

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

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## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?
2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?
3. Do the benefits to the public clearly outweigh the potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

- A. The Board performs only minimal functions. The majority of their duties as outlined by AS 08.71.070 are handled by the Division of Occupational Licensing. Those duties that are executed by the Board include conducting meetings, reviewing applications for licensure, reviewing results of investigations and hearings, and determining proper disciplinary actions, and preparing and grading the State examination. These duties are not substantial enough to continue the Board. Conducting meetings is only necessary to the extent that it is easier to take care of business at a meeting as opposed to by mail. The bulk of the work on reviewing applications for licensure is done by the license examiner. He/she gathers the proper documentation and makes sure it is complete. The applications are then presented to the Board, who then votes whether to approve or disapprove licensure. This review tends to be cursory as the majority of it has already been done by the license examiner.

Reviewing results of investigations and hearings and determining proper disciplinary actions also tends to be cursory. This is due to the up-front work that is done by the investigations unit in Occupational Licensing and the hearing officers. The Board is kept informed of the status of complaints but are not involved in the investigations. The determination of proper disciplinary actions has usually been done by the hearing officer. It is then a formality for the Board to approve them.

The only duty requiring the expertise of the Board is the preparation and grading of the State examination. A license examiner does not have the background to formulate those exams. However, it is not necessary to give an exam because the potential physical harm caused by unlicensed dispensing opticians is minimal to non-existent, and the administering of an exam is not essential.

Consequently, there are not enough duties for the Board to justify its existence. The expenses to maintain a Board of 5 members to regulate approximately 60 dispensing opticians is not economical.

- B. An optician cannot cause great physical harm to an individual. Spectacles can cause double vision, distorted vision, and trouble with perception. Yet with these types of troubles, most patients will return to their optometrist or ophthalmologist for verification of the prescription. Improper fitting of contact lenses can result in physical harm. However, AS 08.71.200 requires a licensed physician (ophthalmologist) or optometrist to supervise the fitting of contact lenses and requires the patient to return to the prescribing physician or optometrist. In addition, AS 08.72.275 is adequate to protect the public from harm due to improperly hardened lenses because it requires each lens to be impact resistant under specified test conditions.
- C. Approximately 12 complaints were received by the Division of Occupational Licensing and 2 complaints were received by Consumer Protection over the last few years. Most of the complaints were instigated by licensed practitioners, not consumers, and related to unlicensed individuals dispensing. Of these, none resulted in physical harm. In one case, the Attorney General's Office refused to prosecute a violation because there was no evidence of physical harm.

- D. Several cases were noted where individuals were licensed without adequate documentation of statutory and regulatory requirements (See Recommendation No. 4). These individuals were potentially "unqualified," yet no evidence of physical harm has resulted from their practices.
- E. Only 20 out of the 49 other states deem it necessary to license dispensing opticians. The rest recognize that potential users can evaluate a dispensing optician's qualifications. Free enterprise will take care of those unlicensed practitioners who are not able to provide quality services and competitive prices. Consumers will not continue to patronize a business or individual if they are not satisfied.
- F. Contact lenses cost approximately \$500 and spectacles cost much less. Therefore, if for some reason the consumer received poor quality or useless contacts or spectacles, the loss to the consumer would not be severe. Also, if a consumer is dissatisfied, he/she has recourses available whether a business or individual is licensed or not. The Consumer Protection Unit as well as the court system are there to provide remedies for injured parties.

If the Board is not terminated and some control over the occupation is desired, the dispensing opticians should be combined with the Board of Optometry. The optometrists can and do dispense spectacles and contact lenses like the dispensing opticians as well as refracting eyes and diagnosing eye diseases. Thus, the Board of Optometry has experience in the same areas and is an appropriate Board with which to combine the Board of Dispensing Opticians.

However, in the event that the Board is reestablished, we recommend the following changes be made in their operations.

Recommendation No. 2

The Board of Dispensing Opticians and the Office of the Governor should work together to ensure that vacant Board positions are filled.

The Board is responsible for making recommendations to the Office of the Governor, Special Staff Assistant, Boards and Commissions for vacant Board positions. The Office of the Governor is then responsible for following up on those recommendations as well as those from any other interested parties.

There are conflicting stories from the staff of the Office of the Governor and the Board members regarding the lack of recommendations and follow up. There is some dispute as to whether any recommendations have been made in the past several years as there has been no acknowledgement of receipt by the Office of the Governor, except within the last month. Regardless of who has been at fault, there are still vacant Board positions to be filled.

This is particularly crucial since two of the five positions have members who are serving past the expiration dates of their terms. One member has served two years beyond his original term because no one has been appointed to fill his slot. This extension of terms defeats the purpose in setting a specified term length. In addition, the public member slot has been vacant since June 1982. The public member brings a different perspective. They help keep the purpose in mind which is to protect the public, not the economic interest of an occupational group. Therefore, it is crucial that the Board and the Office of the Governor work together to fill these three slots.

Recommendation No. 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, vague, or unduly restrictive. Examples of what we found are as follows:

- A. AS 08.71.130(d) and 12 AAC 30.050 set out continuing competency requirements. These requirements were based on biennial licensing. Since then, the profession has changed to quadrennial licensing without a compensating change in the continuing competency requirements.
- B. AS 08.71.150 allows the State to license by reciprocity. However, none of the 20 other states will grant Alaska these rights. And since licensure by credentials accomplishes the same purpose, this Statute is not necessary.
- C. AS 08.71.200 sets out dispensing opticians' constraints for issuing contact lenses. The language used is not specific enough and needs to be further defined as to what is meant by "contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist." The optometrists and dispensing opticians are currently debating changes to this Statute, and a caution should be noted. The Attorney General's Office has found a potential

antitrust issue with regards to where contact lens prescriptions can be filled. Any changes to this Statute should not be to make it more restrictive (i.e., requiring the prescriptions be filled at specified places instead of where the consumer chooses).

- D. The Board still has not received statutory authority to issue temporary permits. These temporary permits would allow a greater influx of qualified individuals to practice while awaiting formal Board approval.

AS 08.71.055 provides that the Board shall exercise general control over dispensing opticians. This cannot be done effectively without clear and concise statutes and regulations. And although the Board has had various obsolete or vague statutory and regulatory requirements repealed or amended, the Board should continue to review them for obsolescence, vagueness, and restrictiveness, and propose appropriate changes where necessary.

Recommendation No. 4

The Board should ensure that requirements are being met and adequately documented prior to licensure.

Statutory and regulatory requirements have been set up to ensure that competent individuals are being licensed. Documentation of these requirements is necessary to show that they have indeed been met.

During our examination, we reviewed several licensing files to determine if statutory and regulatory requirements were being met. Examples of what we found are as follows:

- A. Out of 12 tested, 4 did not have adequate documentation of training hours. Either the hours listed were not signed by the instructor on the application or there weren't enough hours (AS 08.71.110 and 12 AAC 30.070).
- B. For those 2 tested that were licensed by credentials, apprentice hours were not listed at all or those listed were not enough. Also there was no evidence that the applicants had ever taken the national exam either in Alaska or in another state (AS 08.71.145 and 12 AAC 30.100).
- C. One licensee's file did not have any indication of the Board's approval (AS 08.71.055).
- D. Much of the documentation consisted of photocopies and not originals. Photocopies are acceptable but they should be notarized or certified copies and not copies of notarized or certified originals since copies of notarized or certified originals are easy to falsify.

The Board has some flexibility in assuring the requirements are met. They can waive them in order to let a candidate take the exam. However, there should be no exceptions when licensing. All requirements must be met including those that may have been initially waived for the exam. The follow up on those items lacking is the Board's responsibility, and the Board should ensure requirements are being met and adequately documented prior to licensure.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

- I. The extent to which the board, commission, or program has operated in the public interest.
  - A. The Board has held meetings and exams at least two times a year.
  - B. The Board has passed regulations regarding apprentices, continuing competency, and licensure by credentials.
  - C. The Board has not had a public member since June 1982 (see Recommendation No. 2).
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
  - A. The Board has had two vacant Board positions for two years (see Recommendation No. 2).
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
  - A. The Board succeeded in having various obsolete or vague statutory requirements repealed or amended.
  - B. No statutory changes have been made since 1980.
- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
  - A. The Board has published public notices of all examinations, meetings, and regulation changes. The Board has not actively solicited comments on its effectiveness.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Board has published notices of its meetings in Anchorage, Fairbanks, and Juneau. However, no public participation appears to have resulted.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. According to the Division of Occupational Licensing's files, there have been approximately twelve investigation cases in the past four years. Two complaints have been filed with the Consumer Protection Unit and none with the Office of the Ombudsman.
- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.
- A. In the last six years, the number of currently licensed dispensing opticians has increased from 45 to 63.
- B. The Board has not established reciprocal agreements with other states or established statutory authority to issue temporary permits. They have established licensure by credentials which tries to address the same situation.
- VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.
- A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.
- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

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APPENDIX A

BOARD OF DISPENSING OPTICIANS  
REVENUES COMPARED WITH EXPENDITURES  
For the Fiscal Year Ended 1983  
(UNAUDITED)  
(Note 1)

Average Revenues (Note 2)	\$ 3,853
Expenditures (Note 3)	<u>4,258</u>
Excess of Expenditures over Revenues	<u>\$ (405)</u>

Schedule 1  
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Examination Fee	\$ 50	With application
Reexamination Fee	\$ 50	With application
Initial License Fee	\$ 50	Before licensure
Renewal Fee	\$ 200	Every four years
Late Renewal Fee	\$ 10	If over 60 days after renewal date

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average for the revenues collected from 1981 to the present in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by board members, such as travel, per diem, and direct administrative expenses of the Division of Occupational Licensing. They do not include indirect administrative expenses of the Division or expenditures for efforts of other departments such as the Department of Law, assisting the boards and the Division.

DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT

POULI D  
JUNEAU, ALASKA 99811  
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OFFICE OF THE COMMISSIONER

October 4, 1984

OCT 05 1984

LEGISLATIVE  
AUDIT

Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary audit report on the Board of Dispensing Opticians, covering the period July 1, 1981 to June 30, 1984.

The position we expressed in response to your interim letter has not changed. We, at that time, concluded the assessment of allowing the board to terminate was accurate and would not subject the public to harm. We concurred in part to your recommendations.

Having now reviewed your preliminary audit report, we continue to maintain our position. We do not know of any reason to change.

For clarification, we will respond to each of your recommendations.

Recommendation 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

We concur with your report and endorse allowing the board to terminate on June 30, 1985. Since establishment (Chapter 45 SLA 1973), the board has licensed 60 practitioners.

We would also suggest the licensing functions by the Division of Occupational Licensing should also terminate. Citizens have other means of redress for harm, and the practitioners would still be required to have a State business license from the Department of Revenue.

(?)

Recommendation 2

The Board of Dispensing Opticians and the Office of the Governor should work together to ensure that vacant board positions are filled. Currently, the Office of the Governor is making efforts to increase communication with the boards. The staff has solicited from boards, professional associations and the general public, candidates for board appointments. Vacancy lists are published in the Administrative Journal.

We would not endorse appointing a person to a board when we are suggesting termination of the function. Although the board has not had its full membership, licenses have been issued.

Recommendation 3

The board should review existing statutes and regulations and seek appropriate revisions where necessary.

We concur with your assessment in part. The board has made efforts to change regulations and, in doing so, has developed a better working relationship with the Board of Optometry in subjects of mutual consideration.

We disagree that the board is responsible for statutes that are unnecessary. Their input is necessary, however, they have no control over forcing repeal.

Our position on temporary permits remains unchanged. We disagree that a temporary permit allows for a greater influx of qualified practitioners. Applying for licensure should be a scheduled pursuit, not when an applicant wants immediate licensure by a different set of standards. To protect the public, verification of all documentation should be made. This does take time.

Recommendation 4

The Board should ensure that requirements are being met and adequately documented prior to licensure.

We concur in this recommendation and, if the board is continued, will work with them to ensure your suggestions and the laws are followed. Our position, expressed in response to your interim letter, is still accurate.

Mr. Gerald L. Wilkerson

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October 4, 1984

Be assured your recommendations will be endorsed to the board pending the determination of the legislative committee. We appreciate your evaluation and thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard A. Lyon', with a long horizontal stroke extending to the right.

Richard A. Lyon  
Commissioner

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- III. WHAT THE BOARD HAS DONE SINCE THE 1978  
RULING - SUMMARY OF MINUTES OF MEETINGS
  
- IV. 1981 - 1984 LEGISLATIVE AUDIT AND RESPONSE  
FROM OPTICIANS TO THAT AUDIT
  
- V. GOALS AND PLANS OF THE BOARD OF DISPENSING  
OPTICIANS

III. WHAT THE BOARD OF DISPENSING OPTICIANS HAS ACCOMPLISHED  
SINCE THE LAST SUNSET REVIEW IN 1978

(Meeting Minutes Summarized 1980-1984)

<u>Date</u>	<u>Summary of Meeting Minutes</u>
May 22, 1980	<ol style="list-style-type: none"><li>1. Board agreed to recontact those states interested in reciprocity.</li><li>2. The Board reviewed regulation regarding computation of continuing education or competence hours and Board accepted regulations, to be added to those already in existence regarding continuing competence.</li><li>3. The Board determined that one of the objectives or goals would be to promulgate regulations to comply with the new Practice Act. The Board resolved to add to the application form for the opticians test that "any exam candidate has 30 days upon receipt of exam scores to register with the Board any discrepancies regarding the scores.</li></ol>
September 22, 1980	<ol style="list-style-type: none"><li>1. Board discussed that they had not received any response from other states to date regarding reciprocity. It was advised that Alaska's reciprocity agreement with Arizona was to become null and void due to a clause in Arizona's Practice Act requiring an optician to be licensed in both contact lens and spectacles due to recent legislation in Arizona.</li><li>2. Letter was to be written to Optician's Association of America regarding Board and licensing status of Opticians in Alaska, as a result of Sunset. Other states were to be notified that Alaska Board of Dispensing Opticians was still in existence, and recommended that notification be written in the same letter to Optician's Association of America.</li><li>3. Board approved four year renewal period with recommendation and approval that continuing competency hours be increased to 30 hours. (Because of a foul up last legislative session, this was not accomplished)</li></ol>

4. Board was informed Division was seeking alternatives in speeding litigation process and in considering taking cases before Board for action and/or direction, rather than through attorney general office. Board expressed approval and support for possible alternatives.
5. The Board stated all exam applications should be sent to entire Board for approval prior to being allowed to sit for the exam.
6. Motion was made and carried to establish new Board policy requiring all apprentices in Alaska be registered with the State as of September 22, 1980, and all examination applicants must be registered prior to consideration to approval to sit the exams.

Board requested that application for apprentice registration be assigned to all licensed dispensing opticians along with memo advising of apprenticeship regulation policy and copy of new Practice Act.

7. Chairman was to compose three new practical exams for spectacles and another member of the Board was to compose new exam for contact lenses. The exams were to rotate each exam date.

