \_\_\_\_\_  
 Title: An Act extending the termination date of the  
Board of Chiropractic Examiners;....  
 Sponsor: House Labor & Commerce  
 Requestor: House Labor & Commerce

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

**Expenditures/Revenues**

(Thousands of Dollars)

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SUPPLIES	0.1	0.1	0.1	0.1	0.1	0.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>	<b>26.8</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	56.5	8.6	56.5	8.6	56.5	8.6
--------------------	------	-----	------	-----	------	-----

**FUND SOURCE**

(Thousands of Dollars)

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1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	26.8	26.8	26.8	26.8	26.8	26.8
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Estimate of any current year (FY 96) cost: \$ 32.7

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

CSHB 404(STA) extends the Board of Chiropractic Examiners to June 30, 2002. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$32.7. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

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

Phone: 465-2144  
 Date: February 5, 1996  
 Date: 2-5-96

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# House Labor & Commerce Committee

State Capitol  
Juneau, Alaska 99801-1182  
907-465-4954

APR 24 1996

TO: Senator Rick Halford  
Co-Chair  
Senate Finance Commerce

Senator Steve Frank  
Co-Chair  
Senate Finance Committee

FROM: Representative Pete Kott  
Chair

DATE: March 24, 1996

RE: CS HB 404 (STA); Request for Committee Action

I respectfully request that CS HB 404 (STA) be scheduled for a hearing before the Senate Finance Committee. It extends the Board of Chiropractic Examiners to June 30, 2002 and amends licensure requirements to eliminate licensure by credential. I attach hereto the following:

- (1) Copy of bill;
- (2) Sponsor Statement;
- (3) Sectional
- (4) Fiscal Note;
- (5) Backup.

Thank you in advance for your kind assistance in this matter. Should you have any questions, please do not hesitate to contact me.

# House Labor & Commerce Committee

State Capitol  
Juneau, Alaska 99801-1182  
907-465-4954

## SPONSOR STATEMENT CS HB 404 (STA)

The Board of Chiropractic Examiners currently has a sunset date of June 30, 1996. CS HB 404 (STA) establishes a new sunset date of June 30, 2002. It also repeals statutory provisions which permit licensure by credential.

Legislative Audit, in a report dated September 6, 1995, states: "In our opinion, the Board of Chiropractic Examiners should be reestablished." The auditors also recommend that statutory authorization for licensure by credential be eliminated or amended. I therefore commend this bill to you and urge your support.

# House Labor & Commerce Committee

State Capitol  
Juneau, Alaska 99801-1182  
907-465-4954

## SECTIONAL ANALYSIS CS HB 404 (STA)

**Section 1:** Extends the Board of Chiropractic Examiners to June 30, 2002.

**Section 2:** Repeals statutory authorization for licensure by credential.

**Section 3:** Gives the bill an immediate effective date.

# ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE  
Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

September 6, 1995

Members of the Legislative Budget  
and Audit Committee:

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

## A SPECIAL REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF CHIROPRACTIC EXAMINERS

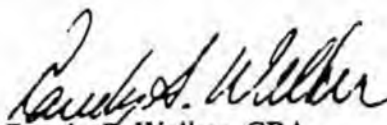
September 6, 1995

Audit Control Number  
08-1434-95

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report, we assess the operations and performance of the Board of Chiropractic Examiners utilizing the criteria set out in AS 44.66.050(c). The criteria relates to assessing the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(8), the Board of Chiropractic Examiners is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Chiropractic Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Chiropractic Examiners until June 30, 2000.

The audit was conducted in accordance with generally accepted government auditing 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 section of this report.

  
Randy S. Welker, CPA  
Legislative Auditor

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Organization and Function .....	3
Report Conclusions .....	5
Findings and Recommendations .....	7
Analysis of Public Need .....	11

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Chiropractic Examiners. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(8) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

### Objectives

Our specific audit objectives were:

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

### Scope and Methodology

We reviewed the board activities and licensing functions for the years FY 92 through FY 95. The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

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

Board of Chiropractic Examiners  
(As of August 1, 1995)

William F. Risch, D.C. Chair

Patricia Conners-Allen, D.C.

Trevor Ireland, D.C.

LeRoy D. Nordstrom, D.C.

(Vacant), Public Member

As discussed in Recommendation No. 2, since January of 1995 the public member seat on the board has been vacant.

## ORGANIZATION AND FUNCTION

The Board of Chiropractic Examiners was established under the provisions of Title 8, Chapter 20 of Alaska Statutes. The board consists of five members appointed by the governor and subject to legislative confirmation. Four members must be chiropractors and one member must be appointed from the general public. Board members serve staggered terms of four years.

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

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling the standards of professional chiropractic practice.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when an individual has violated chiropractic statutes or regulations.

By statute an applicant may be licensed by passing the examination given by the board or by credentials. For credentials, an applicant must provide proof of licensure in another jurisdiction with requirements that are essentially equivalent to Alaska's. Both types of applicants must meet specified educational requirements, and pass all parts of an examination administered by the National Board of Chiropractic Examiners.

### Division of Occupational Licensing

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

## REPORT CONCLUSIONS

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

The Board of Chiropractic Examiners has consistently been found to satisfy a public purpose and has demonstrated its ability to conduct business satisfactorily. Deficiencies found have been relatively minor, and are further discussed in the Findings and Recommendations section of this report.

Alaska Statute 08.03.010(c)(8), requires that the Board of Chiropractic Examiners be terminated on June 30, 1996. Under AS 08.03.020 the board has a one-year period to administratively conclude its affairs. Based upon our review of the board's performance, it is recommended that the next termination date for sunset review should be June 30, 2000.

Our recommendation for a four year extension is linked to the suggested legislative action set out in Recommendation No. 1. In the recommendation, we suggest the legislature clarify statutory language which allows for licensure by credential. As reflected by subsequent discussion, we make this recommendation despite concerns that such action may appear to lead to more restrictive entry into the chiropractic profession.

Our concerns were alleviated by our review of examination results which indicated that the current board's policy of denying licenses by credential did not result in unduly restricted entry into the profession. If the legislature adopts our recommendations related to credential provisions in statute, we believe the board should be limited to only a four year renewal period. By limiting the renewal period, a more timely review of examination practices would automatically be triggered. Such a review will allow our agency to address concerns that licenses continued to be issued in a fair and reasonable manner, even after current practice has been codified in statute.

