

673 SC 1 VOLUME SUNSET REVIEWS, (HEALTH CARE)

III

STATE OF ALASKA
Board of Veterinary Examiners
(August, 1978)

Findings

The Board of Veterinary Examiners regulates a profession involved in treatment of diseased and injured animals which may include administration of medication or controlled substances. Federal authorization to prescribe controlled substances and to issue health certificates for interstate and international transportation of animals is contingent on State licensure. Disease prevention, control, and treatment and restrictions on prescriptive authority for drugs are legitimate areas of governmental concern in protecting public health, safety and welfare. It is the determination of this review that State licensure and regulation of this profession is justifiable and that the Board of Veterinary Examiners should be reestablished for an additional four-year period.

I. General Information

A. Regulated Parties

1. Veterinarians

B. Statutory Definition of Regulated Profession

"(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(AS 08.98.250)

C. Nature and Composition of the Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Berton A. Gore, DVM ends January 31, 1980

Clifford D. Lobaugh, DVM ends January 1, 1981

David Howe, DVM ends January 31, 1979

2. Representation:

Professional = 3

Public = -0-

3. Qualifications:

Members must be licensed veterinarians.

D. Licensing Data

By Examination

Year	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1974	5	4	1	80	20
1975	12	11	1	92	8
1976	11	9	2	82	18
1977	8	8	-0-	100	-0-
1978	8	5	3	62	38

(through June)

Currently licensed:

in-State = 66 (through June, 1978)

out-of-State = 34 (through June, 1978)

Total - 100

E. Fees

1) examination fee	\$25.00
2) reciprocity fee	25.00
3) initial license fee	25.00
4) biennial renewal	50.00
5) temporary license	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$3,570.00	\$ 705.00	\$4,236.50	\$1,160.00
- Refunds	<u>25.00</u>	<u>-</u>	<u>50.00</u>	<u>-</u>
Total	3,545.00	705.00	4,186.50	1,160.00
Expenditures				
Per Diem	70.00	493.00	37.50	808.75
Transportation	32.00	355.15	85.14	170.05
Phone	34.05	88.45	83.35	21.00
Printing, Advert. & Postage	240.86	230.34	304.54	280.62
Fees & Services	320.00	540.00	588.32	360.00
Rents, Leases, Other	<u>-</u>	<u>-</u>	<u>11.34</u>	<u>-</u>
Total	<u>696.91</u>	<u>1,706.94</u>	<u>1,110.19</u>	<u>1,640.42</u>
Surplus	\$2,848.09	-	\$3,076.31	-
Deficit	-	\$1,001.94	-	\$ 480.42

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	-	-	-
1976	-	-	-
1977	2	-	-
1978	3	-	-

Pending: 5

These complaints involve allegations of over-charging and malpractice through neglect of animals resulting in death and injury. There are two complaints against one practitioner and three against another, both of whom are established in the same office. No action has been taken at this writing and resolution is pending.

H. Qualifications

Veterinarians are generally required to have from two to four years of preprofessional course work at an accredited university. Veterinary colleges usually require some 5,000 classroom hours over a four-year period. Individuals must successfully complete examination prior to initial licensure.

II. Criteria and Analysis

- A. To what extent has the Board of Veterinary Examiners operated in the public interest?

The Board of Veterinary Examiners has statutory authority to pass on qualifications of applicants, to issue licenses, to administer and grade examinations and to revoke or suspend licenses. Public interests are protected by requiring that applicants be qualified and demonstrate proficiency in their profession and by providing methods by which incompetence or abuse may be disciplined.

For the past several years the Board has utilized a national written examination. This examination is administered only if the applicant has not taken and passed it within the last three years. An applicant may also choose to take this examination a second time as the Board will accept the higher of the two scores. Applicants are required to take and pass additional written and practical examinations composed by the Board. An average score of 72.5% has been established as the minimum passing score. The Board is required to offer at least one examination each year and this has been its practice. 1978 is the first year in which two examinations were scheduled.

Other qualifications for licensure include graduation from an approved school of veterinary medicine and a requirement that the applicant must not have had his license revoked in the past. By examining and licensing veterinarians in the State, based on these qualifications, the Board is certifying to the public that the practitioner is at least minimally competent.

The Board has adopted regulations which define incompetence, require full disclosure of facts in instances of potential conflict of interest and require the exercise of care, skill and diligence in practice.

No statutory provisions are made for continuing education requirements. Regulatory powers of the Board are restrictive (in comparison to those of other health care boards) and specify the subject matter to be regulated. Continuing education is not one of these specified subjects.

Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of implementation in a State where well developed systems of higher and/or professional education are limited, or of requiring professionals to go out of State to obtain education must be weighed against whatever assurance there might be that incompetency will be significantly avoided or reduced by this method. Pending further study of this issue, one opinion¹ seems to indicate that vigorous investigation and enforcement programs may be an effective course of action.

It must be recognized, however, that there is a widespread trend toward continuing education requirements within health care professions. Eighteen states presently have such requirements for the veterinary profession. In the event that reassessment advantages are determined to outweigh the disadvantages, alternatives are:

¹Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J., 1976.

1. certification of completion of approved courses to provide a basis for public selection of practitioners;
2. periodic in-office review of client records and/or actual veterinary practices and procedures;
3. mandatory reexamination by such methods as written tests, records and/or x-ray review;
4. routine periodic oral interviews before the Board, a member, or a selected committee;
5. review and analysis of quantity, type and disposition of complaints;
6. well developed and effective peer review mechanisms; and/or
7. programs that may be developed by the Alaska State Veterinary Association.

It is recommended that the Board of Veterinary Examiners be given the authority to adopt regulations which are necessary and advisable to carry into effect the chapter provisions. One of these should address the matter of continuing education as a condition of relicensure.

The Board must allow entry into the profession and has no latitude under statutory temporary permit procedures. Candidates for licensure have obtained a temporary permit pending the examination, moved into the State, set up individual practice and then failed the examination (temporary permits are not renewable). In response to concern by the Board over instances such as this, an Attorney General's opinion in February of 1978 indicated that the Board may not decline to issue permits nor

does it have any legal responsibility to the candidate. Temporary permits are authorized as a means of expediting entry into a profession and of providing increased availability of qualified services to the public. The Board has indicated a desire to restrict the practice of permittees to an existing clinic but has no authority to do so. Provisions for reexamination in all or a portion of the test areas which were failed are advisable but would require clarification regarding procedures and scheduling.

Endorsement is also utilized by the Board as a means of allowing entry into the profession.

- B. To what extent has the operation of the Board of Veterinary Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The statutes governing the Board of Veterinary Examiners and the veterinarian profession are perhaps the most restrictive of all Alaska health care statutes. There have been no statutory changes made since 1970 and none of major significance since the Board was created in 1963.

No public members serve on this Board as was provided by statute for all other health care boards in 1976. The Board has discussed this subject and requested in June of 1978, through the administrative agency, that a public member be allowed to attend Board meetings. No response or further action was taken on this request. Board membership consists of three licensed veterinarians. One member whose term expired in January of 1978 had moved from the State leaving a quorum of two professional members until September when a new member was appointed.

Regular annual meetings are required. However, any special meetings may only be held "with prior approval of the governor" (AS 08.98.040). "The commissioner of commerce and economic development is the executive secretary of the board" (AS 08.98.030).

Violations specified as causes for revocation or suspension of license include the terms "chronically drunk," "drug addict" and moral turpitude." Such terminology is considered to be outdated, somewhat ambiguous and difficult to charge in a legal proceeding.

Regulations may be adopted by the Board only if they define incompetence, specify approved schools of veterinary medicine or if they specify subject matter to be covered in examinations. In contrast to most health care boards, it may not specifically adopt regulations necessary or advisable to govern the practice of veterinary medicine within statutory guidelines.

Statutes for this Board and profession contain no provisions for veterinary assistants or technicians, no provisions for foreign graduates of veterinary medicine, no requirement for an annual report, no continuing education provisions, no penalties in the form of fines or designation as a misdemeanor of violations, and no provisions for emergency care or services under the "good samaritan" principle.

The Board of Veterinary Examiners, in conjunction with the professional association has drafted a complete "Proposed Alaska Veterinary Practice Act." Minutes of Board meetings indicate that at least since 1969 and every year thereafter, requests have been made to the administrative agency for assistance in introducing revised drafts. There is no record of any action having been taken. Separate requests for assistance in introducing changes in individual statutes (i.e., temporary permit changes) have apparently met the same fate.

It is recommended that a separate, short-term task force be created with specific directive and goal of reviewing, revising, and recommending concise and thorough statutory construction, such task force to be represented by members of the veterinary and legal professions, and knowledgeable lay persons, and to be dissolved immediately upon completion of this task.

The Board of Veterinary Examiners has experienced little difficulty in its general administrative operations with respect to personnel or budgetary restrictions with the exception of investigative services and technical assistance as previously noted. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Veterinary Examiners has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

- C. To what extent has the Board of Veterinary Examiners recommended statutory changes which are generally of benefit to the public interest?

As previously cited, no major changes have taken place in the profession's statutes since creation of the Board in 1963. Since 1968 numerous requests have been made by the Board for assistance in implementing statutory and regulatory changes. These changes involved Board discretion in issuing temporary permits and in licensing out-of-State practitioners by waiver of examination. The Board and the Alaska Veterinary Association have jointly drafted a proposed new practice act which they have been attempting to obtain assistance with.

No recommendations have been made by the Board of Veterinary Examiners relating to statutory changes that would be of specific direct benefit to the public, however, efficient administration and regulation of the profession would have an overall beneficial public effect.

- D. To what extent has the Board of Veterinary Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest or participation in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

The absence of public members on this Board is not felt to encourage public participation or to further public interests. Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.²

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Veterinary Examiners processed and resolved?

²Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

No complaints were received which were specifically directed at individual members of the Board of Veterinary Examiners and no complaints regarding the Board or profession have been received by the Office of the Ombudsman. Five complaints received in the last past two years involve allegations of over-charging and malpractice through neglect of animals resulting in injury and death. All were against two practitioners in the same clinic and none have been acted upon.