February 9, 1981

1. No new information to report on securing reciprocal rights with other states. Chairman indicated most states interested in establishing reciprocity, but were waiting to see results of amendments to Alaska Practice Act before further consideration of establishing reciprocity.
2. Due to lack of cooperation from Attorney General's office in processing complaints, Chairman asked each Board member to write letters to Harry Treager, Director of Division of Occupational Licensing, to request assistance in seeking Attorney General's cooperation. Through discussion, it was mentioned that the Board was being blamed through Sunset Review for lack of attention in area of investigations, when in fact, problem was lack of cooperation by Attorney General's office. Decided one letter should be written on behalf of the Board and signed by the Chairman.

3. Board reviewed reports regarding advertising written by Federal Trade Commission. Since Alaska Statutes already contained statutory coverage of misleading advertising, no further action needed.
4. Board reviewed list of apprentices registered with the State. On bottom of application form for apprentices, space to be put for signature indicating information contained is true and signature affixed testifies to validity or should be data be false, charges of fraud will be filed.
5. Goals and objectives for FY 82 to be held for discussion at next Board meeting.
6. Discussion held about possibility of holding meetings and exams in other areas of the state.
7. Names to be submitted to Governor's office on behalf of Alaska Dispensing Opticians Association by April 1 for replacements on Board in June.

May 13, 1981

1. Review and executive session for investigators report.
2. New Chairman elected, Larry Harper.
3. Discussion on reciprocity with other states. Was suggested that other states not be contacted until amendments to Alaska Statutes were adopted. All correspondence in researching to establish reciprocity to be sent to licensing examiner for follow up.
4. New Chairman, Larry Harper, advised he would write letter to various periodicals to solicit establishing reciprocity with Alaska.
5. Discussion of goals and objectives -
  - a. Establish reciprocity by seeking reciprocal rights with other states.
  - b. Pass new statutes and regulations changing number of required continuing education hours to accommodate four year renewal. (Introduce and support amendments at next legislative session).

6. Recommendations to Division of Occupational Licensing for FY 83.
  - a. Request funding for at least 3 meetings and examinations.
  - b. One out of state travel for one Board member to attend Optician's Association of America Convention.
7. Board agreed to hold examination of specified national testing date as recommended by Opticians Association of America; however, Board agreed to continue to administer other "special" examinations on different dates, in order to accommodate all people interested in optician profession.
8. Board agreed to accept all seminars offered by Optifair, Inc., as continuing education credits.
9. Board reviewed license renewal forms.
10. Recommendation to be made to Governor's office requesting that new appointee hold a dual license in contacts and spectacles to avoid problem with having to administer contact lens examination, if Larry Harper (only member of Board in contact lens category) not able to attend.
11. Chairman asked licensing examiner when statute changes regarding number of continuing competency hours for renewal were going to be submitted. Also expressed concern about possibility of legislative audit criticizing Board for not establishing reciprocity when other states are waiting the results of amendments before finalizing reciprocal rights.

October 16, 1981

1. Executive session on report from Investigator.
2. Discussion regarding possibility of purchasing equipment to administer state practical exam. Harper to compose itemized list of necessary equipment and costs. It was resolved that formal request be made to Division of Occupational Licensing for purchase of equipment.

3. Discussion on particular case of continuing education, where continuing education was not acceptable.
4. Discussion was held regarding reciprocity. Licensing examiner explained words reciprocal rights prohibited Board from establishing reciprocity with other states, since reciprocal rights implies agreement from both parties involved. It was resolved the discussion on reciprocity be tabled until Board is able to review licensing requirements of all states to see which states require equal or greater requirements than Alaska. Harper made suggestion that Board seek to change reciprocity requirement and replace with licensing by credentials.
5. Board adapted request of licensing examiner - "applicants who make application to sit for exams and state on application that they have completed 6,000 hours as practicing optician or apprentice be allowed to sit upon approval of Board, but also required to submit proof of 6,000 hours before exam results will be released.
6. Board requested licensing examiner evaluate fee structure regarding contacts and spectacles.
7. Concern expressed by Board on not having member replacements on Board. Why isn't Governor appointing people?
8. Board resolved not to schedule examination of less than 3 applicants unless otherwise approved by the board.

February 19, 1932

1. It was resolved to change part of last meetings minutes. and resolved to hold one exam a year (after licensing examiner brought to the attention of the Board a problem regarding this resolution), even if there is only one applicant, any additional examinations must have three or more applicants in order to be held.
2. Licensing examiner made clear that \$200 renewal fee for licensees with license in either or both categories of spectacle or contact lenses.

3. Licensing examiner made it clear to the Board that if any member receives a complaint, it should be referred to the investigation unit immediately and that the Board member and Board should stay out of any further involvement.
4. Harper suggested that Board should compile an information packet to be distributed to all licensees which should include specific guidelines of acceptable documents for evidence of continuing education. It was resolved to design and provide a continuing education form that would be accepted as documentation for evidence of continuing education. Form should include statements stating information contained is true and is being submitted under penalties of perjury. If the form is not used, only a document that is similar which contains the necessary information will be acceptable.
5. Again there was discussion on reciprocity; licensing examiner shared with Board study compiled from other states on issue of reciprocity.
6. There seemed to be some conflicting statutes regarding "reciprocity" and "credentials". Licensing examiner advised that although no reciprocity had been established with another state, Board should still accept applicants for licensing by credentials.
7. Schooling vs. a total of 6,000 hours, the Board resolved that they would accept formal full time education in the field of optics at a rate of 2,000 hours per college year, or fraction thereof, in lieu of on-the-job training toward fulfilling the requirement of 6,000 hours for the exam.
8. Credentials - licensing examiner suggested applicant for licensure by credentials be required to submit a verification of licensure form to be completed by the applicant's state of licensure, verification of apprentice hours, or as a practicing optician, and official school transcripts (if applicable). Board agreed with licensing examiner suggestion and asked that she seek proper wording from other Board statutes and submit to be put into regulations.

9. Discussion on investigations presented by Chief Investigator.
10. Apprentices - discussion held regarding establishing of requirements for practice of dispensing optician apprentices. Board to develop guidelines of what an apprentice should know within apprenticeship time frame in preparation for examinations.
11. Board endorsed program of Optifair East granting approval of all courses to be considered continuing education.
12. New exams to be developed - three comprehensive spectacle examinations to be administered on rotating basis and a new contact lens exam.
13. Harper brought book listing equipment available, which opticians had requested from the State. Harper was to compile list of equipment needed with costs of each item and submit to division for approval.
14. Discussion on continuing education courses and number of hours required for relicensure.
15. Changes under continuing education include one college credit equal to one continuing education credit up to a maximum of 7.5 hours directly related to optics or anatomy and/or physiology of the eye. Harper asked changes to be submitted to regulation specialist for redrafting and circulation as soon as possible.
16. Board decided on contents of information package:
  - \* Copy of current statute books
  - \* Specifics regarding continuing education
  - \* Letter regarding apprenticeship
  - \* The underneath requirement to be registered by employer
  - \* Reminder of lapsed license
  - \* Form for reporting continuing education hours

17. Continuing education reporting form, Board agreed that it would contain the following information:

- a. Name of course
- b. Time and date of course
- c. Number of hours
- d. Sponsor of course and instructor (printed and signed)
- e. Number of students in attendance
- f. Name and address of students

June 17, 1982

1. Goals and objectives for FY 83 were reviewed and accepted:
  - a. Establish guidelines for continuing education requirements through regulations.
  - b. Continue ongoing review of statutes and regulations by striving always for clarity and simplicity.
  - c. Seek to get all opticians properly licensed by providing information packet.
  - d. Establish better communication between the Board and the consumer by contributing to the updated news letter and increase public awareness.
2. 1982 Goals and objectives were reviewed and progress discussed.
3. Discussion of annual performance report and budget recommendation section. Report to be compiled in budget recommendation and consist of funding to hold a meeting in Juneau, Fairbanks and Anchorage, funding from newspaper advertisements, and telephone calls.
4. Discussion on information packet and items to be included. Board requested that packet be sent to each currently licensed dispensing optician, optometrist and ophthalmologist (NOTE THAT STATUTES REQUIRE ALL THREE OF THESE TO REGISTER THEIR APPRENTICES.)

5. Board was advised of staff shortage in investigation section at present time. Informed board no complaints of investigation reports to be presented.
6. Harper advised investigator of a situation presently in existence in which statutes require that Optical Shop which employes dispensing opticians have license posted; however, optometrists and ophthalmologists are refusing to have these licenses posted.

Board to compile list of the practicing people with lapsed licenses and those people who are not posting their licenses.

7. Discussion held on licensees with lapsed licenses and resolved that if licenses lapse for twelve months or more, applicant must be reexamined before renewed license will be issued.
8. Board requested letter be written to all licensees whose licenses lapsed in 1981 notifying them of Board's resolution. Also request that the statement be made advising licensee cannot revert back to apprentice status on lapsed license.
9. Board was advised that they did not have authority to adopt regulations to accept schooling in lieu of 6,000 hours of apprentice training to qualify for exam. Suggested Board seek a statute change present at next legislative session.
10. Board resolved that Board submit for statute change to accept formal fulltime education in field of optics at rate of 2,000 hours per college year or fraction thereof to be applied to 6,000 hours required for examination.
11. Board also resolved to submit for statute change to change number of continuing education hours required for renewal to 30 hours.
12. Board passed various changes in regulations, including that if license has lapsed, licensee will be required to be reexamined prior to reinstatement.

13. Board members will be submitting names to Governor's office for consideration.
14. Board also recommended that public member, Mr. Harry Lang, be reappointed.

February 8, 1983

1. The 1983 goals and objectives were reviewed and progress discussed.
2. Applications brought before Board and reviewed and approved.
3. Discussion on license renewal where forged continuing education forms believed existed.
4. Board requested help and comments from regulation specialist in regarding definition of supervision.

May 10, 1983

1. Review of 1983 goals and objectives.
2. Review of applications.
3. Discussion on information package.
4. Some confusion existed in the Board - the 15 hours of continuing competence and optical dispensing had not been changed to the 30 hours. Apparently there was not a statute change.
5. Board resolved that there was a need for tighter control on continuing education forms. There must be an instructor signature. Receipts are not acceptable if they do not have the instructors signature.
6. Added to definition section of statutes, definition of "direct supervision" means physical presence of licensed supervisor while dispensing optician tasks are being performed.
7. Board resolved to add to statutes that an apprentice must be registered with the state on an approved form at the onset of training. Failure to do so results in forfeiture of any hours acquired prior to registration, any hours acquired outside of State of Alaska must be submitted and verified at onset of registration, and any apprentice change in instructors must notify state of change and the new instructor and license number.

August 5, 1983

8. Resolved by Board that applicant failing either section of test three times must retake entire test.
1. Discussion of 1983 goals and objectives.
2. New goal of seeing continued communication line with other state boards'. Board requested that licensing examiner write different Board requesting copy of laws for their files and easy reference.
3. Review of annual report.
4. Review of budget request.
5. Discussion on new administration's views.
6. Discussion on possibility of reviewing ETS's standardized test. (Educational Testing Service)
7. Board initiated discussion regarding obtaining control with investigating matters. Revocation of license will need hearings and should still be directed to be investigators, that was recommended by licensing person.
8. Goals and objectives discussed for 1984.
  - a. Continued communication lines with other state boards in regards to regulations of dispensing opticians.
  - b. Arrange meeting with representatives from educational testing service regarding national exam given.
  - c. Review and compile several state practical tests for dispensing opticians.
  - d. Continue review of regs and statutes.
9. Statistical report from examiner accepted.
10. Board indicated narrative report should include regulation for direct supervision and regulations for apprentices.

11. Board indicated that public should be aware that they can attend meetings to bring forth consumer complaints. Also suggested to send Alaska Dispensing Optician Association public notice of meetings.
12. Review of applications.
13. Temporary permits were discussed. The main reason for looking into this would be that when someone comes in by credentials, they could be issued the permit until further information was received in the state in which they are licensed.
14. Report from Chairman, on Optician's Association of America, 11th annual convention in D.C.
15. Cases discussed in investigation report.
16. Recommended by Harper that National Academy of Opticianary Homestudy be copied for all Board members and copy kept in Juneau office.

COPY IS ATTACHED TO PROPOSE CHANGES IN REGULATIONS OF DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF DISPENSING OPTICIANS. SINCE LAST SUNSET, BOARD OF DISPENSING OPTICIANS HAS MADE NUMEROUS CHANGES AND HAS AMENDED AND ADOPTED REGULATIONS TO INSURE CONTINUANCE OF BOARD AND INTEGRITY OF PROFESSIONALISM OF OPTICIANS.

January 20, 1984

1. Reviewed 1984 goals and objectives and progress of goals and objectives.
  - a. Continue communication lines with other state boards in regard to regulations of dispensing opticians.
  - b. Arrange meeting with representatives from ETS regarding national exams.
  - c. Review and compile state practical tests for dispensing opticians. Discussion of categories of areas.
2. Continued review of regulations and statutes.

3. CONCERN WAS EXPRESSED ON LACK OF BOARD APPOINTMENTS. Filling vacancies should be done ASAP and Board has indicated they have indicated so to Governor's office.
4. Review of applicants.
5. Opticfair, Inc. sent list of classes that Alaska Board of Dispensing Opticians reviewed for approval of continuing education courses.
6. Discussions on investigations. Board reminded that Board does not have jurisdiction in unlicensed activity. Board indicated it would like to take more active stand in investigations and unlicensed activity.
7. Board resolved to add to the definition of contact lens prescription.
8. Board resolved to add to regulations for temporary permits - temporary permit shall issued under the following reason and shall not expire until next Board meeting and applicant is issued a license. An individual who applies for licensure by credentials and is awaiting Board approval providing his/her application is complete and in order shall receive a temporary permit.
9. Criteria for instructors to use for teaching apprentice and whether there should be regulation written for this was tabled until next meeting so Board could get feel from Association regarding criteria.
10. Information package was ready to go upon receipt of printing of continuing education forms. Decided not to hold package until new regulations approved.
11. Board resolved to adopt proposed regulations and changes as written from previous meeting.
12. Executive session on investigations.

INTRODUCTION

BACKGROUND INFORMATION

- I. WHEN IS LICENSURE NECESSARY
- II. REVIEW OF 1978 AUDIT AND RESPONSE OF BOARD TO 1978 RULINGS
- III. WHAT THE BOARD HAS DONE SINCE THE 1978 RULING - SUMMARY OF MINUTES OF MEETINGS
- IV. 1981 - 1984 LEGISLATIVE AUDIT AND RESPONSE FROM OPTICIANS TO THAT AUDIT
- V. GOALS AND PLANS OF THE BOARD OF DISPENSING OPTICIANS
- VI. STATUTE CHANGES THE BOARD FEELS ARE NECESSARY DURING 1985 LEGISLATIVE SESSION

ALASKA OPTICIANS ASSOCIATION  
BOARD OF DISPENSING OPTICIANS

BACKGROUND INFORMATION

GENERAL

BOARD: Board of Dispensing Opticians - Alaska

ESTABLISHED: 1973

LEGAL CITATION: Dispensing Optician Statutes AS 08.71.010 -  
AS 08.71.240

Dispensing Opticians Regulations 12 AAC 30.010 -  
12 AAC 30.910

TYPE STATUTE: "A person may not act as a dispensing optician  
in the state unless the person is licensed  
under this chapter".

