

614 SC 1 VOLUME, SUNSET REVIEWS (HEALTH CARE)

Sec. 08.72.181. Renewal of license. (a) To remain in force a license must be renewed biennially.

(b) An optometrist licensed in this state and serving in the military service of the United States, while in the discharge of his official duties, may maintain his eligibility to practice in this state without paying a renewal fee by registering his name and place of residence with the department.

(c) An application for license renewal shall contain the name, office and post office address, date and license number of the licensee, and other information the board considers necessary.

(d) 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. (§ 9 ch 76 SLA 1969)

Sec. 08.72.190. Fee for license by reciprocity.

Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949.

Sec. 08.72.191. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee	\$35
(2) re-examination fee for written portion	25
(3) waiver of examination fee	25
(4) certificate fee	50
(5) biennial renewal fee	50
(6) branch office biennial registration fee	25

(§ 11 ch 76 SLA 1969)

Sec. 08.72.200. Examination fee.

Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949.

Sec. 08.72.210. Certificate fee.

Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949; § 1, ch. 12, SLA 1963.

Sec. 08.72.220. Renewal fee.

Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949; § 2, ch. 12, SLA 1963.

Sec. 08.72.230. Fees and disbursements. The department shall collect all fees and keep a record of each transaction, and shall remit to the Department of Revenue all money received. (§ 35-3-138 ACLA 1949; am § 12 ch 76 SLA 1969)

Sec. 08.72.240. Revocation of registration certificate or exemption. The board may revoke a certificate of registration or exemption granted by it if the holder

- (1) has violated a rule, order or regulation of the board; or
- (2) has violated this chapter or is guilty of a crime; or
- (3) is grossly incompetent, afflicted with a contagious disease, habitually drunk or guilty of unprofessional conduct. (§ 35-3-140 ACLA 1949)

C.J.S. references. -- 53 C.J.S. Licenses § 44; 70 C.J.S. Physicians and Surgeons §§ 10, 15.

Sec. 08.72.250. Board action on revocation and renewal. In a proceeding for the revocation of a certificate of registration or for the annulment of registration the board shall make a complete written report of its findings, and if the board finds that any of the charges are sustained, the board may revoke the certificate of the accused, or annul his registration, or both. If the board annuls the registration, it shall transmit to the clerk of the judicial district in which the accused is registered as an optometrist, a certificate under its seal, certifying that his registration has been annulled. The clerk shall, upon receipt of the certificate, file it and mark the registration "annulled." The board may, after the expiration of one year, entertain an application for the renewal of a revoked certificate, in the same manner as an original application for a certificate and may exempt the applicant from the examination. (§ 35-3-140 ACLA 1949)

Full and substantial hearing.—It is not necessary that the board follow technical legal procedure. A full and substantial hearing of the charges, where denied, is all that is required. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Under this section the board may not entertain an application until the expiration of one year. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Order revoking renewal certificate cannot be set aside in a mandamus proceeding. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Conduct justifying treatment of charge as confessed.—Where a written complaint and notice were served on an optometrist requiring him to appear and answer charges against him by the board, but where no answer, denial or appearance was ever made, it was not incumbent upon the board to call any witnesses or receive any evidence in support of the charges, and the board was justified in treating the charge as confessed and entering its findings accordingly. *Edmunds v. Board of Exmrs. Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.255. Limits or conditions on license; discipline. (a) In addition to action under §§ 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter 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 license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 24 ch 102 SLA 1976)

Sec. 08.72.260. Revocation of license by court. A license may be revoked by the superior court upon proof of violation of law or for a cause for which the board may refuse admittance to its examination. The attorney general shall prosecute appropriate judicial proceedings upon request of a member of the board. (§ 35-3-146 ACLA 1949)

Sec. 08.72.270. Practice not at place of business. (a) A registered optometrist, who temporarily practices optometry away from his regular place of business, shall display his registration certificate and deliver to each patient or person fitted or supplied with glasses a receipt with his signature showing his permanent place of business or post office address, certificate number, and the amount charged. A licensee who fails to comply with any of the foregoing provisions for six months after issuance of the certificate shall forfeit his certificate.

(b) Nothing contained in this section shall be construed as permitting peddling or canvassing by licensed optometrists. (§ 35-3-136 ACLA 1949)

Article 3. Unlawful Acts.

Section	Section
275. Lenses and frames for eyeglasses and sunglasses	280. Violations
	290. Penalty

Sec. 08.72.275. Lenses and frames for eyeglasses and sunglasses. (a) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses unless they are fitted with plastic lenses, laminated lenses, heat-treated glass lenses, or glass lenses made impact resistant by other methods. All plastic and heat-treated glass lenses, before they are mounted in frames, shall be capable of withstanding the impact of a five-eighths inch steel ball dropped on the lens from a height of 50 inches. The impact test shall be conducted at room temperature, with the lens supported by a plastic tube one inch inside diameter, one and one-fourth inch outside diameter, with a one-eighth inch by one-eighth inch neoprene gasket on the top edge.

(b) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses having frames manufactured from cellulose nitrate or other highly flammable materials.

(c) A person who violates this section is punishable by a fine of not less than \$50 nor more than \$100. (§ 1 ch 220 SLA 1968; am § 1 ch 48 SLA 1973)

Effect of amendment. — The 1973 amendment rewrote subsection (a).

Sec. 08.72.280. Violations. No person may falsely personate a registered optometrist, nor buy, sell or fraudulently obtain a certificate of registration issued to another or advertise the practice of optometry in violation of rules of the board. Practicing or offering to practice optometry is sufficient evidence of a violation of this chapter. (§ 35-3-144 ACLA 1949)

Sec. 08.72.290. Penalty. A person who violates this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment for a term of not less than 10 days nor more than 90 days, or by both. (§ 35-3-145 ACLA 1949)

C.J.S. references. — 53 C.J.S. Licenses §§ 62 to 65.

Article 4. General Provisions.

Section

300. Definitions

310. Short title

Sec. 08.72.300. Definitions. As used in this chapter

(1) "board" means the Board of Examiners in Optometry;

(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;

(4) "lenses" means conventional or contact lenses;

(5) "recognized school or college of optometry" is one which is approved by the American Optometric Association or one of its committees;

(6) "department" means the Department of Commerce and Economic Development. (§ 35-3-131 ACLA 1949; am § 2 ch 95 SLA 1966; am § 13 ch 76 SLA 1969; am § 53 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (6).

This chapter is a valid exercise of the legislative power. *Edmunds v. Board of Exmrs. in Optometry*, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.310. Short title. This chapter may be cited as the Optometry Law. (§ 35-3-150 ACLA 1949)

CHAPTER 48.
BOARD OF EXAMINERS IN OPTOMETRY

Section

- 10. Board membership
- 20. Biennial license renewals and reinstatement
- 30. Branch office certificates
- 40. Display of certificate
- 50. When a practice is conveyed to another
- 60. Visual analysis records
- 63. Advertising
- 65. Routine vision examination
- 70. Unprofessional conduct
- 80. Definitions

12 AAC 48.010. BOARD MEMBERSHIP. The secretary shall notify the office of the governor of Alaska whenever a vacancy occurs. The secretary shall supply the governor with a list of all Alaska-registered optometrists who have resided in Alaska for a period of three years or more, and are qualified as the statute provides, AS 08.72.040. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.030
AS 08.72.050(1)

12 AAC 48.020. BIENNIAL LICENSE RENEWALS AND REINSTATEMENT. (a) The postgraduate education may be obtained any time within the two-year renewal period, but may not be carried over from one renewal period to the other.

(b) Courses that will be accepted are: educational courses given at the American Optometric Association Annual Convention or any AOA affiliate state optometric convention; seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes; postgraduate courses offered by recognized schools or colleges of optometry. Other postgraduate courses may be approved by the board if course titles, instructors' names, and a brief description of the course material is submitted to the board 30 days before the commencement of the educational program. Licensees who submit satisfactory proof that they were prevented from attending an educational program because of illness or other reasons may be exempted from this requirement. A form shall be provided

with the biennial renewal application that must be validated by the instructor teaching the course. Correspondence courses will not be accepted as fulfilling the requirements of AS 08.72.181. (Eff. 4/24/71, Reg. 37)

Authority: AS 08.72.181

12 AAC 48.030. BRANCH OFFICE CERTIFICATES. (a) A branch office certificate may be issued for the purpose of serving 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. The name of an associate practicing in a branch office shall appear on the entrance door to the office used and upon all stationery; no commercial name or designation may be used in connection with any branch office nor may such a practice have any commercial lay connections, nor may there be anything in the nature of "chain exploitation" of licenses. Nothing in this section requires an active licensee to obtain a branch office certificate for the purpose of rendering necessary optometric services for his patients confined to their homes.

(b) 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.

(c) No branch office certificate will be required for a licensee to participate in bona fide vision and eye-screening projects outside of his regular or branch office. Vision and eye-screening projects must be organized under the auspices of an established service organization not composed primarily of optometrists.

(d) Optometrists who participate in vision and eye-screening projects may not receive remuneration for their services other than for travel and living expenses and for emergency care as required. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.125(c)

12 AAC 48.040. DISPLAY OF CERTIFICATE. A licensee's registration certificate and renewal certificate shall be

displayed in the office in which the holder practices optometry, but not in such a manner that the certificate may be seen from the street. Every licensee, whenever requested, shall exhibit the certificate to a member of the board or person authorized to represent the board and shall notify the department or board of his address and changes of his address. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

12 AAC 48.050. WHEN A PRACTICE IS CONVEYED TO ANOTHER. When an optometrist disposes of his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery, and directories connected with the practice he has acquired or is acquiring, all words or phrases such as "successor to," "associate of," or words of like import. Under no circumstances may the use of these signs, cards, stationery or advertising continue for more than two years. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

12 AAC 48.060. VISUAL ANALYSIS RECORDS. Every optometrist shall keep a record of examinations and visual analyses made and prescriptions issued and for whom the prescriptions were prepared. The record shall be preserved for a period of at least five years from the date services were rendered, except in the case of death of the patient. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

12 AAC 48.063. ADVERTISING. (a) An advertisement concerning the availability, sale or price of frames or mountings for spectacle lenses must contain a readily legible statement, in the same type size as the main body of the advertisement, which specifies the

- (1) name of the manufacturer;
- (2) material from which the frames or mountings are made;
- (3) country of origin; and
- (4) style name or model number.

(b) An advertisement concerning the availability, sale, or price of spectacle or contact lenses must contain a readily legible statement, in the same type size as the main body of the advertisement, which specifies the

- (1) name of the manufacturer;
- (2) material from which the lenses are made;
- (3) country of origin;
- (4) absorptive property of the lenses, whether clear or tint;
- (5) refractive powers of the lenses, whether low, medium or high; and
- (6) type or style, whether single vision, bifocal or trifocal.