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**LICENSURE AS A CHIROPRACTOR IN ALASKA REQUIRES  
APPLICANTS TO PASS BOTH A NATIONAL AND  
STATE EXAMINATION**

The Board of Chiropractic Examiners requires applicants for licensure to successfully complete both national and state examinations. The national examination is made up of three parts. Additionally, the state board requires that applicants also pass a physiotherapy examination. Both of these national examinations are administered through the auspices of the National Board of Chiropractic Examiners.

Some applicants, licensed in other jurisdictions, fail to meet the State's *essentially equivalent* standard because they were licensed without having to pass part three of the national examination and/or the physiotherapy examination. State regulation provides that an applicant can substitute an examination from another state for part three or the physiotherapy section if the applicant can demonstrate that the test is equivalent. As discussed in Recommendation No. 1, to date the board has yet to recognize any other state's examination as being equivalent.

**The state examination includes written, oral, and practical components**

The state examination involves a written test of Alaska Statutes related to the ethical and legal requirements involved with the practice of chiropractic in the State. Additionally, the examination also involves a written test on the administration, safety procedures, analysis, and interpretation of x-rays. As might be expected, applicants licensed in other jurisdictions have not met these criteria, and accordingly, even if they meet all the requirements of the other phases, they cannot achieve the State's *essentially equivalent* standard. The written examination also covers clinical practice and evaluates the applicant's competency in this area.

The state examination also includes a demonstration of an applicant's ability to properly apply chiropractic techniques using one of a number of different methods. In addition to demonstrating what is termed manipulative technique, the applicant must also demonstrate their competency in the area of physiotherapy, physical diagnostic skills, and interpretation of x-rays. Even though an individual, licensed in another state, may have passed a similar practical examination as a condition of licensure, the board still requires the applicant to pass this phase. Unlike the national examination phase, the applicant does not receive "credit" for successful completion of any one segment of the state examination. Rather, all applicants regardless of any previous license status, must demonstrate their practical technical proficiency to the satisfaction of the board.

After successfully completing all phases of the licensing examination the applicant is required to sit for a formal interview with the board and respond to typically routine questions regarding their background and experience. The interview process is generally a routine formality for the applicant.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should consider amending state law related to what the statutes term as "licensure by credentials" for chiropractors.

Alaska Statute (AS 08.20.140) provides for a process by which applicants may be licensed as chiropractors without taking the state examination. The statute provides that the Board of Chiropractic Examiners may issue a license if an applicant can satisfactorily demonstrate they were licensed in another jurisdiction that imposed requirements *essentially equivalent* to the State's current licensing standards.<sup>1</sup>

For the past four years reviewed, no applicant has received a license without taking the state examination. In practice, the board essentially deals with all applicants the same way, regardless whether or not the individual may have been licensed as a chiropractor in another jurisdiction. The board scrutinizes each applicant's training, experience, and examination credentials in making its licensing determination. The board gives credit to examination testing, training, and experience that may have been obtained in another jurisdiction by an individual practicing as a licensed chiropractor. However, the board has historically held that no applicants, licensed in other jurisdictions, meet the *essentially equivalent* requirements.

The board seems to have made this determination by considering licensing requirements, in their entirety. To be licensed as a chiropractor in Alaska, an applicant, after documenting they meet the necessary qualifying education and experience requirements must then successfully complete both the national and state examinations. These examination requirements, as described in the inset on the opposite page, are applied to all applicants, and invariably result in everyone needing to successfully complete at least one examination.

The multiplicity, and to some degree the uniqueness, of examination requirements for licensure in the State has rendered the licensure by credential statute meaningless. The statute serves to falsely suggest that an applicant could obtain licensure in Alaska based solely on their licensure in another jurisdiction, as long as the other jurisdiction had *essentially equivalent* standards. However, because of the extensive and state-specific nature

---

<sup>1</sup> Specifically, AS 08.20.140 provides

*The board may issue a license without examination to an applicant presenting satisfactory proof of possession of a license or certification of registration in good standing in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of the applicant's license were essentially equivalent to those in this chapter. [emphasis added]*

Alaska's requirements, as a practical matter no other jurisdiction's requirements can meet the equivalency standard.

We would typically look in askance on such practices and requirements that seem to be unduly rigorous. Such extensive requirements can serve as an unfair barrier to entry into the profession — protecting the professional interests of current licensees at the expense of the public interest. We are given further pause by the apparent intent of the legislature that licensure be available to applicants from other jurisdictions. This intent can be reasonably inferred from AS 08.20.140 which provides for a process whereby licenses could be obtained without examination. We have been traditionally skeptical about board actions and functions that seemingly have the effect of eviscerating original statutory intent.

However, from our review of this board's licensing activities, we determined that the board has not been acting to unduly or unfairly restrict licensure. Over the past four years the board has issued more than 40 licenses, and the rate of success for applicants is almost 93 percent. In cases where an individual did not pass the jurisprudence section of the state examination, the board allowed applicants to retake the examination upon arrangement with the board's licensing examiner. In our view, these statistics suggest that the board has not been overly restrictive in its application of licensing requirements.

As discussed in the inset on page six, the State requires applicants that may be licensed in another jurisdiction to demonstrate their practical proficiency, even though they may have done so in an essentially equivalent process as a condition of original licensure. We believe it is reasonable for the board to satisfy itself that prospective practitioners can adequately and appropriately perform the day-to-day practical requirements of their profession.

Accordingly, we recommend the legislature consider either amending or repealing AS 08.20.140. By doing so, the legislature could more clearly set out the actual requirements and expectations involved in the licensing of chiropractors. Repeal would eliminate the expectation and possible confusion on the part of applicants who may be licensed by other jurisdictions regarding what they must do to be licensed in Alaska.

A preferable remedy may be for the legislature to codify more specifically in statute the requirements for licensure. Such a statutory amendment could state that any applicant must successfully complete certain relevant national examinations; the necessary state examinations; and, a practical demonstration and examination in front of board members. By codifying current practice in statute, the legislature could provide both clear notice of licensing requirements and standards, while also guarding against possible abuses by future boards.

Recommendation No. 2

The Office of the Governor should arrange for appointments to the public member seat on the Board of Chiropractic Examiners to be made in a more timely manner.

Alaska Statute 08.20.020 provides that one member of the general public be appointed to serve on the Board of Chiropractic Examiners. The public member sits with four licensed chiropractors on the State's regulatory and oversight board.

The public member board seat has been vacant since January of 1995. It was also vacant from March of 1991 to July of 1992, and from January of 1994 through March of 1994. Of the fifty-one months from March of 1991 to June of 1995, the seat was vacant approximately twenty-five months. In that time, the board held five meetings without the benefit of the presence of the required board member.