LAST MAJOR REWRITE: Consistently amended since 1978

BOARD COMPOSITION: 5 members: 4 licensed opticians and 1 member at  
large. Members appointed by Governor from list  
of names submitted by Board of Dispensing  
Opticians of Alaska.

TERM: Members serve staggered terms of 4 years which  
shall be set so that they do not expire at the  
same time. Vacancies on the Board are filled  
for the unexpired term. A person who has  
served 2 successive complete terms may not be  
reappointed until 4 years from the expiration  
of the second term.

BOARD MEMBERS AND  
OFFICERS:

1. Robin Issbel  
Optical Dispensers of Alaska  
333 West 4th Avenue  
Anchorage, Alaska 99501
2. Ed Brochelsby  
North Pole Optical  
Box 55309  
#2 Santa Claus Lane  
North Pole, Alaska 99705
3. "Member at Large" - Vacant

4. William Reedy  
Frontier Optical  
Mile 14, Old Glenn Highway  
Eagle River, Alaska 99645

5. Sharla Thomas  
Lyon Optical  
Anchorage, Alaska 99508

MEETINGS: 2 meetings this calendar year, 3 meetings 1983  
calendar year.

REPORTS: Sent by Board to Office of Occupational  
Licensing, Department of Commerce and Economic  
Development. Annual reports filed with the  
Office of Occupational Licensing, Department of  
Commerce and Economic Development.

OVERSIGHT AGENCIES: Legislative oversight agency

LICENSING PROFILE:

A license shall be issued for (1) the dispensing of contact lenses  
or (2) the dispensing of other lenses, eyeglasses, spectacles,  
artificial eyes, and their purchases or both. The Board shall, by  
endorsement on the license designate for which aspect of dispensing  
opticianry, the license is issued.

<u>FISCAL YEARS</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
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QUALIFYING EXAMINATIONS:

Applications for Examinations

Examination Administered

Failure Rate (%)

LICENSES ISSUED BY EXAMINATION:

LICENSES ISSUED BY CREDENTIALS:

LICENSES RENEWED:

TOTAL NUMBER OF LICENSED  
PRACTITIONERS:

LICENSURE  
QUALIFICATIONS

A person is entitled to take the exam who has either completed at least 6,000 hours of training as an apprentice, or has been engaged at least 6,000 hours as a practicing optician in good standing in the state, territory, district or possession of the United States, and has paid the required examination fee.

Board will attempt to get passed in the 1985 session that formal fulltime education in the field of optics at a rate of 2,000 hours per college year or a fraction thereof, is to be applied to the 6,000 hours required for examination.

Licensure by credentials - a person with a valid license that is a dispensing optician from another state shall be issued a license without examination for those professional areas in which the person is licensed upon payment of any fee and documentation which the Board may require.

DURATION OF  
REGISTRATION:

Renewal is required every four years for each licensed optician. Registered apprentices are registered for a six year period, and must then take the opticians exam.

TYPE AND FREQUENCY  
OF THE EXAM:

Exam is held at least once a year, for any number of people; after the exam is held once a year, it is held any number of times a year when there are at least 3 people waiting to take the exam.

There are two parts of the exam:

1. For Contact Lenses

National Contact Lense Registry Exam and Practical Exam prepared by the Board.

2. Spectacles

National Opticianry Competency Exam and Practical Exam prepared by the Board

APPRENTICES:

A person may be employed by a licensed dispensing optician as an apprentice and an apprentice shall be designated as such in the records of the Board at the request of a licensed physician, optometrist or dispensing optician, and shall be in training under the supervision of the physician, optometrist, or dispensing optician. No apprentice may be employed longer than 6 years. No more than 2 apprentices may be under the supervision of one licensed dispensing optician.

CLASSIFICATIONS:

Dispensing opticians (license), apprenticeship registration.

AVENUES:

Exam, licensing by credentials, reciprocity.

RENEWAL  
REQUIREMENTS:

Licensed opticians are required to take courses or submit to the Board evidence of 30 hours of continuing competence and optical dispensing for the four year period. (This will be attempted to be increased to 60 hours through statute change in the 1985 legislative session.)

Maximum credit hours allowed are:

1. Six credit hours in a specialty for which a licensee is not presently licensed.
2. Six credit hours of business management.
3. 1/4 hour credit from a college or university course directly related to optics, anatomy, or physiology of the eye, constitutes 10 hours of continuing competency.
4. One semester hour or academic credit from a college or university related to optics, anatomy, or physiology, constitutes 15 hours of continuing competency.

PROHIBITED CONDUCT:

Board may revoke or suspend the license when the Board finds, after hearing that the license has been secured through deceit; the optician has engaged in deceit, fraud, or intentional misrepresentation; the optician has advertised professional services in a false or misleading manner; the optician has been convicted of a crime which affects the licensee's ability to continue to practice competently and safely;

the optician intentionally or negligently engaged or permitted in the performance of patient care by persons under the licensee's supervision which does not conform to minimum professional standards regardless of whether actual injury occurred; the optician continued to practice after becoming unfit due to professional incompetence, addiction or severe dependence on alcohol or other drugs, or physical or mental disability; the optician engaged in lewd or immoral conduct in connection with the delivery of professional service to patients; the optician participated in the division, assignment, rebate, or refund of fees to a physician or optometrist in consideration of patient referrals.

COMPLAINT  
PROCEDURE:

If Board receives written complaint, the complaint goes directly to the Office of Occupational Licensing. Some complaints are received directly to the OL. Board has been told that they are not to participate in complaint procedures or in investigation procedures. Investigator from OL makes report to Board after investigation, and decision is reached on what to do with the questioned person.

FINANCIAL:

FEE:

Examination Fee - \$50.00

Initial Dispensing Optician License Fee - \$50.00

Renewal Fee (due every 4 years) - \$200.00

I. DEFINITION ON WHEN LICENSURE IS NECESSARY  
REASONS FOR LICENSURE

1. Licensure is necessary when a group of people or profession can pose a serious risk to safety, economic well being, or health. The question that needs to be asked is will the absense of regulation significantly harm or endanger the public health, safety or welfare?
2. Licensure is necessary when potential users cannot pass judgement or evaluate the qualifications of the group involved. The question that needs to be asked is can the public adequately evaluate the competency of people if they are not licensed?
3. Licensure is necessary when the benefits to the public outweigh harmful effects. The question are all facets of the regulatory process designed solely for the purpose, and have as their primary effect, protection of the public?

Opticians can pose a serious risk to safety, health and economic wellbeing through the incorrect fitting of contact lenses or spectacles. The general public cannot evaluate the qualifications of the people involved unless they are licensed. The benefits to the public definitely outweigh the harmful effects of having unlicensed people serve as opticians.

Board establishes minimum educational requirements and assurances that people licensed are qualified. Those assurances are provided by active investigation of complaints and revocation or suspension of licenses (i.e., license just suspended of unqualified individual).

## REASONS FOR LICENSURE

1. Statutory recognition at the state level is needed to help insure survival of independent dispensing opticians' competitive element in the nation's eye care delivery system for the long term best interests of the consumer. By openly competing among themselves, as well as with ophthalmologists and optometrists who also dispense eyeglasses and contact lenses, opticians perform an extremely important function in the market place for corrective eyewear. Their presence in the market place adds competitive factors and incentives for both quality and cost control that directly benefit wearers of prescription eyeglasses and contact lenses.
2. Equally important from consumer's point of view is the need for a public recognizable means of insuring that competing providers have necessary qualifications to dispense eyeglasses and/or contact lenses safely and effectively.
3. State licensing serves as a vital function of assuring consumers that providers have prerequisite knowledge and skill and offer additional protection by establishing formal procedures for redress of grievances and resolution of complaints by optical products and dispensing services.
4. Alaskans are entitled to reasonable assurances that dispensing opticians will be qualified by training and/or experience to fill prescriptions for corrective eyewear properly and efficiently.
5. Ophthalmologists and optometrists who release their prescriptions are entitled to assurances that the finished pair of eyeglasses, as well contact lenses dispensed by opticians will obtain the prescribed optical correction.
6. Qualified dispensing opticians will be protected from unwarranted interference from optometry and undo infringement by persons who lack the qualifications needed to dispense safely and effectively.

Sunset Legislation establishes a fixed timetable for abolishing certain boards and commissions unless the legislature specifically authorizes their continued existence. Shortly before the Sunset is scheduled to go down on affected bodies, the Board must demonstrate to the Legislature that a need for the type of regulation they provide continues to exist and that they are operating efficiently, effectively, openly and in the public interests.

Since its inception, the Opticians Association of America and the Opticians Association Board of Alaska have been working to strengthen the qualifications of Ophthalmic dispensers as well as to obtain that measure of legal recognition needed to protect dispensers from undue interference and infringements in states that do not license opticians.

1. The OAA and the Opticians Board of Alaska believes that dispensers of eyeglasses and contact lenses should be required to meet uniform, national standards of competence and that dispensers who do so should be recognized at the National and State levels. OAA has already completed detailed task analysis study designed to identify and describe the specific tasks that together constitute the optical dispensing function.
2. OAA has assembled model licensing to assist state associations that plan to introduce licensing legislation.

IV. EVALUATION OF 1984 PERFORMANCE REPORT  
ON THE BOARD OF DISPENSING OPTICIANS  
AND OPTICIANS REPLY TO THE AUDIT STATEMENTS

(July 1, 1981 to June 30, 1984)

PURPOSE AND SCOPE OF THE REPORT

Purpose was to review the activities of the Board of Dispensing Opticians for the past three fiscal years to determine if the Board has been operating in an efficient and effective manner.

Major areas of examination were the licensing, examination, administration, complaint and affirmative action functions of the Board.

ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established by the 1973 session laws of Alaska.

The Board is organized under the Department of Commerce and Economic Development, the Division of Occupational Licensing (OL). OL, through the statutes, provides the Board with licensing and investigative support.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations necessary and desirable to enforce statutes.
3. Revoking, annulling or suspending licenses in accordance with the Administrative Procedures Act when a person has violated Dispensing Opticians Statutes or regulations.

REPORT CONCLUSION

Primary purpose of a regulatory board with a licensing function is to protect the public. Report first evaluated if licensing was needed:

1. Does the unlicensed practice pose a serious risk to the consumer's life, health, safety, or economic wellbeing?
2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in availability of practitioners, higher cost of services, and restriction on optimum utilization of personnel?

The report indicated that they felt the Board performed only minimum functions. Those duties that are executed by the Board include conducting meetings, reviewing applications for licensure, reviewing results of investigations and hearings and determining proper disciplinary actions. The report stated that these duties were not substantial enough to continue the Board.

The report indicated that the bulk of the work on reviewing applications for licensure was done by the licensing examiner. He or she gather the proper information and make sure that it is complete. The applications are then presented to the Board, who votes whether to approve or disapprove licensure.

Report indicates that reviewing results of investigations and determining disciplinary actions tends to be cursory. They indicated this was due to the up front work that was done by investigation units and occupational licensing and the hearing officers.

It was indicated that the only duty requiring the expertise of the Board was the preparation and grading of the state exam. The report even went so far as to say that it was not necessary to give an exam because the potential physical harm caused by an unlicensed dispensing optician is minimal to non-existent and the administration of any exam is not essential.

The report said that there were not enough duties for the Board to justify its existence. The report indicated that the expenses to maintain a board of five members to regulate 60 dispensing opticians is not economic.

DISPENSING OPTICIANS BOARDS REPLY

The Board has the following duties and powers:

To examine and issue licenses to applicants.

To renew licenses.

To hold hearings and order disciplinary sanctions against a person who violates this chapter.

To supply forms for applications licenses and other needed documents.

To keep a record of all proceedings open to the public including the name of each applicant.

To enforce the provisions of the Chapter and adopt or amend regulations necessary to make these provisions effective.

1. THE BOARD DISAGREES WITH THE REPORT'S FINDINGS

DURING THE TIME PERIOD OF THE REPORT, 1981 THROUGH 1984, THE BOARD INDICATED TO OL:

- A. THEY WOULD PREFER TO EXAMINE APPLICATIONS MORE THOROUGHLY THEMSELVES FOR THE SCHEDULED EXAM.
- B. THE BOARD INDICATED THAT THEY WANTED TO BECOME INVOLVED IN INVESTIGATIONS AND COMPLAINT PROCEDURES. BUT THE OL INDICATED TO THEM THAT THIS WAS NOT THEIR FUNCTION.
- C. AS CAN BE SEEN IN THE SUMMARY OF THE MINUTES ATTACHED, THE BOARD HAS WORKED TO MAINTAIN THE INTEGRITY AND PROFESSIONALISM OF OPTICIANRY.

THERE HAS BEEN AN ONGOING REVIEW OF STATE STATUTES AND REGULATIONS AND THE BOARD HAS ACTED TO MODIFY ANY IN CONFLICT AND TO STRIVE FOR CLARITY - INCLUDING INITIATING INCREASED CONTINUING EDUCATION/COMPETENCE HOURS, ENFORCING REGISTRATION OF APPRENTICES FOR BOTH OPTICIANS, BUT ALSO OPTOMETRISTS, OPTHOMOLOGISTS AND PHYSICIANS. (SEE COPY OF REGULATIONS ADOPTED SINCE 1978 INVOLVING CONTINUING EDUCATION, APPRENTICESHIP REGISTRATION AND DEFINITION)

- D. THE BOARD HAS, BY REVIEW OF ITS MINUTES, WORKED DILIGENTLY TO ESTABLISH RECIPROCITY WITH OTHER STATES.
- E. THE BOARD HAS REVIEWED AND MODIFIED THE STATE PRACTICAL TEST FOR DISPENSING OPTICIANS FOR BOTH THE SPECTACLE AND THE CONTACT LENS AREA.