F. To what extent does the Board of Veterinary Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Veterinary Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. State examinations are conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Every statutory authority is currently being exercised to screen qualified applicants and provide acceptable practitioners. The Board is already licensing by endorsement, issuing temporary permits and conducting examinations as warranted. These procedures help to expedite entry into the profession and to increase availability of services to the public.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Veterinary Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Veterinary Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Veterinary Examiners to better serve the interests of the public?

Several changes need to be made to the statutes governing this Board. All have been previously noted as have the recommendations for upgrading terminology and content. Needed regulatory changes cannot take place unless and until the Board is given authority to adopt such regulations as are advisable in governing the profession. The Board has repeatedly requested assistance with, and revised, statutory changes and a complete new practice act. Appropriate steps are now being taken by the administrative agency to provide the assistance requested by the Board.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses.

Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable laymembers is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."³ Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." It is recommended that Board membership be increased to five to include two public members.

III. Conclusion

Veterinarians have the responsibility for detecting and controlling animal diseases; they have the authority to issue prescriptions for controlled substances; federal authorization for a Drug Enforcement Agency number (necessary if prescribing controlled substances) is contingent on State licensure as is federal authorization to issue health certificates for interstate and international transportation of animals. It must also be recognized that many members of the public have a substantial economic and/or emotional investment in their animals. Continuation of the Board of Veterinary Examiners and State regulation is determined to be justified in terms of protection of public health, safety and welfare.

³Ibid, Shimberg & Roederer, p. 9.

IV. Summary of Recommendations

The Board of Veterinary Examiners should be continued for an additional four-year period. The following recommendations are made:

It is recommended that a complete review and revision of these statutes take place in order that they be updated and extend the authority necessary and adequate to govern the practice of veterinary medicine in the State. (See discussion beginning on p. 9)

- a. The Board should be given authority to adopt regulations necessary to govern the practice of veterinary medicine in the State. (See discussion on p. 9)
- b. Mandatory continuing education requirements, and possible exceptions, should be imposed by statute. The Board should then adopt regulations delineating compliance methods and criteria. (See discussion on p. 7)
- c. Public members should be included in the composition of the Board. The statutory restriction precluding lay members on the Board has not encouraged public participation or interest in its regulations or decisions. (See discussion on p. 9, 13 and 16)
- d. The Board, in conjunction with the administrative agency, should be given the authority to establish a necessary and reasonable fee structure. (See discussion on p. 15)

Chapter 98. Veterinarians.

Article

1. Board of Veterinary Examiners (§§ 08.98.010 — 08.98.100)
2. Licensing (§§ 08.98.120 — 08.98.210)
3. Enforcement (§ 08.98.230)
4. General Provisions (§ 08.98.250)

Article 1. Board of Veterinary Examiners.

Section

10. Creation and membership of board
20. Appointment and term of office
30. Executive secretary of board
40. Board meetings
50. Duties of the board
60. Board regulations

Section

70. Duties of the department
80. Department regulations
90. Applicability of the Administrative Procedure Act
100. Compensation

Sec. 08.98.010. Creation and membership of board. There is a Board of Veterinary Examiners. It consists of three licensed veterinarians. (§ 1 ch 91 SLA 1963; am § 1 ch 94 SLA 1966)

Sec. 08.98.020. Appointment and term of office. The governor shall appoint the members of the board, with the confirmation of the legislature, for terms of four years, or until their successors are appointed. A member serves at the pleasure of the governor. The first members shall be initially appointed for two-, three- and four-year terms. (§ 1 ch 91 SLA 1963)

Sec. 08.98.030. Executive secretary of board. The commissioner of commerce and economic development is the executive secretary of the board. (§ 1 ch 91 SLA 1963; am § 59 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce."

Sec. 08.98.040. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (§ 1 ch 91 SLA 1963)

Sec. 08.98.050. Duties of the board. The board shall

- (1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;
- (2) prepare and grade examinations, provided that the board may use examinations prepared by the National Board of Veterinary Examiners;
- (3) after hearing, have the authority to suspend or revoke the license of a licensed veterinarian who
 - (A) obtained his license by fraud, misrepresentation, or deception;
 - (B) is chronically drunk or is a drug addict;

(C) makes untruthful statements about his professional ability, to solicit business;

(D) distributes alcohol or drugs except as required by the practice of veterinary medicine, surgery, or dentistry;

(E) in his professional capacity, conducts himself in a way that indicates he is not a competent veterinarian;

(F) is convicted of a felony or any crime involving moral turpitude;

(G) falsifies an official state or federal certificate relating to veterinary medicine. (§ 1 ch 91 SLA 1963; am § 2 94 SLA 1966, am § 1 ch 54 SLA 1967)

Sec. 08.98.060. Board regulations. (a) The board shall adopt procedural regulations describing how a person applies for and takes an examination under this chapter.

(b) The board shall adopt substantive regulations

(1) defining conduct which, if engaged in by a veterinarian, is evidence of incompetence;

(2) specifying approved schools under § 170(1) of this chapter;

(3) specifying the subject matter to be covered in an examination for veterinarians. (§ 1 ch 91 SLA 1963)

Sec. 08.98.070. Duties of the department. The department shall furnish the board with administrative services, including renting space for holding examinations, printing and mailing licenses, sending notices, before December 1 of each year, that licenses must be renewed, collecting fees and issuing receipts, keeping a current register of licensees, employing secretarial assistants, replying to routine requests for information, printing forms and informational bulletins, typing all matter to be reproduced, maintaining records and completed examinations, and keeping records of receipts and disbursements. (§ 1 ch 91 SLA 1963; am § 3 ch 94 SLA 1966)

Sec. 08.98.080. Department regulations. The department shall adopt procedural regulations necessary to carry out the duties imposed on it by § 70 of this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.100. Compensation. Members of the board are entitled to per diem allowances and transportation expenses allowed by law and paid members of other state examining boards. (§ 1 ch 91 SLA 1963)

Article 2. Licensing.

Section

- 120. License required
- 130. Examination
- 140. Content of examination
- 150. Administration of examination
- 160. Reexamination

Section

- 170. Qualification for examination
- 180. Temporary license
- 190. Fees
- 200. Reinstatement of lapsed license
- 210. Out-of-state veterinarian

Sec. 08.98.120. License required. No person may practice veterinary medicine, surgery, or dentistry unless he is licensed under this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.130. Examination. A person who passes the examination given by the board is entitled to be licensed as a veterinarian. (§ 1 ch 91 SLA 1963)

Sec. 08.98.140. Content of examination. The examination shall be in veterinary anatomy, surgery, medicine, obstetrics, pathology, chemistry, diagnosis, materia medica, therapeutics, physiology, sanitary medicine, dentistry, and other scientific subjects related to the practice of veterinary medicine, surgery, and dentistry. (§ 1 ch 91 SLA 1963)

Sec. 08.98.150. Administration of examination. The board shall offer examinations at least once a year. Examinations shall be so administered that, whenever possible, one who grades a written examination does not know whose paper he is grading. (§ 1 ch 91 SLA 1963; am § 4 ch 94 SLA 1966)

Sec. 08.98.160. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the examination fee each time he applies. (§ 1 ch 91 SLA 1963)

Sec. 08.98.170. Qualification for examination. A person is entitled to take the examination who

(1) was graduated from a school of veterinary medicine approved by the board;

(2) Repealed by § 25 ch 245 SLA 1970.

(3) has completed application forms and returned them to the board;

(4) has paid the fee specified in § 190 of this chapter;

(5) has not had a veterinarian license revoked for cause in another jurisdiction;

(6) is of good moral character. (§ 1 ch 91 SLA 1963; am §§ 5, 6 ch 94 SLA 1966; am § 25 ch 245 SLA 1970)

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.) For

report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 08.98.180. Temporary license. A person who meets the requirements of § 170 of this chapter is entitled to be licensed. A license issued under this section is valid until the results of the examination following the issuance of the license are published. No person may receive more than one license under this section. (§ 1 ch 91 SLA 1963; am § 1 ch 94 SLA 1966)

Sec. 08.98.190. Fees. The following fees shall be imposed under this chapter when applicable:

- (1) examination fee\$25
- (2) reciprocity fee 25
- (3) initial license fee 25
- (4) biennial renewal 50
- (5) temporary license 10

(§ 1 ch 91 SLA 1963; am § 1 ch 53 SLA 1968)

Sec. 08.98.200. Reinstatement of lapsed license. A person whose license has lapsed is entitled to have his license reinstated without taking an examination unless his license has remained lapsed more than five years. (§ 1 ch 91 SLA 1963; am § 2 ch 53 SLA 1968)

Sec. 08.98.210. Out-of-state veterinarian. A veterinarian in good standing in a veterinary association of another state or territory or the District of Columbia which licenses veterinarians to practice veterinary medicine may be licensed without examination and otherwise upon substantially the same terms and conditions as are fixed in the jurisdiction from which he has come for the licensure of a veterinarian from this state. As a prerequisite to licensure the board shall require a veterinarian to take and pass an examination, unless the applicant has

- (1) passed a state veterinarian examination;
- (2) engaged in the active practice of veterinary medicine for at least five out of the previous seven years before filing the application excluding time spent in the military service of the United States;
- (3) graduated from an accredited school of veterinary medicine;
- (4) met the character requirements established by the board. (§ 1 ch 91 SLA 1963; am § 8 ch 94 SLA 1966; am § 2 ch 54 SLA 1967)

Article 3. Enforcement.

Section
230. Injunction

Sec. 08.98.230. Injunction. When it appears that a person has engaged in or is about to engage in an act constituting a violation of § 120 of this chapter, the board, through its executive secretary, shall bring an action in the superior court to enjoin the act and to enforce compliance with § 120 of this chapter. (§ 1 ch 91 SLA 1963)

Article 4. General Provisions.