(c) An advertisement concerning the fees charged for optometric services, other than for an initial routine vision examination, must contain a readily legible statement in the same type size as the main body of the advertisement, which specifies the tests and measurements to be performed.

(d) An advertisement for a routine vision examination or complete eye examination or which uses language of similar import, need not specify the tests and measurements to be performed so long as the optometrist providing the advertised services complies with the examining and recording standards established by sec. 65 of this chapter. Failure to comply with the standards is unprofessional conduct within the meaning of AS 08.72.240(3).

(e) Advertising permitted by this section may only appear in newspapers, periodicals, and professional directories and must include the name of the licensed optometrist. (Eff. 2/14/78, Reg. 65)

Authority: AS 08.72.050(4)
AS 08.72.060(e)

12 AAC 48.065. ROUTINE VISION EXAMINATION. For the purposes of this chapter, an advertisement for a routine vision examination means that the optometrist shall at a minimum adhere to the following standards in the initial examination of the patient:

(1) the optometrist shall, in accordance with professionally recognized standards, make and record the following findings of the condition of the patient:

(A) a complete case history including ocular, physical, occupational and medical data and other pertinent information concerning the patient;

(B) aided and unaided visual acuity at both near and far;

(C) external examination of the eyes and adnexa;

(D) internal ophthalmoscopic examination;

(E) ocular motility and neurological integrity;

(F) a far point subjective examination, a static retinoscopy, and a subjective refraction;

(G) a near point subjective examination, a dynamic retinoscopy and a subjective refraction;

(H) tests of accommodation and convergence and binocular coordination at far and near, preferably made with a phoropter; and

(I) confrontation fields and tonometry tests;

(2) if contact lenses are prescribed, a routine vision examination includes, in addition to the requirements of subsection (1):

(A) a slit lamp evaluation;

(B) a fluorescein examination;

(C) a diagnostic evaluation when soft lenses are prescribed; and

(D) reexamination and reevaluation within three months in the case of firm lenses and within six months in the case of soft lenses. (Eff. 2/14/78, Reg. 65)

Authority: AS 08.72.050(4)
AS 08.72.060(c)

12 AAC 48.070. UNPROFESSIONAL CONDUCT. (a) An optometrist may not engage in unprofessional conduct within the meaning of AS 08.72.240(3). Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) except as provided by sec. 63 of this chapter, soliciting patients by advertising of any nature or description regardless of means or media employed; however, upon the opening, reopening or removal of any office for the practice of optometry, an optometrist may publish, in local newspapers, an announcement, which announcement is limited to a statement of his name, title, profession, degrees, specialty, address, telephone number and office hours; the announcement may not be published for more than 90 days after the opening, reopening, or removal of the office; the announcement may not exceed eight square inches in area;

(2) displaying any spectacle, eyeglasses or eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eyeglass cases, ophthalmic material of any kind, optometric instruments or optical tools or machinery, or any merchandise, material or displays of a commercial nature in office windows or reception rooms or display cases outside the office, where the display of the merchandise, material or display would make it visible from outside the office;

(3) using display or boldface type or type that is in any way dissimilar in size, shape or color to that used for others of the healing arts in the same directory;

(4) using any false, deceptive, or misleading representation in connection with any advertising concerning ophthalmic prosthetic products or optometric services;

(5) using "bait" advertising;

(6) using signs whether painted, neon, decalcomania, colored or otherwise, and whether constructed in the form of eyes or structures resembling them, or frames or mountings for any type of lenses or other ophthalmic prosthetic products displayed in any manner or place connected with the practice of optometry;

(7) using publicly, a sign, card, stationery, or other publicity medium which fails to clearly identify the individual optometrist or optometrists engaged in practice in an office or practice location, or using a name other than the name under which the optometrist is licensed including such designations as "optical company," "optical laboratory," or words or phrases of like import which are out of keeping with the use of the title "Doctor of Optometry" and the practice of optometry as a profession;

(8) soliciting, personally or through agents, from house to house for the rendering of optometric services or sale of ophthalmic prosthetic products;

(9) advertising self-styled superiority or the performance of services in a manner presumed to be superior, or the making of untruthful, improbable or impossible claims regarding treatments, cures, or values;

(10) lending, leasing, renting, or in any other manner placing a certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this state.

(b) An optometrist may not associate with a corporation or voluntary association for the practice of optometry, or in any manner practice the profession, on a salary or commission basis, for a corporation or voluntary association. However, this subsection does not prohibit professional incorporation under the Professional Corporation Act, AS 10.45. The fact that an officer, trustee, director, agent, or employee of a corporation or voluntary association is an optometrist does not permit the corporation or voluntary association to do the acts prohibited in this section, nor is that fact a defense to board action against any of the persons mentioned in this subsection for a violation of this section; however, this subsection does not apply to a partnership of two or more registered and licensed optometrists who practice under their own names.

(c) It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile

establishment that he is a registered practitioner and is practicing or will practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or in connection with one. Nothing in this subsection prohibits the rendering of professional services to the officers and employees of a person, firm, or corporation by an optometrist, whether or not the compensation for the services is paid by the officers and employees or by the employer or jointly by all or any of them.

(d) No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

(e) No optometrist may display a sign containing other than his name, profession, recognized specialty, and office hours, which sign may be used only on office windows or at an entrance to his office. Letters may not be luminous or illuminated.

(f) No optometrist may represent himself or herself as a specialist in an optometric field unless he or she is certified, as a diplomate of the American Academy of Optometry or as a fellow of the College of Vision Development, in a recognized specialty. The board recognizes American Academy certification in contact lenses, binocular vision, geriatric care, and low vision, and College of Vision Development fellowships in vision training and developmental vision. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65; am 7/6/78, Reg. 67)

Authority: AS 08.72.050(4)
AS 08.72.060(e)
AS 08.72.240(3)

12 AAC 48.080. DEFINITIONS. Unless the content in this chapter otherwise states:

(1) "Act," "law," or "statute" refers to AS 08.72.;

(2) "regulations" referred to are those made by the board in keeping with AS 08.72.;

(3) "registration" means registration under AS 08.72.;

(4) "chain exploitation" means establish-

ments that provide vision care in various locations either in one community or throughout a geographic area, where the service is provided by one or more than one optometrist in each or more than one location, and who is under the employ or have an agreement based on a lease, rental agreement partnership, stockholder, or other binding agreement; where control over these establishments are exercised by an individual or group of individuals;

(5) "established service organizations" means an organization who holds a charter from a parent organization whose primary established goal is public service without profit;

(6) "vision and eye-screening projects" means a project organized with the intent of identification and referral of vision and eye disorders;

(7) "prescription" means a written formula prepared by a person licensed under AS 08.72 and which contains the following essential elements when applicable to eyeglasses, contact lenses or other visual therapy: dioptric power of spheres, cylinders and prisms, axis of cylinders and position of prism base; designation of inter-pupillary distances; size, base curve, power, color and type, when a contact lens; and the name of the patient, date of prescription and name and office location of prescriber;

(8) "ophthalmic prosthetic products" means eye-glasses, lenses, contact lenses, frames or any component thereof or any other device used for or incident to the correction of any visual anomaly;

(9) "optometric services" means the measuring, fitting and adjusting of ophthalmic prosthetic products to the face and eyes; and

(10) "routine vision 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 and subjective tests. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65)

Authority: AS 08.72.050(1) and (4)

12 AAC 48.1100 - 12 AAC 48.1121.
Repealed. (4/24/71, Reg. 37)

VI

STATE OF ALASKA
Board of Psychologist and Psychological
Associate Examiners
(September, 1978)

Findings

In contrast to most health care professions, services of a psychological nature often cannot be measured in terms of imminent physical improvement or tangible results. Methods are employed in the treatment of illnesses of the mind and emotions which should be used only by properly educated and certified individuals.

Persons with emotional handicaps should be given a choice in the type of treatment which is available. Mental therapy is available in two general forms: through the use of drugs by a psychiatrist and without the use of drugs by a psychologist. The choice of methods, in theory, results in the same end. It is the method of treatment which differs and, in the case of the mind and emotions, both methods require regulation by the State. State regulation and certification of this profession is necessitated by the need to assure the public of practitioner competency so that whatever form of therapy is chosen, the practitioner has been determined to be qualified.

The Board of Psychologist and Psychological Associate Examiners, in practice, has been arbitrary and capricious in the application of the laws contained in its practice act to applicants for examination and licensure. The Board also has repeatedly ignored Attorney General advice relating to various applicants. In accordance with the criteria established within the Sunset Act, it is recommended that the Board of Psychologist and Psychological Associate Examiners be allowed to terminate on June 30, 1979. In

light of the Board's past performance, the availability of standardized examinations offered by a Professional Examination Service and statutorily defined minimum qualifications, regulatory functions necessary for this profession could be assumed by the administrative agency.

I. General Information

A. Regulated Parties

1. Psychologists
2. Psychological Associates

B. Statutory Definition of Regulated Profession

"(2) 'to practice psychology' means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including

- (A) counseling and guidance;
- (B) using psychotherapeutic techniques with persons or groups at school, or at work;
- (C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;
- (D) conducting research on human behavior;"

"(5) 'psychological associate' includes a counselor and psychometrist;"

"(7) 'to practice counseling' means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment,

- (A) counseling and guidance;
- (B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;
- (C) limited use of testing including tests of intelligence or tests of motor skills;"

"(9) 'to practic psychometrics' means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational education, guidance or placement;"
 (AS 08.85.230)

C. Nature and Composition of Board

1. Board members and terms:

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

Dorothy Whitmore, Ed.D. (Chairman)	ends July 1, 1980
Pamela Delys-Baglien, Ph.D	ends July 1, 1981
James C. Parsons, Ed.D.	ends July 1, 1979
Dick L. Madson	ends July 1, 1980
Robert D. Bowers	ends July 1, 1981

2. Representation:

Profession = 3
 Public = 2

3. Qualifications:

Professional members must be licensed; public members must have no direct financial interest in the health care industry.