- F. THE BOARD HAS RESOLVED TO ADD TO THE REGULATIONS A TEMPORARY PERMIT PORTION WHICH WOULD INDICATE THAT A TEMPORARY PERMIT WOULD BE ISSUED UNDER THE FOLLOWING REASON AND NOT EXPIRE UNTIL THE NEXT BOARD MEETING AND A NEW APPLICANT IS THEN ISSUED A LICENSE - AN INDIVIDUAL WHO APPLIES FOR LICENSURE BY CREDENTIALS AND IS AWAITING BOARD APPROVAL PROVIDING HIS OR HER APPLICATION IS COMPLETE AND IN ORDER, SHALL RECEIVE A TEMPORARY PERMIT.
- G. THE BOARD SOUGHT TO GET ALL OPTICIANS PROPERLY LICENSED BY PROVIDING AN INFORMATION PACKET TO ALL LICENSEES WHICH HAS BEEN DONE.
- H. THE BOARD HAS WORKED DILIGENTLY WITH THE INVESTIGATIVE UNIT OF OL TO EVALUATE OPTICIANS WHO ARE NOT PRACTICING IN A LAWFUL MANNER. (THE BOARD HAS REVOKED/SUSPENDED A LICENSE IN 12/84) HOWEVER, AGAIN, THE BOARD HAS ASKED TO BECOME MORE INVOLVED IN INVESTIGATIONS AND COMPLAINT PROCEDURES.

- 2. The report indicated that an optician cannot cause great physical harm to an individual.

It is indicated that improper fitting of contact lenses could result in physical harm, but, the report indicated that (because the patient must go back to the licensed physician or ophthalmologist, or optometrist to "check" the fitting of the contact lenses, and because the public was adequately protected from harm due to improperly hardened lenses because the statutes require each lens to be impact resistant under specified test conditions), no licensing is necessary.

The reported indicated that spectacles could cause double vision, distorted vision, and trouble with perception.

THE BOARD'S ANSWER TO THE SECOND REPORT FILING IS IN DISAGREEMENT WITH THAT FINDING.

THE BOARD FEELS THAT THE REASONS FOR INCENSURE ARE BASICALLY THREE:

- A. UNLICENSED OPTICIANS COULD CAUSE HARM AND RISK TO A CONSUMER'S LIFE, HEALTH, SAFETY, OR ECONOMIC WELL BEING.

OBVIOUSLY, AN IMPROPER FITTED CONTACT LENS CAN CAUSE CORNEA ABRASION AND DAMAGE THE VISION. SPECTACLES THAT ARE IMPROPERLY FITTED CAN CAUSE NAUSEA, BLURRING OF VISION, DIZZINESS, AND OTHER SYMPTOMS.

MANY OTHER STATES ALSO FEEL THE SAME WAY - FLORIDA FOUND THAT UNSKILLED AND INCOMPETENT OPTICIANS PRESENT A DANGER TO PUBLIC HEALTH AND SAFETY. THE LEGISLATURE FOUND, IN ADDITION, THAT IT WAS DIFFICULT FOR THE PUBLIC TO MAKE AN INFORMED CHOICE ABOUT OPTICIANS, AND THE CONSEQUENCES OF A WRONG CHOICE COULD ENDANGER HEALTH AND SAFETY.

- B. THE SECOND ARGUMENT FOR CONTINUING LICENSING IS THAT IT WAS DIFFICULT FOR THE PUBLIC TO MAKE AN INFORMED CHOICE.

AS THE CONNECTICUT LEGISLATURE INDICATED AFTER ITS SUNSET REVIEW, FINANCIAL OR PHYSICAL HARM COULD RESULT WITH UNLICENSED OPTICIANS AND IN ORDER TO PROTECT THE PUBLIC, THEY REQUIRE LICENSURE AND REGULATION OF INDIVIDUALS. CONNECTICUT ALSO RECOMMENDED THAT THE BOARD BE AUTHORIZED TO HEAR AND TO DECIDE APPEALS ON SUSPENSION, REVOCATION, OR DENIAL OF LICENSURE. THE ALASKA DISPENSING OPTICIANS BOARD ALSO WOULD SUGGEST THIS.

THE BOARD WOULD ALSO RECOMMEND THAT IT SHOULD RECEIVE AND SCREEN COMPLAINTS FOR HEARINGS AND IMPOSE DISCIPLINARY ACTION.

- C. The report indicated that twelve complaints were received by the Division of Occupational Licensing and two complaints by the Consumer Protection Agency. Most of the complaints were instigated by licensed practitioners and not the consumers, and none resulted in physical harm.

THE BOARD'S RESPONSE TO "C" ABOVE - REPORT FINDING - IN MANY CASES, IT IS THE BOARD'S OPINION, THAT COMPLAINTS HAVE NOT COME DIRECTLY TO THEM BECAUSE OF THE WAY THAT THE STATUTES AND REGULATIONS CURRENTLY EXIST. CONSUMERS WOULD CALL AND ARE TOLD TO CALL THE OFFICE OF OCCUPATIONAL LICENSING. WITH THE BOARD'S PROPOSED INVOLVEMENT IN COMPLAINTS AND INVESTIGATIONS, THIS, THE BOARD BELIEVES, WILL CHANGE.

- D. The report indicated cases where individuals were licensed without adequate documentation of statutory and regulatory requirements. It indicated that these individuals were potentially "unqualified" but, no evidence of physical harm has resulted from their practices.

THE BOARD'S RESPONSE TO FINDING "D" ABOVE WAS THE BOARD IS UNAWARE OF ANY INDIVIDUAL THAT THEY HAD OKAYED THAT HAD BEEN LICENSED WITHOUT ADEQUATE DOCUMENTATION. THE ONLY CASE THE BOARD IS AWARE OF WAS A RE-LICENSURE OKAYED TO AN UNQUALIFIED PERSON DIRECTLY BY THE DEPARTMENT. EVEN THE OLD AUDIT REPORT INDICATES THAT THE BULK OF THE WORK ON REVIEWING APPLICATIONS FOR LICENSURE IS DONE BY THE LICENSING EXAMINER, HE OR SHE GATHERS THE PROPER DOCUMENTATION AND MAKES SURE THAT IT IS COMPLETE. THIS IS THE BOARD'S ARGUMENT THAT THEY SHOULD TAKE MORE ACTION IN REVIEWING THE APPLICATIONS AND VERIFICATION THEREOF.

- E. The report indicated that contact lenses cost approximately \$500, spectacles less. It indicates that the cost to the consumer would not be severe economically.

THE BOARD'S REPLY TO FINDING NUMBER 5 IS THAT \$500 AND EVEN \$100 CAN BE VERY ECONOMICALLY DEVASTATING TO SOME FAMILIES.

THE BOARD TAKES EXCEPTION THAT THE FINDINGS INDICATED THAT THE EXISTENCE WAS "SUPERFLUOUS". MANY STATES RECOGNIZE THAT THE OPTICIAN CAN CAUSE HARM TO A PERSON, AND THAT THE PUBLIC CANNOT BE EXPECTED TO POSSESS THE KNOWLEDGE NEEDED TO PROPERLY EVALUATE THE QUALIFICATIONS WITHOUT LICENSURE. THE BOARD FEELS THAT THE BENEFITS TO THE PUBLIC CLEARLY OUTWEIGH THE POTENTIAL HARMFUL EFFECTS, AND ALSO ACT AS A COMPETITIVE EDGE IN REDUCING HIGHER COSTS.

THE BOARD DISAGREES WITH THE RECOMMENDATION THAT THEY BE ALLOWED TO TERMINATE ON JUNE 1985.

#### FINDINGS AND RECOMMENDATIONS

##### Recommendation No. 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

1. Recommendation No. 1 and the Board's response is covered in the FINDING section of this summary. Under Recommendation No. 1, the audit indicated that if the Board was not terminated and some control is desired, that the dispensing opticians should be combined with the Board of Optometry.

THE BOARD'S RESPONSE TO BEING COMBINED WITH THE BOARD OF OPTOMETRY IS THAT IT IS AN ILLOGICAL STEP. OPTOMETRISTS DO NOT NEED TO PASS THE SAME EXAMS OR DO NOT REQUIRE THE SAME REVIEW AS OPTICIANS, AND "COMBINING THE BOARD OF OPTOMETRY AND THE DISPENSING OPTICIANS" WOULD RESULT IN BASICALLY TWO BOARDS IN EXISTENCE, BUT ONLY BEING CALLED ONE BOARD. THERE IS ADEQUATE AND SUBSTANTIAL PROOF THAT MANY OF THE OPTOMETRISTS WOULD PREFER THAT OPTICIANS NOT BE ALLOWED TO FIT CONTACT LENSES. THE BOARD OF DISPENSING OPTICIANS FEEL THAT BY COMBINING THE BOARD OF DISPENSING OPTICIANS WITH THAT OF THE BOARD OF OPTOMETRISTS, AUTONOMY AND THEIR RIGHT GAINED THROUGH EDUCATION, AND EXPERIENCE TO FIT CONTACT LENSES WILL BE IN JEOPARDY. IN ADDITION, THE OPTICIANS DO NOT FEEL COMFORTABLE COMBINING BOARDS BECAUSE OF SOME ANTI-TRUST "VIOLATIONS" IN THE OPTOMETRY STATUTES, WHICH THE OPTOMETRISTS ARE NOT WORKING TO HAVE REVERSED. THE BOARD STRONGLY FEELS THAT THERE ARE TWO QUESTIONS INVOLVED. (SEE FINDINGS AND RECOMMENDATIONS - OPTOMETRISTS AUDIT 1983.)

- a. SHOULD THE BOARD BE ALLOWED TO CONTINUE TO EXIST. YES, ACCORDING TO ALL OF THE TERMS OF LICENSURE - THEY COULD HARM THE PUBLIC, THE PUBLIC DOES NOT POSSESS KNOWLEDGE TO EVALUATE QUALIFICATIONS OF THOSE OFFERING SERVICE, AND THE BENEFITS TO THE PUBLIC OUTWEIGH THE HARMFUL EFFECTS.

- b. IF THEY ARE ALLOWED TO EXIST, SHOULD THEY BE COMBINED WITH THE OPTOMETRIC BOARD. THE BOARD FEELS ABSOLUTELY NOT. THEIR AUTONOMY STRENGTHENS THE BENEFITS TO THE PUBLIC, BY ALLOWING THE PUBLIC A CHOICE OF WHO TO GO TO TO HAVE THEIR SPECTACLES OR CONTACT LENSES FIT, AND OPTICIANS OFFER COMPETITIVE ALTERNATIVES TO HAVING PRESCRIPTIONS FILLED BY OPTOMETRISTS OR OPTHOMOLOGISTS.

### Recommendation No. 2

The Board of Dispensing Opticians and the Office of the Governor should work together to insure that vacant positions are filled.

The report indicates that there are conflicting stories from the Office of the Governor and the Board Members regarding the lack of recommendations for Board appointments. It indicates that there is some dispute as to whether any recommendations have been made in the past, as there has been no acknowledgement of receipt by the Office of the Governor.

THE BOARD'S RESPONSE IS THAT THEY HAD REQUESTED, INITIALLY IN GOVERNOR SHEFFIELD'S FIRST TERM, TO HAVE BOARD POSITIONS FILLED. THE GOVERNOR'S OFFICE HAD TOLD THEM "GIVE US A YEAR TO GET THINGS IN ORDER AND THEN WE WILL FILL THEM". THIS NEVER HAPPENED, EVEN WITH NUMEROUS RECOMMENDATIONS SENT IN. IT IS INTERESTING TO NOTE THAT NOW TWO NEW APPOINTMENTS HAVE BEEN MADE, THE BOARD INTERPRETS THIS AS AN UNSTATED RECOMMENDATION FOR CONTINUATION OF THE BOARD. RICHARD LYON, FORMER COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT, INDICATED "WE WOULD NOT ENDORSE APPOINTING A PERSON TO A BOARD WHEN WE ARE SUGGESTING TERMINATION OF THE FUNCTION".

### Recommendation . 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

The report indicates that during examination, they reviewed the Board's and regulations and found the following:

- a. Competency requirements were based on bi-annual licensing and since since the profession has changed to quadrannal licensing without a compensating change in the continuing competency requirements.

THE BOARD'S RESPONSE IS THAT THEY HAD TRIED LAST LEGISLATIVE SESSION TO HAVE THE DISCREPANCY CORRECTED. IT WAS NOT DONE BECAUSE OF THE TIME SITUATION, BUT WILL BE ACCOMPLISHED THIS SESSION.

- b. The report indicates that it allows the state to license by reciprocity. None of the other 20 states will grant Alaska these rights. Since licensure by credentials accomplishes the same purpose, the statute is not necessary.

THE BOARD'S REPLY THAT LICENSURE BY CREDENTIAL DOES BASICALLY ACCOMPLISH THE SAME THING AS RECIPROCITY. THE REASON THAT RECIPROCITY HAS NOT BEEN GRANTED TO ALASKA IS BECAUSE, IN MANY INSTANCES, THE REQUIREMENTS ARE DIFFERENT THAN THOSE THAT ALASKA INDICATES THE BOARD STILL FEELS THAT THEY SHOULD WORK FOR RECIPROCITY, WITH THE GOAL BEING TO MAKE UNIFORM THE REQUIREMENTS NATIONWIDE FOR OPTICIANS LICENSURE.

- c. The report indicates that a statute that sets out dispensing optician's constraints for issuing contact lenses, and that the language used was not specific enough and needed to be defined further.

THE BOARD'S RESPONSE TO ITEM "C", IS THAT THE CONTACT LENSES ARE FITTED UNDER THE SUPERVISION OF A LICENSED PHYSICIAN AND OPTOMETRIST SINCE THE PATIENT IS REQUIRED TO GO BACK FOR CHECKUPS TO THE PHYSICIAN OR OPTOMETRIST.

THE BOARD AGREES WITH THE REPORT THAT ANY CHANGES SHOULD NOT BE TO MAKE IT MORE RESTRICTIVE.

- d. The Board still has not received statutory authority, so the report indicates, to issue temporary permits.

THE BOARD'S RESPONSE IS THAT THEY HAVE DILIGENTLY WORKED AS CAN BE VERIFIED BY A REVIEW OF THE MINUTES OF THE MEETINGS, TO ISSUE TEMPORARY PERMITS BY REGULATION. THIS WOULD, HOWEVER, REQUIRE LEGISLATIVE ACTION, AND THE BOARD WILL WORK ON THIS IN THE NEXT LEGISLATIVE SESSION.

#### Recommendation No. 4

The Board should insure that requirements are being met and adequately documented prior to licensure. Examples of what were found indicated in the report to be inadequate documentation of training hours and in some cases, apprentice hours not listed on some license by credentials, when licensees file did not have any indication of the Board's approval (this is the one that the OL office did without running past the Board), and much of the documentation consisted of photo copies that were not notarized.

THE BOARD'S RESPONSE TO RECOMMENDATION NO. 4 IS THAT VERIFICATION IS EXTREMELY IMPORTANT FOR LICENSURE. AGAIN, THE REPORT INDICATED THAT THE LICENSING EXAMINER GATHERS THE PROPER DOCUMENTATION FOR LICENSURE AND MAKES SURE IT IS COMPLETE. THE BOARD DOES DISAGREE WITH THIS PRACTICE AND WOULD RECOMMEND THAT THE BOARD TAKE MORE RESPONSIBILITY FOR VERIFICATION.

## ANALYSIS OF PUBLIC NEED

1. The extent to which the Board, commission or program has operated in the public interest:

THE BOARD HAS HELD MEETINGS AND EXAMS AT LEAST TWO TIMES PER YEAR.

