

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Examiners in Optometry, September 27, 2005.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry (BEO). As required by state law, the legislative committees of reference are to consider this report when considering whether to extend the termination date for BEO. Currently under AS 08.03.010(c)(14), the board will terminate on June 30, 2006. If the legislature does not extend the termination date for the board, BEO will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the termination date for BEO should be extended. The board is operating in the public interest by effectively regulating the individuals who hold themselves out to the public as licensed optometrists.

The board adopted regulatory changes and supported legislation that improved BEO's oversight process and have promoted more effective regulation of licensed optometrists.

Alaska Statute 08.03.010(c)(14) requires that BEO be terminated on June 30, 2006. Under AS 08.03.020(a), the board has a one-year period to administratively conclude its operations. We recommend the legislature extend the board's termination date to June 30, 2014.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Professional and Business Licensing (division), in conjunction with the Board of Examiners in Optometry, should decrease licensing fees to eliminate the board's current and projected operating surplus.

Evidence shows the board is accumulating a growing surplus each year. At the end of FY 04 and FY 05, the board had an operating surplus of \$13,541 and \$56,760, respectively. Alaska Statute 08.01.065(c) requires that fees for an occupation be set to approximate the regulatory costs related to that occupation. Given the growing surplus, it is evident that BEO revenues have exceeded board costs for several years without the division and BEO recommending necessary licensing and other fee adjustments.

There has been a steady decrease in board costs since FY 02. Review of board expenditures for the period FY 02 through FY 05 shows travel and contractual costs have decreased each year since FY 02 and personal services costs are down following a spike occurring in FY 03. In general, total expenditures have decreased slightly each year since FY 02, while revenues have steadily increased each renewal year during this time period.

Recommendation No. 2

The legislature should consider amending the optometry statutes to ensure they support diagnostic use of pharmaceutical agent endorsements.

BEO issues pharmaceutical agent use (only) license endorsements under 12 AAC 48.021, which is not consistent with AS 08.72.175. Regulation 12 AAC 48.025, Pharmaceutical Agent Prescription and Use Endorsement, specifically authorizes the board to issue a TPA, or Therapeutic Pharmaceutical Agent endorsement. This endorsement authorizes a licensee to prescribe and use pharmaceutical agents as specified by AS 08.72.175. Comparatively, regulation 12 AAC 48.021 authorizes the board to issue a license endorsement to use topically applied pharmaceutical agents for diagnostic examination purposes only. The endorsement, commonly referred to as a DPA, or Diagnostic Pharmaceutical Agent endorsement, is not authorized by statute.

A 1992 amendment to AS 08.72.175 expanded the license endorsement authority of the board from “use” to “prescribe and use,” thereby causing regulation 12 AAC 48.021, Pharmaceutical Agent Use Endorsement, to become void. A discord between statute and regulation governing optometry endorsements is evident.

September 27, 2005

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF EXAMINERS IN OPTOMETRY
September 27, 2005
Audit Control Number
08-20042-05

This audit was conducted as required by AS 44.66.050 and under 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, or program subject to the sunset review process. Currently under AS 08.03.010(c)(14), the Board of Examiners in Optometry is scheduled to terminate on June 30, 2006. The board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Examiners in Optometry should be extended. The regulation and licensure of optometrists contributes to the protection of the public's welfare. We recommend the legislature extend the termination date of the Board of Examiners in Optometry to June 30, 2014.

The audit was conducted in accordance with generally accepted government audit 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.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry (BEO). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(14) requires the board to terminate on June 30, 2006. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed optometrists.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, and complaint investigation and resolution functions for fiscal years ending June 30, 2002, 2003, 2004, and 2005. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain their optometry license in good standing.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by, BEO.
- Files related to applicants for, and holders of, licenses issued by BEO.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Corporations, Professional and Business Licensing (division).
- Interviews with employees of the division.
- Reading and correspondence files maintained with the division.

ORGANIZATION AND FUNCTION

Alaska Statute 08.72.010 establishes the Board of Examiners in Optometry (BEO). The board is composed of five members: four licensed optometrists who have been Alaska residents for at least three years and one public member. All appointments are made by the governor.