D. Licensing Data

Psychologists Examined

<u>Year</u>	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1974	2	1	1	50	50
1975	4	3	1	73	27
1976	5	4	1	80	20
1977	3	2	1	67	33
1978	6	5	1	83	17

(through June)

Currently Licensed

Psychologists

in-State = 46

(through June 1978)

out-of-State = 6

(through June 1978)

52

Psychological Associates

in-State = 3

out-of-State = 0

3

E. Fees:

1) application	\$50.00
2) renewal	50.00
3) biennial	50.00
4) out-of-state	50.00
5) temporary license	10.00
6) duplicate license	2.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$1,580.00	\$1,600.00	\$1,700.00	\$2,780.00
- Refunds	<u>10.00</u>	<u>20.00</u>	<u>150.00</u>	<u>100.00</u>
Total	\$1,570.00	\$1,580.00	\$1,550.00	\$2,680.00
Expenditures				
Per Diem	35.00	750.12	443.33	2,385.25
Transportation	168.90	1,405.62	530.85	1,933.63
Phone	207.45	314.63	122.24	138.51
Printing, Advertising & Postage	39.11	594.14	866.01	660.29
Fees and Services	56.00	239.00	407.00	500.00
Rents, Leases, Other	<u>-</u>	<u>-</u>	<u>-</u>	<u>20.00</u>
Total	<u>506.46</u>	<u>3,303.51</u>	<u>2,369.43</u>	<u>5,637.68</u>
Surplus	1,063.54	-	-	-
Deficit	-	1,723.51	819.43	2,957.68

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	3	0	0
1976	5	1	0
1977	1	0	0
1978	1	0	1
(through June)			

Pending: 9

The only case closed was closed by virtue of the fact that the party against whom the complaint was lodged left the State. In 1976 three complaints were received against a single practitioner; potential litigation is pending in this case. Most complaints involved allegations of practicing without a license and of false advertising. None were received in recent years from the public and none were determined to have resulted in harm to the public. The case referred to litigation was brought by an unsuccessful applicant for licensure charging that the board is arbitrary and capricious in its application of examination and scoring procedures.

II. Criteria and Analysis

- A. To what extent has the Board of Psychologist and Psychological Associate Examiners operated in the public interest?

The Board is statutorily charged with responsibility for passing on applicant qualifications; for preparation, administration and grading of written examinations; for revocation or suspension of licenses as a result of statutory violations; and for setting associate fees (AS 08.86.070). "Passing on qualifications of applicants" has been a problem with this Board for a number of years. A 1975 Division of Legislative Audit report recommended that the Board "should apply Alaska Statute 08.86 consistently to all applicants for licensing." Specific examples

of arbitrary granting of examination and licensure privileges are cited within the report. That recommendation and the examples cited are still relevant and could alone be the basis of this report.

The Board has continued to approve one applicant by waiving standards for examination while denying another with equal qualifications for not complying with the standard. Applications for licensure by endorsement are held pending information on licensure from another state which is already contained in the applicant's file. While statutes require a doctoral degree with emphasis on psychology from an accredited school, the Board has held action or refused examination or licensure to candidates meeting this requirement who did not take specific courses or who took courses which the Board did not approve of. At least one applicant who held a doctoral degree in education was allowed to sit for the exam while another was denied because his doctoral emphasis was not in psychology. The Board approved one applicant for examination pending receipt of a letter from his supervisor. This applicant was advised the day before the examination that he would not be allowed to take the examination because the information had not been received. A review of the applicant's file indicates that the information was received and the applicant so notified several months before the examination date. This applicant has since left the State. One applicant was refused because he had not resided in Alaska for thirty days preceding the date of examination. Another applicant was approved by a previous Board, took and passed the examination, and was subsequently denied licensure because he had not graduated from an "accredited" school, a criteria which has not yet been formally defined through Board regulations nor consistently applied through Board policy.

The Board has adopted a policy in Board minutes whereby the requirement for one year's experience acceptable to the Board is defined as one year's post doctoral experience under the supervision of a licensed psychologist. However, enforcement of this policy has also been con-

sistently inconsistent. One candidate who was initially refused licensure under this policy was subsequently licensed by intervention from the Office of the Attorney General. It is interesting to note that the Board will not accept supervision by a licensed psychiatrist to fulfill this post graduate requirement. At its September, 1978 meeting the Board considered two particular candidates for examination, both of whom met the statutory requirements and neither of whom met the post doctoral experience policy requirements. One was approved, the other was not. The only apparent differences in these two candidates were the specific courses taken though both graduated from American Psychology Association "fully approved programs."

If this Board is continued, recommendations are noted herein which should be considered for implementation.

Examination procedures need to be improved with respect to conduct of the examination and to anonymity of applicants. Answer sheets found in files contain the name of the applicant and at least one 1978 applicant made references to his current employment status and professional associations. Applicant anonymity should be maintained to the extent possible to help insure complete objectivity in scoring. The Board constructed written examination is of the essay type. During the time period in past examinations in which some candidates were writing their responses they were also interviewed orally by the Board on those same questions. Candidates should not be interrupted during the examination and should not be given the opportunity to test their own responses against Board reaction during this interview. Additionally, the Board does not have the statutory authority to give an oral interview as part of the examination, only to prepare, administer and grade written examinations.

The Board should discontinue the practice of approving applications for examination prior to receipt of all application materials. This procedure has created a number of problems when an applicant is notified that he is approved and scheduled and then finds at a late date that a reference has not been received or a transcript is missing from his file. Regulations currently being processed require that an applicant's file be complete "at least 45 days before a scheduled examination," and, once adopted, should be complied with.

Statutes provide that the Board may issue a temporary permit to an otherwise qualified applicant pending examination. This provision has been utilized in granting temporary permits to individuals who have not yet submitted proof that they are qualified, such as official transcripts which indicate a doctoral degree. Statutes applicable to applicants already licensed in an authority other than Alaska provide that the applicant is entitled to be licensed if he holds a doctoral degree with emphasis on psychology and if the other authority's qualifications were similar to Alaska's at the time he was licensed. One applicant was initially denied by the Board because the other state's qualifications at the time he was initially licensed were different from those presently in effect in Alaska. Another was required to take the Board's written examination because he did not have the experience required by the other state although he had worked for two years following the date of his degree. Another was approved for endorsement without examination but did not meet the endorsement requirements. Another applicant for endorsement was denied but approved for examination and did not meet requirements for either one.

Lack of continuity and standardization in Board policies and practices does not operate in the public interest. Statutes regarding qualifications for licensure and Board responsibilities in regulation of the profession are designed to assure competency of practitioners and to allow methods by which services may be made available to the public.

The Board has been aware of these problems for some time and pending Board regulations address many of the points raised in this report. If, however, the Board has failed to apply existing statutes and policies consistently in the past, the effect of future regulatory provisions is questionable.

The Board has authority to adopt regulations to carry out the purposes of 08.86. A recent resolution was made expressing the intent of the board to draft mandatory continuing education requirements. If the board is reestablished, it should pursue this subject. A statutory change, however, would be advisable if relicensure or exemptions are contingent on compliance with board outlined criteria.

Regulatory functions for this profession could be carried out by the administrative agency with utilization of professional expertise where necessary.

- B. To what extent has the operation of the Board of Psychologist and Psychological Associate 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?

Existing statutes have not particularly impeded or enhanced the operation of the Board. Inconsistent application of statutory provisions, as previously cited, has impeded impartial examination and licensure of qualified applicants. Arbitrary Board policies and practices restrict

the quality and quantity of services to the public. If adhered to, present statutes and pending regulations would be generally adequate to govern this profession.

The Board of Psychologist and Psychological Associate Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs except that high turnover of agency personnel has in some respects prevented continuity of services to all boards. 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 assist the Board and the agency in carrying out its functions.

This Board 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 mandates that only the most flagrant and potentially injurious licensing complaints are pursued.

Complaints regarding this profession are in the nature of unethical advertising and practicing without a license. There also were no complaints received from the public at large, only from the Board, the profession, or a related profession.

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

Recent statutory changes with respect to the profession concerned:

- (1) addition of lay persons to Board membership; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; and (4) general "housekeeping" items.

Records of Board meetings reflect a desire of the Board to require a one-year State residency clause as a licensure qualification. There is also indication that the Board wishes to regulate unlicensed governmental employees and counselors. No recommended changes were made by the Board which would be of specific public benefit.

- D. To what extent has the Board of Psychologist and Psychological Associate 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?

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 although notices of pending meetings and new or changing regulations are published in major newspapers in the State. It may be that members of the public are somewhat reluctant to involve themselves

in areas of a technical or scientific nature and which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists which probably tends to deter public knowledgeability and participation. This barrier appears to be perpetuated by the Board through the use of professional terminology and the aura of secrecy that is conveyed at Board meetings. The licensing examiner from the administrative agency has been instructed not to record large portions of "public" Board meetings. Additionally, minutes of those meetings are edited and reworded by individual Board members at the time the draft is circulated for perusal. This practice has resulted in questions regarding past Board considerations and does not lend credence to the minutes as written.

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 If this Board is continued, consideration should be given to a public membership majority.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Psychologist and Psychological Associate Examiners processed and resolved?

No complaints have been received which were directed against individual members of the Board. However, on at least four occasions the Board as a whole was threatened with litigation by applicants for licensure, another applicant was licensed after intervention by the Attorney General's

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

Office and litigation was initiated by another applicant charging capricious and arbitrary conduct by the Board.

One of the ten cases received during the past four years had been closed through June, 1978. No recent complaints have been received which were lodged by a member of the general public or which were determined to have resulted in actual danger to the public. The administrative agency is currently addressing complaints and investigative procedures and the need for timely disposition of issues. Investigative services to all boards and commissions under its jurisdiction are expected to improve.

F. To what extent does the Board of Psychologist and Psychological Associate Examiners present qualified applicants to serve the public?

Applicants for examination and/or licensure are not sponsored by the Board. Individuals wishing to practice within the State must submit fees and application with documentation of qualifications. Unfortunately, as is noted previously in this report, compliance with statutory requirements does not necessarily insure an applicant that (s)he will be examined and/or licensed in a timely manner if at all. Review of files for recent years revealed that applicants generally must wait several months from the time of initial application to final licensure. One applicant was licensed seven years after the date of application. Another waited over three years.

Board practices which would allow for the issuance of temporary permits and expeditious licensing by endorsement or examination for all applicants who are qualified would be conducive to entry into the profession and to increased availability of practitioners within the State.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Psychologist and Psychological Associate 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 two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

This Board is responsible for issuing 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 Psychologist and Psychological Associate Examiners to better serve the interests of the public?

If the Board is reestablished, the statutes should specifically delineate Board duties and applicant qualifications in a manner that precludes Board latitude in interpretation beyond statutes. For instance, the Board should not be able to deny examination to an applicant who meets the degree requirements of AS 08.86.130(2) because it does not approve of specific courses taken in pursuit of the degree. Continuing education requirements, if desirable, should be set down by statute as should any exceptions to those requirements.

The Board should consistently apply its own standards as set forth in pending regulations. For instance, if "one year's experience acceptable to the board" is defined as one year's post doctoral supervised experience, the Board should apply this regulation to all cases regardless of other background factors.

The Board should issue temporary permits only in compliance with statutes and should take positive steps toward utilizing endorsement provisions wherever possible. If Alaska's examination and qualification requirements are determined to be substantially different than those of other states, they should then be reviewed for validity as measures of professional competency.

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, examination costs and investigative services. The need for a State Board has not been demonstrated to justify expenses of regulation in this instance.

