

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8939 SENATE LABOR & COMMERCE

JUL - 9 1995

DIVISION OF
OCCUPATIONAL LICENSING
RECEIVED

Name

Affiliation

'95 APR 12 PM 1 30

- Carol Ann Conaghan GAAP member / UAF Accounting Student
- Michael Paul Tschal GAAP member / UAF Accounting Student
- Marie Bennett UAF Accounting Student
- Joan H. Fieruzzi GAAP member / UAF Accounting Student
- Tilee Tschal GAAP member / UAF Accounting Student
- Allen Nussbaumer GAAP member / Accounting student
- Heidel Linn GAAP member / Act. Student
- Jeanne D. Dwyer GAAP member / UAF Accounting Student
- Christina Lyman GAAP president
- Erin Mearns GAAP secretary
- Margaret Bell UAF Accounting Student

ALASKA STATE BOARD OF
PUBLIC ACCOUNTANCY
MINUTES OF MEETING
JANUARY 25-26, 1996

DRAFT

Agenda Items 9,
8, and 6
(THURS JAN 25 AM)

ASCPA Proposed Legislation

Mike Kelliher submitted the society's proposed legislation asking the Board for their comments and support. (Final Draft attached.)

The proposed legislation addressed the following issues:

- AS 08.04.120 would delay the effective date of the 150-hour education requirement to January 1, 2001, and grandfather baccalaureate degrees conferred prior to January 1, 2001.

The Board supported this change.

- AS 08.04.240 would add Limited Liability Companies (LLC) to the statute giving the Board authority to register and permit these entities. It was noted that all other statutes that reference partnerships and corporations would also be amended to include LLCs.

Mr. Truitt confirmed that LLC firm provisions must be statutory.

The Board supported this change with the intent that LLCs meet all applicable requirements that corporations currently must meet as outlined in AS 08.04.240(b)(1) through (6).

- AS 08.04.195 (new), Interjurisdiction Reciprocity, would allow a CPA from another jurisdiction to obtain an Alaska certificate on passage of the Uniform CPA exam and five years of practice experience outside of Alaska within the last ten years.

The Board supported this change conceptually. Mr. Kelliher and Mr. Truitt agreed to redraft the proposed legislation addressing the Board's concerns.

Agenda Items 9,
8, and 6
(THURS JAN 25 AM)

ASCPA Proposed Legislation

Mr. Kelliher submitted a redraft of the proposed legislation as agreed.

After review and a motion by Nelson, seconded by Ogle and carried unanimously, it was

RESOLVED to endorse and support the legislative package and rationale as submitted by the ASCPA with the intent that the term LLC be added to the accountancy act in all other applicable areas.

DRAFT



ALASKA SOCIETY OF CPAs
 141 W. TUDOR #105
 ANCHORAGE, ALASKA 99503
 (907) 562-4234
 800-478-4134
 FAX (907) 562-4023

March 18, 1996

Senator Tim Kelly
 Capital Building
 Room 101
 Juneau, Alaska 99801

Dear Senator Kelly:

On behalf of the Alaska Society of Certified Public Accountants, Inc., we would like to thank you and your staff for introducing SB 305. As representatives of our profession we feel that although the changes are technical in nature they will have a significant effect on the profession.

The Alaska Society of CPAs supports the three areas of change in the accountancy statute. The extension of the 150 hour education requirement to January 1, 2001 will give the Board of Accountancy the authority to establish a transition period for accounting students entering the profession.

The second change dealing with reciprocity would ease the administrative burden on the Alaska State Board of Accountancy and allow experienced CPAs to relocate to Alaska with a minimum amount of regulatory oversight.

Finally, the change in the accountancy statute allowing certified public accounting practice units to organize as limited liability companies, will allow CPA firms the same organizational alternatives already available to other professional organizations in Alaska. Again, we would like to thank you for introducing SB 305 and offer any further assistance. Please do not hesitate to contact me or Mike Kelliher if you need further support.

Sincerely,

Tom Bartlett

Tom Bartlett, CPA
 ASCPA President

Michael Kelliher
 Michael Kelliher, CPA
 Legislative Chairman

SB

316

Back in the 60s when the insurance statutes came into existence, the term disability was commonly used to describe health insurance coverages. In the 90s the common usage of the term disability refers not to health insurance as we think of it today, but to loss of income or disability income insurance. The use of the word disability to mean health insurance has been a confusing term for everyone. Several pieces of health insurance legislation over the years have referenced that "health insurance includes disability insurance" when according to the insurance statutes "disability" insurance is defined to include "health" insurance. The public and other state governments have had this same confusion. Correcting this confusion is the reason for SB 316.

SB 316 would merely change the term "disability" to "health" to better reflect the type of insurance that is being regulated. Health insurance in this case would include disability income insurance not the other way around. Both health insurance and disability income insurance are clearly defined in the bill. SB 316 is not intended to do anything other than correct this misnomer. The statutes will remain exactly the same as to their regulatory effect.

382

SB

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 382

Revision Date:	Department: <u>Commerce and Economic Development</u>
Title: <u>An Act extending the termination date of the</u>	BRU: <u>Occupational Licensing</u>
Board of Dispensing Opticians: <u>.....</u>	Component: <u>Operations</u>
Sponsor: <u>Representative James</u>	
Requestor: <u>Representative James</u>	COMPONENT SERIAL NO. <u>1844</u>

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	7.3	7.3	7.3	7.3	7.3	7.3
TRAVEL	1.0	1.0	1.0	1.0	1.0	1.0
CONTRACTUAL	1.4	1.4	1.4	1.4	1.4	1.4
SUPPLIES	0.1	0.1	0.1	0.1	0.1	0.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.8	9.8	9.8	9.8	9.8	9.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	4.9	5.3	4.9	5.3	4.9	5.3
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	9.8	9.8	9.8	9.8	9.8	9.8
TOTAL	9.8	9.8	9.8	9.8	9.8	9.8

Estimate of any current year (FY 98) cost: \$ 14.4

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 382 extends the Board of Dispensing Opticians to June 30, 2000. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$14.4. Fees were adjusted in May 1995 to cover full costs of the program over a two-year period and will be reviewed again prior to the next renewal.

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



Audit Report

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF DISPENSING OPTICIANS

September 29, 1995



Audit Control Number:

08-1435-96

Division of Legislative Audit

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

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

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

BUDGET AND AUDIT COMMITTEE

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Representative Con Bunde
Representative John Davies
Representative Gary Davis
Representative Vic Kolring
Representative Mark Hanley (alternate)

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Senator Steve Frank
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Senator Steve Rieger
Senator Fred Zharoff (alternate)

DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA
Legislative Auditor
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P.O. Box 113300
Juneau, Alaska 99811-3300

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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September 29, 1995

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF DISPENSING OPTICIANS

September 29, 1995

Audit Control Number
08-1435-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(8), the Board of Dispensing Opticians is scheduled to terminate on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Dispensing Opticians should be reestablished. The regulation and licensing of qualified dispensing opticians is of benefit in protecting the public's health, safety, and welfare. We recommend that the legislature extend the Board of Dispensing Opticians until June 30, 2000.