Section

250. Definitions

Sec. 08.98.250. Definitions. In this chapter

(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(2) "board" means the Board of Veterinary Examiners;

(3) "department" means the Department of Commerce and Economic Development. (§ 1 ch 91 SLA 1963; am § 60 ch 218 SLA 1976)

Revisor's note (1973). — In light of the 1966 amendment of AS 08.98.010, "Veterinarian" has been changed to "Veterinary" in paragraph (2) of this section.

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (3).

CHAPTER 68.
BOARD OF VETERINARY
EXAMINERS

Article

1. Examinations
2. Evidence of Incompetence

ARTICLE 1.
EXAMINATIONS

Section

10. Applications
20. Time and place of examination
30. Notification of applicants
40. Application for license

12 AAC 68.010. APPLICATIONS. (a) An application for examination to practice veterinary medicine, surgery, or dentistry shall be made in writing to the Department of Commerce on a form prescribed and furnished by the Department. The fee required by AS 08.98.190 shall accompany the application form.

(b) An applicant may be required to furnish other information to demonstrate that he meets the minimum qualifications of AS 08.98.170.

(c) An application for examination must be postmarked no later than 60 days before the examination date. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)
AS 08.98.070

12 AAC 68.020. TIME AND PLACE OF EXAMINATION. (a) The time and place of the examination will be published by all major newspapers, in the State of Alaska, at least six months before the examination date.

(b) The Department of Commerce will arrange for space in which the examination is given. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)
AS 08.98.070

12 AAC 68.030. NOTIFICATION OF APPLICANTS. (a) All applicants will be notified in writing of the time and place of the examination by the Department of Commerce at least 10 days before the examination.

(b) An applicant will be advised by the department of his grade in writing no later than 60 days following the grading of the examination by the board. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)

12 AAC 68.040. APPLICATION FOR LICENSE. An application for a license is included on the same form used for the application for examination. Space is provided on the form to indicate whether licensing will be by examination or by waiver of examination. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060
AS 08.98.210

ARTICLE 2. EVIDENCE OF
INCOMPETENCE.

Section

50. Evidence of incompetence
60. Approved schools
70. Conflict of interest
80. Treatment of patients
90. Certificate of health
100. Confidential relationship
110. Testimonials
120. Soliciting

12 AAC 68.050. EVIDENCE OF INCOMPETENCE. The following conduct is considered evidence of incompetence of an applicant:

(1) a judgment of insanity by any competent court;

(2) a conviction of a violation of a federal or state law relating to narcotic drugs;

(3) a conviction of malpractice in veterinary medicine, surgery or dentistry. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060

12 AAC 68.060. APPROVED SCHOOLS. A school of veterinary medicine that is recognized and approved by the American Veterinary Medical Association is approved by the board. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(b)(2)

Editor's Note: A list of approved schools may be obtained from the American Veterinary Medical Association.

12 AAC 68.070. CONFLICT OF INTEREST. It is unprofessional to represent conflicting interest, except by express consent of all concerned, given after a full disclosure of the facts. A conflict of interest results when a veterinarian is employed by a buyer to inspect an animal for soundness or other reason, and he accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is evidence of unprofessional conduct for the purposes of AS 08.98.050. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050 (3) (E)
AS 08.98.060 (b) (1)

12 AAC 68.080. TREATMENT OF PATIENTS. A licensed veterinarian shall exercise the degree of care, skill and diligence in treating patients that is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in the community in which he practices. Failure to comply with this section constitutes incompetence for the purpose of AS 08.98.050(3)(E). (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.090. CERTIFICATE OF HEALTH. No licensed veterinarian may issue a certificate of health for an animal unless he performs the inspection and the appropriate tests it required. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.100. CONFIDENTIAL RELATIONSHIP. A licensed veterinarian shall maintain a confidential personal relationship between himself and his client, or his client's authorized agent. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.110. TESTIMONIALS. No licensed veterinarian may write testimonials endorsing proprietary remedies, instruments, equipment or food except that reports of the results of properly controlled experiments or clinical studies are permitted if given publicity through scientific journals or meetings. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.120. SOLICITING. (a) No member of the veterinary profession may utilize the services of solicitors. No licensed veterinarian may participate in arrangements which share the proceeds from professional services with individuals who may have been instrumental in his having been selected to perform the particular service.

(b) A licensed veterinarian shall avoid the impropriety of employing questionable methods to attract public attention or claim to possess superior knowledge or skill in the treatment or prevention of a disease. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

IV

STATE OF ALASKA
Physical Therapy Board
(August, 1978)

Findings

Governmental deregulation of the physical therapy profession would subject the public to potential danger from persons who are not required to meet minimum standards of proficiency. Physical therapy is performed at the direction of a physician and can be a prolonged process characterized by gradual physical improvement and frequently accompanied by substantial investments of time and money. Lack of quality control could result in considerable financial loss or physical injury among members of the general public. Unregulated and unqualified practitioners would be unhindered in practice and promises of physical aid that may be unrealistic or blatantly false. Regulation of this profession could, however, be accomplished without a State board by the administrative agency with appropriate statutory guidelines. If the Board is continued, recommendations are contained herein that would enhance its efficient functioning.

I. General Information

A. Regulated Parties

1. Physical Therapists
2. Physical Therapy Assistants

B. Statutory Definition of Regulated Profession

"(2) 'physical therapist' means a person who practices physical therapy;

(3) 'physical therapy' means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term 'physical therapy';

(4) 'physical therapy assistant' means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his responsibilities do not include testing or evaluation."

(AS 08.84.190)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

<u>Recently resigned</u> Chairman	ends September 1, 1977
Donna Klokkevold, RPT (Secy)	ends September 1, 1978
Richard Alsop, RPT	ends September 1, 1979
J. Michael James, M.D.	ends September 1, 1977
Edward Heuston	ends September 1, 1977

2. Representation:

Profession = 4 (includes one licensed physician)
Public = 1

3. Qualifications:

"...The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person..." (AS 08.84.010)

D. Registration Data

Physical Therapists

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	3	3	0	100	-0-
1976	1	1	0	100	-0-
1977	3	2	1	67	33
1978	2	1	1	50	50

(through June 30)

Physical Therapy Assistants

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	0	0	0	-0-	-0-
1976	1	1	0	100	-0-
1977	0	0	0	-0-	-0-
1978	1	1	0	100	-0-

(through June 30)

Currently Registered:

Physical Therapists

in-State	=	87	(through June, 1978)
out-of State	=	<u>14</u>	(through June, 1978)
Total		101	

Physical Therapy Assistants

in-State	=	<u>2</u>
Total		2

E. Fees

1. application	\$25.00
2. registration by examination	25.00
3. registration by endorsement	25.00
4. biennial renewal	25.00
5. temporary permit	10.00
6. delinquent penalty	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$750.00	\$1,880.00	\$1,455.00	\$3,132.00
- refunds	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	\$750.00	\$1,880.00	\$1,455.00	\$3,132.00
Expenditures				
Per Diem	-	45.00	125.00	475.00
Transportation	-	168.30	86.64	516.51
Phone	16.20	43.75	74.52	107.95
Printing, Advert., Postage	-	212.33	242.52	371.13
Fees & Services	35.00	335.00	145.00	275.00
Rents, Leases, Other	16.30	-	-	-
Total	<u>\$ 67.50</u>	<u>\$ 804.38</u>	<u>\$ 673.68</u>	<u>\$1,745.59</u>
Surplus	\$682.50	\$1,075.62	\$ 781.32	\$1,386.41
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	1	1	0
1976	0	0	0
1977	0	0	0
1978	0	0	0
(through June)			
Pending:	0		

One complaint was received by the Office of the Ombudsman. This complaint was from an applicant charging that s/he was improperly denied licensure; the charge was determined to be justified and was rectified. One other complaint for practicing without a license received in 1975 had previously been referred to the Medical Board and is still pending.

H. Qualifications

Practitioners are required to have a Bachelor's degree (four-year program) from an approved school and work only under physician direction.

II. Criteria and Analysis

- A. To what extent has the Physical Therapy Board operated in the public interest?

The statutory duties of the Board are to conduct examinations, control all matters pertaining to professional registration, issue, suspend or revoke registration certification, maintain current registration listings, and maintain records of its proceedings. The Board has no regulatory authority and, hence, has operated under the restrictive limitations of the foregoing duties.

A national examination for applicants has consistently been utilized by the Board. All applicants for registration, including those who are requesting licensure by endorsement, must have taken and passed this written examination with a minimal score of 70. The examination is given twice each year, is proctored by one or more members of the Board and is graded by the national testing service. No practical examination is given. The testing function could be assumed by the administrative agency.

Assuring competency of practitioners by utilizing nationally established testing standards and procedures is one method by which regulation operates in the public interest. Handicapped individuals or their relatives may be tempted to place their well being in the care of unqualified or unscrupulous persons who promise unrealistic help or cures. The result could be the loss of literally thousands of dollars and no assistance to the individual while actual physical harm could occur in the incorrect application of treatments such as those utilizing muscular exercise, heat, and electricity. The general public must be supplied with a measure for determining the qualifications of a person providing such services. Compliance with State requirements and subsequent registration controlling applicants for this profession function to protect the public health and safety.

Provisions for registration by endorsement and for issuance of temporary permits are found in the Board's statutes. These avenues of expeditious entry into the profession are utilized by the Board and are felt to be in keeping with the public interest by allowing opportunities for access to practitioners. Most licentiates within the State have been licensed by endorsement. Endorsement is allowed from any state whose registration requirements were substantially equal to those of Alaska at the date of the applicants' registration. Temporary permits may be, and are, issued to applicants who are otherwise qualified pending examination. Permits are valid for eight months or until the next examination results are

published - or until the endorsement application is considered by the Board - whichever occurs first. Foreign graduates must first be licensed in another state and must have passed the national examination to be eligible for endorsement in Alaska.