III. Conclusion

No public need has been demonstrated which would mandate continuation of regulation of this profession by an established board. Aside from this main consideration, restrictive and monopolistic practices by a board which serve to protect and perpetuate only a small interest group should not have the sanction of State authority and should not continue under its auspices.

IV. Summary of Recommendations

- A. The Board of Psychologist and Psychological Associate Examiners should be allowed to terminate on June 30, 1979.

The functions of examining and licensing should be assumed by the administrative agency with appropriate statutory guidelines and regulatory authority.

B. In the event that the Board of Psychologist and Psychological Associate Examiners is continued, the following recommendations are made:

1. Statutory amendments should be made which outline specific qualifications and examination criteria. Content and language should be such that the Board is precluded from arbitrary granting or withholding of these privileges. (See discussion on pp. 8 & 9)
2. The Board should act consistently in applying its own policies and regulations within statutory authority. Standardization of examination procedures should be formulated, and observed, and applicant anonymity should be maintained to the extent possible. The Board should refrain from practices which imply an oral examination and from interrupting candidates while being tested. (See discussion on p. 9)
3. The Board should discontinue past practice of approving and notifying candidates for examination prior to completion of the application. (See discussion on p. 10)
4. The Board should review its policies with respect to the issuance of temporary permits and grant these only as allowed by statute. (See discussion on p. 10)
5. Continuing competency requirements as a condition of licensure, should be addressed by statute as should any exemptions from the requirements. (See discussion on p. 11)

6. The Board should confine its activities in regulating the profession to those over which it has regulatory authority. This does not include government employees or unlicensed counselors within the State. (See discussion on p. 13)
7. The Board should utilize endorsement provisions wherever possible. If Alaska's qualifications are found to be substantially different from those of other states, they should be reviewed for validity and appropriate recommendations made. (See discussion on p. 10)
8. Consideration should be given to placing a majority of public members on this Board. Professional members would provide advice and expertise and would review written examination sheets. Members should not serve consecutive terms unless initially appointed to an unexpired term, but may be reappointed following a term of absence.
9. The Board should refrain from giving the appearance of concealing information during meetings that should properly be a matter of public record. It should also refrain from making substantive changes in minutes of Board meetings. (See discussion on p. 14)

Chapter 86. Psychologists and Psychological Associates.

Article

1. Board of Psychologist and Psychological Associate Examiners (§§ 08.86.010 — 08.86.050)
2. Administration of Board Affairs (§§ 08.86.070 — 08.86.100)
3. Licensing of Psychologists (§§ 08.86.120 — 08.86.150)
- 3A. Licensing of Psychological Associates (§§ 08.86.160 — 08.86.162)
4. Prohibitions and Penalties (§§ 08.86.170 — 08.86.220)
5. General Provisions (§ 08.86.230)

Article 1. Board of Psychologist and Psychological Associate Examiners.

Section

10. Creation and membership of board
20. Appointment and term of office
30. Board meetings

Section

40. Assistants
50. [Repealed]

Sec. 08.86.010. Creation and membership of board. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry. (§ 1 ch 136 SLA 1967; am § 1 ch 65 SLA 1973; am § 30 ch 102 SLA 1976)

Effect of amendments. — The 1973 amendment inserted "and Psychological Associate" in the first sentence. interest in the health care industry" to the end of the second sentence.

The 1976 amendment added "and two persons who have no direct financial

Sec. 08.86.020. Appointment and term of office. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor. (§ 1 ch 136 SLA 1967; am § 31 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment added the present second sentence.

Sec. 08.86.030. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman or of two board members. (§ 1 ch 136 SLA 1967)

Sec. 08.86.040. Assistants. The board may employ assistants to prepare and grade examinations and to investigate alleged violations of this chapter. (§ 1 ch 136 SLA 1967)

Sec. 08.86.050. Transportation and per diem.
Repealed by § 1 ch 42 SLA 1977.

Editor's note. — The repealed section derived from § 1, ch. 136, SLA 1967.

Article 2. Administration of Board Affairs.

Section	Section
70. Duties of the board	100. Applicability of the Administrative Procedure Act
80. Board regulations	
90. Administrative duties of the department	

Sec. 08.86.070. Duties of the board. The board shall

- (1) pass on qualifications of applicants for licenses;
- (2) prepare, administer and grade written examinations;
- (3) after hearing, suspend or revoke the license of a licensed psychologist or psychological associate who violates a regulation of the board;
- (4) set fees which are charged for psychological associates. (§ 1 ch 136 SLA 1967; am §§ 2, 3 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment inserted "or psychological associate" in paragraph (3) and added paragraph (4).

Sec. 08.86.080. Board regulations. The board shall adopt regulations to carry out the purposes of this chapter. (§ 1 ch 136 SLA 1967)

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.090. Administrative duties of the department. The department shall furnish administrative services for the board. (§ 1 ch 136 SLA 1967)

Sec. 08.86.100. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 136 SLA 1967)

Article 3. Licensing of Psychologists.

Section

120. Entitlement to licensure
125. Malpractice insurance
130. Qualification for examination

Section

135. Temporary license
140. Fees
150. Out-of-state license

Sec. 08.86.120. Entitlement to licensure. A person who passes the examination given by the board is entitled to be licensed as a psychologist. (§ 1 ch 136 SLA 1967)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.125. Malpractice insurance. If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of psychologist or psychological associate 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. (§ 32 ch 102 SLA 1976)

Sec. 08.86.130. Qualification for examination. A person is entitled to take an examination if the board finds he

(1) has not engaged in dishonorable conduct relevant to the practice of psychology;

(2) holds a doctoral degree with primary emphasis on psychology from an accredited school;

(3) has at least one year's experience acceptable to the board. (§ 1 ch 136 SLA 1967)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.135. Temporary license. The board may issue a temporary license to a person who meets the requirements of § 130 of this chapter. A temporary license issued under this section is valid until the results of the examination following the issuance of the temporary license are published. (§ 1 ch 38 SLA 1970)

Sec. 08.86.140. Fees. Each application fee, renewal fee, biennial and out-of-state license fee is \$50. The fee for a temporary license is \$10. The fee for a duplicate license is \$2. (§ 1 ch 136 SLA 1967; am § 2 ch 38 SLA 1970)

Revisor's note (1970). — In ch. 38, SLA 1970, "biannual" was used instead of "biennial" in the first sentence of this section. The correction was made in light of AS 08.01.100(a) (which requires biennial

renewal) and the statement in Webster's Third New International Dictionary that the two words are "sometimes" synonymous. Such a usage was clearly the intent of ch. 38, SLA 1970.

Sec. 08.86.150. Out-of-state license. A person who is licensed or certified as a psychologist by an authority other than Alaska is entitled to be licensed in Alaska without examination if

(1) he holds a doctoral degree with primary emphasis on psychology from an accredited school;

(2) the examination and qualification requirements for his out-of-state license or certificate were essentially similar to the examination and qualification requirements for licensure in Alaska at the time he was licensed; or

(3) he is a diplomate in good standing of the American Board of Examiners in Professional Psychology;

(4) he completes and returns the proper application forms, and pays the out-of-state certificate fee. (§ 1 ch 136 SLA 1967)

Article 3A. Licensing of Psychological Associates.

Section

- 160. Associates: Entitlement to licensure
- 162. Associates: Qualification for examination

Sec. 08.86.160. Associates: Entitlement to licensure. A person who passes the examination given by the board is entitled to be licensed as a psychological associate. (§ 5 ch 65 SLA 1973)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.162. Associates: Qualification for examination. A person is entitled to take a psychological associate examination if the board finds that he:

(1) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;

(2) holds a master's degree from an accredited or approved educational institution, with at least 24 credit hours of course work directly related to counseling or another specialized area in which licensure is requested, including a practicum;

(3) has at least three years' experience within the past ten years, two of which are in Alaska, and including one year's supervised postgraduate experience acceptable to the board;

(4) has the recommendation of his immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees;

(5) has not within the preceding six months failed an examination given by the board. (§ 5 ch 65 SLA 1973)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Article 4. Prohibitions and Penalties.

Section

- 170. Use of title
- 180. Practice of psychology
- 185. Practice of counseling and psychometrics
- 190. Name under which person practices

Section

- 200. Confidentiality of communication
- 210. Penalty
- 220. Limits or conditions on license; discipline

Sec. 08.86.170. Use of title. (a) Unless he is licensed under this chapter, no person may use the title "psychologist" or a title, designation, or device indicating or tending to indicate that he is a psychologist or practices psychology.

(b) Unless he is licensed under this chapter, no person may use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that he is a psychological associate or practices counseling or psychometrics. (§ 1 ch 136 SLA 1967; am § 6 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment added subsection (b).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. *Allred v.*

State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

Sec. 08.86.180. Practice of psychology. (a) Unless he is licensed under this chapter, no person may practice psychology, or offer to practice psychology, or represent to the public that he is a psychologist or that he practices psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of his employment, if the employer maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board is qualifying training and experience for psychologist, if his activities constitute a part of his supervised course of study and he is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, such as a social worker, or pastoral counselor, in doing work of a psychological nature consistent with his training and consistent with the code of ethics of his profession;

(4) Repealed by § 15 ch 65 SLA 1973.

(5) a person practicing medicine, if he is licensed to practice medicine.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state. (§ 1 ch 136 SLA 1967; am § 10 ch 69 SLA 1970; am §§ 7, 15 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment deleted "or" preceding "educational institution" in paragraph (1) of subsection (b) inserted "or private agency" and the proviso, and repealed paragraph (4) of that subsection.

Legislative committee report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 08.86.185. Practice of counseling and psychometrics. (a) Unless he is licensed under this chapter, no person may practice counseling or psychometrics, offer to practice counseling or psychometry, or represent to the public that he is a counselor or psychometrist.

(b) This sections does not apply to:

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a counseling nature in the course of his employment, if the employer

maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern or resident in psychology pursuing a course of study approved by the board as qualified training and experience for counseling, if his activities constitute a part of his supervised course of study;

(3) pastoral counselors.

(c) Nothing in this chapter authorizes a person licensed as a psychological associate to engage in the practice of medicine, as defined by the laws of the state. (§ 8 ch 65 SLA 1973)

Sec. 08.86.190. Name under which person practices. (a) A licensed psychologist may practice psychology only under his own name.

(b) A licensed psychological associate may practice counseling or psychometry only under his own name. (§ 1 ch 136 SLA 1967; am § 9 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment added subsection (b).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. *Allred v.*

State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

Sec. 08.86.200. Confidentiality of communication. No psychologist or psychological associate may reveal to another person a communication made to him by a client of his about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to a case conference with other psychologists, psychological associates or with physicians and surgeons, or in the case in which the client in writing authorized the psychologist or psychological associate to reveal a communication. (§ 1 ch 136 SLA 1967; am § 10 ch 65 SLA 1973)

Effect of amendment. The 1973 amendment, in the first sentence, inserted "or psychological associate" twice and, in the second sentence, inserted "psychological associates" and "or psychological associate."