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

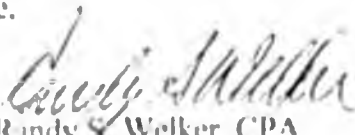

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dispensing Opticians. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 44.66.010(11) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

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

Scope and Methodology

The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

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

In addition we conducted interviews with Division of Occupational Licensing staff, and with selected licensed dispensing opticians, including the current chair of the board.

ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established under the provisions of Title 8, Chapter 71 of Alaska Statutes. The board consists of five members appointed by the governor and subject to legislative confirmation. Four members must be dispensing opticians and one a public member. Board members serve staggered terms of four years.

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

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

Board of Dispensing Opticians
(As of June 30, 1995)

Alicia Musser - Chairperson
Patricia Hedges-Gajdos
Cynde Oleck

note - two seats, including the public member seat are vacant

From a commercial perspective, the licensed dispensing optician is, compared to other professional groups, somewhat uniquely situated. The optician provides services that also can be provided by two other licensed professionals — optometrists and ophthalmologists (the latter being a licensed physician specializing in care of the eyes). State law specifies that the rights, privileges, and obligations of dispensing opticians are designed not to "limit or restrict a licensed physician or optometrist from the practices enumerated" in the dispensing optician statutes. Additionally, statute provides that "each licensed physician and optometrist has all the rights and privileges which may accrue under [statute] to a dispensing optician licensed [under state law]."

Opticians provide services to the public that also can be provided by individuals associated and supervised by optometrists and ophthalmologists. Some opticians work independently while others are employed by, or in some other way affiliated with, optometrists and ophthalmologists. As discussed further in this report, these unique commercial relationships and circumstances have contributed to allegations of widespread unlicensed activity along with confusion as to the extent that unlicensed individuals are required to be supervised by licensed professionals.

REPORT CONCLUSIONS

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

Although we determined the Board of Dispensing Opticians has demonstrated that it serves a public purpose, we do have concerns regarding certain aspects of its administrative operations. We discuss our concerns more extensively in both the Findings and Recommendations, and Analysis of Public Need sections of this report.

Alaska Statute 08.03.010(c)(11) requires that the Board of Dispensing Opticians be terminated on June 30, 1996. Under AS 08.03.020 the board has a one-year period to administratively conclude its affairs. We recommend that legislation extend the termination date for the board to June 30, 2000.

In making this recommendation we have departed from the trend began last year in our sunset review reports. In those reports we recommended longer extension periods for occupational licensing regulatory boards. This change reflected our view that the administration of most licensing boards was such that limited benefit would be provided by more frequent sunset reviews. We recommended, and the legislature adopted, ten year extensions for the various occupational licensing boards that were due to sunset on June 30, 1995.

In this instance, we recommend that the legislature return to a more limited, four year sunset review cycle. Our recommendation reflects concerns that we have regarding certain aspects of the board's performance. These concerns are discussed further in two sections of this report — Findings and Recommendations and Analysis of Public Need. As discussed in the Findings and Recommendation section, we suggest the legislature consider making certain changes to the statutes governing the Board of Dispensing Opticians. If the suggested changes are made, a review of operations conducted in preparation of a 2000 sunset date would provide an opportunity to assess the impact of any adopted statutory and administrative changes.

Essentially, in this instance we believe there is a prospective benefit to reevaluating the operations of the Board of Dispensing Opticians through the sunset review process. Accordingly, we recommend the legislature extend the board to 2000, consider the recommended statutory changes, and set in a motion a process by which the impact of these actions can be evaluated after three years of implementation.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 69R

Central Microfilm Services
Department of Education
State of Alaska

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Division of Occupational Licensing

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

REPORT CONCLUSIONS

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

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Essentially, in this instance we believe there is a prospective benefit to reevaluating the operations of the Board of Dispensing Opticians through the sunset review process. Accordingly, we recommend the legislature extend the board to 2000, consider the recommended statutory changes, and set in a motion a process by which the impact of these actions can be evaluated after three years of implementation.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should amend the statutes related to the licensing of opticians without examination

Currently, under the statutes related to the Board of Dispensing Opticians, provision is made for individuals to be licensed without having to pass the State's practical examination. Provision is made through two different, although somewhat related, methods — reciprocity and credentials.

Reciprocity

Current statute permits an individual to be licensed as a dispensing optician if they have been practicing in another jurisdiction which has "*requirements for licensing and gives reciprocal rights equivalent*" to those of Alaska.¹ In practice, this provision has proven inapplicable, since Alaska has not entered into any reciprocal agreements with any other state. In the 1991 sunset report prepared by the Legislative Finance Division, it was recommended that this statute be repealed altogether since it was not effectively providing reciprocal licensure. During the audit period, the board issued no licenses through reciprocity.

Currently, the Department of Law (DOLaw) is analyzing this statute. DOLaw is informally advising that reciprocity may be allowed even in the absence of a formal agreement. As we understand it, the Department of Law points to the construction of the statute saying that reciprocal rights need only be equivalent and not necessarily memorialized in a formal agreement.

Credentials

Alaska law also permits an individual to be licensed without examination as an optician through a credentials process. State law (AS 08.71.145) provides that an individual with a valid license from another jurisdiction "*shall be issued a license without examination upon payment of fees and documentation that the board may require by regulation*" [emphasis added]. The board has issued several licenses over the past three years under this statutory provision.

¹ The full statutory reference, at AS 08.71.150 states that

An applicant who has been licensed and has been practicing as a dispensing optician in a state, territory, district, or possession of the United States which has requirements for licensing and gives reciprocal rights equivalent to those of this state, and who otherwise meets the requirements of AS 08.71.110, shall be licensed by the board without examination

AS 08.71.110, referenced in the statute, sets out the specific qualifications that an individual must have to apply for taking the optician licensing examination.

In its FY 93 Annual Report, the board endorsed the recommendation made in a prior sunset review that the reciprocity statute be repealed. The board also proposed the deletion of the credentials exception to licensure without an examination set out in AS 08.71.145.²

In our view, the legislature provided for licensure by reciprocity and credentials as a means to allow qualified individuals fair and reasonable access to the profession. Accordingly, we typically adopt a skeptical perspective of board actions and practices that serve to undermine statutory intent.

In this instance, however, we agree with the recommendation of the board and affirm the prior sunset review's recommendation regarding licensure by reciprocity. The current statute is essentially irrelevant and serves to primarily provide legal support for applicants who have been rejected and are predisposed to legally challenging the board's decision.

Although we believe the statutory provision for licensure by credential should be amended and clarified, we do not believe it should be repealed. The legislature made provision for licensure without examination to prevent the board from unduly restricting entry into the profession. Accordingly, a credential statute, clarifying the conditions for licensure without examination, better serves this legitimate public policy goal.