The Board has established a policy by which an applicant may take the examination an unlimited number of times. While it is felt to be advisable that an applicant who has failed the examination twice must obtain further qualifying training and/or experience, there is no authority for the Board to impose requirements of this kind.

There also is no authority for the Board to consider the subject of continuing education except as a policy matter. Valid arguments may be made against continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of this in a rural State where well developed systems of higher and/or professional education are virtually nonexistent, or of requiring professionals to go out-of-State to obtain education they cannot get here, must be weighed against whatever assurance there might be that incompetency will be significantly avoided or reduced by this method. It must be recognized, however, that there is a widespread trend toward continuing education requirements as a condition of license renewal and the Board should have the authority to consider the implications and implementation of such action.

If the Physical Therapy Board is allowed to terminate, continuing education should be delineated by statute to allow administration and determination of qualifications by the agency. If continued, it is recommended that the Physical Therapy Board be given the statutory authority to adopt regulations necessary and advisable to govern the practice of the profession within statutory limitations, including the matter of continuing education.

- B. To what extent has the operation of the Physical Therapy Board been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The operation of the Physical Therapy Board has been limited by the absence of statutory authority necessary to adopt regulations governing the profession and its practitioners. Procedures covering application for registration, codes of ethics, training functions and utilization of physical therapy assistants, and clarification of a supervisory relationship have been formulated as Board policies. These policies do not, however, have the sanctity of regulations. As previously noted, the Board may not consider or require continuing education as a condition for relicensure.

Present Board composition requires that only one public member may be appointed. This is not considered to enhance the public interest and accountability of the Board's operation. Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable lay members is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."¹ Shimberg and Roederer further indicate that,

¹Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 9.

"... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." Public representation on the Board should be increased to two members for a public-profession ratio of 2:3.

A general review of Board statutes indicates a need to refine and define terms such as "habitually drunk," "immoral or unprofessional conduct," "moral turpitude" and "gross negligence." (AS 08.84.120)

The Physical Therapy Board has experienced some difficulty in its administrative operations with respect to budgetary matters. In an attempt to recognize and alleviate limitations, the Board recently resolved that a licensing examiner from the administrative agency need not be present at all Board meetings. (This is not in keeping with the policy of the administrative agency but is intended to demonstrate Board efforts with respect to minimizing expenditures.) The Board also has recently discussed the possibility of members not requesting transportation or per diem for meetings and has in fact refused this. (Again, this is contrary to administrative policy.) It is noted that prior to a 1977 statutory amendment, members of this Board were not entitled to a travel or per diem allowance by the Physical Therapist practice act.

Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs although employee turnover has not enhanced Board operations. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

Complaints received in relation to this profession would encounter the same difficulties as have those of all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

C. To what extent has the Physical Therapy Board recommended statutory changes which are generally of benefit to the public interest?

As with general statutory amendments recently made to many health care related boards, recent changes to these statutes included: deletion of the requirement that nominations to the Board be made only by the professional association, Medical Indemnity Corporation of Alaska provisions, applicability of the Administrative Procedure Act and minor "housekeeping" items.

No recommendations have been made by the Physical Therapy Board relating to statutory changes that would be of specific benefit to the public.

D. To what extent has the Physical Therapy Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance or participation at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

E. How efficiently are public inquiries or complaints regarding the activities of the Physical Therapy Board processed and resolved?

One complaint was received by the Office of the Ombudsman (in 1975) charging that an applicant was improperly denied licensure. This complaint was justified and resolved in a timely manner. Several references are found in the files of complaints made against a particular individual since 1975. These complaints also involve allegations of violations concerning the medical and chiropractic professions and action is still pending under jurisdiction of the Medical Board.

F. To what extent does the Physical Therapy Board present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Physical Therapy Board or any of its members. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. Two examinations each year are currently conducted and endorsement provisions are utilized. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Current Board practices which allow registration through endorsement and the issuance of temporary permits are conducive to entry into the profession, provide opportunity for availability and public access to services and could as well be agency administered. Qualifications delineated for these methods are designed to assure competency sufficient to meet minimal practicing standards.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Physical Therapy Board in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Physical Therapy Board issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

- H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Physical Therapy Board to better serve the interests of the public?

If continued, the Board should be authorized to promulgate and adopt regulations necessary and advisable to govern the practice of physical therapists and physical therapy assistants in the State within statutory guidelines. Areas which should be considered by the Board include: a limitation on the number of times an applicant may fail the examination before further study is required, continuing education/competency requirements, functions and training of physical therapy assistants and definitions of "supervision," "immoral or unprofessional conduct," "moral turpitude" and "gross negligence."

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.² It is, therefore, recommended that public membership on the board be increased to two, with three professional members and that number of terms or of consecutive terms be limited.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations and the costs of Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses.

III. Conclusion

Regulation of this profession is determined to function in the protection of the public health, safety and welfare and could be accomplished by the administrative agency.

²Ibid, Shimbeg & Roederer, p. 20.

IV. Summary of Recommendations

- A. The Physical Therapy Board should be allowed to terminate and the functions of examining and licensing should be assumed by the administrative agency with appropriate statutory guidelines.
- B. If the Physical Therapy Board is reestablished for an additional four-year period, the following recommendations are made:
1. It is recommended that the Physical Therapy Board be given authority to promulgate and adopt appropriate regulations. The Board may then consider advisable and needed regulations such as those concerning:
 - a. a limitation on the number of times an applicant may fail an examination before s/he must obtain further training, (See discussion on p. 9)
 - b. continuing education requirements, (See discussion on p. 9)
 - c. form and procedures for licensure applications,
 - d. the functions and scope of activities for physical therapy assistants, and
 - e. the definition and scope of activity of a supervisory relationship. (See discussion on p. 10)
 2. Terms such as "habitually drunk," "immoral or unprofessional conduct," "moral turpitude," and "gross negligence," should be refined and/or defined. (See discussion on p. 11)

3. The ratio of lay persons to professional members of the board should be increased. It is recommended that public membership be increased to two and that number of terms or consecutive terms be limited. (See discussion on p. 10)

Chapter 84. Physical Therapists Practice Act.

Article

1. State Medical Board (§§ 08.84.010 — 08.84.020)
2. Registration (§§ 08.84.030 — 08.84.120)
3. Unlawful Acts (§§ 08.84.130 — 08.84.185)
4. General Provisions (§§ 08.84.190 — 08.84.200)

Article 1. State Medical Board.

Section

10. State Physical Therapy Board
20. Applicability of Administrative Procedure Act

Sec. 08.84.010. State Physical Therapy Board. (a) There is created the State Physical Therapy Board, which consists of five members appointed by the governor. The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person. Members of the board shall be appointed for terms of one, two and three years, respectively; all subsequent appointments shall be made for a term of three years and until their successors are appointed.

(b) The Physical Therapy Board shall conduct examinations for applicants and shall control all matters pertaining to the registration of physical therapists and physical therapy assistants and the practice of physical therapy. The board shall

- (1) pass upon the qualifications of applicants;
- (2) conduct examinations;
- (3) issue temporary permits and registration certificates to physical therapists and physical therapy assistants qualified under this chapter;
- (4) suspend or revoke registration certificates, when necessary;
- (5) keep a current register listing the name, business address, date and number of registration certificate of each physical therapist and physical therapy assistant who is registered to practice in this state;
- (6) keep a record and minutes of its meetings, proceedings and hearings. (§ 15 ch 74 SLA 1957; am § 8 ch 49 SLA 1969; am § 1 ch 71 SLA 1974; am § 1 ch 208 SLA 1975; am § 2 ch 43 SLA 1977)

Effect of amendments. — The 1974 amendment rewrote this section.

The 1975 amendment substituted "American Physical Therapy Association" for "American Physical Therapist Association" at the end of the former third sentence of subsection (a).

The 1977 amendment, in subsection (a), deleted the former third, fifth, and sixth sentences, which read, respectively, "The members shall be selected from a list of 10

persons which shall be submitted by the Alaska Chapter of the American Physical Therapy Association", "Vacancies on the board shall be filled by appointment in like manner", and "Board members are not entitled to a travel or per diem allowance."

Legislative committee report. — For report on ch. 43, SLA 1977 (SB 110), see 1977 Senate Journal, p. 173.

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, § 31.

Sec. 08.84.020. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Article 2. Registration.

Section	Section
30. Qualifications for registration	80. Examinations
35. Malpractice insurance	90. Registration
40. Application for registration	100. Renewal of registration
50. Fees	110. [Repealed]
60. Registration by endorsement	120. Refusal, revocation and suspension of registration
65. Temporary permit	
70. [Repealed]	

Sec. 08.84.030. Qualifications for registration. To be eligible for registration by the board as a physical therapist or physical therapy assistant, an applicant shall

(1) be of good moral character;

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination from the Professional Examination Service Association, to determine his fitness for practice as a physical therapist or physical therapy assistant, or be entitled to registration without examination as provided in § 60 of this chapter. (§ 3 ch 74 SLA 1957; am §§ 1, 8 ch 49 SLA 1969; am §§ 1, 2 ch 26 SLA 1970; am § 25 ch 245 SLA 1970; am § 2 ch 71 SLA 1974; am § 2 ch 208 SLA 1975)

Effect of amendments. — The 1974 amendment repealed and re-enacted this section, renumbering the paragraphs and inserting "or physical therapy assistant" in the introductory language and in present paragraph (3).

The 1975 amendment substituted "Professional Examination Service

Association" for "professional examination service of the American Public Health Association" in paragraph (3).

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 08.84.035. Malpractice insurance. If medical malpractice insurance for physical therapists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of physical therapist services to the public, the director of insurance may require all persons registered under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of registration under this chapter. The provisions of this section are satisfied if the registrant's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 29 ch 102 SLA 1976)

Sec. 08.84.040. Application for registration. To be registered as a physical therapist or physical therapy assistant, an applicant shall apply to the board on a form prescribed by the board. An applicant shall include in his application, evidence under oath that he possesses the qualifications required by § 30 of this chapter. (§ 4 ch 74 SLA 1957; am § 3 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "or physical therapy assistant" in the first sentence.