This lack of public representation on the board defeats the intent behind the board membership statutory requirement. It fosters the possibility that the board will be more insular and self-serving in its actions and makes the board less accountable to the public at large.

As of the date of this report no new public member has been appointed. We recommend that if at all possible, the seat be filled before the next scheduled meeting.

(Intentionally left blank)

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

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

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

The board has served the public by examining and licensing qualified applicants, and by proposing changes to statutes and regulations in order to enhance the quality of chiropractic care in Alaska.

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

The board was instrumental in the passage of legislation permitting the establishment of a peer review committee to review complaints concerning the reasonableness or appropriateness of care provided, fee charges, or the costs of services rendered by licensees.

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

The board has served the public by examining and licensing qualified applicants and by proposing changes in regulation that are necessary to enforce state statutes and enhance the quality of chiropractic care in Alaska.

Appointments to the public member board seat were not made in a timely manner. This seat has been vacant since January 1995. It was also vacant from March 1991 through July 1992 (16 months), and it was vacant from January 1994 through March 1994. For further discussion, see Recommendation No. 2.

Alaska Statute 08.20.140 states that licensure by credential may be extended to applicants who present proof of current licensure in other states, and who have met requirements essentially the same as those which exist in Alaska. The board has held that no tests equivalent to the state exam, or equivalent to part three of the national written exam exist. Therefore, as a practical matter, all applicants are required to take these tests to be licensed in Alaska. For further discussion, see Recommendation No. 1.

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

The board was instrumental in the passage of legislation establishing a peer review committee to review complaints concerning the reasonableness or appropriateness of care provided, fees charged, or the costs of services rendered by licensees.

The board supports implementation of Locum Tenens statutes and regulation of chiropractic technicians. Adoption of a Locum Tenens measure would provide easier access to licensed chiropractors from other states to practice in Alaska on a temporary basis. This would permit professionals from other states to practice, perhaps in a substitute capacity for a licensed chiropractor within the State.

The board also supports inclusion of chiropractors in the Impaired Physician's Act as found in AS 08.01.050(d). This statute allows occupational licensing to contract with public or private agencies to provide assistance and treatment to persons licensed by the board, who abuse alcohol, drugs, or other substances. Currently, professionals not covered under this act are monitored by personnel in the investigative unit of the Division of Occupational Licensing. Contracting with agencies specializing in the treatment of alcohol and drug abuse will afford those professionals a better chance for recovery and will ultimately result in more stable professional care offered to the public.

*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 meetings and examinations were advertised in three Alaskan newspapers with adequate notice for interested individuals to attend or to make written comment.

Time was set aside to hear public testimony at all meetings.

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

Public notices of proposed regulations are published in major newspapers. As noted above, meetings were adequately advertised, and time was set aside for public testimony.

*The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or to the Ombudsman have been processed or resolved.*

No complaints were filed with the Ombudsman regarding chiropractic licensees.

Overall, the investigation of complaints against licensees received by the Division of Occupational Licensing is effective. While timeliness is a concern, given the circumstances surrounding the cases that have remained open for an extended period, progress is not unreasonably slow. Complaints are prioritized logically and handled accordingly.

During the period under audit, nineteen investigative cases were opened. Six of these cases involved allegations of fraud or misrepresentation. Three cases involved allegations of negligence, and two involved practice beyond the scope of ones license. One case was a sexual misconduct case and one dealt with violation of professional ethics. Two cases involved unlicensed practice, one involved criminal action, and the final three were license application problems. We reviewed a sample of nine cases. Additionally, we noted all cases that required board decision. All hearing officer's decisions were upheld by the board.

The licensing board appears to be willing to take effective licensing enforcement action, and to operate in a fair and objective manner.

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

Overall, the application process for chiropractic licensure appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Qualified applicants are readily licensed.

Adequate continuing education is required to maintain licensure. Continuing education credits are adequately monitored by the Division of Occupational Licensing to promote a high level of quality performance to the public.

*The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.*

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

*The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.*

As discussed in Recommendation No. 2, the significant portion of time the public member board seat was vacant represents a lack of public representation on the board.

The board's position that no test is equivalent to the state exam or to part three of the national exam causes AS 08.20.140 to be misleading. As discussed in Recommendation No. 1, the statute should be clarified to avoid confusion as to what are the board requirements for licensure by credentials.

November 30, 1995

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

Dear Mr. Welker:

Reference the Board of Chiropractic Examiners Preliminary Audit Report. Thank you for this opportunity to comment.

**Recommendation No. 1:**

The Legislature should consider clarifying state law related to what the statutes term as "licensure by credentials" for chiropractors.

As the board has not issued a license by credentials in more than four years, we concur that license by credentials provision in AS 08.20 is misleading to applicants. The board has been unable to determine equivalency of other jurisdiction exams and, therefore, all applicants have been required to sit for the entire Alaska examination.

**Recommendation No. 2:**

The Office of the Governor should arrange for appointments to the public member seat on the Board of Chiropractic Examiners to be made in a timely manner.

My department is not involved with board appointments; this recommendation will be passed along to the Governor's office for comment as applicable.

**Analysis of Public Need:**

We agree with your analysis of the need for licensing this profession. In our opinion, the board has performed its responsibilities in the best interest of the public.

**Examinations:**

With regards to page 6, relating to the exam categories, we would like

to clarify that under paragraph four, it is correct that the board previously gave a practical exam section which specifically covered physiotherapy and interpretation of x-ray; however, that portion of the exam was discontinued some time ago (approximately 1992). Current exam categories administered during the August 1995 exam were as follows:

<u>Exam</u>	<u>Passing Score</u>
X-ray Written Exam Section	75%
Jurisprudence Written Exam Section	75%
Oral Exam (six questions--applicant specific)	Pass/Fail
Manipulation Techniques (Applicant chooses one of three options)	75%

Sincerely,

William L. Hensley  
Commissioner

WLH/BG/yd730.ol  
103195a

cc: Catherine Reardon, Director  
bcc: Barbara Gabier, Program Coordinator

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 2/19/96

FURTHER: Finance

3/20/96

DATE TURNED INTO OFFICE: ~~3/17/96~~

The Labor & Commerce Committee considered CS FOR HOUSE BILL NO. 404(STA)  
 Relating to the Board of Chiropractic Examiners.