We recommend that the legislature set out in more specific statutory language the conditions for licensure without examination. As is done elsewhere in statute, we suggest a provision permitting licensing by credential in those instances where the applicant can provide satisfactory documentation that they are licensed in another jurisdiction where requirements and standards are essentially equivalent to those of Alaska. Such language would reflect the current standard being utilized by the board. Under regulation 12 AAC 30.100, applicants can be licensed without examination if they can demonstrate they have:

- a) passed an equivalent practical examination.
- b) passed the national examination (or an examination equivalent to the national examination),³ and.
- c) have received training equivalent to that of Alaska.

² The full statutory reference, at AS 08.71.145 states that

A person with a valid license as a dispensing optician from another state, territory, district or possession of the United States shall be issued a license without examination for those professional areas in which the person is licensed upon payment of any fee and documentation the board may require by regulation.

³ The national examination is the National Opticianry Competency Examination and is administered by a private firm, Professional Testing Services.

According to the board's FY 93 Annual Report, only 14 of the 23 states that license opticians require that applicants successfully complete a practical examination. Under the equivalency requirement, applicants from these states would seem to be most likely, in the first instance, to qualify for licensure by credential. In the past, applicants licensed in Washington and Florida have been considered to meet Alaska's standards and accordingly, have been licensed by credential, without examination.

These circumstances indicate that such amending to the credential statute would not unduly jeopardize protection of the public. Likewise, clarification of the statute would serve to establish more clearly the intent of the legislature and better circumscribe the discretion of the board in providing for licensure without examination.

Recommendation No. 2

The legislature should consider adopting statutory changes to provide for more efficient and cost-effective control over unlicensed activity.

The investigative unit of the Division of Occupational Licensing is the agency primarily responsible for the enforcement of professional licensing laws. The unit utilizes legal processes set out in statute in carrying out its investigative and enforcement duties.

Unlicensed activity is a concern of the Board of Dispensing Opticians

As discussed in the Analysis of Public Need section, the incidence of what some eye care professionals view as unlicensed practice is of increasing concern. Opticians provide services to the public that also can be provided by individuals associated and supervised by optometrists and ophthalmologists. Some opticians work independently while others are employed by, or are in some other way affiliated with, optometrists and ophthalmologists. This unique commercial relationship has contributed to allegations of widespread unlicensed activity along with confusion as to the extent that unlicensed individuals are required to be supervised by licensed professionals.⁴

The Department of Law has advised the optometrists' licensing board that all individuals dispensing eyeglasses under its supervision should either be a licensed optician or a registered apprentice.⁵ Given the conclusions of this legal analysis, we received reports and complaints

⁴There are provisions in the statutes relating to both opticians and optometrists that acknowledge that services may be provided by non-licensed individuals under the supervision of the professional license holder. More specifically, optician statutes provide for what are termed registered apprentices and require applicants to serve an apprenticeship in order to sit for professional examination.

⁵In a July 1991 memorandum of advice from the Department of Law, the Division of Occupational Licensing was advised that individuals dispensing and fitting eyeglasses under the supervision of an optometrist still needed to be either a licensed optician or a registered apprentice. The attorney general has held this opinion even though statute specifies that the rights, privileges, and obligations granted to dispensing opticians are designed not to "limit or restrict a licensed physician or optometrist from the practices enumerated" in the dispensing optician statutes. Additionally, statute provides that "each licensed physician and optometrist has all the rights and privileges which may accrue under [statute] to a dispensing optician licensed [under state law]."

from dispensing opticians that there is extensive unlicensed activity. That is, numerous individuals are dispensing and fitting eyeglasses and contact lenses without a license — ostensibly under the supervision of licensed optometrists.⁶

Enforcement of unlicensed activity is low priority

In the context of risk to public health, unlicensed activity in the dispensing of eyeglasses poses a relatively minor threat. Although the threat of improperly fitted contact lenses is somewhat greater, the public health risk is still relatively small. Accordingly, local prosecuting attorneys assign the enforcement of optician licensing requirements a low priority. Likewise, given the many demands of various professions, the Division of Occupational Licensing's investigative unit is able to give limited attention to enforcement. However, the division may be able to more expediently shut down unlicensed practice through the use of civil penalties.

Under the current statute related to the licensing of architects, engineers, and land surveyors a civil penalty of up to a \$5,000 fine can be levied against an individual who engages in unregistered or unauthorized practice.⁷ In discussions with the Division of Occupational Licensing's investigative unit, this provision has proven to be an effective means to closing down unlicensed activity. Although it has not been invoked, it has been proven to be an effective deterrent and appears to encourage timely compliance with cease-and-desist notices.⁸ In our view, adopting legislation to give the unit this authority at its discretion would be a cost-effective way to address unlicensed activity in all professions in a comprehensive, efficient manner.

⁶As a result, the value and necessity of obtaining an optician license in order to work is lessened. Individuals can continue to work under the supervision of optometrist, without obtaining the necessary license. This decreases the number of license holders, which has the effect of increasing license fees, which in turn lessens the incentive of individuals to maintain their license in good standing. From a commercial standpoint, due to lack of enforcement of licensing requirements, the dispensing optician license in many circumstances is meaningless.

⁷AS 08.48.295 provides for the following

(a) In addition to any other provision of law, if a person practices or offers to practice architecture, engineering, or land surveying in the state without being registered or authorized to practice in accordance with the provisions of this chapter, the board may enter an order levying a civil penalty

(b) A civil penalty levied under this section may not exceed \$5,000 for each offense. In levying a civil penalty, the board shall set the amount of the penalty imposed under this section after taking into account appropriate factors, including the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other matters the board considers appropriate.

⁸A cease-and-desist order is often the first remedy sought by the investigation unit of the Division of Occupational Licensing. Essentially, such an order is a legal document that charges an individual with a certain violation of statute and requires them to stop the activity in question.

Accordingly, we suggest the legislature consider amending the central licensing statutes at AS 08.01.075(a)(8) to specify that civil fines may be imposed for violation of either general licensing statutes and regulations, in addition to violation of the statutes or regulations related to any given professional licensing board.

Recommendation No. 3

The board should improve the objectivity and consistency of the practical examination.

The board requires applicants for licensure to pass a national written examination and a practical examination to demonstrate sufficient ability to dispense optical products. The current practical examination is very subjective.

Five times in the past four years the scores given applicants for the practical examination have been challenged. In two of these instances, test scores were changed when re-graded, and in one of these cases the applicant went from a failing to a passing score.

The board acknowledges that the consistency and scoring procedures for the examination must be improved. The board has started work on developing an examination manual which should make the examination process more objective, more consistent, and less vulnerable to challenge. Unfortunately, the public board member, who was the most active individual in developing these changes, resigned in January 1995. It is our understanding that drafting of the manual has been set aside since that time.

We encourage the board to continue making the examination manual a priority, and recommend that the board assign the effort to a subcommittee of the board for further development.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

Although there has been some inconsistencies and defects in the administration of the State's practical examination, the board has served the public by examining and licensing qualified applicants. The board has also proposed changes to statutes and regulations in order to enhance the quality of opticianry care in Alaska.

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

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.

Two board seats have been vacant since January of 1995. This causes a strain on the ability of others on the board to effectively fulfill the duties of the board. As of the date of this report, two seats remain unfilled — including the public member seat.