THE BOARD HAS PASSED REGULATIONS REGARDING APPRENTICES CONTINUING COMPETENCY AND LICENSURE BY CREDENTIALS.

THE BOARD HAS NOT HAD A PUBLIC MEMBER SINCE JUNE 1982 (THE BOARD'S RESPONSE IS THAT THEY HAVE REQUESTED APPOINTMENTS MANY TIMES. TWO APPOINTMENTS WERE JUST MADE 12/84)

2. Extent to which the operation of the Board, Commission or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, in any other matter, including budgetary, resource, and personal matters.

THE BOARD HAS HAD TWO VACANT BOARD POSITIONS FOR TWO YEARS. (THE BOARD'S RESPONSE IS THAT THEY HAVE REQUESTED MANY TIMES FOR BOARD APPOINTMENTS AND HAVE MADE RECOMMENDATIONS.)

3. The extent to which the Board, Commission or agency has recommended statutory changes which are generally of benefit to the public interest.

THE BOARD SUCCEEDED IN HAVING VARIOUS OBSOLETE OR VAGUE STATUTORY REQUIREMENTS REPEALED OR AMENDED.

NO STATUTORY CHANGES HAVE BEEN MADE SINCE 1980. (THE BOARD'S RESPONSES ABOVE ARE THEY HAVE HAD MANY REGULATORY CHANGES, AND STATUTORY CHANGES TO ELIMINATE ANY CONFLICT AND WILL BE WORKED ON IN THE 1985 LEGISLATIVE SESSION. IT ALSO SHOULD BE NOTED THAT THEY HAD ATTEMPTED STATUTORY CHANGE FOR THE CONTINUING EDUCATION REQUIREMENT LAST SESSION, BUT BECAUSE OF THE TIME RESTRAINTS, IT DID NOT MAKE IT THROUGH THE SESSION.)

4. The extent to which the Board, Commission or agency has encouraged interested people to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The Board has published public notices of all examinations, meetings, and regulation changes. The Board has not actively solicited comments on its effectiveness.

THE BOARD'S RESPONSE IS THAT IT WILL MORE ACTIVELY SOLICIT COMMENTS FROM BOTH OPTICIANS AND THE GENERAL PUBLIC IN THE FUTURE, AND RECOGNIZES THAT THIS IS AN ESSENTIAL PART OF ITS EXISTENCE.

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

THE BOARD HAS PUBLISHED NOTICES OF ITS MEETINGS IN ANCHORAGE, FAIRBANKS, AND JUNEAU. NO PUBLIC PARTICIPATION APPEARS TO HAVE RESULTED.

6. The efficiency with public inquiries or complaints regarding the activity of the Board, commission, or agency filed with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

ACCORDING TO THE OL FILES, THERE HAVE BEEN APPROXIMATELY 12 INVESTIGATIONS IN THE PAST FOUR YEARS. TWO COMPLAINTS WERE FILED WITH THE CONSUMER PROTECTION AGENCY, AND NONE WITH THE OFFICE OF THE OMSBUDSMAN.

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

In the last 6 years the number of currently licensed dispensing opticians has increased from 45 to 63.

The board has not established reciprocal agreements with other states or established statutory authority to issue temporary permits. They have established licensure by credentials which tries to address the same situation.

THE BOARD'S RESPONSE IS THAT THEY HAVE BEEN WORKING TO ESTABLISH RECIPROCAL AGREEMENTS, BUT THE LACK OF UNIFORMITY NATIONWIDE ON REQUIREMENTS FOR LICENSURE HAS MADE THIS DIFFICULT. THE BOARD SETS AS ONE OF ITS MAIN GOALS TO CONTINUE TO WORK FOR RECIPROCITY.

8. The extent to which State personnel practices, including affirmative action, requirements have been complied with by the Board, commission or agency, to its own activity in the area of activity or interest.

Application for licensure require information and photographs with the Division of Equal Employment Opportunity (EEO) believe may not be necessary to determine the qualifications of the applicant.

BOARD'S RESPONSE IS THAT THEY AGREE WITH THIS DECISION, AND THEY WILL WORK TO CHANGE ANY INEQUITIES WHICH ARE IN EXISTENCE.

9. The extent to which a statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and comply with the factors enumerated in this subsection.
- A. THE BOARD'S RESPONSE - THE BOARD SHOULD BE ALLOWED TO CONTINUE TO EXIST AUTONOMOUSLY, AND NOT AS A SUBSIDIARY OF THE OPTICIANS BOARD. THE AUTONOMY STRENGTHENS THE BENEFITS TO THE PUBLIC, BY ALLOWING THE PUBLIC A CHOICE OF WHO TO GO TO TO HAVE THEIR SPECTACLES OR CONTACT LENSES FIT AND OPTICIANS OFFER COMPETITIVE ALTERNATIVES TO HAVING PRESCRIPTIONS FILLED BY OPTOMETRISTS OR OPHTHOMOLOGISTS. IN ADDITION, THE OPTICIANS ARE NOT COMFORTABLE WITH MANY OF THE ANTI-TRUST VIOLATIONS CURRENTLY FOUND IN THE OPTOMETRISTS STATUTES.
  - B. THE BOARD IS COMMITTED TO MAKING RECOMMENDATIONS FOR BOARD VACANCY APPOINTMENTS AS SOON AS POSSIBLE AND WILL WORK DILIGENTLY WITH THE GOVERNOR'S OFFICE TO MAKE SURE THESE APPOINTMENTS OCCUR.
  - C. THE BOARD WILL BE WORKING THIS LEGISLATIVE SESSION TO INCREASE THE NUMBER OF CONTINUING EDUCATION HOURS REQUIRED TO 60 HOURS. (THIS WAS A DISCREPANCY AND AN ERROR, NOT CHANGED LAST LEGISLATIVE SESSION)
  - D. THE BOARD WILL CONTINUE TO WORK FOR RECIPROCITY WITH THE GOAL BEING TO MAKE UNIFORM THE REQUIREMENTS NATIONWIDE FOR OPTICIANS LICENSURE.
  - E. THE BOARD WILL WORK TOWARDS ISSUING TEMPORARY PERMITS BY LEGISLATIVE ACTION.  
  
THE BOARD WILL TAKE MORE RESPONSIBILITY FOR VERIFICATION OF APPLICATIONS FOR LICENSURE BY CREDENTIALS.
  - F. THE BOARD HAS SET GOALS AND PLANS FOR THE NEXT YEAR FOR THE BOARD OF DISPENSING OPTICIANS AND WILL WORK TOWARDS THEIR ACCOMPLISHMENTS.
  - G. THE BOARD HAS INDICATED STATUTE CHANGES WHICH ARE NEEDED DURING THIS LEGISLATIVE SESSION AND WILL WORK TOWARDS CLARIFYING AND SIMPLIFYING THE CURRENT STATUTES, AND INCORPORATING ADDITIONAL NEEDED STATUTES.

APPENDIX A

REVENUES COMPARED WITH EXPENDITURES

The excess of expenditures over revenues was \$405.

The Board would recommend that for any anticipated negatives, the renewal fees should be increased.

NOTE: The negative of (\$27,999) for the optometric Board versus the Opticians Board.

V. GOALS AND PLANS OF THE BOARD OF DISPENSING OPTICIANS

1. Enforce dispensing opticians law and establish continuing guidelines for competency.
2. Adopt regulations and make modifications necessary for the enforcement of the law.
3. Operate in an effective, efficient manner to benefit the public. Take more responsibility for self-audit and improvement or clearly define the function of the Board and take on more responsibility, especially in those areas where Occupational Licensing now takes the majority of the responsibility, but where the Board "gets blamed" - evaluation of test applications, evaluations for licensure, and review of unlicensed activity.  
  
Recommend, as is done in Connecticut, that the Board be authorized to hear and to decide appeals on the suspension, revocation, or denial or licensure.
4. Emphasize accountability and responsiveness to public interests.
5. Establish formal goals semi-annually, along with objectives and measures to be included in reports to Occupational Licensing.
6. Begin work on a uniform opticians exam which will "cross" state lines and work for uniformity in licensure in all states.
7. Continue ongoing review of statutes and regulations by striving for clarity and simplicity.
8. Seek to get all opticians properly licensed by providing information packet to all licensees.
9. Establish better communication between the Board and consumers by contributing to newsletter and work to increase the public awareness.
10. Work more closely with Governor's office to get board appointments done expeditiously.
11. Work towards legislation to allow temporary permits where a person qualifies by credentials and all application forms are in order.

12. Encourage more people to consider the profession of opticianry.
13. Opticianry is a profession-work to maintain the integrity of the profession and to uphold the standards.
14. Continue to work for reciprocity.
15. Increase and foster better communication between opticians and the general public.
16. Recommend Board receive and screen complaints and hold hearings and impose disciplinary sanctions.
17. Require at least one member of the Board to be licensed in contact lens.

VI. STATUTE CHANGES NEEDED (TO BE WORKED FOR THE 1985 LEGISLATIVE SESSION)

1. Accept formal fulltime education in the field of optics at a rate of 2,000 hours per college year, or fraction thereof, to be applied to 6,000 hours required for the exam. (Section 08.71.110)
2. Increase education hours to 40 hours for continuing competence in optical dispensing. (Section 08.71.130)
3. Introduce legislation allowing temporary permits when an individual applies for licensure by credentials and is awaiting Board approval, provided his or her application is complete and in order.
4. ~~Repeal anti-trust violations in optometric statutes (See 1983 audit).~~

Navarre

BOYD A. SKILLE, M.D.  
OPHTHALMOLOGY AND OPHTHALMIC SURGERY  
3744 LAKE OTIS PARKWAY  
ANCHORAGE, ALASKA 99504

562-2618

The Honorable Mike Navarre  
Pouch V  
Juneau, Alaska 99811

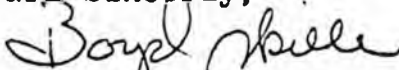
Dear Representative Navarre;

It has come to my attention that the Opticians Board is up for Sunset Review. I feel very strongly that the Board should be continued in the public interest. Sunsetting this Board could have a terrible effect on the quality of eye care here in Alaska.

In the past three years it is my understanding that the Board has fielded nine complaints- one from a customer and the rest from Opticians who were not granted licenses for one reason or another having mostly to do with educational requirements. To me this indicates that those opticians licensed are doing a good job and the Board is keeping those who are not qualified from obtaining licenses until they do qualify.

Therefore I am asking that you support continuing this Board in the public interest. Permanent eye damage can occur when contact lenses are fitted by someone who is not properly trained and examined by a board who is qualified to judge that persons ability.

Yours Sincerely,

  
Boyd A. Skille, M.D.

MILO H. FRITZ, M.D.

P. O. BOX 159  
ANCHOR POINT, ALASKA 99556

AREA CODE 907 235-8366

AMERICAN BOARD OF OPHTHALMOLOGY  
AMERICAN BOARD OF OTOLARYNGOLOGY  
AMERICAN COLLEGE OF SURGEONS  
AMERICAN ACADEMY OF FACIAL PLASTIC  
AND RECONSTRUCTIVE SURGERY, INC

13 Feb. 1985.

The Hon. Mike Navarre  
Pouch V  
Juneau, Alaska 99811

Dear Mike:-

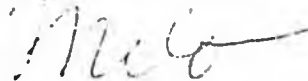
Opticians, in case you do not know, are the folks who fill eye glass prescriptions and fill contact lens prescriptions. As I understand it the Opticianry Board is being considered for sunseting and I think that would be a mistake. If the fees for a license to practice opticianry are too low they can be raised--something to which the opticians of Alaska have no objection.

In the past 3 years there have been 9 complaints brought before the Board---one from a client and the rest from opticians who were not granted licenses for one reason or another having to do with educational qualifications for the most part. To me this indicates that the those opticians in Alaska are doing a good job and the Board is keeping the poorly qualified from obtaining licenses until they can qualify.

Therefore I am asking for your support in continuing the Board in the public interest. Considerable damage can be done by anyone fitting contact lenses who is not properly trained and examined.

Thank you for your consideration of this important matter.

Yours sincerely,



Milo H. Fritz M.D.

*1/24 Rep. Navarre -  
ATTACHED IS DRAFT  
COPY OF PROPOSED  
HOUSE BILL. I HAVE  
discussed with  
Kopmen. We'll need  
to increase funding  
see changes.  
I'll check  
with you next  
week.  
Im Storm*

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to dispensing opticians; and provid-  
7 ing for an effective date."

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

9 \* Section 1. AS 08.03.010(c)(5) is amended to read:

10 (5) Board of Dispensing Opticians (AS 08.71.010) - June 30,  
11 1991 [1985].

12 \* Sec. 2. AS 08.71.110 is amended to read:

13 Sec. 08.71.110. QUALIFICATIONS OF APPLICANTS FOR EXAMINATION.

14 A person is entitled to take the examination who

15 (1) has [EITHER]

16 (A) completed at least 6,000 hours of training as an  
17 apprentice, [OR]

18 (B) been engaged for at least 6,000 hours as a prac-  
19 ticing optician in good standing in a state, territory, district  
20 or possession of the United States, or [; AND]

21 (C) completed 6,000 hours of formal fulltime education  
22 in the field of optics to be credited at a rate of 2,000 hours  
23 for each college year or fraction thereof; and

24 (2) has paid the required examination fee.

25 \* Sec. 3. AS 08.71.120 is amended to read:

26 Sec. 08.71.120. FEES. The follow *\$50 ? \$150* ll be imposed under  
27 this chapter when applicable:

28 (1) examination fee ..... *\$50 ? \$150*

29 (2) initial dispensing optician license fee .....? 300

[50]

(3) renewal fee, due every four years ..... <sup>400</sup> ~~300~~ [200]

\* Sec. 4. AS 08.71.130(d) is amended to read:

(d) Before a license may be renewed the licensee shall submit to the board evidence of 40 [15] hours of continuing competence in optical dispensing as prescribed by regulations of the board.

\* Sec. 5. AS 08.71 is amended by adding a new section to read:

Sec. 08.71.147. TEMPORARY PERMIT. The board may issue a temporary permit to an applicant who has submitted a completed application for licensure under AS 08.71.145.

\* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

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2/27/85

Mr. Mike Navarre, Chairman  
Labor and Commerce Committee  
House of Representatives  
Juneau, Alaska

Dear Mr. Navarre,

I strongly urge you and the members of your committee to recommend passage of HB 216, thereby continuing the State Board of Dispensing Opticians. I believe that the Board of Dispensing Opticians provides the necessary oversight and governance of a vital part of the health care field in Alaska.

The Board of Dispensing Opticians is responsible for establishing licensing requirements and ensuring that professional standards are maintained for more than seventy Opticians in Alaska. Failure to continue the Board would be a disservice to the thousands of Alaskans who require corrective eyewear.

Thank you for your consideration of this important matter.

sincerely,

A handwritten signature in cursive script that reads "Gregg L. McClanahan". The signature is written in dark ink and is positioned above the typed name.