*FN*

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO. PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>John Ferguson</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Tom Kelly</i>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>DCEI</i>	<i>2/5/96</i>		<i>565</i>

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**HB**

**405**

**HFIN**

**FILE**

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 23, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/8/96

The FINANCE Committee considered:

HB 405

HOUSE BILL NO. 405

EXTEND BOARD OF OPTOMETRISTS

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

recommends it be replaced with the following committee substitute C.S HB 405 (STA) [ ] the same title [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) \_\_\_\_\_

[X] fiscal note(s) CED, 1/16/96

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

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard Foster</i>	Foster	X			
<i>Glad Mulder</i>	Mulder	X			
<i>Paul Parnell</i>	Parnell	X			
<i>Wm Kohring</i>	Kohring	X			
<i>Sam Grussendorf</i>	Grussendorf	X			
<i>Ray Brown</i>	Brown	X			
<i>Pete Kelly</i>	Kelly	X			
<i>Gene Theriault</i>	Theriault	X			

CHAIR'S SIGNATURE \_\_\_\_\_

*Richard Foster*  
FOSTER

# FISCAL NOTE

No. 1  
 Bill Version: HB 405  
 (H) Publish Date: 1/16/96

STATE OF ALASKA  
 1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
 Title: An Act extending the termination date of the SRU: Occupational Licensing  
Board of Optometry;.... Component: Operations  
 Sponsor: House Labor & Commerce  
 Requestor: Representative James COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	15.7	15.7	15.7	15.7	15.7	15.7
TRAVEL	2.8	2.8	2.8	2.8	2.8	2.8
CONTRACTUAL	4.5	4.5	4.5	4.5	4.5	4.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES</b>	<b>48.5</b>	<b>3.8</b>	<b>48.5</b>	<b>3.8</b>	<b>48.5</b>	<b>3.8</b>

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	23.0	23.0	23.0	23.0	23.0	23.0
<b>TOTAL</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>

Estimate of any current year (FY 96) cost: \$ 27.0

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

**ANALYSIS:** (Attach a separate page if necessary)  
 HB 405 extends the Board of Optometry to June 30, 2001. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$27.0. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
 Division: Occupational Licensing Date: January 10, 1996  
 Approved by Commissioner: William L. Hensley Date: 1-11-96  
 Agency: Commerce and Economic Development

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**COMMITTEE COPY**

# House Labor & Commerce Committee

State Capitol  
Juneau, Alaska 99801-1182  
907-465-4954

## SPONSOR STATEMENT CS HB 405 (STA)

CS HB 405 (STA), which was sponsored by the House Labor and Commerce Committee, would extend the Board of Examiners in Optometry to June 30, 2002. This board, which is due to sunset this year, performs a valuable mission for Alaska by regulating the licensure and practice of optometry.

In addition, CS HB 405 (STA) clarifies a current point of confusion by providing that employees of optometrists and physicians may perform their assigned tasks without triggering the regulatory oversight of the Board of Dispensing Opticians. It eliminates a current proscription on having branch offices. It eliminates certain visual acuity and health requirements and thereby removes the potential for litigation under the Americans with Disabilities Act. Finally, it eliminates an inflexible and unworkable deadline for filing licensure applications and permits future deadlines to be established by regulation.

It respectfully is submitted that CS HB 405 (STA) is consistent with the recent legislative audit report dated October 4, 1995. Your support is urged.

# House Labor & Commerce Committee

State Capitol  
Juneau, Alaska 99801-1182  
907-465-4954

## CS HB 405 (STA) SECTIONAL ANALYSIS

### Section 1:

The Board of Examiners in Optometry is extended to June 30, 2002.

### Section 2:

Employees of physicians and optometrists, when performing duties delegated to them, are exempted from regulation by the Board of Dispensing Opticians.

### Section 3:

This section makes it clear that persons employed by physicians and optometrists may perform assigned duties without engaging in the illegal practice of optometry.

### Section 4:

This section repeals the existing requirement that applications for licensure be filed at least 15 days prior to the examination and permits the Board to establish application deadlines by regulation.

### Section 5:

An existing prohibition on branch offices is repealed. Existing vision and health requirements for licensure are repealed.

### Section 6:

The Act has an immediate effective date.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

October 4, 1995

Members of the Legislative Budget  
and Audit Committee:

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

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF EXAMINERS IN OPTOMETRY

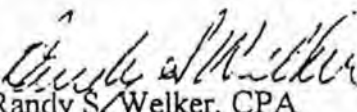
October 4, 1995

Audit Control Number  
08-1436-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report we assess the operations and performance of the Board of Examiners in Optometry utilizing the criteria set out in AS 44.66.050(c). This criteria relates to assessing 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)(19), the Board of Examiners in Optometry is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Examiners in Optometry until June 30, 2002.

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

  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(19) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

### Objectives

Our specific audit objectives were:

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

### Scope and Methodology

Our audit reviewed the operations and activities of the Board of Examiners in Optometry for the period of FY 92 through FY 95.

During the course of our examination, we reviewed and evaluated the following:

1. Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain his/her optometry license in good standing.
2. Minutes of meetings of the Board of Examiners in Optometry.
3. Annual reports issued by the board.
4. Complaints filed with the Division of Occupational Licensing and the Department of Law.

We also conducted interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing, and the Department of Law.

## ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry was established under the provisions of Title 8, Chapter 72 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Four board members must be licensed, practicing optometrists who have been residents in the State for at least three years. The statute also requires one member of the general public to sit on the board.

The board regulates the practice of optometry in the State by setting education, training, and work experience standards necessary for an individual to be licensed as an optometrist.

Alaska Statute (AS 08.72) defines the practice of optometry as the examination, diagnosis, and treatment of conditions of the human eyes and visual system, other than by use of laser, x-rays, surgery, or pharmaceutical agents.<sup>1</sup>

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**Members of the Board of Examiners in Optometry**  
*(As of June 30, 1995)\**

**James W. Matson, Optometrist & Chairperson**  
**Lynn J. Coon, Optometrist & Secretary**  
**Steve S. Dobson, Optometrist**  
**Randall Christiansen, Optometrist**

*\* As of the date of this report Governor Knowles has not appointed a public member to the Board of Examiners in Optometry (See Recommendation No. 3).*

---

The board's duties and responsibilities under statute include:

1. Holding a minimum of one meeting per year.
2. Examining and issuing licenses to qualified applicants.
3. Holding hearings in order to impose disciplinary sanctions on persons who violate optometry licensing statutes and/or regulations.
4. Adopting regulations necessary to enforce the statutes relating to the board.
5. Adopting a code of ethical practice for optometry.

---

<sup>1</sup> Recent statutory amendments provide that optometrists may obtain a license endorsement that permits them to prescribe and administer pharmaceutical agents. These pharmaceutical agents (drugs) may only be topically applied to the human eye and its appendages. To obtain such an endorsement an individual must pass "written and practical portions of an examination on ocular pharmacology, approved by the board, that tests the licensee's or the applicant's knowledge of the characteristics, pharmacological effects, indications, contraindications, and emergency care associated with the prescription and use of pharmaceutical agents."