Due to budget constraints the board has been forced to cut back to one annual face-to-face meeting. While teleconference meetings have been held, most substantive administrative action and the state practical examination must be administered during the two-day annual face-to-face meeting. This has made it difficult for the board to complete all its tasks.

The nature of the opticianry industry also impedes the operation of the board. The industry is in a state of flux. Traditional optician shops are facing increased competition from chain store operations which often offer less expensive, allegedly lower quality eyeglasses. As discussed in Recommendation No. 2, these stores are often accused of using unlicensed, unsupervised employees. Investigation of unlicensed dispensing of eyeglasses is a low priority for the Division of Occupational Licensing's investigative unit due to the low level of health risk it represents to the public.

Consistent with statute, Occupational Licensing has increased the biannual licensing fees from \$230 to \$385.⁹ There has been a substantial decline in the number of licensed opticians during the most current license renewal period. Informed observers we spoke with have speculated that many license holders may have come to see that the license is not worth it in view of the increase in fees. As discussed in the Organization and Function section, the structure of the vision care profession is such that an individual does not necessarily have to be licensed as an optician to legally dispense optical products.

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

The board has recommended the repeal of AS 08.71.150, which provides for licensure by reciprocity. This was also recommended in the 1984 and 1991 sunset reports. It has been the board's contention that the statute was unnecessary since no other state offered reciprocity to Alaskan license holders. Licensure without examination can be achieved through what is termed licensure by credential. For further discussion of the issues involved in licensure by reciprocity and credentials, see Recommendation No. 1. As reflected by our analysis presented in that recommendation, we do not necessarily agree with all aspects of the board's position — however, we do feel this issue should be clarified in statute.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effective of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it provides.

All but one meeting was advertised in three Alaskan newspapers, with adequate notice for interested individuals to attend or to make written comment. One meeting was not advertised in the Juneau or Fairbanks papers. Two meetings, including this one were rescheduled. Therefore, cancellation notices were required to be published.

At each meeting, the public was encouraged to submit either oral or written testimony before the board.

⁹AS 08.01.065(c) requires that the Department of Commerce and Economic Development establish licensing fees so

... the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation ... "regulatory costs" means costs of the department that are attributable to regulation of an occupation plus

(1) all expenses of the board that regulates the occupation if the board regulates one occupation.

In order to comply with the requirements of the statute, the Division of Occupational Licensing raised the license fees for Dispensing Opticians more than two-thirds from \$230 to \$385 for the 1995 renewal.

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

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

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

Overall, the investigation of complaints against licensees received by the Division of Occupational Licensing is effective. While timeliness is an issue, given the circumstances surrounding the cases that have remained open for an extended period, progress is reasonable. Complaints are prioritized appropriately and handled accordingly.

The licensing board appears willing to take effective licensing enforcement action, and to operate in a fair and objective manner. In only one instance was a case heard by a hearing officer. In that case, the hearing officer's proposed decision was upheld. While the board's willingness to enforce licensure laws is not in question, the efficiency with which it acts is in doubt. In two cases, licenses to dispense contact lenses were erroneously issued by the board. One applicant voluntarily returned the license, but another is resisting the rescission.

It is noteworthy that of the fourteen investigative cases opened from FY 92 through FY 95, only four involved allegations of misconduct by a licensed optician. Three of those four cases were closed with findings of no violation, or compliance. One case is still opened. More than 70% of investigative cases involved licensing application problems, unlicensed practice, or challenges to licensing examination scores. The remaining investigations involved applicant's complaints regarding examinations, allegedly unlicensed practice, and concerns involving applicant information.

The two complaints reported to the ombudsman were of a limited scope. The first involved an allegedly improper prescription and the refusal of the optician to correct the error. The ombudsman's investigator directed the complainant to file a formal complaint with the board.

The second complaint dealt with the refusal of the Division of Occupational Licensing to allow an applicant to sit for the examination because the application was received after the deadline. The ombudsman found that the deadline was set by statute and was due to national examination standards. However, the complainant was advised to appeal to the Board of Dispensing Opticians. Neither of these complaints is cause for concern as to the efficiency with which the board fulfills its mission.

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

Applicants to the board of dispensing opticians are licensed according to statute. Of the ten licenses tested, two minor errors were detected. Additionally, as discussed above, it was brought to our attention that two licenses for the dispensing of contact lenses were issued in error.

The written examination process adequately and fairly tests an applicants' basic knowledge. However, the state practical examination is highly subjective and subject to challenge. This raises concerns regarding the efficiency with which the board presents qualified applicants to serve the public. See Recommendation No. 3 for further discussion.

Fewer than half the states nationwide regulate opticians. Of the 23 states that do, only 14 require any type of practical examination. There is little if any apparent standardization among the practical tests given in different states. Given these facts, it also appears that Alaska is one of the most difficult states in the nation in which to obtain a license. This may be cause for concern about barriers to entry into the opticianry market. For further discussion, see Recommendation No. 1.

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

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

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

The board needs to meet more than once a year to be effective. At the present, the board has one two-day meeting annually. One day is needed to conduct the state practical examination. Not enough time is left to administer other board business effectively.

Vacant board seats must be filled in a more timely manner to ensure that the board functions properly. Currently, two seats have been vacant for more than six months. This leaves only three members to fulfill all board obligations. Low examiner/examinee ratios have been cited as one cause for problems with the state practical examination. A complete board, coupled with an additional meeting/examination would alleviate this problem.

The state practical examination must be more standardized. Lack of standardization has led to inconsistency in examination scoring. This is partially due to the low examiner/examinee ratios and partially due to the hurried manner in which board members are forced to grade examinations. The board had begun work on a testing manual, but the member most involved in the drafting of the manual resigned and the project has fallen by the wayside. More standardization is essential to reduce the number of challenges currently received to test scores and to better allow the board and occupational licensing to defend the scores that are given. See Recommendation No. 3 of the Findings and Recommendations section of this report.

Statutory changes are necessary to allow better enforcement against unlicensed activities. Unlicensed practice is common in the opticianry industry. Due to the nature of the service, and the demands on occupational licensing's investigators, prosecution of such matters is a low priority. Unlicensed practice is a class B misdemeanor in Alaska. Therefore, the penalty for unlicensed practice, as well as the risk of prosecution is low. Increasing the penalty for such practice would help deter. For further discussion see Recommendation No. 2.

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TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
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November 30, 1995

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

RECEIVED
DEC 08 1995

LEGISLATIVE AUDIT

Dear Mr. Welker:

Reference the Board of Dispensing Opticians Preliminary Audit Report. Thank you for this opportunity to comment.

Recommendation No. 1:

The Legislature should amend the statutes related to the licensing of opticians without examination.

We concur that license by credentials (AS 08.71.145) and license by reciprocity (AS 08.71.150) provisions should be repealed or clarified by the Legislature. These provisions have caused much concern over the past year, and the board has been involved in litigation as a result of the confusion. Regulations which were enacted several years ago relating to license by credentials have now been determined by the Attorney General's office to be beyond the scope of statutory authority.