This section does not provide a statutory psychotherapist privilege in criminal cases. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

This section nowhere states that it was intended as creating a privilege. It does not refer to courtroom testimony. The general thrust of its language seems to point towards "anti-gossip" consideration. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

The legislature's failure to create expressly an evidentiary privilege for psychotherapists while doing so for newspapermen during the same session as the Psychological Licensure Act was enacted indicates a legislative intent that psychotherapists were not to be so favored. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

It is only as an "anti-gossip" measure that this section makes sense. *Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).*

This section provides that only a writing may waive whatever rights a patient acquires under the section. But evidentiary privileges are traditionally much more easily waived, in light of the strong

competing policy in favor of compulsory testimony. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Effect of enacting this section as "anti-gossip" measure. — By enacting this section as an "anti-gossip" measure the legislature has opened the door to professional licensing sanctions and possibly broadened the scope of common-law duty in suits against indiscreet psychotherapists. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

The supreme court recognizes a common-law privilege, belonging to the patient, which protects communications made to psychotherapists in the course of treatment. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

As to the scope of the common-law privilege, see Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.210. Penalty. A person who violates §§ 170, 180, 185, or 190 of this chapter is guilty of a misdemeanor. (§ 1 ch 136 SLA 1967; am § 11 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment inserted "185."

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.220. Limits or conditions on license; discipline. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 32 ch 102 SLA 1976)

Article 5. General Provisions.

Section

230. Definitions

Sec. 08.86.230. Definitions. In this chapter

- (1) "psychologist" means a person who practices psychology;
- (2) "to practice psychology" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including
 - (A) counseling and guidance;
 - (B) using psychotherapeutic techniques with persons or groups of persons who have adjustment problems in the family, at school, or at work;
 - (C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;
 - (D) conducting research on human behavior;

(3) "board" means the Board of Psychologist and Psychological Associate Examiners;

(4) "department" means the Department of Commerce and Economic Development;

(5) "psychological associate" includes a counselor and psychometrist;

(6) "counselor" means a person who practices counseling;

(7) "to practice counseling" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment,

(A) counseling and guidance;

(B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;

(C) limited use of testing including tests of intelligence or tests of motor skills;

(8) "psychometrist" means a person who practices psychometrics;

(9) "to practice psychometrics" means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational selection, guidance or placement;

(10) "private agency" means a clinic or private practice under the direction of a licensed psychologist, psychiatrist, or a custodial, rehabilitative or health care organization which is acceptable to the board;

(11) "supervision" means at least one hour a week of personal interview with a supervisor whose educational qualifications are consistent with the level of activity being supervised; a supervisor is responsible for insuring that the extent, kind and quality of the psychological and counseling services performed are consistent with a psychological associate's training and experience, as well as his obedience to the provisions of this chapter. (§ 1 ch 136 SLA 1967; am §§ 12, 13 ch 65 SLA 1973; am § 55 ch 218 SLA 1976)

Effect of amendments. — The 1973 amendment inserted "and Psychological Associate" in paragraph (3) and added paragraphs (5) to (11).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (4).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others

such as psychological associates be limited to the practice of counseling. *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See *Allred v. State*, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

VII

STATE OF ALASKA
Board of Chiropractic Examiners
(October, 1978)

Findings

Manipulation of the human body in such a way as to relieve pain rather than increase pain or cause injury requires a degree of skill that can only be obtained through specialized study and training. The practice of chiropractic includes the taking of x-rays and administration of treatments such as those utilizing heat, water, and electricity. Unqualified practitioners present a danger to the public health, safety and well-being in that the possibility of inappropriate application of treatment methods would be increased by deregulation of the profession. Regulation of the chiropractic profession by a State Board should continue. Recommendations to enhance efficient functioning of the Board are made in this report.

I. General Information

A. Regulated Parties

1. Chiropractors
2. Associate Chiropractors

B. Statutory Definition of Regulated Profession

"Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery."
(AS 08.20.220)

An associate chiropractor serves in an existing clinic or office under direct supervision of a licensed chiropractor for a period not to exceed three years pending completion of at least two years of college in liberal arts or science, and providing all other qualifications have been met.

C. Nature and Composition of Board

1. Board members and terms:

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

Keith Godfrey, DC (Chairman)	ends July 15, 1979
Lee Q. Burger, DC (Vice President)	ends July 15, 1980
Adrian Barber, DC (Secy)	ends July 15, 1978
Linnea Burmeister	en's July 15, 1978
Locke Jacobs	ends July 15, 1979

2. Representation:

Profession = 3
Public = 2

3. Qualifications:

"Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry..." (AS 08.20.020)

D. Licensing Data

By Examination

<u>Year</u>	<u># of Candidates</u>	<u># Passed</u>	<u># Failed</u>	<u>% Passed</u>	<u>% Failed</u>
1975	7	6	1	86	14
1976	4	4	0	100	-0-
1977	12	12	0	100	-0-
1978	7	5	2	71	29

(through August)

Currently licensed:

in-State = 32 (through June, 1978)
out-of-State = 9 (through June, 1978)
Total 41

Associate licenses = 4 (through June, 1978)

E. Fees

1. application for examination	\$25.00
2. application for reexamination	10.00
3. temporary permit	25.00
4. initial license	50.00
5. biennial renewal	50.00
6. associate license	30.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$1,205.00	\$ 345.00	\$1,910.00	\$1,070.00
- refunds	<u>-</u>	<u>25.00</u>	<u>-</u>	<u>-</u>
Total	\$1,205.00	\$ 320.00	\$1,910.00	\$1,070.00
Expenditures				
Per Diem	-	1,001.25	1,000.00	1,835.00
Transportation	-	1,027.36	1,128.58	1,815.32
Phone	-	20.55	19.51	65.98
Printing, Advert.,				
Postage	85.98	544.58	174.67	370.55
Fees & Services	-	220.04	-	107.63
Rents, Leases,				
Other	<u>75.00</u>	<u>25.00</u>	<u>54.24</u>	<u>23.59</u>
Total	<u>\$ 160.98</u>	<u>\$2,838.78</u>	<u>\$2,377.00</u>	<u>\$4,218.07</u>
Surplus	\$1,044.02	-	-	-
Deficit	-	\$2,518.78	\$ 467.00	\$3,148.07

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	2	1	0
1976	0	1	0
1977	2	0	0
1978	1	3	0
(Through September 15)			

Pending: 0

One complaint was closed because no violation was found to exist, another due to lack of information. Three complaints alleged over-charging, unethical advertising, and practicing without a license. None alleged harm to the public.

H. Qualifications

According to the Alaska Chiropractic Society, chiropractors must have a minimum of six years of college study and internship, the latter two years of which are generally devoted to practical or clinical studies.

II. Criteria and Analysis

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

Board authority in governing the practice of chiropractic includes the adoption of regulations necessary to carry out chapter provisions, approval of accredited schools or colleges, administration and approval of examinations and licensing of qualified chiropractors and associates. Authority to issue temporary permits and to license out-of-State licensees without examination is discretionary. Requirements which are designed to measure proficiency operate in the public interest in assuring competency of practitioners. While administration and approval of examinations by the Board is an appropriate and desirable function, consistency and validity of these measures must be a major consideration.

Two examinations are scheduled routinely each year as provided by regulations. Applicants are required by statute to have taken and passed "to the satisfaction of the board, Part I and Part II of the examination of the National Board of Chiropractic Examiners." The State Board has, in the past, given this examination to applicants who have not already taken it or who have not passed. Pending regulations will require that an applicant have passed the national examination before s/he applies for examination in Alaska with the result that the Board will no longer be administering the national examination as it has been doing.

In addition to the requirement for successful completion of the national examination, the Board requires a written Board prepared examination, an oral (diagnosis, x-ray, visual) examination and a practical (application, treatment) examination. Each portion is graded by individual examiners and scores are averaged including the national examination score. A general average rating of 75% is considered to be a passing grade.

A review of Board prepared examination materials for recent years indicates that content was frequently identical or at least strikingly similar for as long as three years. Most questions are in essay form and require a measure of subjective judgment on the part of the examiners. The Board has not promulgated regulations which govern methods of grading or scoring for consistency of application. Although not specifically cited in Board records, it appears that there may have been additional inconsistencies in averaging methods utilized.

As one method of avoiding allegations of arbitrary and capricious action, the Board should adopt regulations which specify grading criteria. The Board should also adopt a policy which would promote substantial dissimilarity in successive Board examinations and regulations which govern "general average rating" procedures that would apportion examination sections appropriately and definitively. Potential problem areas could be largely avoided through the use of a national testing service.

Continuing education requirements, as a condition of continuing licensure, have been discussed by the Board. The Board (and the Alaska Chiropractic Society) has expressed a desire to institute such requirements, however, it has no authority to do so as a condition of relicensure. There are no current review or reexamination procedures. Valid arguments may be made against mandatory education requirements: lack of facilities, cost of programs, and the prospect of legal issues arising from failure to renew a license. Equally valid arguments may be made in behalf of measures that are designed to help insure continued competency and allow practitioners to up-date themselves in their profession.

Statutory authority to adopt "necessary" regulations implies that the Board may consider continuing education requirements. To provide definitely that this may be done the Board should be given the specific

statutory direction to consider the subject and to impose requirements that are determined to be advisable. This would not be inconsistent with other health care boards, i.e., Medical, Optometry and Dispensing Opticians, whose statutes require continuing education. It is considered advisable to address mandatory continuing education by statutory directive with any appropriate exemption provisions.

Statutory authority exists for the issuance of temporary permits pending examination to applicants who are otherwise qualified. Records indicate that only one temporary permit has been requested and approved in recent years.

Present statutes require that out-of-State applicants meet both endorsement and reciprocity provisions. It is interesting to note that while all present professional members of this Board were licensed by reciprocity, the Board has made a formal policy decision that it will not license in this manner. The last license to be issued by reciprocity was issued in 1970-to a member of the Board. Several requests have been made by out-of-State applicants seeking endorsement. Board replies indicate that no reciprocal agreement exists between Alaska and the other state, however, there is no documentation that suggests reciprocity has been explored as a possibility, only that such relationships do not exist. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and increasing services of practitioners. It is recommended that licensing be allowed on the basis of endorsement and that the Board consider every mechanism by which entry into the profession and availability of services to the public may be facilitated.

- B. To what extent has the operation of the Board of Chiropractic 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?

Restrictive policies of the Board regarding reciprocity impede the opportunity of providing additional services to the public. The Board should recommend statutory changes for licensure by endorsement and, if unsuccessful, it should investigate the possibility of establishing reciprocal agreements with other states. If the requirements of Alaska and other states are substantially dissimilar, the Board should then review statutory qualifications for validity and make any appropriate recommendations that may be indicated.