Sec. 08.84.050. Fees. The following fees shall be imposed under this chapter when applicable:

- (1) application \$25
 - (2) registration by examination 25
 - (3) registration by endorsement 25
 - (4) biennial renewal 25
 - (5) temporary permit 10
- (§ 4 ch 74 SLA 1957; am § 2 ch 49 SLA 1969; am § 3 ch 26 SLA 1970)

Sec. 08.84.060. Registration by endorsement. The board may register without examination an applicant who is a physical therapist or physical therapy assistant registered under the laws of another state or territory, if the requirements for registration in that state or territory were, at the date of his registration, substantially equal to the requirements in this state. (§ 6 ch 74 SLA 1957, am § 4 ch 26 SLA 1970; am § 4 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "or physical therapy assistant" near the middle of the section.

Sec. 08.84.065. Temporary permit. (a) The board may issue a nonrenewable temporary permit to an applicant for registration by endorsement or by examination who meets the requirements of § 30(1) and (2) of this chapter and pays the required fee.

(b) A temporary permit issued to an applicant for registration by endorsement is valid for eight months or until the board considers the applicant's endorsement application, whichever occurs first.

(c) A temporary permit issued to an applicant for registration by examination is valid for eight months or until the results of the first examination for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take the first examination for which he is scheduled his temporary permit lapses on the day of the examination. (§ 5 ch 26 SLA 1970; am § 5 ch 71 SLA 1974; am § 3 ch 208 SLA 1975)

Effect of amendments. — The 1974 amendment substituted "registration" for "licensure" in subsections (a) and (b) and in the first sentence of subsection (c).

The 1975 amendment substituted "§ 30(1) and (2)" for "§ 30(1), (2) and (3)" in subsection (a).

Sec. 08.84.070. Registration fee.
Repealed by § 8 ch 49 SLA 1969.

Editor's note. — The repealed section derived from § 6, ch. 74, SLA 1957.

Sec. 08.84.080. Examinations. (a) The board shall examine applicants for registration as physical therapists or physical therapy assistants at the times and places it determines.

(b) An application for examination shall be submitted to the department at least 40 days before the examination date. (§ 7 ch 74 SLA 1957; am § 3 ch 49 SLA 1969; am § 6 ch 26 SLA 1970; am § 6 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment, in subsection (a), inserted "or physical therapy assistants" and deleted the former second sentence.

Sec. 08.84.090. Registration. The board shall register an applicant who meets the qualifications for registration under this chapter. It shall issue a certificate of registration to each person registered. A certificate of registration is prima facie evidence of the right of the person to represent himself as a registered physical therapist or registered physical therapy assistant. (§ 8 ch 74 SLA 1957; am § 7 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment added "or registered physical therapy assistant" to the end of the third sentence.

Sec. 08.84.100. Renewal of registration. (a) A registered physical therapist or physical therapy assistant shall renew his registration biennially with the Department of Commerce and Economic Development on or before the date set by the department under AS 08.01.100(a). If the registration is not renewed on or before that date, it lapses.

(b) A penalty of \$10 shall be charged in addition to all delinquent renewal fees for reinstatement of registration which remains lapsed for more than 60 days. If the registration remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under § 30(3) of this chapter. (§ 9 ch 74 SLA 1957; am § 4 ch 49 SLA 1969; am § 8 ch 71 SLA 1974; am § 4 ch 208 SLA 1975; am § 54 ch 218 SLA 1976)

Effect of amendments. — The 1974 amendment inserted "or physical therapy assistant" near the beginning of the first sentence of subsection (a).

The 1975 amendment substituted "§ 30(3)" for "§ 30(4)" in the second sentence of subsection (b).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the first sentence of subsection (a).

Sec. 08.84.110. Renewal fee.

Repealed by § 8 ch 49 SLA 1969.

Editor's note. — The repealed section derived from § 9, ch. 74, SLA 1957.

Sec. 08.84.120. Refusal, revocation and suspension of registration.

The board may refuse to register an applicant, may refuse to renew the registration of a person, and may suspend or revoke the registration of a person who

- (1) is habitually drunk or addicted to the use of narcotic drugs;
- (2) is, in the judgment of the board, guilty of immoral or unprofessional conduct;
- (3) has been convicted of violating a state or federal narcotic law;
- (4) has been convicted of a crime involving moral turpitude;
- (5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;
- (6) has obtained or attempted to obtain registration by fraud or material misrepresentation;
- (7) has been declared mentally ill by a court and has not thereafter been lawfully declared sane; or
- (8) has treated or attempted to treat ailments of human beings otherwise than by physical therapy, or has attempted to practice independent of the prescription and direction of a person licensed to practice medicine or osteopathy;
- (9) as a physical therapy assistant, has attempted to practice physical therapy which has not been initiated, supervised and terminated by a registered physical therapist. (§ 10 ch 74 SLA 1957; am § 5 ch 49 SLA 1969; am § 9 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment added paragraph (9).

Cited in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

Article 3. Unlawful Acts.

Section

- 130. False claim of registration forbidden
- 140. Penalty for fraud in obtaining registration
- 150. Registration of physical therapists
- 160. Practice of registered physical therapist

Section

- 170. Penalty
- 180. Investigation by board
- 185. Limits or conditions on license; discipline

Sec. 08.84.130. False claim of registration forbidden. (a) A person not registered as a physical therapist, or whose registration is suspended or revoked, or whose registration is lapsed, who uses in connection with his name the words or letters "R.P.T.," "Registered Physical Therapist," or other letters, words, or insignia indicating or implying that he is a registered physical therapist, or who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapist is guilty of a misdemeanor.

(b) A person not registered as a physical therapy assistant, or whose registration is suspended or revoked, or whose registration is lapsed, who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapy assistant is guilty of a misdemeanor. (§ 11 ch 74 SLA 1957; am § 10 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment designated the provisions of this section as subsection (a) and added subsection (b).

Sec. 08.84.140. Penalty for fraud in obtaining registration. A person who wilfully makes a false oath or affirmation or who obtains or attempts to obtain registration by a fraudulent representation is guilty of a misdemeanor. (§ 12 ch 74 SLA 1957)

Sec. 08.84.150. Registration of physical therapists. (a) It is unlawful for anyone to practice physical therapy without being registered in accordance with this chapter.

(b) A person practicing physical therapy without being registered on April 27, 1969 may continue to practice for a period of six months. At the end of that period he must be registered under § 90 of this chapter in order to continue to practice physical therapy in the state. (§ 14 ch 74 SLA 1957; am § 6 ch 49 SLA 1969)

Sec. 08.84.160. Practice of registered physical therapist. A person registered under this chapter may not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person licensed to practice medicine or osteopathy. This chapter does not authorize any person to practice medicine, osteopathy, chiropractic, or other method of healing. A person who violates this section is guilty of a misdemeanor. (§ 13 ch 74 SLA 1957; am § 7 ch 49 SLA 1969)

Sec. 08.84.170. Penalty. A person who violates this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than 30 days. (§ 17 ch 74 SLA 1957)

Sec. 08.84.180. Investigation by board. The board shall investigate every supposed violation of this chapter coming to its notice and shall report all cases which in the judgment of the board warrant prosecution to the proper law enforcement officials. (§ 17 ch 74 SLA 1957)

Sec. 08.84.185. Limits or conditions on license; discipline. (a) In addition to action under § 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a registration.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 29 ch 102 SLA 1976)

Article 4. General Provisions.

Section

190. Definitions

200. Short title

Sec. 08.84.190. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "board" means the State Physical Therapy Board;

(2) "physical therapist" means a person who practices physical therapy;

(3) "physical therapy" means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term "physical therapy";

(4) "physical therapy assistant" means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his responsibilities do not include testing or evaluation. (§ 2 ch 74 SLA 1957; am § 11 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "State Physical Therapy Board" for "State Medical Board" in paragraph (1), inserted "and physical

therapy evaluation, treatment planning, instruction and consultative services" in paragraph (3), and added paragraph (4).

Sec. 08.84.200. Short title. This chapter may be cited as the Physical Therapists Practice Act. (§ 1 ch 74 SLA 1957)

11

STATE OF ALASKA
Board of Examiners in Optometry
(September, 1978)

Findings

Research and interviews conducted in the preparation of this review indicated that State regulation of this profession is justified, however, regulation through a Board of Optometry is unnecessary. Potential damage to a consumer is possible in some cases. The financial investment is not unduly large. The total number of licensees is small (37 in-State). Dissolution of the Board of Examiners in Optometry and assumption of the examination and licensing functions by the administrative agency would adequately serve the physical health and well being of the general public. It is therefore recommended that the Board of Examiners in Optometry be allowed to terminate on June 30, 1979. However, should retention and reestablishment of the Board be determined to be in the public interests, recommendations are made throughout this report which would contribute to efficiency of its operation.