As noted in your report, less than half the states regulate opticians. Some of the states that do have a licensing scheme in place may not require training prior to examination. Some require only a written exam and no practical examination, and still others may require training only. Under the current interpretation of license by credential and reciprocity provisions, a process is now in place whereby Alaska residents have a much harder time qualifying for a license (i.e., Alaska residents are required to complete an apprenticeship as well as national written and state practical examinations prior to licensure). Placing a higher burden of proving competency on Alaska applicants while simply accepting another jurisdiction's determination of competency without regard for the licensing requirements of that jurisdiction does not appear to be in the best interest of the public. If an Alaska applicant fails the Alaska exam, or for whatever reason does not qualify for a license under other provisions of AS 08.71, they could simply apply and receive a license in a jurisdiction where the requirements are less stringent and then apply for Alaska license under AS 08.71.145 or 150. Providing this type of loophole in our licensing scheme is not in the best interest of the public being served or in providing for equal treatment of Alaska optician applicants.

Recommendation No. 2:

The Legislature should consider adopting statutory changes to provide for more efficient and cost-effective control over unlicensed activity.

We concur with your analysis and have attempted to correct this concern by proposing statutory revisions during past legislative sessions.

In our opinion, unlicensed activity will continue to rise unless legislative action is taken regarding unlicensed activity penalty provisions. Licensees share in the cost of administering and enforcing the licensing program. As fewer individuals comply with the licensing requirements, there are fewer practitioners to which the enforcement costs are spread. The license fees will continue to increase potentially leading even more individuals to fail to renew their license. There is no particular incentive to comply with the licensing requirements when coworkers and competing businesses are not being forced to cease business or comply with licensure. Lack of ability to fine individuals for unlicensed activity only aggravates the casualness some industry's practitioners may have regarding licensure.

Recommendation No. 3:

The board should improve the objectivity and consistency of the practical examination.

We concur with this recommendation. As noted, the board also shares concerns with the examination process and with the limited opportunity available during meetings; they are attempting to resolve areas of concern.

Analysis of Public Need:

We concur with your comments under the analysis of public need. One comment which should be discussed, however, is related to the board's need to meet more frequently to conduct business (currently the board meets only once a year for one day). The costs of administering the program, including travel and per diem costs for the board, are borne by the licensees. We continue to have an increase in license fees since there is a decline in practitioners who are complying with licensure. Although the board can easily justify additional board meeting time, they are at that same time attempting to operate in a cost-efficient manner and keep travel and per diem costs at a minimum. Teleconference meetings have been held in the past, however, it can be difficult to accomplish complex tasks such as rewrite of examinations via teleconference. We will continue to explore cost-effective avenues for the board to accomplish the mandates of its position.

Sincerely,


William Hensley
Commissioner

WLH/BG/yd731.01

110195a

cc: Catherine Reardon, Director
Division of Occupational Licensing, DCED
bcc: Barbara Gabier, Program Coordinator

SB

404

House Labor & Commerce Committee

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

SPONSOR STATEMENT CS HB 404 (STA)

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

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

House Labor & Commerce Committee

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

SECTIONAL ANALYSIS CS HB 404 (STA)

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

Section 2: Repeals statutory authorization for licensure by credential.

Section 3: Gives the bill an immediate effective date.



Audit Report

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF CHIROPRACTIC EXAMINERS

September 6, 1995



Audit Control Number

08-1434-96

Division of Legislative Audit

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate the revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

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Division of Legislative Audit



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September 6, 1995

Members of the Legislative Budget
and Audit Committee:

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

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

September 6, 1995

Audit Control Number
08-1434-96

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

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

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

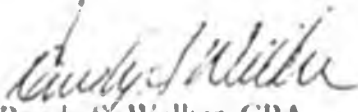

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

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

Objectives

Our specific audit objectives were:

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

Scope and Methodology

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

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

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

William F. Risch, D.C. Chair

Patricia Conners-Allen, D.C.

Trevor Ireland. D.C.

LeRoy D. Nordstrom, D.C.

(Vacant), Public Member

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

ORGANIZATION AND FUNCTION

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

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

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

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

Division of Occupational Licensing

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

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REPORT CONCLUSIONS

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

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

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

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

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

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

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

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

The state examination includes written, oral, and practical components

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

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

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

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

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

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

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

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

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

¹ Specifically, AS 08.20.140 provides

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

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

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

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

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

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

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

Recommendation No. 2

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

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

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

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

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

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

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

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

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

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

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

No complaints were filed with the Ombudsman regarding chiropractic licensees.

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

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

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

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

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

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

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

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

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

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

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

TOIY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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

November 30, 1995

RECEIVED
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LEGISLATIVE AUDIT

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

Dear Mr. Welker:

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

Recommendation No. 1:

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

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

Recommendation No. 2:

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

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

Analysis of Public Need:

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

Examinations:

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

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

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

Sincerely,


William L. Hensley
Commissioner

WLH/BG/yd730.ol
103195a

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 404(STA)

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act extending the termination date of the BRU: Occupational Licensing
 Board of Chiropractic Examiners: _____ Component: Operations
 Sponsor: House Labor & Commerce
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	56.5	8.6	56.5	8.6	56.5	8.6
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FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: February 5, 1996
 Approved by Commissioner: William L. Hensley Date: 2-5-96
 Agency: Commerce and Economic Development

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HB

23



Official Business

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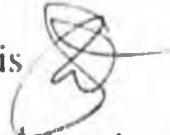
HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

March 15, 1995

TO: Senator Tim Kelly, Chairman
Senate Labor & Commerce Committee

FROM: Representative Gary Davis 

RE: House Bill 23, "An Act relating to referrals involving dental services."

I respectfully request that House Bill 23 be scheduled for a hearing in the Senate Labor & Commerce Committee at your earliest convenience.

House Bill 23 will prohibit the receipt of compensation by a dentist for referring a person to another dentist or dental practice. The American Dental Association Code of Ethics forbids dentists from profiting from referrals. This legislation codifies the ethical concern relating to referrals.

In Section 2, the receipt of compensation by a person or advertisement referring a dental service is prohibited unless the compensation for referral is disclosed at the time of referral. This legislation will help ensure that patients are being referred to a dentist or dental practice as a result of their quality service.

The Alaska Dental Society has had several breeches of their ethics code and their board has requested this legislation. I feel this is an appropriate legislative function of the Board of Dental Examiners under AS 08.36.315.

Thank you for considering this legislation.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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SECTIONAL ANALYSIS

HOUSE BILL 23

"An Act relating to referrals involving dental services."

Section 1 - Amends AS 08.36.315. Grounds for discipline, suspension or revocation of license. Adds a new subsection relating to the grounds for discipline, suspension, or revocation of a license for the receipt of compensation for referring a person to another dentist or dental practice.

Section 2 - Amends AS 45.50.471 (b). Unlawful acts and practices. Adds two new paragraphs relating to the receipt of compensation by a dentist or advertiser for referring a person to a dentist or dental practice.



Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675 • FAX: 274-2960

February 6, 1998

Representative Gary Davis
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Davis:

The Alaska Dental Society sincerely thanks you for agreeing to sponsor HB 23 "An Act relating to referrals involving dental services." We feel this action is necessary for two main reasons - the public's protection and to comply with dentistry's national code of ethics.

We came upon this matter when the dental society office was queried by a citizen as to why the referral made to her was incorrect. After investigation, it was discovered that even though the yellow page listing said"our caring receptionist will tell you about the dentist nearest you who best meets your needs"....all callers were referred to the same practitioner and unbeknownst to the caller, this particular dentist was chosen because he had *paid* the referring company for referrals. The caller had asked for an orthodontist and was surprised to discover after receiving treatment by the dentist seen (and paid) that she next needed to see a "real orthodontist" to properly finish her treatment.... Upon checking in other cities where the directory ad was placed, the same scenario was apparent as was the fact that in all instances, the caller was never informed that the dentist referred had paid for the referral.

The American Dental Association's Principles of Ethics and Code of Professional Conduct clearly states the following: "A dentist is generally not permitted to make payments to another person or entity for the referral of a patient for professional services....It constitutes advertising which is false or misleading in a material respect and violates the prohibitions in the Code against fee splitting."

HB 23 will help in two ways. First - through the dental statutes, it says that receiving compensation for referring patients is a disciplinary offense. Second - through the unfair trade practices statute it says that any referral accompanied by pay back compensation must be disclosed in the advertising and by the referral source to the individual seeking the referral at the time the referral is made.

Again, we appreciate your assistance.

Sincerely,

A handwritten signature in black ink that reads "Arne R. Pihl, DMD".

Arne R. Pihl, DMD
President
Alaska Dental Society

American Dental Association

Back-up for HB 23

~~BACK~~

E C

ADA
PRINCIPLES OF
ETHICS
AND CODE OF
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American Dental Association
Council on Ethics, Bylaws and Judicial Affairs
211 East Chicago Avenue
Chicago, Illinois 60611
With official advisory opinions
revised to January, 1993

With official advisory opinions
revised to January, 1993

ADA.



Back-up for HB 23

Principle - Section 5

PROFESSIONAL ANNOUNCEMENT:

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.*

Code of Professional Conduct

5-A. ADVERTISING.

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.*

Advisory Opinions

1. If a dental health article, message, or newsletter is published under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.
2. The Council on Ethics, Bylaws and Judicial Affairs believes it would be of service to the members to provide some insight into the meaning of the term "false or misleading in a material respect." Therefore, the following examples are set forth. These examples are not meant to be all-inclusive. Rather by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) contain a representation or implication regarding the quality of dental services which would suggest unique or general superiority to other practitioners which are not susceptible to reasonable verification by the public, and d) be intended or be likely to create an unjustified expectation about results the dentist can achieve.
3. The use of an unearned or non-dental degree in any general announcements to the public by a dentist may be a representation to the public which is false or misleading in a material respect. A dentist may use the

of unearned or nonhealth degrees could be misleading because of the likelihood that it will indicate to the public the attainment of a specialty or diplomate status. It may also suggest that the dentist using such is claiming superior dental skills.

For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree. Generally, the use of honorary degrees or nonhealth degrees should be limited to scientific papers and curriculum vitae. In all instances state law should be consulted. In any review by the council of the use of nonhealth degrees or honorary degrees, the council will apply the standard of whether the use of such is false or misleading in a material respect.

4. A dentist using the attainment of a fellowship in a direct advertisement to the general public may be making a representation to the public which is false or misleading in a material respect. Such use of a fellowship status may be misleading because of the likelihood that it will indicate to the dental consumer the attainment of a specialty status. It may also suggest that the dentist using such is claiming superior dental skills. However, when such use does not conflict with state law, the attainment of fellowship status may be indicated in scientific papers, curriculum vitae, third party payment forms, and letterhead and stationery which is not used for the direct solicitation of patients. In any review by the council of the use of the attainment of fellowship status, the council will apply the standard of whether the use of such is false or misleading in a material respect.

5. There are two basic types of referral services for dental care: not-for-profit and the commercial.

The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expenses of the service and has no relation to the number of patients referred.

In contrast, experience has shown that commercial referral services generally limit access to the referral service to one dentist in a particular geographic area. Respective patients calling the service are referred to a single subscribing dentist in the area.

the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service.

A dentist is allowed to pay for any advertising permitted by the Code, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the Code in that it constitutes advertising which is false or misleading in a material respect and violate the prohibitions in the Code against fee splitting.

6. An advertisement which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. An advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact, is an example of a misleading omission. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.

5-B. NAME OF PRACTICE.

Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year.*

Opinion

1. Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5-C. ANNOUNCEMENT OF

Back-up for HB 23

February 25, 1994

Dr. Pitts -

These are the incidents that I know of that pertain to the dental referral service. Is this what you want?

In Fairbanks, a dentist called the dental referral service and was told that the service only referred to dentists:
who were in good standing with the dental society, and
who did high quality work

The dentist replied that this company must refer to most of the dentists in the Fairbanks area if that was the criteria which was used. The referral service then admitted that they refer to the dentists who pay them to refer.

In Anchorage a dentist expressed concern that one of his patients had called the dental referral service listed in the yellow pages for a referral to an orthodontist and made an appointment with the dentist to whom he was referred. During the initial evaluation the dentist related that because the nature of the case he would have to consult with an orthodontist.

The patient then questioned the dentist as to his qualifications because he was led to believe that he had come to an orthodontist, when in fact he had been referred to a general dentist.

Following this call to our office concerning the dental referral service, several people called the number listed in the telephone book, giving various names and home addresses in various parts of town, and requesting various specialists. No matter what zip code was given, no matter what specialist was requested, the referral service only referred to 2 practices in Anchorage. Neither office was a specialty practice. One was a member of the dental society, another was not. There are 150 dentists in the Anchorage area who are members of the dental society.

The dental referral service has never asked the dental society which dentists are in good standing.

Betty

Letter of Support - Betty Prentice
Director of Operations - AK Dental Society

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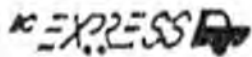
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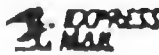


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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 23

Revision Date February 6, 1995 Department Commerce and Economic Development
 Title An Act relating to referrals involving BRU Occupational Licensing
 dental services Component Operations
 Sponsor Representative G Davis
 Requestor Representative G Davis COMPONENT SERIAL #: 1844

(Thousands of Dollars)

Expenditures/Revenues	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00

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

CHANGE IN REVENUES						
---------------------------	--	--	--	--	--	--

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 95) cost: \$ 00

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

HB 23 amends the dental statutes providing grounds for discipline, suspension, or revocation of a license if a dentist receives compensation for referring a person to another dentist or dental practice. New funds are not required to implement this bill.