Applicants must be a high school graduate or equivalent in addition to having graduated from a recognized college or school of optometry. Additionally, all applicants must certify that they are in good health with no contagious or infectious diseases and have a visual acuity correctable to 20/40. Licensed optometrists are required to obtain 12 hours of continuing education per year.<sup>2</sup>

Alaska's optometry statutes and regulations do not allow for reciprocity with other states. Optometrists licensed in other states wishing to practice in Alaska must first become licensed in Alaska. Applicants that have passed a written examination in another jurisdiction may obtain waiver from passing the written examination requirement.<sup>3</sup> However, AS 08.72.170 specifically states "*a waiver of the practical or oral portions of the examinations may not be given.*"

To become licensed in Alaska optometrists licensed in other states must provide the department with official documentation verifying Alaskan optometry educational requirements have been met. They must also apply for and pass all parts of the state optometry examination, pay all examination and application fees, and fulfill all other licensing requirements.

State law requires all optometrists licensed in Alaska to license each of their branch offices. There are few requirements for the licensing of branch offices. Optometrists must submit completed applications and pay all the required fees to the Division of Occupational Licensing biennially. Currently, the board is no longer enforcing the statute and the division is no longer collecting the required fees.<sup>4</sup>

The board grants license endorsements for optometrists to prescribe and use pharmaceutical agents. The board also grants endorsements for practitioners to only use pharmaceutical agents. Currently, all applicants graduating from optometry schools automatically qualify for pharmaceutical prescription and use license endorsement, after meeting all other licensing requirements.

---

<sup>2</sup> If an optometrist maintains a license endorsement for the prescription and use of pharmaceutical agents as discussed in footnote one then they must obtain additional hours of continuing education.

<sup>3</sup>The state examination consists of three sections — oral, written, and practical. Alaska Statute 08.72.170 grants the board the authority to waive the written portion of the state examination. The board may not waive either the practical or oral sections. The written section of the examination may be waived if;

- 1) The applicant meets all other examination criteria per AS 08.72.140.
- 2) The applicant holds a current license by examination in another state or a province of Canada if they have been established in an ethical practice for at least three years.
- 3) The applicant can show satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry.
- 4) The applicant has not had a certificate or license revoked for cause in any state, territory, or foreign country.

<sup>4</sup>AS 08.72.125, and 12 AAC 48.030 relate to the licensing of branch offices. Neither clearly defines when branch office licenses are required, rather they address situations only when they are not (See Recommendation No. 1).

Department of Commerce and Economic Development, Division of Occupational Licensing

The Department of Commerce and Economic Development, Division of Occupational Licensing (OccLic) provides administrative and investigatory assistance to the Board of Examiners in Optometry. Administrative assistance 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 the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of 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.

Results of our reviews during prior audits determined OccLic has implemented timekeeping policies and procedures to ensure licensing fees for boards and commissions include and closely reflect actual administrative, investigative, and overhead costs incurred by the division.

Further, under AS 08.01.087, OccLic has the authority to act on its own initiative or in response to a complaint and may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which OccLic has authority. OccLic can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

## REPORT CONCLUSIONS

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

The Board of Examiners in Optometry has been found to satisfy a public purpose and has demonstrated its ability to conduct its business in a satisfactory manner. The Board of Examiners in Optometry statutes, regulations, policies and procedures are current. The board carries out its regulatory oversight function in a professional, competent, and efficient manner.

Alaska Statute 08.03.010(c)(19) requires the Board of Examiners in Optometry be terminated on June 30, 1996. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend legislation be enacted to extend the board's termination date to June 30, 2002.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

Current statutory provisions related to the Board of Examiners in Optometry contribute to administrative "bottlenecks" in the licensing of optometrists. Additionally, certain statutory requirements are apparently no longer relevant to conventions of current practice. Specifically, we suggest the legislature consider:

1. Eliminating reference to, or extending the deadline for applications. Under current statute (AS 08.72.150) applicants for licensure may submit their applications and supporting documentation 15 days before examination or license expiration date. This 15 day deadline has caused a workload "bottleneck" for the licensing examiner during renewal periods. During these periods, the licensing examiner must process large volumes of various types of documentation received from applicants and license holders. He must check the applications for completeness and follow-up on missing documentation, in preparation for final review and approval of the full board.

The 15 day deadline allows little time for the licensing examiner to request additional documentation and to make corrections before the board reviews applicant files. The statutes for most other licensing boards leave the setting of the deadline to the discretion of the Division of Occupational Licensing (OccLic) or provide for more time than 15 days. We suggest that the legislature repeal AS 08.72.150 and leave the establishment of administrative deadlines to OccLic and the board through the adoption of regulations.

2. Repealing license requirements related to branch offices. At a June 1994 meeting, the board directed OccLic to no longer enforce AS 08.72.125 which requires the licensing of each branch office of any licensed optometrist's practice. This statute directs that *"a person may not practice, or attempt or offer to practice, optometry without obtaining a license for each branch office from the board."*

Since the board's decision, no collection notices have been sent to optometrists and branch office licensing fees have not been actively collected by OccLic. The only occasion these fees have been collected has been when an optometrist has voluntarily remitted payment. From our review of statutory history and the discussion of the board it appears the conditions and concerns that originally gave rise to branch office licensing requirements no longer exist. We suggest the legislature repeal this statute.

3. Repeal health and visual acuity requirements. Currently, AS 08.72.140 requires applicants for examination and licensure to provide the division with notarized or certified documentation verifying they are free from contagious and infectious diseases and have visual acuity of 20/40 in at least one eye as corrected. With one exception, no other profession — not even those that are typically thought of as being more medically related such as physicians, dentists, or nurses — has such a disease-free requirement.

Enactment of the federal Americans with Disabilities Act increased both the number and types of discrimination claims which may be asserted by individuals and enforced by a court of law. The potential for litigation against the board and/or State based on assertions that these two requirements are discriminatory may now exist. We suggest that OccLic obtain an opinion from the Attorney General's office regarding the advisability and legality of these requirements. We also suggest the legislature reconsider these statutory requirements in both AS 08.74.140 and AS 08.72.181 (which pertains to renewal of licenses).

4. Clarify the status of unlicensed professionals supervised by optometrists. There is a unique professional and commercial overlap between licensed optometrists and dispensing opticians. Both professionals are licensed to dispense eyeglasses and contact lenses. Both professions are allowed to supervise unlicensed individuals to assist them in the dispensing of corrective lenses. However, it has been asserted by dispensing opticians that all unlicensed assistants should be registered optician apprentices — subject to requirements set out in the optician licensing statutes. Analysis by the Department of Law supports this interpretation of current statute.