I. General Information

A. Regulated Parties

1. Optometrists

B. Statutory Definition of Regulated Profession

"(2) 'optometry' is the employment of means or methods, other than the use of drugs, for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;

(3) 'practicing optometry' means the diagnosis by means or methods other than the use of drugs, of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;" (AS 08.72.300)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Curtis M. Johnson, OD (Chairman)	ends June 15, 1978
Timothy B. McLaughlin, OD	ends June 15, 1979
John T. Shank, OD	ends June 15, 1980
Thomas Kinsella	ends June 15, 1978
(Unfilled term since 11-76)	

2. Representation:

Profession = 3
Public = 2 (by statute)

3. Qualifications:

"Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry." (AS 08.72.040)

D. Registration Data

By Examination

Year	# of Candidates	# passed	# failed	% passed	% failed
1975	2	1	1	50	50
1976	7	7	0	100	0
1977	5	5	0	100	0
1978	4	4	0	100	0

Currently registered:

in-State = 37 (through June, 1978)
out-of-State = 8 (through June, 1978)
Total 45

E. Fees

1. examination	\$35.00
2. reexamination	25.00
3. waiver	25.00
4. certificate	50.00
5. biennial renewal	50.00
6. branch office registration	25.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$2,190.00	\$ 630.00	\$2,800.00	\$ 795.00
- Refunds	<u>110.00</u>	<u>100.00</u>	<u>175.00</u>	<u>-</u>
Total	2,080.00	530.00	2,625.00	795.00
Expenditures				
Per Diem	558.00	900.00	837.50	1,991.84
Transportation	722.15	577.93	613.07	2,306.22
Phone	20.50	5.10	40.30	67.70
Printing, Advert. & Postage	25.40	330.16	179.16	488.65
Fees & Services	50.00	765.00	50.00	50.00
Rents, Leases, Other	<u>400.00</u>	<u>-</u>	<u>200.00</u>	<u>800.00</u>
Total	<u>\$1,776.05</u>	<u>\$2,578.19</u>	<u>\$1,920.03</u>	<u>\$5,704.41</u>
Surplus	303.95	-	704.97	-
Deficit	-	2,048.19	-	4,909.41

(EXCLUDING DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	3	0	0
1976	2	1	0
1977	10	0	0
1978	3	0	0
(through June)			

Pending: 17

An additional complaint was filed against the Board by an unsuccessful applicant for licensure. The applicant was given a failing grade, the case went to litigation and the Board agreed to pass and license the applicant largely because the oral examination contained unspecified subject matter that the candidate had not been notified would be included.

II. Criteria and Analysis

A. To what extent has the Board of Examiners in Optometry operated in the public interest?

The Board of Examiners in Optometry has the authority to adopt rules and regulations necessary for the performance of its duties, governing applicants and applications, registering of optometrists and governing the practice of optometry. It may define and adopt rules of professional conduct.

Included in statutory powers given to the Board is the authority to issue branch office certificates of registration to "an Alaskan licensee who maintains a full-time practice in the state but who serves other communities in the state on a part-time basis..." (AS 08.72.125). The Board is charged with the responsibility of prescribing factors to be considered in the issuance of branch office certificates. It appears, however, that the Board has far exceeded its authority in regulations and practices concerning branch office certificates the issuance of which is intended to provide public services.

Board files indicate that a number of applications for branch office registration have been turned down by the Board on the basis that another practitioner already has a branch office in the subject community. A review of current branch office licenses revealed that two practicing optometrists have branch offices in the same two communities. Another

application was refused because the Board determined that the community which was to be served was accessible to a larger community by road. A branch office registration was subsequently issued to another applicant for the same community. Additionally, the Board has periodically demanded that an applicant "explain his reasons" for wanting to establish a branch office practice but this requirement has not been applied to all applicants. Pertaining to branch office certificates, 12 AAC 48.030(a) states in part, "A branch office certificate may be issued for the purpose of servicing some community in the state which cannot support an optometrist and which can be shown to the satisfaction of the board to need the service of a licensed optometrist on a part-time basis may be issued a semiannual branch office certificate of registration..." (emphasis added). 12 AAC 48.030(b) states: "No branch office certificate will be issued in a community where a full-time optometric practice is available, and any certificate in force when a full-time practice is established will not be renewed." In October of 1977, an Attorney General's opinion was issued in which the Board was advised that such "obvious anticompetitive implications" restrict part-time practice to communities incapable of supporting a full-time practice and prevent a part-time practice in a community capable of supporting a full-time practice. This opinion further advised "that the board conduct a thorough review of its branching regulations so that it might consider the anticompetitive consequences of its regulations, weigh them against the public interest in maintaining the restrictions in their present form and consider substituting less restrictive alternatives in their stead." The Board has apparently chosen to ignore this advice and continues to restrict the availability of optometric services to the public. It also appears to have gone even further in inconsistent application of its restrictive practices by arbitrarily denying one application and granting another as previously noted.

Branch office certificates have also been transferred or sold with a practice by one practitioner to another. This is in conflict with statutes in that certificates are issued to a licensee, not a practice. If a certificate holder discontinues his practice for some reason, his successor or any other interested licensee should be allowed and required to apply for certification.

AS 08.72.140 sets out qualifications of an applicant for examination which require that (s)he must have "normal color perception and a visual acuity of a standard of at least 20/40 in at least one eye as corrected" and that (s)he must not be "afflicted with a contagious or infectious disease." Application forms do not address these items and there is no record of any applicant ever having complied or having submitted evidence of compliance with the statute. There also is no record of Board consideration and/or approval based on any evidence or statement of compliance from the applicant nor is there any record of continued compliance.

An applicant for examination must also be a graduate of a "recognized" school or college of optometry. Applicants may be, and have been, approved for examination without a Doctor of Optometry degree. These applicants have graduated from science curriculums with a major in optometry. The Board has never formally established what is considered to be a "recognized" school or college, however, it has rejected applicants who (1) did not graduate from an "accredited" school or (2) did not graduate from a "United States" school. In the absence of regulations specifying "accredited" or "recognized" schools, the Board has again exceeded its authority in the arbitrary granting of examination privileges.

"The examination shall be written, practical, and oral in nature. The oral portion of the examination shall be recorded and retained for two years" AS 08.72.160(a). It is difficult to comment on observed aspects of the Board administered examinations because licensing examiners from the administrative agency have been overtly and specifically barred from this procedure by the Board. Files maintained by the agency present the only substantive record of examination proceedings and are inadequate in documentation. Again, the Board has not adopted formal regulations and/or procedures covering the content or grading of examinations.

The first record in Board minutes of a Board administered written examination appears in 1976. However, this may be because the Board previously required only that the applicant had taken and passed the national examination. One unsuccessful candidate filed charges and was ultimately granted a license because the national examination may have been improperly scored and because he had not been notified that the Board would be testing on Alaska Statutes. Questions asked by the Board, and on which candidates are graded, include: (1) "How many members on the Optometry Board?", and (2) "What are the qualifications to be a member of the Board?". These types of questions do not constitute valid measures of competency nor do they elicit an applicant's knowledge of his responsibilities under the law.

While there is no requirement that applicants must have taken and passed the National Board Examination, some have been denied the Alaska examination on that basis. Portions of examination and scoring sheets are at times missing from the files and some scoring sheets were not completed by the examiners. The statutory requirement that oral examinations be recorded and retained for two years has apparently not been complied with.

"Before a license may be renewed the licensee shall submit to the board evidence of 24 hours post graduate education as prescribed by regulations of the board" AS 08.72.181(d). The Board has adopted broad criteria for acceptable post graduate education, including all those programs recognized and approved by the Board. The Board has never refused or questioned any submission. While the statute plainly states that 24 hours of post graduate education shall be submitted as a condition of relicensure, the Board has chosen to waive this requirement. Requirements for licensees who were initially licensed within the two year period prior to renewal have been waived. In a few instances, relicensure was granted to those who either did not comply with the requirements or who submitted a fewer number of hours than those required

without any documentation showing that they were prevented from compliance. "24 hours" has apparently been interpreted to mean either clock hours or credit hours. Forms submitted to verify completion of courses have been accepted without the licensees' name, without the licensees' signature and without an instructor's signature or initials. Notes and letters from various sources have been accepted as verification of attendance. The authority to adopt regulations exempting recent licensees and those who have compelling reasons prohibiting compliance is questionable under the statutory wording. This type of regulation is considered to be reasonable, however, it has not been done. The Board presently has no authority to waive the statutory requirements for continuing education as a condition of relicensure.

Arbitrary standards and procedures by which the Board purports to determine qualifications and competency of applicants and practitioners do not operate in the public interest. Statutory requirements, such as those concerning continuing education and health standards for applicants, are designed to insure a satisfactory level of care quality and availability which is not achieved unless applied consistently as directed.

In response to recent court decisions and concern regarding anticompetitive advertising restrictions, the Federal Trade Commission in May of 1978 adopted a final Trade Regulation Rule:

"It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:

- (a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist." 16 C.F.R. § 456.3

Recent regulations adopted by the Board in April, 1978 are designed to allow competitive but ethical and professional advertising. This subject is being further addressed by the administrative agency with respect to all boards and commissions under its jurisdiction.

B. To what extent has the operation of the Board of Examiners in Optometry been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Statutory provisions for the Board and the profession are considered to be adequate. The public participation intended for this Board has been somewhat limited by the presence of only one public member as opposed to two authorized by the Legislature in 1976.

Restrictive policies of the Board in issuing branch office certificates are not conducive to provision of services to the public. Practitioners are discouraged from competing in the profession and in the quality of services offered. Some communities either have no choice of practitioners or are only served sporadically.

The Board of Examiners in Optometry has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs except that employee turnover has impeded continuity and follow through on Board requests and actions. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Research and record keeping procedures within the administrative agency are now being developed. Noted deficiencies are partially due to the fact that some materials have been forwarded to the Board rather than to the administrative agency. Organization of records, forms and examination information would better enable the Board to perform its functions.

The Board of Examiners in Optometry has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

C. To what extent has the Board of Examiners in Optometry recommended statutory changes which are generally of benefit to the public interest?

Legislation enacted recently with respect to this profession concerned: (1) Board membership, appointment and term of office; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; and (4) general "housekeeping" items.

In the 1978 Legislative session, a bill was introduced which would have given selective authority for optometrists to administer diagnostic drugs. This bill did not get out of the committee and was not acted upon.

No recommendations were made by the Board of Examiners in Optometry relating to statutory changes that would be of specific benefit to the public.

- D. To what extent has the Board of Examiners in Optometry encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Public interest and participation in Board activities has been hampered by the absence of one of the public members authorized by the Legislature in 1976.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.¹

¹Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

- E. How efficiently are public inquiries or complaints regarding the activities of the Board of Examiners in Optometry processed and resolved?

Most complaints received against members of the optometry profession were allegations of improper prescriptions or fit, over charging, and prescribing glasses unnecessarily. One unsuccessful candidate for licensure filed charges against the Board and was subsequently licensed due to questionable testing procedures. Only one case out of 18 received since 1975 had been closed as of June 30, 1978. None of the complaints involved physical damage or danger to members of the public.