Other statutory provisions for the Board of Chiropractic Examiners are generally considered to be adequate with the exception of mandatory continuing education requirements. The Board is given authority and latitude sufficient to allow it to operate in regulating the chiropractic profession.

The Board of Chiropractic Examiners 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. 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, one of which is submission of an annual report.

The Board of Chiropractic 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 Chiropractic Examiners recommended statutory changes which are generally of benefit to the public interest?

Laymembers were added to the Board by statute in 1976. Other 1976 amendments were concerned with Medical Indemnity provisions and general "housekeeping" items.

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

- D. To what extent has the Board of Chiropractic 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 appears to be 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. Notices of pending meetings and new or changing regulations are published in major newspapers in the State.

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 partially mitigate public disinterest.

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 Chiropractic Examiners processed and resolved?

No complaints were received which were specifically directed at individual members of the Board and none against the Board or profession were received by the Office of the Ombudsman. All complaints received against the profession through September, 1978 have been closed.

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

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

Board policy against licensure of out-of-State applicants by reciprocity is not conducive to encouraging entry into the profession. In order to provide the opportunity for increased availability of services to the public, it is recommended that reciprocity requirements be deleted and that licensure by endorsement be utilized. If not, the Board should attempt to establish reciprocal relationships with other states wherever possible.

- G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Chiropractic 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 two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Chiropractic 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 Chiropractic Examiners to better serve the interests of the public?

Steps should be taken by the Board to apply existing statutes, regulations, and policies uniformly. Standards for examinations and grading should be formulated and enforced. Continuing education upon which relicensure would be contingent, and appropriate exemptions, should be considered and implemented. Efforts should be made to establish reciprocal relationships with other jurisdictions or to amend statutes to allow for licensure by endorsement.

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.

Information obtained in the process of this review indicates that the Board has not complied with 12 AAC 16.210 concerning the practice and working agreements of chiropractic associates. Under these regulations, an associate must execute a contract with a supervising chiropractor which "provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract."

"The supervising chiropractor assumes liability for all malpractice of the associate." "The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate." Available documentation suggests that the Board has abrogated its responsibility in reviewing these contracts and that the contracts are, in fact, unfair to associates. There is question also as to the legality of the current agreements, however, determination on this is a matter to be taken up by another department. If such agreements are to exist, the Board should enforce its regulations regarding them.

Board membership in terms of numbers is considered adequate. Although it would be desirable to have the two separate chiropractic schools of thought represented by professional members, this may be difficult in administration. Terms of membership should be limited unless appointed to an unexpired term or following a term of absence.

Reciprocity requirements in many cases serve to restrict entry into professions in a state. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and with providing services of practitioners.

Regulations of this and all boards which pertain to advertising prohibitions are currently in the process of review and appropriate revisions.

III. Conclusion

Regulation of this profession is determined to function in the public interest.

IV. Summary of Recommendations

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

1. The Board should promulgate and adopt regulations covering examination and grading procedures, content, and criteria.
(See discussion on p. 7)
2. The Board should address the subject of mandatory continuing education, possible exemptions, and qualifying courses or methods of compliance.

It is recommended that these requirements and exceptions be established by statute. (See discussion on p. 7)

3. It is recommended that statutory provisions for reciprocity be deleted and endorsement be allowed instead. Whether by reciprocity or by endorsement, the Board should make every effort to encourage entry into the profession and to increase the availability of practitioners. (See discussion on p. 8)
4. The Board should fulfill its responsibility in applying statutes and regulations uniformly and fairly.

Chiropractic associate agreements should be reviewed as stipulated or appropriate amendments made to the regulations.
(See discussion on n. 13)

5. The Board should adopt regulations which define "accredited" schools or colleges of chiropractic which are approved by the Board.

6. The Board should comply with the statutory requirement for submission of an annual report.

Chapter 20. Chiropractors.

Article

1. Board of Chiropractic Examiners (§§ 08.20.010 — 08.20.090)
2. Licensing and Regulation (§§ 08.20.100 — 08.20.190)
3. Unlawful Acts and Penalties (§§ 08.20.200 — 08.20.210)
4. General Provisions (§ 08.20.220)

Article 1. Board of Chiropractic Examiners.

Section

10. Creation and membership of Board of Chiropractic Examiners
20. Members of board
30. Members' terms; vacancies
40. Organization of board
50. Power of officers to administer oaths and take testimony

Section

55. Board regulations
60. Power of board to adopt seal
- 70 — 80. [Repealed]
90. Quorum of board

Sec. 08.20.010. Creation and membership of Board of Chiropractic Examiners. There is created the Board of Chiropractic Examiners consisting of five members appointed by the governor. (§ 35-3-23 ACLA 1949; am § 2 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "five members" for "three members."

Am. Jur., ALR and C.J.S. references. — 41 Am. Jur., Physicians and Surgeons, § 27.

Constitutionality of statute prescribing conditions of practicing medicine as

affected by discrimination against chiropractors, 37 ALR 680; 54 ALR 600.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 ALR 630.

70 C.J.S. Physicians and Surgeons §§ 1, 8, 10, 12, 15.

Sec. 08.20.020. Members of board. Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry. Each member serves without pay but is entitled to per diem and travel expenses allowed by law. (§§ 35-3-23, 35-3-30 ACLA 1949; am § 3 ch 102 SLA 1976)

Revisor's note. — This section relating to per diem and expenses was impliedly amended by § 1, ch. 130, SLA 1953, as amended by § 1 ch. 34, SLA 1960.

Effect of amendment. — The 1976 amendment substituted "Three members"

for "Each member" and "licensed chiropractic physicians who" for "a licensed chiropractic physician and shall" in the first sentence and added the present second sentence.

Sec. 08.20.030. Members' terms; vacancies. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 35-3-23 ACLA 1949; § 4 ch 102 SLA 1976)

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

Sec. 08.20.040. Organization of board. Every two years, the board shall elect from its membership a president, vice president and secretary. (§ 35-3-24 ACLA 1949)

Sec. 08.20.050. Power of officers to administer oaths and take testimony. The president and the secretary may administer oaths in conjunction with the business of the board. (§ 35-3-24 ACLA 1949)

Sec. 08.20.055. Board regulations. The board shall adopt substantive regulations necessary to effect the provisions of this chapter. (§ 1 ch 102 SLA 1966)

Sec. 08.20.060. Power of board to adopt seal. The board shall adopt a seal and affix it to all licenses issued. (§ 35-3-24 ACLA 1949)

Sec. 08.20.070. Secretary.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.20.080. Records, reports and accounts of board.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.20.090. Quorum of board. A majority of the board constitutes a quorum for the transaction of business (§ 35-3-24 ACLA 1949)

Article 2. Licensing and Regulation.

Section	Section
100. Practice of chiropractic without license prohibited	150. Recording of license
110. Application for license	160. Temporary permits
115. Malpractice insurance	170. Grounds for suspension, revocation or refusal to issue a license
120. Qualifications for license	175. Limits or conditions on license; discipline
130. Examination	180. Fees
135. Associate	190. Disposition of fees
140. Out-of-state licenses	

Sec. 08.20.100. Practice of chiropractic without license prohibited. No person may practice chiropractic in the state without a license. (§ 35-3-21 ACLA 1949)

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

Am. Jur. reference. — 41 Am. Jur.,
Physicians and Surgeons, §§ 15, 16, 27.

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

Sec. 08.20.115. Malpractice insurance. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic 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. (§ 5 ch 102 SLA 1976)

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

(1) Repealed by § 25 ch 245 SLA 1970.

(2) has had a high school education or its equivalent;

(2) has successfully completed at least two academic years of study in a college of liberal arts or sciences;

(4) is a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each;

(5) passes an examination given by the board;

(6) Repealed by § 8 ch 32 SLA 1971.

(7) passes to the satisfaction of the board Part I and Part II of the examination of the National Board of Chiropractic Examiners. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955; am § 1 ch 91 SLA 1965; am § 25 ch 245 SLA 1970; am § 8 ch 32 SLA 1971; am § 1 ch 84 SLA 1972)

Revisor's note (1972). — In ch. 84, SLA 1972, the apparently necessary word "examination" was omitted from AS 08.20.120(7). It has been added here.

Legislative committee reports. — 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. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

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

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

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

(d) An applicant may take a re-examination within one year after failing the examination upon payment of a fee of \$10. (§ 35-3-27 ACLA 1949; am § 2 ch 91 SLA 1965)

Am. Jur. reference. — 41 Am. Jur.,
Physicians and Surgeons, §§ 40, 41.

Sec. 08.20.135. Associate. A person who complies with § 120 (1), (2), (4), (5), and (6) of this chapter shall, pending compliance with (3) of § 120 of this chapter, be licensed to serve as an associate in an existing chiropractic clinic or office under the direct supervision of a licensed chiropractor for a period not to exceed three years. (§ 3 ch 91 SLA 1965)

Editor's note. — Paragraphs (1) and (6) of § 120, referred to in this section have been repealed.

Sec. 08.20.140. Out-of-state licenses. The board may issue a license without examination to an applicant presenting satisfactory proof of the possession of a license or certificate of registration in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of his license are considered by the board as equivalent to those in this chapter, and if the licensing jurisdiction extends the same privilege to those holding a license from this state. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955)

Sec. 08.20.150. Recording of license. Each licensee shall record his license with the clerk of the superior court in the judicial district in which he is practicing his profession. (§ 35-3-28 ACLA 1949)

Sec. 08.20.160. Temporary permits. Temporary permits may be issued to persons apparently qualified until the next regular meeting of the board. (§ 35-3-28 ACLA 1949)

Sec. 08.20.170. Grounds for suspension, revocation or refusal to issue a license. (a) The board may refuse to issue, or may suspend or revoke a license upon any of the following grounds:

- (1) malpractice;
- (2) misrepresentation;
- (3) unprofessional conduct;
- (4) habitual intemperance, or addiction to the use of narcotics;
- (5) conviction of a felony or misdemeanor involving moral turpitude;
- (6) violation of any provision of this act.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board for the suspension or revocation of a license.

(c) Any person whose license is suspended or revoked may within two years from date of suspension apply for reinstatement, and if the board is satisfied that the applicant should be reinstated, it shall order reinstatement. (§ 35-3-29 ACLA 1949).

Am. Jur. reference. — 41 Am. Jur.,
Physicians and Surgeons, §§ 44 to 46.