There are allegations that despite the requirements of statute (as further interpreted by the Department of Law) many optometrists utilize unlicensed or unregistered assistants to dispense corrective lenses. Twice in recent years the Board of Examiners in Optometry has sought legislation that would exempt staff supervised by its licensees from having to be either an optician or a registered apprentice. We suggest the legislature consider statutory amendments to clarify the current statute that sets the demarcation line of responsibilities between the two professions.

#### Recommendation No. 2

The Division of Occupational Licensing should enforce only those optometry application requirements set out in either statute and regulation.

OccLic has been enforcing optometry application requirements not required by state statutes or regulations. Specifically, application forms for optometric examination and licensure require applicants to submit certified or notarized copies of an unmounted 3" x 3" photograph taken within six months previous to filing the application.

Applicants must also submit official transcripts from all colleges or universities attended prior to optometry college to the Division of Occupational Licensing. All applications include a

statement to the effect that these items must be submitted to the division before the applications will be considered for licensure.

Neither the optometry statutes or regulations direct that applicants to meet these submission requirements. It appears the division has unilaterally imposed these requirements without clear legal authority. In our view, there is no compelling justification to support imposition of either requirement.

### Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

State law (AS 08.72.140) requires that "*four board members shall be licensed, practicing optometrists who have been residents for at least three years. One board member shall be a public member* [emphasis added]." Over the past three fiscal years the Board of Examiners in Optometry has operated for extended periods without benefit of a public member. During the period of FY 93 - FY 95 there was no appointed public member for four of the board's seven meetings.

This problem has developed in part from the actions of the Knowles administration. Upon assuming office, the governor removed a public member that Governor Hickel had appointed in December 1992. Although the Hickel-appointed member was removed, no public member was appointed in a expedient manner by the Knowles administration. As of the date of this report, no appointment has been made. It appears to us that the Hickel-appointed member, subject to legislative confirmation, could have served until the Knowles administration provided for a replacement appointment. Alaska Statute 08.01.035 which states "*members of boards . . . are appointed for staggered terms of four years. A member of a board serves until a successor is appointed* [emphasis added]."

The public board member serves as a representative of the citizenry at large. The intent behind placing public members on licensing boards is to provide more access to the board's actions and deliberations. The presence of such a member serves as a check against a professional licensing board becoming too insular or self-serving in its actions.

2/23/96

# HOUSE COMMITTEE REPORT

Date RETURNED to Committee: January 24, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-22-96

The STATE AFFAIRS Committee considered:

HB 405

HOUSE BILL NO. 405

EXTEND BOARD OF OPTOMETRISTS

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

recommends it be replaced with the following committee substitute CS HB 405 (Sta)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) CEB 1/16/96

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<u>Janette James</u>	<u>James</u>	<input checked="" type="checkbox"/>			
<u>Priscilla Porter</u>	<u>Porter</u>	<input checked="" type="checkbox"/>			
<u>John Willis</u>	<u>Willis</u>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE Janette James

(4)

(7)

# DUSE COMMITTEE REPORT

Date Referred to Committee: January 9, 1996

FURTHER REFERRALS:

1/16/96  
Rules  
Fin Ref Act  
1/17/96

Date of Committee Action: 1-16-96

The STATE AFFAIRS Committee considered:

HB 405

HOUSE BILL NO. 405

EXTEND BOARD OF OPTOMETRISTS

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

recommends it be replaced  the same title  
with the following committee substitute \_\_\_\_\_  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_  
 fiscal note(s) CEO

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATION:		DP	DNP	NR	AM
<i>Janette James</i>	James	✓			
<i>Richard A. Porter</i>	Porter			✓	
<i>Joseph Green</i>	Green			✓	
<i>Ivan Robinson</i>	Ivan	✓			
<i>Caren Robinson</i>	Robinson	✓			
<i>Willis Ogan</i>	Willis	✓			
<i>Willis Ogan</i>	Ogan			✓	
		(4)		(3)	

CHAIR'S SIGNATURE *Janette James*  
James

**HOUSE BILL NO. 405**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

Introduced: 1/9/96

Referred: State Affairs

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act extending the termination date of the Board of Examiners in Optometry;  
2 and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* Section 1. AS 08.03.010(c)(19) is amended to read:

5 (19) Board of Examiners in Optometry (AS 08.72.010) -- June 30, 2001

6 [1996];

7 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

**HB**

**405**

**SFIN**

**FILE**



# Alaska State Legislature

## Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V  
CAPITOL BUILDING  
JUNEAU, ALASKA 99811

FOR YOUR IMMEDIATE ATTENTION

DATE: 5/5/96

TO SENATE COMMITTEE: Finance

FROM: Office of the Senate Secretary

The Chairman of the above-referenced Committee has waived the Committee referral on the following bill(s):

HB 405 - Bd of Optometrists  
HB 2 - Boot Camps

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you for your prompt attention to this request.

JR/s

# FISCAL NOTE

No. 1

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Bill Version: HB 405  
(H) Publish Date: 1/16/96

Revision Date: \_\_\_\_\_  
Title: An Act extending the termination date of the  
Board of Optometry: \_\_\_\_\_  
Sponsor: House Labor & Commerce  
Requestor: Representative James

Department: Commerce and Economic Development  
BRU: Occupational Licensing  
Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	15.7	15.7	15.7	15.7	15.7	15.7
TRAVEL	2.8	2.8	2.8	2.8	2.8	2.8
CONTRACTUAL	4.5	4.5	4.5	4.5	4.5	4.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	48.5	3.8	48.5	3.8	48.5	3.8
--------------------	------	-----	------	-----	------	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	23.0	23.0	23.0	23.0	23.0	23.0
<b>TOTAL</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>	<b>23.0</b>

Estimate of any current year (FY 96) cost: \$ 27.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 405 extends the Board of Optometry to June 30, 2001. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$27.0. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

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

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

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**COMMITTEE COPY**

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806  
JUNEAU, ALASKA 99811-0806  
PHONE: (907) 465-2534  
FAX: (907) 465-2974  
TDD: (907) 465-5437

April 23, 1996

Senator Rick Halford, Co-chairman  
Senate Finance Committee  
State Capitol  
Juneau, AK 99801

Dear Senator Halford:

Continuation bills for three of our licensing boards are awaiting scheduling in the Senate Finance Committee. The three bills are Board of Dispensing Opticians (HB 382), Board of Chiropractic Examiners (HB 404), and Board of Examiners in Optometry (HB 405). These programs have been audited by the Legislative Audit Division and recommended for continuation. The bills incorporate the changes suggested in the audits.