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

Board Duties and Powers

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

- Licensing optometrists through examination or credentials.
- Establishing, amending, or eliminating regulations that affect the standards of professional optometry practice.
- Taking disciplinary actions in accordance with the Administrative Procedure Act when a person has violated optometric statutes or regulations.

Board of Examiners in Optometry

(As of September 26, 2005)

Jill Matheson, Optometrist, Chair

John Cobbett, Optometrist, Secretary

Jeffrey Gonnason, Optometrist

Thomas Carter, Public Member

Vacant, Optometrist

Applicants must be a high school graduate or equivalent, in addition to having graduated from a recognized college or school of optometry. Additionally, applicants must pass all parts of the National Board of Examiners in Optometry (NBEO) examination, the Treatment and Management of Ocular Disease (TMOD) examination, and the Alaska State Optometry Law examination. Licensed optometrists are required to obtain minimum amounts of continued education every year. Optometrists licensed in other states who wish to license by credentials must meet the requirements of AS 08.72.170 and regulation 12 AAC 48.020 prior to receiving Alaska licensure.

Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Professional and Business Licensing (division)

The division provides administrative and investigative assistance to BEO. Administrative assistance includes budgetary services; functions such as collecting fees, maintaining files,

and receiving and issuing application forms; and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates DCCED to adopt regulations establishing the amount and manner of payment for application fees, examination fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the division with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person engaged or is about to engage in a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Examiners in Optometry (BEO) should be extended. The board is operating in the public interest by effectively regulating the individuals who hold themselves out to the public as licensed optometrists.

The regulation and licensing of qualified optometrists is necessary to protect the public's health, safety, and welfare. To that end, BEO assists in establishing educational and work experience standards for licensure. Such standards provide reasonable assurance that persons licensed as optometrists are qualified. Standards of practice are enforced through the active investigation of complaints and revocation or suspension of licenses when appropriate.

BEO has operated effectively and in the public's best interest over the past four years. It has adopted regulatory changes and supported legislation that improved its oversight process and promoted more effective regulation of licensed optometrists.

Chapter 58, SLA 2005, enacted on June 25, 2005, amended AS 08.03.020, Procedures governing termination, transition, and continuation. Among other changes, this amendment extends the continuation or reestablishment period of a board from four to eight years.

Alaska Statute 08.03.010(c)(14) requires that BEO be terminated on June 30, 2006. Under AS 08.03.020(a), the board has a one-year period to administratively conclude its operations. We recommend the legislature extend the board's termination date to June 30, 2014.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Business, and Professional Licensing (the division), in conjunction with the Board of Examiners in Optometry (BEO), should decrease licensing fees to eliminate the board's current and projected operating surplus.

Evidence shows the board is accumulating a growing surplus each year. At the end of FY 04 and FY 05, BEO had an operating surplus of \$13,541 and \$56,760, respectively.

Alaska Statute 08.01.065(c) requires that fees for an occupation be set to approximate the regulatory costs related to that occupation. Given the growing surplus, it is evident that BEO revenues have exceeded board costs for several years without the division and BEO recommending necessary licensing and other fee adjustments.

There has been a steady decrease in board costs since FY 02. Review of board expenditures for the period FY 02 through FY 05 shows travel and contractual costs have decreased each year since FY 02 and personal services costs are down following a spike occurring in FY 03. In general, total expenditures have decreased slightly each year since FY 02, while revenues have steadily increased each renewal year during this time period. See Exhibit 1, the financial schedule in the Analysis of Public Need section of this letter.

We recommend that the division and the board review licensing fees and regulatory costs to ensure BEO's fees are not unduly high and are set to meet the annual operating costs of the board.

Recommendation No. 2

The legislature should consider amending the optometry statutes to ensure they support license endorsements for diagnostic use of pharmaceutical agents.

The board could better serve the public if optometry statutes were broadened to allow the issuance of a pharmaceutical use (only) endorsement. This change would maintain and potentially increase the number of licensees available to provide optometric services. Additionally, if current optometric statutes are amended, BEO may issue pharmaceutical use (only) license endorsements without violating current law.