Gregg L. McClanahan  
AK. Lic. Optician AA0115

OPTICAL GOODS IN ALASKA: COST COMPARISON

Average retail price (eyeglasses) in Greater Anchorage area:

OPHTHALMOLOGISTS.....\$140-\$170  
OPTOMETRISTS.....\$120-\$150  
OPTICIANS.....\$60-\$130

Average retail price (contact lenses) in Greater Anchorage area:

OPHTHALMOLOGISTS.....\$250-\$400  
OPTOMETRISTS.....\$150-\$300  
OPTICIANS.....\$60-\$200

OPTICIANS IN ALASKA - by cities

ANCHORAGE.....45

EAGLE RIVER.....4

WASILLA.....2

PALMER.....1

CHUGIAK.....2

BIRD CREEK.....1

KODIAK.....1

FAIRBANKS.....10

NORTH POLE.....1

KETCHIKAN.....1

JUNEAU.....2

SOLDOTNA.....1

BOYD A. SKILLE, M.D.  
OPHTHALMOLOGY AND OPHTHALMIC SURGERY  
3744 LAKE OTIS PARKWAY  
ANCHORAGE, ALASKA 99504  
562-2618

The Honorable Mike Navarre  
Pouch V  
Juneau, Alaska 99811

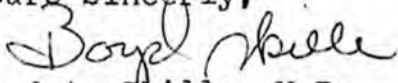
Dear Representative Navarre;

It has come to my attention that the Opticians Board is up for Sunset Review. I feel very strongly that the Board should be continued in the public interest. Sunsetting this Board could have a terrible effect on the quality of eye care here in Alaska.

In the past three years it is my understanding that the Board has fielded nine complaints- one from a customer and the rest from Opticians who were not granted licenses for one reason or another having mostly to do with educational requirements. To me this indicates that those opticians licensed are doing a good job and the Board is keeping those who are not qualified from obtaining licenses until they do qualify.

Therefore I am asking that you support continuing this Board in the public interest. Permanent eye damage can occur when contact lenses are fitted by someone who is not properly trained and examined by a board who is qualified to judge that persons ability.

Yours Sincerely,

  
Boyd A. Skille, M.D.



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

H B

2 3 2

COMMITTEE REPORT  
HOUSE

3/15  
JUDICIARY

(7)

FURTHER: FINANCE

2/25/85

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 232

"An Act relating to claims against the real estate surety fund."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note *Sept 30*
- Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*DAVIS* \_\_\_\_\_ *Mike D...*

*WILSON* \_\_\_\_\_ *Mike K...*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*HANLEY* \_\_\_\_\_ *Chris Hanley No Rec*

*BEARCE* \_\_\_\_\_ *Rec*

*COOPER* \_\_\_\_\_ *W.G. Cooper No Rec*

*\_\_\_\_\_* \_\_\_\_\_ *Mike...*

*LAVERRE* \_\_\_\_\_ *Mike...*

\_\_\_\_\_

\_\_\_\_\_

*Mike...*  
\_\_\_\_\_

CHAIRMAN

March 14, 1985 Thursday 1:15 pm Room 102 Capitol

HOUSE LABOR AND COMMERCE AGENDA

- 1) CALL MEETING TO ORDER
- 2) NOTE TIME/DAY/HOUR
- 3) NOTE MEMBERS PRESENT, ABSENT, LATE
- 4) RECOGNIZE ANY VIP'S OR GUESTS PRESENT
- 5) REMIND EVERYONE PRESENT TO SIGN IN AS EITHER A WITNESS OR AS AN OBSERVOR
- 6) EXPLAIN THE ORDER OF BILLS BEFORE THE COMMITTEE
  - a. HB 232 -- Real Estate Surety Fund by Clocksin (teleconference, Anchorage LIO only)

b. HB 155 -- Horizontal Property Regimes by Ringstad

*c. HOLD OFFER 13 & 90 to tomorrow*  
I gather that both of the sponsors have other conflicts and want to testify first; so maybe you can split the baby and have each of them testify on their respective bills, and then go back and pick up first one and then the other.

At this point, we have a teleconference at the Anchorage LIO site only for HB 232 only, to allow James McGowan to testify on behalf of the Real Estate Commission. I understand that there may be one or two people at the Anchorage end and also the Juneau end that represent the real estate industry who will also be testifying.

- 7) ANNOUNCE FIRST BILL BEFORE COMMITTEE, THEN SECOND, ETC.
- 8) MAKE SURE ALL MEMBERS SIGN ANY BILL THAT IS PASSED OUT OF COMMITTEE
- 9) ANNOUNCE TIME OF ADJOURNMENT

---

Note: As each witness comes forth, please request that they state their name and who they represent for the record, and if they are not speaking loudly enough, ask them to speak up.

AN ACT

Relating to the real estate surety fund.

\* Section 1. AS 08.88.071(b) is repealed and reenacted to read:

(b) When an award is made from the real estate surety fund under this chapter in reimbursement of losses suffered by a claimant as a result of fraud, misrepresentation, deceit, or conversion of trust funds on the part of a licensed broker, associate broker, or salesman, the commission may consider the hearing on the claim to be a hearing on the suspension of the license of the broker, associate broker, or salesman, and may suspend the license of the broker, associate broker, or salesman. A suspension ordered under this subsection shall be lifted if the commission and the broker, associate broker, or salesman reach an agreement with the commission on terms and conditions for the repayment to the real estate surety fund of the money awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The suspension shall be reimposed if the broker, associate broker, or salesman violates the terms of a repayment agreement entered into under this subsection.

\* Sec. 2. AS 08.88.450 is amended to read:

Sec. 08.88.450. REAL ESTATE SURETY FUND. The real estate surety fund is established [THERE IS CREATED A SPECIAL ACCOUNT; in the general fund [KNOWN AS THE REAL ESTATE SURETY FUND] to carry out the purposes of AS 08.88.450 - 08.88.500. The fund is [SHALL BE] composed of payments made by licensed real estate brokers and salesmen under

Chapter 150

AS 08.88.455 and filing fees retained in accordance with AS 08.88.441

The fund may not exceed \$500,000 and amounts in the fund in excess of \$250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091.

\* Sec. 3. AS 08.88.455(a) is amended to read:

(a) A licensed real estate broker, (OR) associate broker, or salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a surety fund [BOND] fee not to exceed \$125 [ , AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMISSION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$125]. After the fund reaches \$250,000 the commission shall by regulation adjust the surety fund [BOND] fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than \$250,000.

\* Sec. 4. AS 08.88.460 is amended by adding new subsections to read:

(c) Within seven days after receipt of notice of a claim under (b) of this section the real estate broker, associate real estate broker, or real estate salesman against whom the claim is made may elect to defend the claim as a small claims action in district court under District Court Civil Rules 8 - 22, if the claim does not exceed the small claims jurisdictional limit. An election to defend a claim in district court under the small claims rules may not be revoked by the broker, associate broker, or salesman without the consent of the claimant. Upon receipt of a valid written election under this subsection the commission shall dismiss the claim filed with the commission and notify the claimant that the claim must be brought as a small

claims action in the appropriate state court.

(d) A claimant under this section shall pay a filing fee to the commission at the time the claim is filed. The fee shall be refunded only if

(1) the commission makes an award to the claimant from the real estate surety fund;

(2) the claim is dismissed under (c) of this section;

(3) the claim is withdrawn by the claimant and the commission holds a hearing on the claim.

\* Sec. 5. AS 08.88.465 is amended by adding a new subsection:

(f) The provisions of this section do not apply to a claim that is dismissed under AS 08.88.460(c).

\* Sec. 6. AS 08.88 is amended by adding a new section to read:

Sec. 08.88.474. PAYMENT OF SMALL CLAIMS JUDGMENT. A small claims action originally filed with the commission is dismissed and is treated as a small claims action under AS 08.88.460(c) and the claimant may bring a small claims action against the real estate broker, associate real estate broker, or salesman, the commission shall make an award from the fund of any outstanding portion of the small claims judgment. Upon receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the broker, associate broker, or salesman has not satisfied the judgment during that time. After payment of a small claims judgment the commission is subrogated to the rights in the judgment under AS 08.88.490.

the other elements of a fraudulent misrepresentation claim have been demonstrated.

One additional aspect of Bubbel's misrepresentation claim requires discussion: Bubbel contends that Wien misrepresented its legal capacity to hire him as a permanent employee.<sup>10</sup> Specifically, Bubbel argues that because Wien had the benefit of house counsel and outside attorneys, Wien knew that it had a unilateral right under the Railway Labor Act, and under federal cases, to renege on its promised "permanency" of employment. Bubbel reasons that in so far as Wien did not apprise him of that limitation on his permanent status, Wien misrepresented the permanency of his position.

Bubbel's argument on this theory is a narrow one: he does not dispute that when it hired him, Wien had the legal capacity to hire permanent replacement employees.<sup>11</sup> Bubbel concedes that Wien was not legally obliged to accept the settlement agreement proposed by the Presidential Emergency Board. Wien could have rejected the proposed settlement, defied the strikers, and continued to operate with its replacement pilots. Instead, Wien voluntarily chose to accept the settlement and furlough its replacement employees. This branch of Bubbel's misrepresentation theory, then, turns solely on Wien's failure to inform its "per-

manent" replacement employees that Wien could voluntarily settle the strike and thus use the collective bargaining agreement reached to override inconsistent individual employment contracts.

This court has not previously considered the question of whether a claim for relief may arise from a misrepresentation of law. Traditionally, courts have refused to recognize such representations as tortious, basing their conclusion upon the principle that "ignorance of the law is no excuse."<sup>12</sup> However, several recent decisions have held that this rule should be relaxed in appropriate circumstances, as for example, when

the person making the misrepresentation "has superior means of information, professes a knowledge of the law, and thereby obtains an unconscionable advantage of another who is ignorant and has not been in a situation to become informed."

*Ford Motor Credit Co. v. Milburn*, 615 P.2d 892, 895 (10th Cir.1980), quoting *White v. Harrigan*, 77 Okl. 123, 186 P. 224, syl. 1 (1919). *Accord, White v. Mulvania*, 575 S.W.2d 184, 192 (Mo.1978) (en banc); *Nesbitt v. Home Federal Savings & Loan Ass'n*, 440 P.2d 738, 743 (Okl.1968); see also *National Conversion Corp. v. Cedar Building Corp.*, 23 N.Y.2d 621, 298 N.Y.S.2d 499, 246 N.E.2d 351 (1969).

placements. *Id.*, — U.S. —, —, 103 S.Ct. 3172, 3174, 77 L.Ed.2d 798, 803; *NLRB v. International Van Lines*, 409 U.S. 48, 93 S.Ct. 74, 34 L.Ed.2d 201 (1972). In such circumstances, the employer's representation of its capacity to hire permanent replacements might well be false and thus actionable.

12. See, e.g., *Hamming v. Murphy*, 83 Ill.App.3d 1130, 39 Ill.Dec. 435, 404 N.E.2d 1026 (1980), where the court refused to impose liability for misrepresentation upon a defendant-vendor of real estate who affirmatively assured a plaintiff purchaser that a contemplated use of the property was permitted under the existing zoning ordinance. The *Hamming* court reasoned that [g]enerally, one is not entitled to rely upon a representation of law as both parties are presumed to be equally capable of knowing and interpreting the law. . . . We conclude plaintiff was charged with knowledge of the permitted uses of this property under applicable zoning ordinances. . . . 404 N.E.2d 1026 at 1030.

Recognizing the importance of the question, and the limited treatment it received in the briefing of this case, we decline to adopt a flat rule that misrepresentations of law are not actionable in this state. Instead, we hold, on the basis of this record, only that Wien did not misrepresent its hiring capacity.

[10, 11] Central to our decision on this point is the character of the alleged misrepresentation. Wien did not tell Bubbel anything false, it merely failed to inform him of the legal consequences of something which might happen (i.e.: that Wien could possibly settle the ALPA strike).<sup>13</sup> There is no evidence in the record suggesting that Wien anticipated such a settlement with the striking pilots at the time it hired Bubbel. On the contrary, the record reflects Wien's intention to keep the replacement pilots in their jobs even after the strike ended. Moreover, as the holding in *Belknap* reflects, Wien's right to voluntarily breach its individual employment contracts was not absolute: the subsequent collective bargaining agreement does not relieve Wien of liability for breach of inconsistent individual contracts. In such circumstances, the appropriate remedy for Wien's breach of its commitment to keep the replacements is a suit for breach of contract, rather than for misrepresentation of Wien's capacity to enter into such contracts.<sup>14</sup>

Thus, we affirm the superior court's grant of a directed verdict against Bubbel on his misrepresentation claims.

For the reasons set forth above, the judgment of the superior court is REVERSED and this case is REMANDED for further proceedings consistent with this opinion.

13. If a failure to warn a party of the possibility of a voluntary breach constitutes an actionable misrepresentation, then all contracts would involve misrepresentations.

14. We recognize that the Supreme Court's opinion in *Belknap v. Hale*, *supra*, contains language suggesting that an action for misrepresentation might be appropriate in factual circumstances similar to those before this court. However, the Supreme Court in *Belknap* held only that feder-

STATE of Alaska, REAL ESTATE COMMISSION, Appellant.

v.

Myrna JOHNSTON and Eva Loken, Appellees.

No. 7826.

Supreme Court of Alaska.

May 4, 1984.

Purchasers of real estate who had scinded earnest money agreement file claim with Real Estate Commission for imbursement of earnest money from Real Estate Surety Fund, alleging that broker had misrepresented boundaries of property. The hearing officer concluded that broker's misrepresentation was innocent, but the Fund provided recovery for such misrepresentations and recommended that Fund reimburse purchasers' deposit. Commission adopted decision and awarded deposit amount, and brokers appealed. The Superior Court, Third Judicial District, Anchorage, Milton Souter, J., reversed award, and Commission appealed. The Supreme Court held that Real Estate Surety Fund does not provide reimbursement to claimants for innocent misrepresentations made by members of real estate profession.

Affirmed.

1. Brokers ⇐

Real Estate Surety Fund does not provide reimbursement to claimants for in-

al labor law does not preclude "otherwise actionable" misrepresentation suits. — U.S. — at —, 103 S.Ct. 3172 at 3178, 77 L.Ed.2d 798, 808. The Court recognized that state law determines whether an action for misrepresentation will lie in any particular case. *Id.* We conclude that our decision on Bubbel's misrepresentation claim is consistent with the holding in *Belknap*.

cent misrepresentations made by members of real estate profession. AS 08.88.450-08.88.500, 08.88.460.

## 2. Appeal and Error ⇨8:2(8)

Applicable standard of review of superior court's decision construing statute is one of independent judgment.

## 3. Statutes ⇨193

If legislative intent or general meaning of statute is not clear, meaning of doubtful words may be determined by reference to their association with other associated words and phrases.