I would appreciate it very much if you would schedule HB 382, HB 404 and HB 405 for hearings.

Sincerely,



Catherine Reardon  
Director

# House Labor & Commerce Committee

State Capitol  
Juneau, Alaska 99801-1182  
907-465-4954

APR 20 1996

TO: Senator Rick Halford  
Co-Chair  
Senate Finance Committee

Senator Steve Frank  
Co-Chair  
Senate Finance Committee

FROM: Representative Pete Scott  
Chair

DATE: April 18, 1996

RE: CS HB 405 (STA); Request for Committee Action.

I request that CS HB 405 (STA) be scheduled for committee action. This bill, should it be enacted into law, would extend the Board of Examiners in Optometry, which is due to sunset this year. It also clarifies the law by providing that employees of physicians and optometrists may perform duties assigned to them without coming into the jurisdictional purview of the Board of Dispensing Opticians. I enclose herewith the following:

1. A copy of the bill;
2. A sponsor statement;
3. A sectional;
4. A fiscal note; and
5. Backup material.

Should you have any questions, or if I can be of any assistance, please do not hesitate to contact me.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

October 4, 1995

Members of the Legislative Budget  
and Audit Committee:

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

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF EXAMINERS IN OPTOMETRY

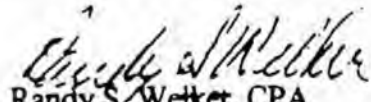
October 4, 1995

Audit Control Number  
08-1436-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report we assess the operations and performance of the Board of Examiners in Optometry utilizing the criteria set out in AS 44.66.050(c). This criteria relates to assessing 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)(19), the Board of Examiners in Optometry is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Examiners in Optometry until June 30, 2002.

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

  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(19) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

### Objectives

Our specific audit objectives were:

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

### Scope and Methodology

Our audit reviewed the operations and activities of the Board of Examiners in Optometry for the period of FY 92 through FY 95.

During the course of our examination, we reviewed and evaluated the following:

1. Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain his/her optometry license in good standing.
2. Minutes of meetings of the Board of Examiners in Optometry.
3. Annual reports issued by the board.
4. Complaints filed with the Division of Occupational Licensing and the Department of Law.

We also conducted interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing, and the Department of Law.

## ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry was established under the provisions of Title 8, Chapter 72 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Four board members must be licensed, practicing optometrists who have been residents in the State for at least three years. The statute also requires one member of the general public to sit on the board.

The board regulates the practice of optometry in the State by setting education, training, and work experience standards necessary for an individual to be licensed as an optometrist.

Alaska Statute (AS 08.72) defines the practice of optometry as the examination, diagnosis, and treatment of conditions of the human eyes and visual system, other than by use of laser, x-rays, surgery, or pharmaceutical agents.<sup>1</sup>

---

### Members of the Board of Examiners in Optometry (As of June 30, 1995)\*

James W. Matson, Optometrist & Chairperson  
Lynn J. Coon, Optometrist & Secretary  
Steve S. Dobson, Optometrist  
Randall Christiansen, Optometrist

\* As of the date of this report Governor Knowles has not appointed a public member to the Board of Examiners in Optometry (See Recommendation No. 3).

---

The board's duties and responsibilities under statute include:

1. Holding a minimum of one meeting per year.
2. Examining and issuing licenses to qualified applicants.
3. Holding hearings in order to impose disciplinary sanctions on persons who violate optometry licensing statutes and/or regulations.
4. Adopting regulations necessary to enforce the statutes relating to the board.
5. Adopting a code of ethical practice for optometry.

---

<sup>1</sup> Recent statutory amendments provide that optometrists may obtain a license endorsement that permits them to prescribe and administer pharmaceutical agents. These pharmaceutical agents (drugs) may only be topically applied to the human eye and its appendages. To obtain such an endorsement an individual must pass "written and practical portions of an examination on ocular pharmacology, approved by the board, that tests the licensee's or the applicant's knowledge of the characteristics, pharmacological effects, indications, contraindications, and emergency care associated with the prescription and use of pharmaceutical agents."

Applicants must be a high school graduate or equivalent in addition to having graduated from a recognized college or school of optometry. Additionally, all applicants must certify that they are in good health with no contagious or infectious diseases and have a visual acuity correctable to 20/40. Licensed optometrists are required to obtain 12 hours of continuing education per year.<sup>2</sup>

Alaska's optometry statutes and regulations do not allow for reciprocity with other states. Optometrists licensed in other states wishing to practice in Alaska must first become licensed in Alaska. Applicants that have passed a written examination in another jurisdiction may obtain waiver from passing the written examination requirement.<sup>3</sup> However, AS 08.72.170 specifically states "a waiver of the practical or oral portions of the examinations may not be given."

To become licensed in Alaska optometrists licensed in other states must provide the department with official documentation verifying Alaskan optometry educational requirements have been met. They must also apply for and pass all parts of the state optometry examination, pay all examination and application fees, and fulfill all other licensing requirements.

State law requires all optometrists licensed in Alaska to license each of their branch offices. There are few requirements for the licensing of branch offices. Optometrists must submit completed applications and pay all the required fees to the Division of Occupational Licensing biennially. Currently, the board is no longer enforcing the statute and the division is no longer collecting the required fees.<sup>4</sup>

The board grants license endorsements for optometrists to prescribe and use pharmaceutical agents. The board also grants endorsements for practitioners to only use pharmaceutical agents. Currently, all applicants graduating from optometry schools automatically qualify for pharmaceutical prescription and use license endorsement, after meeting all other licensing requirements.

---

<sup>2</sup> If an optometrist maintains a license endorsement for the prescription and use of pharmaceutical agents as discussed in footnote one then they must obtain additional hours of continuing education.

<sup>3</sup> The state examination consists of three sections — oral, written, and practical. Alaska Statute 08.72.170 grants the board the authority to waive the written portion of the state examination. The board may not waive either the practical or oral sections. The written section of the examination may be waived if:

- 1) The applicant meets all other examination criteria per AS 08.72.140.
- 2) The applicant holds a current license by examination in another state or a province of Canada if they have been established in an ethical practice for at least three years.
- 3) The applicant can show satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry.
- 4) The applicant has not had a certificate or license revoked for cause in any state, territory, or foreign country.

<sup>4</sup> AS 08.72.125, and 12 AAC 48.030 relate to the licensing of branch offices. Neither clearly defines when branch office licenses are required, rather they address situations only when they are not (See Recommendation No. 1).