Prepared by Jennifer Strickler Admin. Offices Phone 465-2144
 Division Occupational Licensing Date 2/6/95
 Approved by Commissioner William L. Hensley Date 2/6/95
 Agency Commerce and Economic Development

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HB

32

Revision Date: 3/5/96 Dept. Affected: Revenue
 Title: PFD Administrative Proceedings BRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: Representative Green
 Requestor: Conference Committee COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	152.3					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT	14.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	166.3	00	00	00	00	00

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	130.3	143.3	149.8	156.3	162.8	166.1
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other Permanent Fund Div. Fund	166.3					
TOTAL	166.3	00	00	00	00	00

Estimate of any current year (FY96) cost \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Yvonne A. Jester, Director Phone: 465-2323
 Division: Permanent Fund Dividend Date: 3/5/96
 Approved by Commissioner: [Signature] Date: 3/6/96
 Agency: Department of Revenue

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CSHB32(FIN)AMS/FISCAL NOTE

DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION

Fiscal Note Analysis
CSHB 32 HS Conference Committee

OVERVIEW

This bill would amend section AS 43.23.015, Application and proof of eligibility, section (g) to allow an administrative appeal to be filed by an individual. If within eight months after the administrative appeal is filed, the department does not issue a final written opinion, all issues raised in the administrative appeal shall be considered to have been decided in favor of the individual.

FISCAL IMPACT

The current amendment which requires the Appeal Unit to issue a final written decision within eight months after the appeal is filed will have a significant impact on the department. The department will need 4 additional Specialist I positions for one fiscal year, beginning July 1, 1996 through June 30, 1997, in order to eliminate the current appeals inventory for 1995 and those that will be received starting in May 1996. We estimate more appeals will be received with this amendment.

Each position including benefits cost \$38,070 for a total cost of \$152,280 in personal services. Additional costs for computers for each employee are \$14,000. The total fiscal impact will be \$166,280 for the four positions.

Alaska State Legislature

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Representative Joe Green

District 14

SPONSOR STATEMENT HB 32

HB 32 addresses a serious problem with the number of appeals filed after an applicant is denied a Permanent Fund Dividend, and the length of time that it takes to process those appeals. As of February 7, 1996 there were approximately 6,519 appeals pending, and 2,574 applications in review. These statistics are among the highest numbers since the PFD program's inception. One district 10 resident is still waiting to be heard more than 2 years after filing, and there are people who have waited even longer for their appeals to be processed and resolved. Processing such a large number of appeals is costly as well as being unfair to those who have a legitimate claim. Currently there are 10 permanent full time employees in the Permanent Fund Division and one appeals officer in the commissioner's office working on processing the appeals, yet there is no end in sight. Part of the problem is that it only costs a 32 cent stamp to file an appeal. Many people who clearly do not meet the qualifications for receiving a dividend protest their denial simply because they have the opportunity to do so at no risk to themselves. The 1994 denial rate was 64%. In years prior to 1994 the percentage rate of denials has been significantly higher.

HB 32 would implement a \$25 filing fee for individuals protesting the denial of their PFD application. The legislation provides for a waiver of the fee for an indigent individual who is a member of a family whose income is equal to or less than the federal poverty guidelines published yearly by the United States Department of Health and Human Services. The filing fee would be refundable if the appeal is successful, and non-refundable if the denial is upheld. It is anticipated that the implementation of a filing fee would discourage frivolous appeals, thereby reducing costs which are deducted from the amount of the dividend, and making the appeals process significantly shorter for legitimate claims.

SPONSOR STATEMENT

Alaska State Legislature

Representative Joe Green

MEMORANDUM

TO: Members of the Conference Committee on HB 32

FROM: Representative Joe Green, House Chair

DATE: March 6, 1996

SUBJECT: Conference Committee on House Bill 32, PFD Administrative Proceedings

As prime sponsor of HB 32, I respectfully request that Section 1 of the House version of HB 32 be adopted by the committee. Additionally, I request that Section 4 of the Senate version be adopted.

Sections 1 in both the House and Senate versions adds a requirement that an individual pay a \$25 review fee to the Department of Revenue if the individual requests the department to review its decision to deny that individual's PFD. There are two levels of appeals in the Department, informal and formal conference. The House version would assess the fee at the informal conference level. The vast majority of the appeals (90%) are decided on the informal level, therefore in order for the fee to have the desired "chilling effect" on frivolous appeals, the fee must be applicable to both the informal and formal conference levels. In the Senate version, Section 1, the fee would be assessed at only the higher formal conference level, which would essentially eliminate the desired "chilling effect", affecting only 10% of those who appeal. In Addition, I have serious concerns with the Senate version's Section 1 mandate that the Department resolve appeals within 8 months of their filing. Under the Senate version, if the appeal is not resolved within the allocated 8 month time period, the appealing individual is automatically granted his or her PFD. This could actually cause a rush of applicants who are not qualified, to apply, appeal, and due to the additional pressure on an already overworked system actually be given a PFD check that they are unqualified to receive. The

entire purpose of HB 32 is to reduced the number of frivolous appeals, not to further increase the number of appeals from unqualified individuals. Additionally, the updated fiscal note relating to this amendment shows an increase of \$166.3 (thousand) for the three new positions that would be needed to comply with this change. Sections 1 in both the House and Senate versions have provisions stating that if the individual prevails, either at the administrative level or on appeal, the review fee must be returned to the individual.

Sections 4 in both versions address the effective date clause. The House version has an effective date clause of January 1, 1996. The Senate version's effective date is January 1, 1997. The Department has indicated to me that a retroactive effective date would create extra expense and confusion. I request that the Senate version's Section 4 be adopted.

Thank you for your consideration.

Revision Date: 6-Feb-96 Dept. Affected: Revenue
 Title: PFD Administrative Proceedings DRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: Representative Green
 Requestor: Senate Rules COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	130.3	143.3	149.8	156.3	162.8	166.1
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Wanda A. Jones
 Division: Permanent Fund Dividend Division
 Approved by Commissioner: [Signature]
 Agency: Department of Revenue

Phone: 465-2323
 Date: 2/6/96
 Date: 2/6/96

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ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF CS HB 32 (FIN)
As of February 6, 1996

Assumptions

- A. This legislation would be effective in FY 97.
- B. 50% of all appeals received involve bright line issues and 50% of all appeals received involve non-bright line issues. Bright line issues are those that are clearly definable by objective criteria, such as whether an individual was physically present in state during the two previous calendar years or met an application deadline. Non-bright line issues are those that involve issues that are more subjective, such as whether an individual demonstrated an intent to return to Alaska.
- C. The addition of a fee will mean some of those individuals whose denial involved a bright line issue as well as some of those individuals whose denial involved a non-bright line issue will not appeal.
- D. Necessary data processing programming updates to the PFD masterfile computer system would require approximately 4 staff weeks work for PFD Division data processing staff. Other data processing programming projects would be delayed to make time for the initial programming.
- E. It is projected that there will be an increase in the number of appeals due to the annual increase in the number of applications filed. We do not anticipate any staff reductions due to this increase in the number of appeals filed.