- F. To what extent does the Board of Examiners in Optometry present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Examiners in Optometry. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently conducted, monitored and graded by the Board. Applicants who demonstrate a required level of knowledge and proficiency are issued a license.

Current regulations of the Board which restrict temporary permits, restrict services to communities that are incapable of supporting a full-time practice and prohibit practice under a corporation or voluntary association, in conjunction with arbitrary granting of examination and licensure privileges, do not function to present qualified applicants and availability of services to the public.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Examiners in Optometry in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for four other regulated professions) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Examiners in Optometry issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Examiners in Optometry to better serve the interests of the public?

In view of the functions of this Board and the relatively few professional members that are regulated (45 in-and out-of-State), it is felt that present statutes are generally adequate with minor exceptions if the Board is reestablished. Specific statutory language which would grant appropriate exemptions under the continuing education requirements would eliminate any misinterpretation of its applicability. The Board should promulgate and adopt regulations covering examination content and grading procedures and what is considered to be an approved school when applying for licensure.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary, examination expenses, and investigative services.

III. Conclusion

The regulatory functions of the Board of Optometry could be adequately performed by the administrative agency. Examination and licensure of practitioners is determined to be desirable due to the nature of the profession and the fact that optometrists may diagnose deficiencies, deformities or anomalies of the eye.

IV. Summary of Recommendations

- A. The Board of Examiners in Optometry should be allowed to terminate on June 30, 1979, and the functions of examining and licensing should be assumed by the administrative agency.

Technical expertise could be provided by members of the profession if needed periodically.

- B. If the Board of Examiners in Optometry is reestablished for an additional four-year period, the following recommendations are made:

1. The Board should consistently and appropriately grant examination and licensing privileges based on statutory qualifications for applicants. (See discussion beginning on p. 5)
2. Examination tapes, records and materials should be maintained by the administrative agency as should all records pertaining to Board activities and licensees.
 - a. Procedures should be established which cover procedures for content and grading of examinations.

- b. Only questions relevant to competency and job performance should be included in examination. (See discussion on p. 7 & 8)
3. All restrictions regarding the issuance of branch office certificates should be deleted from Board regulations and certificates should be issued only as allowed by statute.

The Board should also reconsider its regulatory prohibition against employment of optometrists by a corporation or voluntary association. (See discussion on p. 5)

4. The Board should enforce statutory requirements with respect to visual and health standards for licentiates and should consider methods of ongoing compliance documentation. (See discussion on p. 7)
5. The Board should define what will be accepted as a "recognized school or college of optometry" and do so in consideration of AS 08.72.170(2) which allows waiver of examination to qualified applicants licensed in a foreign country. (See discussion on p. 7)
6. Definite statutory language should be implemented which specifically addresses possible exceptions to the requirements for continuing education as a consideration of relicensure. (See discussion on p. 8)
7. Operation of the Board and public representation/participation would be enhanced by inclusion on the Board of the second public member authorized by the Legislature in 1976. Terms of all members should be restricted to one unless initially appointed to fill a vacancy or following a term of absence. (See discussion on p. 10 and 12)

Advertising of Ophthalmic Goods and Services

§ 456.1 Definitions

(a) A "buyer" is any person who has had an eye examination.

(b) The "dissemination of information" is the use of newspapers, telephone directories, window displays, signs, television, radio, or any other medium to communicate to the public any information, including information concerning the cost and availability of a product or service.

(c) An "eye examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(d) "Ophthalmic goods" consist of eyeglasses, or any component of eyeglasses and contact lenses.

(e) "Ophthalmic services" are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

(f) A "person" means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, and professional associations.

(g) A "prescription" is the written specifications for ophthalmic lenses which are derived from an eye examination. The prescription shall contain all of the information necessary to permit the buyer to obtain the necessary ophthalmic goods from the seller of his choice. In the case of a prescription for contact lenses, the refractionist must include in the prescription only those measurements and directions which would be included in a prescription for spectacle lenses.

All prescriptions shall include all of the information specified by state law, if any.

(h) A "refractionist" is any Doctor of Medicine, Osteopathy or Optometry or any other person authorized by state law to perform eye examination.

(i) A "seller" is any person, or his employee or agent, who sells or provides ophthalmic goods and services directly to the public.

§ 456.2 Private Conduct

(a) It is an unfair act or practice for sellers to fail to disseminate information concerning ophthalmic goods and services notwithstanding state or local law to the contrary. PROVIDED: Violation of this subpart by any seller acting alone shall not be deemed to be a violation of Section 5(a)(1) of the Federal Trade Commission Act.

To prevent this unfair act or practice, any seller may engage in the dissemination of information concerning ophthalmic goods and services subject to the limitations expressed in Section 456.5 below.

(b) It is an unfair act or practice for refractionists to fail to disseminate information concerning eye examinations notwithstanding state or local law to the contrary. PROVIDED: Violation of this subpart by any refractionist acting alone shall not be deemed to be a violation of Section 5(a)(1) of the Federal Trade Commission Act.

To prevent this unfair act or practice, any refractionist may engage in the dissemination of information concerning eye examinations. Nothing in this subpart shall excuse a refractionist from compliance with any state or local law which permits the dissemination of information concerning eye examinations, including information on the cost

and availability of those examinations, but requires that specified affirmative disclosures also be included.

§ 456.3 Public Restraints

It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:

(a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist. PROVIDED: Nothing in subpart (b) shall be construed to prohibit the enforcement of a state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosure also be included.

Violation of subparts (a) and (b) shall not be deemed for purposes of Section 5(m)(1)(A) or Section 19 of the Federal Trade Commission Act to be a violation of Section 5(a)(1) of the Act.

§ 456.4 Conformance to State Law

It is an unfair act or practice under Section 5 of the Federal Trade Commission Act:

(a) for any seller to reduce, limit, or burden the dissemination of information concerning ophthalmic goods and services in order to comply with any law, rule, regulation or code of conduct of any non-

federal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information, or

(b) for any refractionist to reduce, limit, or burden the dissemination of information concerning eye examinations in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information. PROVIDED: To the extent that a state or local law, rule, or regulation permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, compliance with that law or regulation shall not be construed to reduce, limit or burden the dissemination of information concerning eye examinations.

§ 456.5 Permissible State Limitations

(a) To the extent that a state or local law, rule, or regulation requires that any or all of the following items be included within any dissemination of information concerning ophthalmic goods and services, such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information:

(1) whether an advertised price includes single vision and/or multifocal lenses;

(2) whether an advertised price for contact lenses refers to soft and/or hard contact lenses;

(3) whether an advertised price for ophthalmic goods includes an eye examination;

(4) whether an advertised price for ophthalmic goods includes all dispensing fees; and

(5) whether an advertised price for eyeglasses includes both frames and lenses.

(b) Where a state or local law, rule or regulation applies to all retail advertisements of consumer goods and services (including a law, rule, or regulation which requires the affirmative disclosure of information or imposes reasonable time, place and manner restrictions), such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.

(c) If, upon application of an appropriate state or local governmental agency, the Commission determines that any additional requirement of any such state or local governmental agency deemed by that agency to be necessary to prevent deception or unfairness is reasonable and does not unduly burden the dissemination of information, then that requirement shall be permitted to the extent specified by the Commission.

§ 456.6 Private Restraints

(a) It is an unfair act or practice for any person, other than a state or a political subdivision of agency thereof, to prohibit, limit or burden:

(1) the dissemination of information concerning ophthalmic goods and services by any seller;

(2) the dissemination of information concerning eye examinations by any refractionist. PROVIDED: Nothing in this subpart shall be construed to prohibit any person from imposing reasonable affirmative disclosure requirements on the dissemination of information concerning eye examinations.

(b) Any organization or association which is not composed primarily of sellers and/or refractionists, which adopts or enforces self-regulatory guidelines for the dissemination of information which apply to all retail advertisements of consumer goods and services, shall not be deemed to be in violation of this subpart.

(c) The conditioning of membership in a professional or trade association of sellers or refractionists on a requirement that members or prospective members of that association not engage in the dissemination of information concerning ophthalmic goods and services and eye examinations or a requirement that ophthalmic goods and services be advertised only in a prescribed manner shall be deemed to prohibit, limit or burden the dissemination of that information.

§ 456.7 Separation of Examination and Dispensing

In connection with the performance of eye examinations, it is an unfair act or practice for a refractionist to:

(a) fail to give to the buyer a copy of the buyer's prescription immediately after the eye examination is completed. PROVIDED: A refractionist may refuse to give the buyer a copy of the buyer's prescription until the buyer has paid for the eye examination but only if that refractionist would have required immediate payment from that buyer had the examination revealed that no ophthalmic goods were required;

(b) condition the availability of an eye examination to any person on a requirement that that person agree to purchase any ophthalmic goods from the refractionist;

(c) charge the buyer any fee in addition to the refractionist's examination fee as a condition to releasing the prescription to the buyer. PROVIDED: A refractionist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) place on the prescription, or require the buyer to sign, or deliver to the buyer a form or notice waiving or disclaiming the liability or responsibility of the refractionist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.8 Federal or State Employees

Nothing in this part shall be construed to prohibit any federal, state or local governmental entity from adopting and enforcing standards or requirements concerning the dissemination of information and release of prescriptions by sellers or refractionists employed by those governmental entities.

§ 456.9 Declaration of Commission Intent

(a) It is the purpose of this part to allow retail sellers of ophthalmic goods and services to disseminate information concerning those goods and services in a fair and nondeceptive manner to prospective purchasers. This part is intended to eliminate certain restraints, burdens, and controls imposed by state and local governmental action as well as by private action on the dissemination of information, including advertising, concerning ophthalmic goods and services.