## 4. Brokers ⇨1

"Misrepresentation" as employed in statute allowing recovery from Real Estate Surety Fund for losses suffered as result of fraud, misrepresentation, deceit, or conversion of trust funds on part of real estate broker does not include innocent misrepresentation. AS 08.88.460(a, b).

See publication Words and Phrases for other judicial constructions and definitions.

Richard D. Monkman, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellant.

W. Richard Fossey, Bankston & McCollum, Anchorage, and Peggy Alayne Roston, Anchorage, for appellees.

Lewis Gordon, Baily & Mason, Anchorage, for Alaska Ass'n of Realtors, amicus curiae.

Before BURKE, C.J., and RABINOWITZ, COMPTON and MOORE, JJ.

## OPINION

### PER CURIAM.

This appeal presents a first impression question as to the scope and applicability of Alaska's Real Estate Surety Fund.<sup>1</sup> The issue raised is one of statutory construction, namely, whether the Real Estate Surety Fund provides recovery to claimants who, in the context of real estate transac-

tions, suffer losses due to innocent misrepresentations made by real estate brokers or agents.

## I. FACTS

Newly arrived in Alaska the Mulhollands sought to purchase a home and contacted Eva Loken, a sales person with Area Realtors. In August of 1981, Loken showed the Mulhollands Larry Gross' home located near Eagle River. The following day the Mulhollands made an offer on the house to which the owner counter-offered. On August 10, 1981, the parties entered into an earnest money agreement and the Mulhollands tendered one thousand dollars in earnest money to Loken.

Subsequent to the initial earnest money agreement the Mulhollands contemplated rescinding on the purchase agreement and signing an earnest money agreement on another home; they were distraught over what they perceived as apparent misrepresentations made by Loken concerning mid-winter sunlight and driveway accessibility. Eventually, after discussions with Loken and Myrna Johnston, an associate broker with Area Realtors, the Mulhollands decided to go through with the deal and they signed an extension to the earnest money agreement.

On October 11, 1981, the Mulhollands were asked to accept an "as-built" survey of the property; however, because the survey failed to depict the driveway the Mulhollands refused to sign or accept the survey. Johnston ordered an updated survey. The updated survey revealed that the driveway encroached upon neighboring land to the extent of ten feet by thirty feet.

Having contacted the seller, Larry Gross, to discuss alternative solutions to the encroachment problem, Johnston informed Loken, who in turn contacted the Mulhollands. During the phone conversation between Loken and the Mulhollands a meeting was arranged for October 23, 1981—the day the earnest money agreement expired.

At the October 23rd meeting between the Mulhollands and Johnston, the Mulhollands terminated the transaction and signed a rescission agreement which provided that the earnest money would be returned. Johnston, however, on the advice of Area Realtors' attorney, never executed the rescission agreement; the Area Realtors' attorney felt that the encroachment was a curable defect which did not render title to the property unmarketable.

In December 1981, the Mulhollands filed a claim with the Real Estate Commission for the reimbursement of their earnest money deposit. Thereafter, a Real Estate Commission hearing examiner conducted a hearing on the Mulhollands' reimbursement claim. The hearing examiner concluded that Loken and Johnston had innocently misrepresented the boundaries of the Gross property. The misrepresentation of fact, according to the hearing officer's finding, "consisted of the implied assertion that the driveway was included in the boundaries of the Gross property." Concluding that the Real Estate Surety Fund provided recovery for innocent misrepresentations of this nature the hearing officer recommended that the Fund reimburse the Mulhollands' earnest money deposit.

The Real Estate Commission adopted the recommended decision and awarded the Mulhollands the equivalent of their earnest money deposit. The Commission's decision was then appealed to the superior court.

2. The full text of AS 08.88.460(a) and (b) reads as follows:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

- (1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;
- (2) the amount of the alleged loss;
- (3) the date or period of time during which the alleged loss occurred;

The superior court reversed the award, holding that the Surety Fund did not provide recovery for innocent misrepresentation. The State of Alaska Real Estate Commission now brings this appeal.

## II. THE REAL ESTATE SURETY FUND DOES NOT PROVIDE REIMBURSEMENT TO CLAIMANTS FOR INNOCENT MISREPRESENTATIONS MADE BY MEMBERS OF THE REAL ESTATE PROFESSION.

[1] As indicated at the outset, the principal issue presented in this appeal is whether the Real Estate Surety Fund is obligated to reimburse claimants for innocent misrepresentations made by members of the real estate profession. In relevant part AS 08.88.460(a) provides as follows:

*Claim for payment.* (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker ... shall make a claim to the commission for reimbursement....<sup>2</sup>

The superior court concluded that "misrepresentation" as used in AS 08.88.460(a) was intended to encompass only intentional wrongdoing, not innocent or negligent wrongdoing. More particularly the superior court reasoned as follows:

I think the term misconduct as used in Section (b) of the statute implies inten-

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or [sic?]

(6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission.

tional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation or conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only \$500,000.00, if we're going to open the flood gates to innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

[2] In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.<sup>3</sup>

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned simi-

larly to the surety bond requirement. In relevant part the Surety Fund Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker . . ." If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

In 1980 the Real Estate Surety Fund Act was amended, providing for a simpler recovery process. [AS 08.88.450-500] The 1980 amendment obviated the requirement that the claimant first obtain a civil judgment before filing a claim for reimbursement; instead, the Real Estate Commission was remolded to function in a quasi-judicial role, adjudicating the merits of Surety Fund claims in administrative hearings. [§§ 34-36 Ch. 167 SLA 1980] Procedures governing the Real Estate Commission's administration of Surety Fund claims are provided for in 12 AAC 64.280-330.

[3] As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we think a textual analysis of AS 08.88.460 is controlling.<sup>4</sup> The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their associa-

language, the more convincing contrary legislative history must be. See also *City of Homer v. Gangl*, 650 P.2d 396, 400 n. 4 (Alaska 1982); see gen. *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

tion with other associated words and phrases." 2A C. Sands, *Sutherland Statutory Construction*, § 47.16 at 101 (4th ed. 1973); in accord: *United States v. Raynor*, 302 U.S. 540, 58 S.Ct. 353, 82 L.Ed. 413 (1938); *State v. Taylor*, 49 Hawaii 624, 425 P.2d 1014, 1021 (1967); *Heathman v. Giles*, 13 Utah 2d 368, 374 P.2d 839, 840 (1962). Similarly: *Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); *City of Anchorage v. Scavenius*, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

[4] In short, we hold that innocent misrepresentations are not within the ambit of

5. We think it appropriate to further note that when the Surety Fund was first established in 1974 and amended in 1980, Alaska did not recognize a cause of action for innocent misrepresentation. In *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982), this court first recognized a cause of action against a real estate broker for innocent misrepresentation.

the term "misrepresentation" as that is employed in AS 08.88.460(a). In reaching this conclusion we have carefully considered each of the state's arguments taining to legislative history, policy considerations, and textual analysis and found none of them persuasive.<sup>5</sup> We affirm the superior court's construction of AS 08.88.460(a) and (b).<sup>6</sup>

AFFIRMED.

MATTHEWS, J., not participating.



6. The amicus has attempted to raise the question of whether on this record any innocent misrepresentation was made. In the proper context of this case this issue is not presented before us and thus will not be addressed.

3. The applicable standard of review here is one of independent judgment. *Wien Air Alaska, Inc. v. Dept. of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982).

4. In *State v. Alex*, 646 P.2d 203, 209 n. 4 (Alaska 1982), we held that the plain meaning of the statute's

# MEMORANDUM

State of Alaska

TO: Richard A. Lyon  
Commissioner  
Dept. of Commerce and  
Economic Dev.

DATE: April 26, 1984

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan  
Executive Director  
Alaska Real Estate Commission

SUBJECT: Real Estate Commission  
Hearing on HB 705 &  
SB 537

The commission held a public meeting on April 24 in Anchorage. The meeting was scheduled from 2 to 5 P.M. and from 7 to 10 P.M. There were 20 to 40 people in attendance most of the time. We estimate 50 to 70 members of the public, at least, attended the meeting.

Licensees were there in greater numbers than non-licensees, however, both licensed and unlicensed members of the public attended in significant numbers.

Public testimony ran until after 9:00 P.M.

After the testimony was heard, it was the definite opinion of the commission that important issues and questions have been raised by both licensees and non-licensees. Many of these are not adequately dealt with under the current statute and must be addressed.

The commission determined that these concerns are also not adequately resolved by the current bills (HB 705 - SB 537).

It was, therefore, the commission's decision that it does not support the passage of HB 705 or its companion, SB 537. The commission hopes that it will be given the chance to work with the industry and the public to come up with recommendations for legislation that it can support, legislation that will resolve the existing problems without introducing new problems of at least equal concern.

It is the commission's intention to have alternate legislative recommendations ready for the next session.

This is a high priority with the commission.

The commission has asked that copies of its minutes of the meeting and its decision be passed on to Chairman John G. Fuller, House Rules Committee, Chairman Richard A. Eliason, Senate Labor and Commerce Committee and Carol Derfner, Special Assistant, Boards and Commissions. These copies are attached.

Attachments

JLM/cw/0702C50

DRAFT/April 26, 1984

ALASKA REAL ESTATE COMMISSION

April 24, 1984

Anchorage, Alaska

Call to Order

By authority of AS 08.88.051, and in accordance with AS 44.62, the Alaska Real Estate Commission was called to order by Vice Chairman Ribacchi at 2:10 on 24th of April 1984. He welcomed the presence of visitors and called the meeting to order as a public hearing.

Vice Chairman Ribacchi acknowledged the absence of Chairman Hill due to the illness of her father, Earl Silberer, a former commissioner, and one of the originators of the real estate commission as well as a long time practitioner in the real estate industry. Vice Chairman Ribacchi stated that the purpose of the public hearing was to obtain a feel from the public as well as the industry regarding two bills that have been introduced into the Legislature, HB 705 and SB 537. These bills would significantly amend the current procedure in filing a claim against the surety fund. The following commissioners were in attendance:

Dave Ribacchi, Vice Chairman, Broker-At-Large  
Karen Morris, Broker  
John Benson, Broker  
LaVerne Collins, Public Member  
Gil Serrano, Broker

Absent:

Ed Anders, Public Member  
Chairman Hill, Broker

Commission staff present:

James L. Magowan, Executive Director  
Joseph P. Koss, Investigator/Auditor  
Lois B. Waugh, License Examiner

Before proceeding, Commissioner Ribacchi asked each of the commissioners if they would like to make a comment. At this particular time, none of the commissioners wished to make a comment. Commissioner Ribacchi then asked for the public to present testimony regarding the bills.

S. B. Medford

Mr. Medford stated that he was opposed to SB 705 and HB 537. Mr. Medford stated that the general public do not have access to unlimited funds. These bills, if enacted, would require hiring an attorney and going through a court process which could take up to six years before the case would be settled. The practical effect would be to deprive the claimant of ready access to justice. Mr. Medford suggested that the commission, if they decided to approve the present legislation, increase the surety fund from \$10,000 to a \$100,000 limit and that the commission strengthen their position in order to obtain more evidence and that more funds be appropriated to the investigative staff.

Commissioner Morris read a letter for the record which is addressed to Commissioner Hill from Gary Wilken, former Chairman, Commissioner and Public Member. (Letter attached to the minutes.)

Commissioner Collins read a letter for the record which is from the Department of Law, Norman Gorsuch, Attorney General. (Letter attached to the minutes.)

Janet Mischler, Claimant

Ms Mischler spoke against changing the surety fund procedures. She related to the commission her past history in which she was injured monetarily in a real estate transaction. Her first step was to go through the courts. She incurred \$8,000 in indebtedness to an attorney and has spent over \$20,000 on the problem, which is still not corrected. Her land is deemed unsellable. She stated that she would support a filing fee for the surety fund and that she believed that the surety fund and the commission were there to assist the public.

George Oliver, Associate Broker

Mr. Oliver, Associate Broker since 1974, asked the commission to support the two legislative bills before the house and the senate. He asked the commission to make a bold decision in favor of the legislation which would give a clear message to the Governor and the Administration that there should be a change in the surety fund procedures. He stated that the commission was not equipped to handle the number of surety claims before them and that it had become a burden. He said that the majority of the Realtors were in favor of the present legislation because it is necessary to change the present surety fund procedures before the surety fund is depleted due to an overabundance of claims having been made.

Vice Chairman Ribacchi asked that there be a distinction made between a real estate licensee and the professional organization, REALTORS. Not all licensees are Realtors. Commissioner Ribacchi also stated that five of the members have served for less than six months, and that the majority may not be familiar with the history of the surety fund, and asked that the public look upon the commission as a new body with their own ideas.

Cary Vlahovich, President, Anchorage Board of Realtors

Mr. Vlahovich, President of the Anchorage Board of Realtors which has a membership of 1400, stated that the Realtors have a very strict Code of Ethics and these ethics are served by an arbitration board, which is open to the Realtors and individuals who have dealt with the Realtors to arbitrate any problems they may have. Mr. Vlahovich stated that the majority of the membership of the Anchorage Board of Realtors are discontented with the present surety fund and the hearing officer process. He stated that due process is not provided by the present procedure. It is believed by many Realtors that they not only face a surety fund hearing but will also face civil proceedings simultaneously, before or after a surety fund hearing has concluded. The real estate licensees believe that the present system is not equitable. The state makes no effort in recovering the losses to the surety fund, therefore, the licensees have to bear the burden in fees to the surety fund to maintain its present state. The hearing officer's decisions are most dissatisfying. They do not provide a full check and balance system as well the participation of the commission, therefore, due process is not given to all involved in the surety fund process.

Maureen Kennedy, Alaska Public Interest Research Group (AKPIRG)

Ms. Kennedy spoke representing Alaska Public Interest Research Group (AKPIRG), which has a membership of 400. Ms. Kennedy is not in support of the present legislation. Ms. Kennedy stated the surety fund is effective self-policing of the industry. The present Common Law allows the consumer to argue for innocent representation. She believes that a \$50.00 filing fee is adequate, that any amount above that, could cause unnecessary hardship for the consumer. Not only the consumer, but the licensees, should be concerned about going through the courts, because it would increase the cost to the consumer as well as to the licensee. If the surety fund does not bear the burden of the hearing officer procedure, then the courts would bear the burden of the costs which would also increase the cost to the State.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors, spoke supporting the proposed legislation. One of his main concerns is the damage to the licensee's reputation through adverse publicity. Mr. Mason stated that if the present surety fund system is not changed, the following things could happen:

1. The Bevins/Ballard decision from the Supreme Court establishes that the Real Estate licensee may now be held liable for in "innocent misrepresentation". The Supreme Court, in its decision, invites the Real Estate licensees' to include in listing agreements provisions which require the seller to indemnify the agents if claims are made against them. This is on page sixteen of the advance opinion. The result would be that the licensee would tender his defense to the seller, the seller will then sue the buyer. The seller would then use one form to bring all parties of the transaction together. He suggested that this would not be an easier system but one that would be made more difficult and time consuming.