Sec. 08.20.175. Limits or conditions on license; discipline. (a) In addition to action under § 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic 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 license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 6 ch 102 SLA 1976)

Sec. 08.20.180. Fees. The board shall impose and collect the following fees:

- (1) upon the filing of an application for examination, \$25;
- (2) upon application for re-examination, \$10;
- (3) for issuance of temporary permit, \$25;
- (4) initial and renewal biennial license, \$50;
- (5) associate license, \$30. (§ 35-3-30 ACLA 1949; am § 1 ch 13 SLA 1968)

Sec. 08.20.190. Disposition of fees. All fees collected by the board shall be paid into the general fund of the state. (§ 35-3-30 ACLA 1949)

Article 3. Unlawful Acts and Penalties.

Section

200. Violation of § 100 of this chapter

210. Fraudulent certificates

Sec. 08.20.200. Violation of § 100 of this chapter. A person who violates § 100 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than a year, or by both. In prosecutions under this section, evidence that the defendant has failed to file his certificate of registration with the board is prima facie evidence that he is not a licensed chiropractor. (§ 3 ch 53 SLA 1955)

Revisor's note. — This section introduces a requirement which does not exist in this chapter, viz., filing a certificate

with the board. It is the board's duty to keep a registry.

Sec. 08.20.210. Fraudulent certificates. Any person who obtains or attempts to obtain a chiropractic certificate by dishonest or fraudulent means, or who forges, counterfeits, or fraudulently alters any such certificate is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both. (§ 4 ch 53 SLA 1955)

Article 4. General Provisions.

Section

220. Chiropractic defined

Sec. 08.20.220. Chiropractic defined. Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery. (§ 35-3-22 ACLA 1949)

Prescription of drugs or medicine illegal. — It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Expenditures from fishermen's fund for medicine prohibited. — Money cannot

CHAPTER 16. BOARD OF
CHIROPRACTIC EXAMINERS

Article

1. The Board
2. Licensing
3. General Provisions

ARTICLE 1. THE BOARD

Section

10. Objectives
20. Meetings

12 AAC 16.010. OBJECTIVES. (a) It is the objective of the board to foster professional standards consistent with the best interests of the profession.

(b) It is the objective of the board to adhere to the Code of Ethics of the American Chiropractic Association or International Chiropractic Association as a basis for considering what comprises the duties and obligations of chiropractors to the public. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.020. MEETING. (a) Robert's Rules of Order govern the deliberations of the board to the extent that they do not conflict with this chapter or with the laws of the state.

(b) The board will meet regularly the second Saturday and Sunday of January and June for purposes of meeting and examining applicants. Other meetings or examinations are termed "special."

(c) The board will, when possible, coincide business meetings and examination of applicants for licensure. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

ARTICLE 2. LICENSING

Section

30. Application for examination
40. Evaluation
50. Notification
60. Schedule
70. Basis of questions
80. Identity of applicant
90. Method of examination

100. Materials
110. Leaving examination room
120. Disturbance
130. Questions
140. Grades
150. Re-examination
160. Time
170. Special examination
180. Reconsideration of papers
190. Certificates
200. Temporary permits
210. Associates
220. Duplicate licenses
230. Misrepresentation
240. Unprofessional conduct

12 AAC 16.030. APPLICATION FOR EXAMINATION. No applicant may take the examination unless he

(1) applies on the board approved form for application for licensure;

(2) complies with all the forms, requirements and any additional requests for information by the secretary of the board when necessary to complete the applicant's credentials;

(3) submits to the board written proof of meeting all requirements of AS 08.20;

(4) pays the required fees for application and

(5) applies no less than 30 days before a scheduled examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

AS 08.20.130

12 AAC 16.040. EVALUATION. Evaluation of an applicant's credentials in work for liberal arts or science (two years' liberal arts and science college) shall be made from a course of study from an institution equivalent to those of the University of Alaska or acceptable to the regional accrediting agencies for approved colleges of liberal arts or sciences. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.050. NOTIFICATION. An applicant will be notified of his passing or failing of an examination or the acceptance or denial of his application for examination within a reasonable time from the date of examination or

the receipt of application for examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.060. SCHEDULE. The board will when possible, regularly examine applicants on the second Saturday and/or Sunday of January and June at a time and place determined by the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.070. BASIS OF QUESTIONS. All examination questions will be based upon material contained in standard text books used in chiropractic schools or colleges. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.080. IDENTITY OF APPLICANT. An applicant for examination will be designated by a number instead of a name, so that the identity is not disclosed to the examiners until the papers are graded. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.090. METHOD OF EXAMINATION. The paper of an applicant will be identified by numbers as follows:

(1) each envelope will be numbered and will contain a blank sheet of paper with a number on it which the applicant shall write his name and address on the blank and return it to the envelope which shall be sealed and delivered to the director;

(2) each applicant shall place on his examination paper the number given to him. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.100. MATERIALS. No applicant may have on his examination table any paper or object other than the examination questions, examination paper, blotter, pencil, pens, and ink, eraser, and a watch. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.110. LEAVING THE EXAMINATION ROOM. No candidate may leave the examination room for any reason

unless accompanied by a proctor or board member. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.120. DISTURBANCE. No applicant may communicate with another applicant during the examination. A disturbance on the part of the applicant will cause him to be required to leave the examination room. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.130. QUESTIONS. An applicant shall rely solely on his own judgment for the meaning of each question, and on his own knowledge of the subject in answering each question. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.140. GRADES. (a) An applicant failing to make required grade average will be credited for the subjects passed.

(b) An applicant failing to attain a general average rating of 75 percent after two examinations is required to produce evidence of refresher courses in the subjects failed before he is allowed a re-examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.150. RE-EXAMINATION. An applicant may apply for re-examination by

(1) informing the board of his intention at least 30 days before the next regularly scheduled examination: and

(2) paying the re-examination fee. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.160. TIME. An applicant will be allowed to proceed at his own speed on each subject given in the examination, within the time specified. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.170. SPECIAL EXAMINATION. A special examination of an applicant may be

allowed if all members of the board agree and notice of 30 days in writing is given to the board and the applicant has complied with the provisions of this chapter and AS 08.20. (Eff. 3/8/71, Reg. 37)

Authority: AS 20.055

12 AAC 16.180. RECONSIDERATION OF PAPERS. The examining board will not reconsider an applicant's examination papers unless the applicant presents his reason in writing to the board. The applicant is bound by the decision of the board. (Eff. 3/8/71, Reg. 37)

Authority: 08.20.055

12 AAC 16.190. CERTIFICATES. The board shall issue one form of license to those passing the examination for licensure. The license shall be designated "License to Practice Chiropractic." The license authorizes its holder to practice chiropractic in the state, and shall be signed by all board members. All certificates shall be numbered consecutively. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.200. TEMPORARY PERMITS. (a) Temporary permits are subject to termination by the board at any time if, in the board's determination, the holder of the permit is violating ethical behavior or law after being warned by the board that this action in regard to him was being contemplated.

(b) Temporary permits shall be displayed in a conspicuous place in the office where the holder practices chiropractic.

(c) It is the duty of the permittee to inform the board of any change in his mailing and practicing address. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

AS 08.20.160

12 AAC 16.210. ASSOCIATES. (a) No associate may treat or diagnose a patient professionally unless

(1) he furnishes the board periodic evidence that he is pursuing reasonable academic study to fulfill the two years liberal arts or science requirements within the three-year period;

(2) he executes a contract with the supervising chiropractor which provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract;

(3) the supervising chiropractor assumes liability for all malpractice of the associate.

(b) The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate.

(c) The associate shall inform the board of any changes in his current mailing address and contemplated changes in his contract.

(d) The associate shall openly display his license in the office in which he practices and on the license shall be stamped in a conspicuous place on the face, the words, "associate" or "as the associated chiropractor licensed under statute."

(e) The board will revoke the license of an associate at any time it reasonably appears impossible for the associate to complete the specified curricula within three years from the date of licensure issue.

(f) The licensed associate shall use the word "associate" after his name to inform the public of his status. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

AS 08.20.135

12 AAC 16.220. DUPLICATE LICENSES. The board shall, upon request, issue a duplicate license in place of the original if the original is destroyed or lost, or if the licensee legally changes his name. The duplicate license shall have on the face in a conspicuous place the word "duplicate." (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.230. MISREPRESENTATION. As used in AS 08.20.170 (2) "misrepresentation" means

(1) the use of any advertising in which untruthful, exaggerated, improper, misleading or deceptive statements are made;

(2) the advertising of techniques or modalities to infer or imply superiority of treatment or diagnose by their use;

(3) impersonation of another practitioner of like or different name;

(4) advertising either in his own or under the name of another person, or clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by fellow chiropractic physicians;

(5) the advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method or procedure;

(6) knowingly permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.240. UNPROFESSIONAL CONDUCT. In AS 08.20.170 (3) "unprofessional conduct" means

(1) aiding the practice of any of the healing arts by an unlicensed person;

(2) the use of his name under the designation "Doctor," "Dr.," "Chiropractor," "Chiropractor Physician," or "Ph.C." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise;

(3) advertising which contains offers, premium gifts or cut rates for the purpose of attracting or retaining patients; or which is not in accordance with sec. 250 of this chapter;

(4) mention of either

(A) superiority to other members of the chiropractic profession; or

(B) of the school from which the advertising chiropractor was graduated;

(5) the use of handbills for the purpose of attracting patients;

(6) advertising the prices for which services are available;

(7) dishonorable conduct of degradation by a license relating to the occupation. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.170

ARTICLE 3. GENERAL PROVISIONS

Section

- 250. Violations
- 260. Advertising
- 270. Definitions

12 AAC 16.250. VIOLATIONS. It is the duty of all members of the board to report to the Division of Occupational Licensing, instances of alleged violations of AS 08.20.100. The secretary shall inform a new licensee in the state that it is his duty to report all instances of suspected unlicensed practice of chiropractic known to him to the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.100

12 AAC 16.260. ADVERTISING. (a) Upon the opening, reopening or removal of an office for the practice of chiropractic, the chiropractor may publish, in local newspapers, an announcement, which shall be limited to a statement of his name, title, profession, degrees, address, telephone number and office hours. The announcement may not be published for more than 90 days after the opening, reopening, or removal of the office. The announcement may not exceed eight square inches in area.

(b) When a chiropractor transfers his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery and directories connected with the practice he has acquired or is acquiring, all such words or phrases as "successor to" or words of like import. Under no circumstances may these signs, cards, stationery or advertising

continue for a period of more than two years.
(Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.270. DEFINITIONS. In this chapter:

(1) "board" means the Board of Chiropractic Examiners as established by AS 08.20.010. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

VIII

STATE OF ALASKA
Board of Pharmacy
(October, 1978)

Findings

The practice of pharmacy is controlled by AS 08.80, by Title 17 (Food and Drugs) and by federal laws and regulations. Practitioners dispense, upon prescription, controlled and dangerous drugs as well as those routinely prescribed to relieve pain or illness or to promote health. Lack of control over persons responsible for appropriate dispensing and security of these substances would present a danger to the welfare of the public. In general, the Board of Pharmacy has operated to insure high standards within the profession, to allow entry of qualified individuals, and to provide availability of services to the consuming public. Inconsistencies, exceptions and recommendations concerning the Board and regulation of the profession are cited in this report. It is recommended that the Board of Pharmacy and State regulation of this profession be reestablished for another four-year period.