Department of Commerce and Economic Development, Division of Occupational Licensing

The Department of Commerce and Economic Development, Division of Occupational Licensing (OccLic) provides administrative and investigatory assistance to the Board of Examiners in Optometry. Administrative assistance 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 the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of 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.

Results of our reviews during prior audits determined OccLic has implemented timekeeping policies and procedures to ensure licensing fees for boards and commissions include and closely reflect actual administrative, investigative, and overhead costs incurred by the division.

Further, under AS 08.01.087, OccLic has the authority to act on its own initiative or in response to a complaint and may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which OccLic has authority. OccLic can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

## REPORT CONCLUSIONS

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

The Board of Examiners in Optometry has been found to satisfy a public purpose and has demonstrated its ability to conduct its business in a satisfactory manner. The Board of Examiners in Optometry statutes, regulations, policies and procedures are current. The board carries out its regulatory oversight function in a professional, competent, and efficient manner.

Alaska Statute 08.03.010(c)(19) requires the Board of Examiners in Optometry be terminated on June 30, 1996. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend legislation be enacted to extend the board's termination date to June 30, 2002.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

Current statutory provisions related to the Board of Examiners in Optometry contribute to administrative "bottlenecks" in the licensing of optometrists. Additionally, certain statutory requirements are apparently no longer relevant to conventions of current practice. Specifically, we suggest the legislature consider:

1. Eliminating reference to, or extending the deadline for applications. Under current statute (AS 08.72.150) applicants for licensure may submit their applications and supporting documentation 15 days before examination or license expiration date. This 15 day deadline has caused a workload "bottleneck" for the licensing examiner during renewal periods. During these periods, the licensing examiner must process large volumes of various types of documentation received from applicants and license holders. He must check the applications for completeness and follow-up on missing documentation, in preparation for final review and approval of the full board.

The 15 day deadline allows little time for the licensing examiner to request additional documentation and to make corrections before the board reviews applicant files. The statutes for most other licensing boards leave the setting of the deadline to the discretion of the Division of Occupational Licensing (OccLic) or provide for more time than 15 days. We suggest that the legislature repeal AS 08.72.150 and leave the establishment of administrative deadlines to OccLic and the board through the adoption of regulations.

2. Repealing license requirements related to branch offices. At a June 1994 meeting, the board directed OccLic to no longer enforce AS 08.72.125 which requires the licensing of each branch office of any licensed optometrist's practice. This statute directs that "*a person may not practice, or attempt or offer to practice, optometry without obtaining a license for each branch office from the board.*"

Since the board's decision, no collection notices have been sent to optometrists and branch office licensing fees have not been actively collected by OccLic. The only occasion these fees have been collected has been when an optometrist has voluntarily remitted payment. From our review of statutory history and the discussion of the board it appears the conditions and concerns that originally gave rise to branch office licensing requirements no longer exist. We suggest the legislature repeal this statute.

3. Repeal health and visual acuity requirements. Currently, AS 08.72.140 requires applicants for examination and licensure to provide the division with notarized or certified documentation verifying they are free from contagious and infectious diseases and have visual acuity of 20/40 in at least one eye as corrected. With one exception, no other profession — not even those that are typically thought of as being more medically related such as physicians, dentists, or nurses — has such a disease-free requirement.

Enactment of the federal Americans with Disabilities Act increased both the number and types of discrimination claims which may be asserted by individuals and enforced by a court of law. The potential for litigation against the board and/or State based on assertions that these two requirements are discriminatory may now exist. We suggest that OccLic obtain an opinion from the Attorney General's office regarding the advisability and legality of these requirements. We also suggest the legislature reconsider these statutory requirements in both AS 08.74.140 and AS 08.72.181 (which pertains to renewal of licenses).

4. Clarify the status of unlicensed professionals supervised by optometrists. There is a unique professional and commercial overlap between licensed optometrists and dispensing opticians. Both professionals are licensed to dispense eyeglasses and contact lenses. Both professions are allowed to supervise unlicensed individuals to assist them in the dispensing of corrective lenses. However, it has been asserted by dispensing opticians that all unlicensed assistants should be registered optician apprentices — subject to requirements set out in the optician licensing statutes. Analysis by the Department of Law supports this interpretation of current statute.

There are allegations that despite the requirements of statute (as further interpreted by the Department of Law) many optometrists utilize unlicensed or unregistered assistants to dispense corrective lenses. Twice in recent years the Board of Examiners in Optometry has sought legislation that would exempt staff supervised by its licensees from having to be either an optician or a registered apprentice. We suggest the legislature consider statutory amendments to clarify the current statute that sets the demarcation line of responsibilities between the two professions.

### Recommendation No. 2

The Division of Occupational Licensing should enforce only those optometry application requirements set out in either statute and regulation.

OccLic has been enforcing optometry application requirements not required by state statutes or regulations. Specifically, application forms for optometric examination and licensure require applicants to submit certified or notarized copies of an unmounted 3" x 3" photograph taken within six months previous to filing the application.

Applicants must also submit official transcripts from all colleges or universities attended prior to optometry college to the Division of Occupational Licensing. All applications include a

statement to the effect that these items must be submitted to the division before the applications will be considered for licensure.

Neither the optometry statutes or regulations direct that applicants to meet these submission requirements. It appears the division has unilaterally imposed these requirements without clear legal authority. In our view, there is no compelling justification to support imposition of either requirement.

### Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

State law (AS 08.72.140) requires that "*four board members shall be licensed, practicing optometrists who have been residents for at least three years. One board member shall be a public member* [emphasis added]." Over the past three fiscal years the Board of Examiners in Optometry has operated for extended periods without benefit of a public member. During the period of FY 93 - FY 95 there was no appointed public member for four of the board's seven meetings.

This problem has developed in part from the actions of the Knowles administration. Upon assuming office, the governor removed a public member that Governor Hickel had appointed in December 1992. Although the Hickel-appointed member was removed, no public member was appointed in an expedient manner by the Knowles administration. As of the date of this report, no appointment has been made. It appears to us that the Hickel-appointed member, subject to legislative confirmation, could have served until the Knowles administration provided for a replacement appointment. Alaska Statute 08.01.035 which states "*members of boards . . . are appointed for staggered terms of four years. A member of a board serves until a successor is appointed* [emphasis added]."

The public board member serves as a representative of the citizenry at large. The intent behind placing public members on licensing boards is to provide more access to the board's actions and deliberations. The presence of such a member serves as a check against a professional licensing board becoming too insular or self-serving in its actions.