It is the intent of the Commission that this part shall preempt all state and local laws, rules, or regulations that are repugnant to this part, and that would in any way prevent or burden the dissemination of information by retail sellers of ophthalmic goods and services to prospective purchasers, except to the extent specifically permitted by this part. All state or local laws, rules, or regulations which burden the dissemination of information by requiring affirmative disclosure specifically addressed to ophthalmic goods and services are preempted, except for those specifically permitted by this part. State and local laws,

rules, or regulations which apply to advertising of all consumer goods and services, including those that require affirmative disclosure of information, are not preempted.

(b) It is the Commission's intent that state laws which do not permit refractionists to disseminate information concerning eye examinations, including information concerning the cost and availability of those examinations, be preempted. State and local laws, rules or regulations which require affirmative disclosure of information in all disseminations of information concerning eye examinations are not preempted.

(c) The Commission intends this part to be as self-enforcing as possible. To that end, it is the Commission's intent that this part may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any retail seller of ophthalmic goods and services or refractionist who advertises in a nondeceptive and fair manner.

(d) It is not the Commission's intent to compel any seller or refractionist to disseminate information by virtue of this part. On the contrary, the provisions of this part are intended solely for the protection of those sellers and refractionists who want to disseminate information but have been restrained or prevented from advertising due to the prohibitions and restrictions of state and local laws and regulations, or by private action.

(e) In prohibiting the use of waivers and disclaimers of liability in Section 456.4(d), it is not the Commission's intent to impose liability on a refractionist for the ophthalmic goods and services dispensed by another seller pursuant to that refractionist's prescription.

(f) In this part, the Rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

Chapter 72. Optometry Law.

Article

1. Board of Examiners in Optometry (§§ 08.72.010—08.72.100)
2. Licensing and Registration (§§ 08.72.110—08.72.270)
3. Unlawful Acts (§§ 08.72.275—08.72.290)
4. General Provisions (§§ 08.72.300—08.72.310)

Article 1. Board of Examiners in Optometry.

Section

10. Creation of board of examiners
20. Membership of board and terms of office
30. Vacancies
40. Qualifications
50. Power of board to adopt regulations
60. Miscellaneous powers and duties of board

Section

70. Applicability of Administrative Procedure Act
80. [Repealed]
90. Record of proceedings
100. [Repealed]

Sec. 08.72.010. Creation of board of examiners. There is created the Board of Examiners in Optometry. (§ 35-3-132 ACLA 1949)

Am. Jur., ALR and C.J.S. references.—
41 Am. Jur., Physicians and Surgeons, § 28.

Optometrist within statute relating to practice of medicine, 22 ALR 1173.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against or in favor of optometrists, 37 ALR 682.

Constitutionality of statutes and validity of regulations relating to optometry, 98 ALR 905; 22 ALR2d 939.

Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 ALR 343; 128 ALR 585.

One who fills prescription under reciprocal arrangement with optometrist, as subject to charge of practice of optometry without license, 121 ALR 1455.

What constitutes practice of "optometry," 141 ALR 883.

70 C.J.S. Physicians and Surgeons §§ 1, 3, 5, 6, 8, 10, 12.

Sec. 08.72.020. Membership of board and terms of office. The board consists of five persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. (§ 35-3-132 ACLA 1949; am § 22 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "five persons" for

"three persons" in the first sentence and rewrote the second and third sentences.

Sec. 08.72.030. Vacancies. The governor shall fill vacancies on the board by appointment for the unexpired term. (§ 35-3-132 ACLA 1949)

Sec. 08.72.040. Qualifications. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry. (§ 35-3-132 ACLA 1949; am § 23 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.72.050. Power of board to adopt regulations. The board shall adopt rules and regulations

- (1) necessary for the proper performances of its duties;
- (2) governing the applicants and applications for licensing;
- (3) for the registration of optometrists;
- (4) necessary to govern the practice of optometry. (§ 35-3-133 ACLA 1949)

Chapter contains sole powers of board.
—The board, being purely a creature of the legislature, has no powers other than those contained in this chapter. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

And must be strictly construed.—This chapter and the powers invested in the board are to be strictly construed. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.060. Miscellaneous powers and duties of board. (a) The board or a member designated by the board, may issue subpoenas, administer oaths and take testimony concerning any matter within its jurisdiction.

(b) The board may adopt a seal.

(c) The board shall elect a president and secretary from among its members.

(d) Repealed by § 3 ch 59 SLA 1966.

(e) The board may define professional conduct and adopt rules of professional conduct.

(f) Repealed by § 3 ch 59 SLA 1966. (§§ 35-3-133, 35-3-140 ACLA 1949; am § 3 ch 59 SLA 1966)

Sec. 08.72.070. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.72.080. Compensation of board and secretary.

Repealed by § 3 ch 59 SLA 1966.

Sec. 08.72.090. Record of proceedings. The Department of Commerce shall keep a record of all proceedings, including the name of each applicant for examination and registration. These records shall be open for public inspection. (§ 35-3-133 ACLA 1949; am § 1 ch 76 SLA 1969)

Sec. 08.72.100. Bond of secretary.

Repealed by § 3 ch 59 SLA 1966.

Article 2. Licensing and Registration.

Section	Section
110. License required	190. [Repealed]
115. Malpractice insurance	191. Fees
120. Registration	200—220. [Repealed]
125. Registration of branch offices	230. Fees and disbursements
130. Optometry register	240. Revocation of registration certificate or exemption
140. Qualifications for examination	250. Board action on revocation and renewal
150. Application for examination and issuance of certificate	255. Limits or conditions on license; discipline
160. Examination	260. Revocation of license by court
170. Issuance of certificate by waiver of written examination	270. Practice not at place of business
180. [Repealed]	
181. Renewal of license	

Sec. 08.72.110. License required. No person not licensed as an optometrist may fit, sell, or dispose of or take, receive or solicit an order for fitting, sale or disposition of spectacles, eyeglasses or lenses for the correction or relief of an optical or visual defect of the human eye or sell spectacles, eyeglasses or lenses from house to house, or in the streets or highways. This chapter does not apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses, or complete ready-made spectacles and eyeglasses sold only as merchandise, or the sale or repair of eyeglass frames, or repair or replacement of lenses without pretense of adapting them to the eyes. (§ 35-3-134 ACLA 1949)

Sec. 08.72.115. Malpractice insurance. If medical malpractice insurance for optometrists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optometrist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance

on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 24 ch 102 SLA 1976)

Sec. 08.72.120. Registration. It is unlawful for a person to practice, or attempt, or offer to practice, optometry without first obtaining a certificate of registration from the board, and without filing the certificate with the clerk of the superior court in each judicial district in which he practices. (§ 35-3-135 ACLA 1949)

C.J.S. reference.—70 C.J.S. Physicians and Surgeons § 10

Sec. 08.72.125. Registration of branch offices. (a) The board may issue to an Alaskan licensee who maintains a full-time practice in the state but who serves other communities in the state on a part-time basis a branch office certificate of registration.

(b) It is unlawful for a person to practice, or to attempt or offer to practice, optometry in communities on a part-time basis without obtaining a branch office certificate of registration from the board, and without filing the certificate with the clerk of the superior court in each judicial district in which he maintains a branch office.

(c) The board shall prescribe in the regulations the factors to be considered in issuing a branch office certificate of registration. (§ 2 ch 76 SLA 1969)

Sec. 08.72.130. Optometry register. The clerk of the superior court in each judicial district shall keep a record known as the "Optometry Register" and record the certificate of registration of each optometrist who files his certificate. The clerk shall charge the regular filing fee for registration. When an optometrist dies, or when his certificate is suspended or revoked, the clerk shall note that fact on the record. (§ 35-3-147 ACLA 1949)

Sec. 08.72.140. Qualifications for examination. The board shall admit to the examination a person who furnishes proof that

- (1) Repealed by § 3 ch 76 SLA 1969.
- (2) he has normal color perception and a visual acuity of a standard of at least 20/40 in at least one eye as corrected;
- (3) he is not afflicted with a contagious or infectious disease;
- (4) he has had education equivalent to four years attendance at a state high school;
- (5) he is a graduate of a recognized school or college of optometry;
- (6) he is of good moral character. (§ 35-3-141 ACLA 1949; am § 1 ch 95 SLA 1966; am §§ 3—5 ch 76 SLA 1969)

Cited in *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

C.J.S. references. — 53 C.J.S. Licenses § 34; 70 C.J.S. Physicians and Surgeons § 12.

Sec. 08.72.150. Application for examination and issuance of certificate. An applicant shall apply for the examination by filing an application with the department together with the examination fee at least 15 days before the examination. Upon successful completion of the examination by the applicant and payment of the fee, the board shall issue a certificate of registration as a licensed optometrist to the applicant. After the applicant has properly filed his certificate of registration he may practice optometry in the state. (§ 35-3-141 ACLA 1949; am § 6 ch 76 SLA 1969)

Sec. 08.72.160. Examination. (a) The examination shall be written, practical, and oral in nature. The oral portion of the examination shall be recorded and retained for two years.

(b) An applicant who fails the practical or the oral portion of the examination may take a re-examination in that portion without paying an additional examination fee.

(c) An applicant who fails the written portion of the examination may take a re-examination in the written portion upon payment of an additional examination fee.

(d) An applicant who fails more than one portion of the examination must retake the entire examination and pay the full examination fee. (§ 35-3-141 ACLA 1949; am § 7 ch 76 SLA 1969)

Sec. 08.72.170. Issuance of certificate by waiver of written examination. (a) The board may waive the written portion of the examination requirement for an applicant who:

(1) meets the qualifications of § 140 of this chapter;

(2) holds a current license by examination in another state, territory or foreign country and has been established in ethical optometric practice for at least three years before the application, or shows satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry; and

(3) has not had a certificate or license revoked for cause in any state, territory or foreign country.

(b) No waiver of the practical or oral portions of the examinations may be given. (§ 35-3-142 ACLA 1949; am § 8 ch 76 SLA 1969)

Cited in *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.180. Annual renewal of license.

Repealed by § 7 ch 94 SLA 1968.