I. General Information

A. Regulated Parties

1. Pharmacists
2. Intern Pharmacists
3. Pharmacies
4. Shopkeepers

B. Statutory Definition of Regulated Profession

1. Pharmacist: None specified
2. Intern pharmacist: None specified
3. Pharmacy: "... includes 'drug store' and 'pharmacy or drug department' and means a place of business in which physicians' prescriptions are compounded or dispensed and in which drugs and medicines are compounded or dispensed;" (AS 08.80.480(5))
4. Shopkeepers: "... means a retail dealer who sells over the counter medicinal preparations in original unbroken packaging which do not require a prescription for dispensing." (AS 08.80.480(19))

C. Nature and Composition of Board

1. Board members and terms:

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

Eldon Ulmer (Chairman)	Ends March 31, 1977
James L. Murphy	Ends March 31, 1976
Lester E. Elkins	Ends March 31, 1983
Charles R. Rush (Secy.)	Ends March 31, 1979
James H. McCorcle	Ends March 31, 1980
Fred Savok	Ends March 31, 1981
Robert K. Snider	Ends March 31, 1980

2. Representation:

Profession = 5
Public = 2

3. Qualifications:

Five members shall be resident licensed pharmacists who have actively practiced in the State for the three-year period immediately preceding appointment and two members shall be persons with no direct financial interest in the health care industry.

D. Licensing Data

Year	# of Candidates	By Examination			
		# Passed	# Failed	% Passed	% Failed
1975	2	1	1	50	50
1976	1	1	0	100	0
1977	2	2	0	100	0
1978	4	4	0	100	0

(through June 30)

Currently licensed:

in-State	=	179 (through June, 1978)
out-of-State	=	<u>95</u> (through June, 1978)
Total		274

Currently licensed pharmacies: 77
 Currently licensed drug rooms: 14
 Current shcpkeeper permits: 0

E. Fees

1.	examination fee	\$50.00
2.	reexamination fee	15.00
3.	reciprocity investigation fee	25.00
4.	biennial license fee	50.00
5.	temporary license fee	10.00
6.	wholesale drug dealer biennial license fee	50.00
7.	retail pharmacy biennial license fee	50.00
8.	pharmacy intern registration fee	10.00
9.	emergency permit fee	10.00
10.	hospital pharmacy biennial license fee	50.00
11.	hospital drug room biennial license fee	25.00
12.	nursing home license fee	25.00
13.	shopkeepers biennial permit fee	10.00
14.	license amendment or replacement fee	2.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	\$5,570.00	\$13,883.00	\$8,384.00	\$16,547.00
-refunds	<u>25.00</u>	<u>35.00</u>	<u>135.00</u>	<u>65.00</u>
Total	5,545.00	13,848.00	8,249.00	16,482.00
Expenditures				
Per Diem	551.25	2,677.15	2,216.67	2,016.67
Transportation	345.20	1,928.53	1,508.28	1,712.80
Phone	218.00	252.97	140.55	215.74
Printing, Advertising & Postage	495.58	586.30	320.23	313.19
Fees & Services	120.00	390.00	330.00	100.00
Rents, Leases, Other	<u>-</u>	<u>19.50</u>	<u>139.50</u>	<u>543.00</u>
Total	<u>\$1,730.03</u>	<u>\$ 5,854.45</u>	<u>\$4,655.23</u>	<u>\$ 4,401.40</u>
Surplus	\$3,814.97	\$7,993.55	\$3,593.77	\$11,580.60
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	<u>Received</u>	<u>Closed</u>	<u>To Litigation</u>
1975	5	0	0
1976	4	0	0
1977	5	0	0
1978	1	0	0
(through June 30)			

Pending: 15

The largest portion of these cases was referred by members of the Board or profession and most deal with allegations of unethical advertising. Due to the nature of offense and length of time since filed, several of these complaints may be considered moot at this point.

II. Criteria and Analysis

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

Overall, the Board of Pharmacy is, and has been, acting in the public interest in assuring qualified practitioners and availability of services throughout the State. Recommendations and observations made in this report are designed to enhance Board operation in regulating the profession in a manner which is most desirable for the continued protection of the public.

The Board of Pharmacy has a number of statutory powers and duties through which it regulates the profession. For example, it may examine applicants, investigate State or federal violations, promulgate and adopt regulations, register and govern the practice of interns, and promulgate regulations

to ensure security of dangerous drugs (AS 08.80.030). AS 08.80.040 provides that the Board shall examine applicants, grant registration, initiate prosecution of violators, submit reports on the condition of pharmacy in the State to the Legislature, maintain necessary records, issue a list of potentially dangerous medicinal ingredients or preparations, and issue shopkeeper permits. These powers and duties are felt generally to be necessary if the Board is to continue to function for the public interest and protection by maintaining control over the quality and integrity of practitioners and pharmaceutical related establishments.

Qualifications for licensure include fluency in the English language, two character affidavits, graduation from a recognized college of pharmacy, successful completion of the NABP examination and 1,500 hours of internship, of which 540 must be postgraduate. The only other requirement established by the Board is that the applicant must pass a jurisprudence examination given by a member of the Board. Applicants may take this jurisprudence examination at their convenience and as many times as needed to pass.

The written examination proctored by the Board is developed and provided by the National Association of Boards of Pharmacy. This examination, the NABPLEX, is given nationwide to graduates who are then registered through the National Board. Very few licentiates have been licensed by examination in Alaska, only those who have not previously taken the National Board examination. Most applicants for an Alaska license are approved by endorsement as certified by the National Board.

Licensure may be delayed in instances where an applicant does not meet the requirement for 540 hours of postgraduate training under direct supervision of a licensed pharmacist. Registration as a postgraduate intern is then available until completion of the requirement at which time a permanent license is issued.

Upon completion of all items except validation of registration by the National Board, a Board member may issue a temporary registration certificate. Temporary certificates are valid for three months or until the next Board meeting - whichever is longer, may be extended for 60 days maximum, are nonrenewable and are issued on a one-time basis. This procedure allows adequate time in which to receive NABP certification and allows the applicant to begin practicing in the interim. Pregraduate intern permits are also issued to applicants who are enrolled and at least a junior in pharmacy school.

Practices and policies which utilize standard examinations, standard endorsement procedures and the issuance of temporary permits to qualified applicants are felt to operate in the public interest by encouraging entry into the profession and promoting increased availability of services.

Regulations adopted by the Board govern the practice of interns, practices of hospital pharmacies, and expanded definitions. Statutory authority to promulgate regulations ensuring dangerous drug security and to issue a list of potentially dangerous medicinal ingredients or preparations has been provided, the latter being a mandatory directive. However, some difficulty has been encountered by the Board in attempting to follow through on these. Some time ago regulations were proposed with respect to the required list of dangerous ingredients and preparations; they were not approved and no further action has taken place. This requirement is mandated by statute and should be pursued by the Board. Promulgation and adoption of regulations concerning security of dangerous drugs has also not occurred although this statute is optional and not mandatory.

Investigations of statute violations per se are conducted by and are generally the responsibility of the administrative agency. The Board, on its own initiative, and considering budgetary constraints, has con-

ducted on-premise inspections of pharmaceutical establishments wherever and whenever possible. These inspections include drug security, sanitation, access of pharmacy within the building, display of license, and equipment and references available. Because of budgetary limitations, these inspections have not occurred as often as may be desirable and in some areas very seldom or not at all. Self-inspection forms may be mailed in lieu of a personal visit as a reminder to proprietors.

Statutory provisions are made with respect to registration of shopkeeper permits. Issuance of such permits would entail on-going certification and regulation of all food stores, convenience stores, and so on, which sell items such as aspirin and laxatives to the public. Control over these establishments would assist in such matters as recalling items at the request of the manufacturer but regulation in this area has been unworkable due to opposition on behalf of retail establishments. Without enforcement capabilities, the Board of Pharmacy has requested that provisions regarding shopkeepers be deleted from the statutes.

No report has been made to the Legislature on the condition of pharmacy in the State although the administrative agency has been requested by the Board to accomplish this.

Maintenance of registration records with supporting documents is an area of some concern. Administrative agency files are inadequate with respect to licensing of applicants and actions authorized by the Board. Additionally, there is evidence that one member is acting or approving action which should be documented as occurring after consideration by the Board as a whole. For example, temporary permits, retail pharmacy registrations, and hospital pharmacy registrations are routinely issued by one Board member with no record of other members' consideration or approval. Statutes authorizing these items address the Board, not individual members, and the Board should take action as a body at a duly conducted meeting in the performance of its duties. Also missing from

some files are: (1) renewal information, (2) records of approval for licensure following internship, (3) jurisprudence examinations and scores, (4) copies of initial licenses, (5) application information, and (6) records of licensure authorization. Every effort should be made by the Board and by the agency to maintain adequate records and documents. Organization of records, forms and examination information would better enable the Board to perform its functions, such as submission of an annual report.

Another problem in this area is that fees, examination materials, application forms and other information have frequently been initially sent to a member of the Board rather than to the administrative agency. This procedure should be discontinued and all materials pertaining to applicants and licensees should be forwarded to and maintained by the administrative agency. Again, review and action on files should only occur through consideration of the Board at a regular meeting.

The Board of Pharmacy has been incorrectly interpreting and applying statutes concerning temporary registration in some instances. AS 08.80.150 states, "The board shall issue a temporary license to an applicant applying for registration as a pharmacist under § 140 of this chapter upon written or oral examination..." § 140 provides for licensure by endorsement for an applicant certified by the National Board who meets the requirements of § 110(1) - (4). Section 110(5), requiring 1,500 hours of internship training of which 540 hours must be postgraduate, is excluded from the endorsement provision and from the temporary registration provision. The Board has, however, denied temporary registration to applicants who have not had 540 hours of postgraduate experience, against statutory provisions. Amendments have been recently proposed to change these particular statutes but until such time as a change is made, if it is made, the Board should act in compliance with law.

No continuing education requirements are in effect for members of this profession nor are any contemplated as a condition of relicensure. The Board has recently taken a position in favor of such requirements but against mandatory imposition based on the scarcity of available educational resources within the State. 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. 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 as a condition of license renewal. In view of the technical nature of the profession, changing procedures, new and increasing numbers of medicinal aids, and increasing technology in this field, it is recommended that the Board reconsider its position and adopt regulations requiring some form of continuing competency as a condition of relicensure. This may also be accomplished by statute with the Board outlining acceptable educational criteria. Any exceptions to such requirements should also be delineated by statute.

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

¹Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J., 1976, p. 35.