2. Mr. Mason stated that the present surety fund system is bogged down by surety claims and will continue to be so because of the easy access to the fund.
3. The claimant will eventually bear the cost of the administrative time of the hearing officer procedure. This is now a trend in the State government.

In conclusion, Mr. Mason stated that time is not a problem in the court system, that it takes less time and is less costly than the present surety fund proceedings. The main positive reason for supporting the legislation is that it will provide a neutral forum to handle cases. It is a form by which one is not judged by one's peers or by a hearing officer who is hired by the commission which gives the appearance of unfairness. It is important to have an independent system to judicate claims against Realtors and that system is the judiciary. It is not the function of the real estate commission to compensate without finding fault.

David LeBlond, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke, responding to Mr. Mason's comments.

Mr. LeBlond urged the commission to inquire from staff as to what has been the record of the surety fund, what the current status of the fund is and how many claims have been paid. He suggested this due to comments made by previous speakers that the fund is possibly being depleted by paying out claims.

Mr. LeBlond addressed the notion that there is something fundamentally unfair about the surety fund process, that it denies due process and that the adjudicating official is biased. The commission and the commission's hearing officer are judges, in essence, of the surety fund claims. The hearing officers are not part of the proceedings, they are not one of the parties. There is a claimant and a respondent. The hearing officers are all licensed attorneys with at least two years experience in the practice of law in the State of the Alaska. The commission reviews and adopts the hearing officer's findings of fact pursuant to the Administrative Procedures Act. The APA is well established. It is not considered an unfair procedure.

The last point Mr. LeBlond wished to make was in regard to the liability of the licensee. He said this has been well established through the Bevins/Ballard case. Under common law the licensee is liable for innocent misrepresentation.

Bob Arwezon

Bob Arwezon, Realtor, an Associate Broker since 1967, spoke in favor of the present legislation. Mr. Arwezon wanted to inform the commission of HB 561 which would increase small claim limits from \$2,000 to \$5,000. Mr. Arwezon feels this would be an avenue to adjudicate most real estate disputes in which the liability is \$5,000 or less. Mr. Arwezon submitted a copy of an article which appeared in the Anchorage Times and was written by Annette Taylor. The title of the article is "State Opts Out of Trailer Owner Maker Suits". The essence of the article is that the proposed bill would allow

homeowners to bring suit in civil court on the bond itself whenever a dispute should arise in regards to a mobile home transaction.

Mr. Arwezon expressed concern about "double jeopardy" on the part of the real estate licensee. By "double jeopardy" he meant that a claim could be made against the surety fund and at the same time a civil law suit could be filed. He expressed concern that the licensee would be liable to pay a double amount. He said that there was dissatisfaction with the present surety system, that the original intent in 1974 had never been changed and that if the intent was to be changed, the legislature should readdress the fund as its intent for the fund. The surety fund was originally to act only in place of bonds to be an indemnity when a licensee was either bankrupt or out of state.

#### Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors again addressed the commission to clarify his statements in regard to the hearing officer's appearance of impropriety. He said that he was not saying the hearing officers showed unfairness but they appeared to the public as being unfair because they actually work with the real estate commission, of which five members are real estate licensees. Mr. Mason wanted to point out that the real estate commission is the only agency through which the Administrative Procedures Act actually awards damages. Mr. Mason also wanted to say that the hearing officer procedure through the APA does not meet the standards of the court system.

#### Joseph Dygess

Mr. Dygess, private citizen, spoke in opposition to the surety fund legislation. The purpose of the real estate commission is to perform a service for the public as well as for the licensee. Passage of the legislation would be de facto deregulation of the industry. The real estate commission must decide if it wants to regulate the industry and perform an adjudication service. If it does not wish to do so, then what is the merit of having a commission that is not performing a public service.

#### Frank Austin

Frank Austin, former Public Member of the Alaska Real Estate Commission, resident of the Anchorage area for twenty-five years, spoke in opposition to HB 705 and SB 537. Mr. Austin stated that he supported the written testimony by Elizabeth Johnson, Attorney-At-Law, submitted to the House Labor and Commerce Committee. Mr. Austin is not in support of the present legislation. He wished the commission to consider the following:

1. Is the surety fund serving the purpose for which it was originally intended?
2. What problems does the surety fund now have?

Mr. Austin said that less than 20% of the claimants claims are being paid. The present hearing officers do have the necessary experience. Their findings of fact are only recommendations to the commission. It is the commission that

makes the final decision. It is a process which can be appealed back to the commission and then on to the Superior Court if necessary. There has been a statement that the real estate commission does not have the experience and background to make a decision. These are the same peers that will judge a license action. The original intent of the fund was not for it to be an insurance policy. When a loss is due to the action on the part of the licensee, the fund is the proper form of redress. Mr. Austin proposed that the commission consider the establishment of a filing fee and also a method by which claims can be recovered and repaid to the fund. He suggested a \$50 fee or 10% of claim fee, whichever is greater with a maximum \$250 fee.

Ms. Johnson's letter, referred to by Mr. Austin, is to be attached to the minutes.

#### Charles Bauer

Mr. Bauer does not support the present legislation. Mr. Bauer had filed a claim, went through the surety fund hearing proceedings and was awarded \$10,000. He believes the procedure is fair and just. He stated that without the fund he would have been unable to afford to sue. He would have simply lost \$10,000.

#### Mary Anne Kaemerer

Ms. Kaemerer was a claimant. Ms. Kaemerer is not in support of the present legislation. Before filing a claim against the surety fund, Ms. Kaemerer went through the court system. She was awarded a judgement of \$38,400.00 but as of today, she has not received any of the awarded money. Her attorney fees were \$3,000 approximately. In December of 1981, she filed her claim to the surety fund and one year later, her claim was awarded in the amount of \$10,000.00. She feels the system is fair and just.

#### David LeBlonde, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke again. He said that the procedure is unlike the typical administrative procedure. It is a unique judicial proceeding in which private individuals are assembled and an award is made. The surety fund pays a claim based on findings of fact to which the law is applied by a hearing officer. He stated that because the hearing officer procedures are not identical to the court system doesn't mean that they are unfair in any aspect. In order to receive reimbursement from the licensees whose claims have been paid to a claimant, the commission must go to court for a judgement against the licensee. The court requires additional formality. The court will not just "rubber stamp" the commission's decision. That does not mean that the commission's decision was unfair and not equitable. The court will take into consideration all the facts and then make a decision as to a judgement being awarded back to the surety fund.

#### Jeff Kennedy

Mr. Kennedy, a resident of the State of Alaska, spoke stating he is not in favor of the present legislation. Mr. Kennedy believes the consumer

will have more problems collecting from a real estate licensee, that it will require more procedures to go through, which would be more costly to the consumer.

The public hearing was recessed at 5 P.M. for dinner.

The public hearing was reconvened by Vice Chairman Ribacchi at 7:00 P.M. Vice Chairman Ribacchi asked the commission if they were going to consider specific action in regard to HB 705 and the SB 517. It was decided unanimously that the commission would take a position before the evening ended.

All commissioners with the exception of Chairman Hill and Commissioner Ed Anders were in attendance.

#### Jacqueline Stoll

Jacqueline Stoll, a real estate licensee, a real estate claimant to the surety fund, spoke against the present legislation. Ms. Stoll believes the real estate surety fund should remain as is and that it is a good avenue to settle disputes. She would have been unable to recover her money from a licensee who was convicted and jailed, if the fund had not been available.

#### Kenneth Brown

Kenneth Brown, a broker for nine years, spoke in favor of the present legislation. Mr. Brown said there are several vehicles for the claimant to use as opposed to the surety fund. He said that there is a Professional Standards Committee of the Board of Realtors, an individual make go to a Small Claims Court or an individual make actually take his claim through other judicial courts.

#### Ruth Edmondson

Ruth Edmondson, Broker spoke in favor of the present legislation. Ms. Edmondson believes that there are relatively few "black sheep" in the industry and that most of the licensees are having to pay into the surety fund for these few "black sheep". She spoke of "cronyism" by the hearing officers and stated that she believes that the hearings are held in "star chamber" conditions.

#### Ellen R. Malapanes

Ellen R. Malapanes, an Associate Broker, spoke in favor of HB 705 and SB 537. She believes that the present surety fund system does not give "due process" and that the court system would be more equitable.

#### Ted Kosack

Ted Kosack, Anchorage resident, spoke not in favor of the present legislation. Mr. Kosack is now having a personal experience in which he, as an injured party, in regards to a condominium associaton. He believes that the surety fund is both fair to the consumer and the licensee.

Glenda Straube

Glenda Straube, representing the Fairbanks Board of Realtors, spoke in support of HB 705 and SB 537. She stated two points:

1. The present surety fund system lacks due process.
2. She stated that there is a lack of concern on the part of the Attorney General's Office, Department of Law, to collect from the guilty party. She further stated it is the perception of many that the surety fund is an easy fund to collect from.

Mark Korting

Mark Korting, a Broker since 1976, spoke in support of HB 705/SB 537. Mr. Korting stated that the intent of HB 705/SB 537, is not to eliminate the Consumer Protection aspect but to put it back into the Court System, where it originally was. Mr. Korting stated that the real estate industry is concerned about the consumer and, in many instances, tries to settle out-of-court. Mr. Korting indicated that the Realtor State membership consists of 1,958 members. The commission is noted that there are over 4,000 licensees in Alaska.

DeeAnn Gleason

DeeAnn Gleason, a Broker since 1975, spoke in support of HB 705/SB 537. She believes the present claims filed against the surety fund would not hold up in court. Ms. Gleason also believes that the commission does not have the experience nor willingness to process the surety claims and that the hearing officer proceeding is unfair.

Gene Bates

Gene Bates, a licensed real estate agent since 1972, presently an Associate Broker, spoke in favor of HB 705/SB 537. Mr. Bates spoke in regard to the licensee being subjected to "double jeopardy" and not recently "due process" from their peers.

Connie Sipe, Assistant Attorney General

Connie Sipe, Assistant Attorney General, Consumer Protection Division, Department of Law spoke against HB 705/SB 537. Ms. Sipe believes the real estate commission, if they supported HB 705/SB 537 would be effectively retreating from the consumer's interest. The public has put trust in the commission and the public respects the commission's professionalism. The public believes the commission is a leader of the state. There is a trend in the industry for arbitration and the commission has gone one step beyond arbitrating to paying claims. The commission is in the forefront, one of the leaders.

Ms. Sipe suggested that there may be a problem. Many real estate licensees may take a "back lash" by the problems created by contractors. She asked the real estate industry to support legislation that would tighten the licensing requirements for contractors. Ms. Sipe also stated

that the present courts, through Common Law, recognize innocent misrepresentation. Ms. Sipe stated that there are a number of reasons why one would not want to go through the court judicial system. All lawsuits are reported to the credit bureau and would be part of one's credit rating. Also, it is not easy to go through Small Claims. She believes that the present legislation retreats beyond the original bonds and last, but not least, she believes the public would not be impressed by the real estate commission making the surety fund more remote.

She believes that the present surety fund system does provide due process and that one is allowed the opportunity to appeal the decision if they wish. In most instances, when taking a case through the court system, it is judge tried, not jury tried. Ms. Sipe explained the "double jeopardy" in the language of law means "tried for the same crime twice", it does not apply in instances of civil court action where an individual may be sued by other parties dealing with the same case. An individual may choose whatever entity is available to them to adjudicate a civil court action.

#### Grayce Oakley

Grayce Oakley, Broker, who has been licensed since 1971, spoke representing the Anchorage Board of Realtors in support of HB 705/SB 537. Ms. Oakley said that today that many licensees would not take listings from contractors unless they are bonded and licensed by the regulatory agency. Many licensees believe that they are in "double jeopardy" because they have to defend themselves multiple times through the surety system as well as the courts. The burden of proof, when going through the surety system, is on the claimant. Ms. Oakley does not believe the licensees are given "due process", in effect, the hearing officer is both a judge and a jury. In the court system, a jury hears evidence directly. The benefits from HB 705/SB 537 would be that a judgement would go against the offender or person who has to pay and after it is proven that the individual cannot pay or they are uncollectable, then the claimant may tap the surety fund. In the present surety fund system, the hearing officer makes a proposed decision, forwards it on to the commission and, in essence, the commission authorizes a check to be paid. This is the prevailing view of the Alaska Association of Realtors. It is the belief that the commission does not have before it all the findings of fact and therefore, at times, cannot make a proper decision.

#### Elizabeth Johnson

Elizabeth Johnson, Attorney-At-Law, Hearing Officer, for the Alaska Real Estate Commission spoke against HB 705/SB 537. Ms. Johnson stated that there are problems with the surety fund but they can be addressed by amending the present statutes as opposed to completely "revamping" the surety fund as suggested in HB 705/SB 537. Ms. Johnson stated that the licensee, as well as the claimants, are given "due process" and that there is another example, in which claims are paid, claims which are larger than the surety fund. This is the Worker's Compensation Board, under the Administrative Procedures Act and worker compensation claims are paid, awarded to claimants. She stated that there is a problem in the backlash in regards to contractors, who are

perhaps at fault. There must be some way in which to the contractor responsible. At the present time, there does not seem to be an effective way. She realizes the unhappiness of the industry in regard to the court's decision surety fund legislation will not eliminate the liability of the licensee for innocent misrepresentation.

Commissioner Ribacchi closed the meeting to public testimony. The meeting was recessed for five minutes.

The session reconvened. Vice Chairman Ribacchi stated that the commission, through the day, had procedurally been run informally, but now would be back in formal session, operating under its own commission procedures.

A motion was made by Commissioner Collins, and seconded by Commissioner Serrano, not to support the proposed legislation of HB 705 and SB 537.

The commission voted not to support the present legislation with one dissenting vote.

Commissioner Ribacchi	Aye
Commissioner Collins	Aye
Commissioner Serrano	Aye
Commissioner Morris	Aye
Commissioner Benson	Nay

Commissioner Collins further stated that the commission has a new direction to address after hearing the public testimony but does not believe it is now the time to change the surety fund procedures.

Commissioner Serrano stated that he believes that the industry should look out for the consumer and that it is good public relations to do so. At the moment he is opposed to the present legislation since there are no other alternatives at this time, he would like to leave the surety fund proceedings "as is".

Commissioner Benson stated that he believes the bills are a step forward and there are benefits in it for the industry.

Commissioner Morris stated that it is the leaders of the industry that support and have promoted the present legislation, that they do not necessarily speak for all the licensees. She further stated that the surety fund needs some amendments but it is doing a good job in its present position.

Commissioner Ribacchi stated as an individual, that many things are "over regulated" and that more regulation is not always in the benefit of the industry or the public. He stated that there are some conflicts and discrepancies in the real estate statute and that it can be improved but at the present time the surety fund should remain in its present form.

After listening to testimony, Commissioner Ribacchi, feels that there are many misunderstandings of the commission's functions and that the commission should take into consideration how these misunderstandings can be reversed.