Attachments

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
PROJECTED REVENUES RESULTING FROM CS HB 32 (FIN)

As of February 6, 1996

	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>	<u>FY02</u>
<u>Informal Conference Appeals</u>						
Estimated Appeals Received	7,000	7,700	8,050	8,400	8,750	8,925
Amount Collected	175,000	192,500	201,250	210,000	218,750	223,125
Projected Overturn Rate	25%	25%	25%	25%	25%	25%
Amount Refunded	<u>\$43,750</u>	<u>\$48,125</u>	<u>\$50,313</u>	<u>\$52,500</u>	<u>\$54,688</u>	<u>\$55,781</u>
Amount Retained at Informal before Formal Overturns	\$131,250	\$144,375	\$150,937	\$157,500	\$164,062	\$167,344
<u>Formal Hearing Appeals</u>						
Projected Appeal Rate with fee	15%	15%	15%	15%	15%	15%
Appeals Received	788	866	906	945	984	1,004
Projected Overturn Rate	5%	5%	5%	5%	5%	5%
Amount of Formal Hearing Fee Refunded	<u><\$975></u>	<u><\$1,083></u>	<u><\$1,133></u>	<u><\$1,181></u>	<u><\$1,230></u>	<u><\$1,275></u>
<u>Net Retained</u>	<u>\$130,275</u>	<u>\$143,292</u>	<u>\$149,804</u>	<u>\$156,319</u>	<u>\$162,832</u>	<u>\$166,069</u>

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
PROJECTED INVENTORY RESULTING FROM CS HB 32 (FIN)

As of February 6, 1996

	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>	<u>FY02</u>
<u>Informal Conference Appeals</u>						
Beginning Appeal Inventory	7,000	5,000	3,700	2,750	2,150	1,900
Total New Appeals	7,000	7,700	8,050	8,400	8,750	8,925
Total Resolutions	<u>(9,000)</u>	<u>(9,000)</u>	<u>(9,000)</u>	<u>(9,000)</u>	<u>(9,000)</u>	<u>(9,000)</u>
Ending Inventory	<u>5,000</u>	<u>3,700</u>	<u>2,750</u>	<u>2,150</u>	<u>1,900</u>	<u>1,825</u>
<u>Formal Hearing Appeals</u>						
Beginning Appeal Inventory	1,200	1,488	1,854	2,260	2,705	3,189
Total New Appeals	788	866	906	945	984	1,004
Total Resolutions	<u>(500)</u>	<u>(500)</u>	<u>(500)</u>	<u>(500)</u>	<u>(500)</u>	<u>(500)</u>
Ending Inventory	<u>1,488</u>	<u>1,854</u>	<u>2,260</u>	<u>2,705</u>	<u>3,189</u>	<u>3,693</u>

HB

46

FISCAL NOTE

No. 2
 Bill Version: CSHB 46(L&C)
 (H) Publish Date: 3/17/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to the practice of architecture, engineering, and land surveying. BRU: Resource Development
 Component: Land Development
 Sponsor: Representative Green
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.01	0.01	0.01	0.01	0.01	0.01
CAPITAL EXPENDITURES	0.01	0.01	0.01	0.01	0.01	0.01
CHANGE IN REVENUES ()	0.01	0.01	0.01	0.01	0.01	0.01

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.01	0.01	0.01	0.01	0.01	0.01

Estimate of any current year (FY95) cost: \$ None

POSITIONS

FULL-TIME	01	01	01	01	01	01
PART-TIME	01	01	01	01	01	01
TEMPORARY	01	01	01	01	01	01

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact associated with implementation of this legislation. The legislation is a technical correction only to make sure that only registered land surveyors, architects and engineers can practice or offer professional services.

Prepared by: *John Swanson* Director Phone: 762-2632
 Division: Land Date: 20-Jan-95
 Approved by Commissioner: *John Swanson* Date: 1/20/95
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA 1995 LEGISLATIVE SESSION

Revision Date: January 24, 1995 Department: Commerce and Economic Development
 Title: An Act relating to the practice of architecture, engineering, and land surveying. BRU: Occupational Licensing
 Sponsor: Representative Green Component: Operations
 Requester: Representative Green COMPONENT SERIAL N 1844

Expenditures/Revenues	(Thousands of Dollars)					
	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00

CAPITAL EXPENDITURES

CHANGE IN REVENUES

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 95) cost: \$ 00

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)
 -B 46 amends AS 08 48 281 to prohibit an individual from conveying the impression that the individual is an architect, engineer, or a land surveyor, unless the individual is a "registered" architect, engineer, or a land surveyor. New funds are not required to implement this amendment.

Prepared by: Jennifer Strohler Admin Officer Phone: 485-2144
 Division: Occupational Licensing Date: 1/24/95
 Approved by Commissioner: William L. Hensley Date: 1/24/95
 Agency: Commerce and Economic Development

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Sponsor Statement

CSHB46 - Architects, Engineers, & Land Surveyors

CSHB46 has three goals: 1) Clarify when a registrant will use the seal to stamp a document, 2) correct an ambiguity in the law that governs who can claim to be an architect, engineer, or land surveyor, and 3) re-introduce an exemption from the requirements of the chapter.

Section 1 is clarified by re-writing into a more active case the instructions of when a registrant will stamp a document.

Enforcement of the law in Section 2 is made difficult by the inclusion of the word "registered" in the language that states who may and may not practice a profession. When enforcement officers apprehend an individual for practicing engineering, a common defense is that they did not purport to be a "registered" engineer, only an engineer. Even though "engineer" is defined elsewhere in statute, prosecutors are loath to take these cases due to this ambiguity.

CSHB46 clarifies this section of law by expanding the category of who is prohibited from practicing a profession. If CSHB46 passes, it will be illegal to "assume or advertise a title" of "engineer" unless you are registered by the Board.

Another problem CSHB46 addresses, in Section 3, is an exemption removed in 1990 that has proved to be unworkable for a number of Alaskan companies. Currently, several groups of people who work as architects, engineers, and land surveyors, are exempted from the requirements of this chapter. Until 1990, employees who do not offer their services to the public, but practice engineering as part of their regular work duties for their employer, were also exempted. This bill restores that exemption.

Alaska Telephone Association
Raytheon Engineers & Constructors
Council of Alaska Producers
MAPCO
ARCO
CIRI

Alaska Cable Television Association
Alaska Miners Association
VECO Engineering, Inc.
Prime Cable
BP Exploration
NANA Test
Petro Star, Inc.

April 10, 1995

The above *strongly support* passage in the Senate of CS for HB 46 (STA) for the following reasons:

- HB 46 passed the House on a bi-partisan vote of 31-4
- Until 1990, a licensing exemption for in-house engineers was law in Alaska with no adverse impact on the public
- The in-house exemption for engineers was removed in 1990 with little or no public knowledge
- Similar exemptions are found in 37 other states
- Without an in-house exemption, there will be lengthy construction delays and substantial increases in the cost of doing business without corresponding benefit to the public
- Affected industries include telephone, cable, other utilities, mining and oil
- Restoration of the in-house exemption will allow Alaska to be competitive in attracting business and investment dollars to the state
- All the above businesses and associations strongly support the compromise language reached in the House State Affairs Committee
- This compromise legislation does not apply to buildings or structures whose primary use is public occupancy