Currently, BEO issues pharmaceutical agent use (only) license endorsements under 12 AAC 48.021, which is not consistent with AS 08.72.175. Regulation 12 AAC 48.025, Pharmaceutical Agent Prescription and Use Endorsement, specifically authorizes the board to issue a TPA, or Therapeutic Pharmaceutical Agent endorsement. This endorsement

authorizes a licensee to prescribe and use pharmaceutical agents as specified by AS 08.72.175. Comparatively, regulation 12 AAC 48.021 authorizes the board to issue a license endorsement to use topically applied pharmaceutical agents for diagnostic examination purposes only. The endorsement, commonly referred to as a DPA, or Diagnostic Pharmaceutical Agent endorsement, is not authorized by statute.

The 1992 amendment to AS 08.72.175 expanded the license endorsement authority of the board from “use” to “prescribe and use,” thereby causing regulation 12 AAC 48.021, Pharmaceutical Agent Use Endorsement, to become void. A discord between statute and regulation governing optometry endorsements is evident.

We recommend the legislature consider amending AS 08.72.175 to specifically authorize the board to issue a license endorsement allowing for use (only) of pharmaceutical agents in addition to the current prescribe-and-use authorization. Further, consideration should be given to the need for a grandfather clause to ensure the legality of DPA endorsements issued since the 1992 statute amendment.

A ANALYSIS OF PUBLIC NEED D

The following analyses of board activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board of Examiners in Optometry (BEO), through regulation of the licensure of optometrists, has provided the public with qualified professionals in the field of optometry. The board has ensured continued public safety by supporting both statutory and regulatory changes relating to the exam process, licensure by credentials, and continuing education hours.

The board supported a statutory amendment relating to the requirement to submit a photograph of the applicant with an application for a new license. While not repealed, the statute was revised, specifying that “*the department may require the applicant to submit a photograph of the applicant for its files; however, the photograph may not be forwarded with the application to the board for review.*” This change eliminates any possible bias that could occur if an applicant’s photograph was forwarded with the application to the board.

The board supported legislation to ensure that statutory and regulatory licensing renewal requirements were congruent with one another. Chapter 16, SLA 2002, amended AS 08.72.181(d) to require licensees to obtain 24 hours of postgraduate continuing education (CE). This statutory change reduced the prior CE requirement of 48 hours, thereby providing consistency between statutory and regulatory requirements relating to CE hours.

The board continues to support a statutory change to AS 08.72.272 allowing for prescriptive use of systemic drugs in the treatment of ocular disease or emergency anaphylaxis. In 1988, optometry statutes were updated to allow qualified individuals to use diagnostic drugs. In 1992, a statutory amendment dropped oral medication authorization, thereby limiting licensees to prescribing only topical therapeutic drugs to treat eye diseases.

The board has maintained a reasonable meeting schedule, has consistently strived to make the licensing process more efficient, and has continued to license only qualified applicants.

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

The Board of Examiners in Optometry supported passage of Chapter 16, SLA 2002, which accomplished changes to several statutes related to optometry. Significant changes benefiting the public included:

- Acceptance of passing scores of an exam administered by the National Board of Examiners in Optometry (NBEO).
- Requiring a state jurisprudence exam.
- Elimination of the state practical exam for licensure by credentials.

Overall, the statutory changes allow qualified applicants a more streamlined licensure process in the State. The acceptance of a passing score on the national examination eliminates a duplication of effort that all applicants previously faced with the state practical examination. Requiring successful passage of a state jurisprudence exam ensures optometrists are knowledgeable of Alaska's laws governing optometry.

The board licenses applicants in two ways, by examination and by credentials. Licensure by credentials requires applicants to document their previous work history as the basis for receiving a state license to practice. Applicants under both licensing methods must also pass a written exam of the laws of Alaska governing optometry.

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

The establishment of a statute allowing for licensure by credentials has eliminated an unnecessary barrier for individuals licensed in other states wishing to practice in Alaska.

As shown in Exhibit 1 on the following page, most of BEO's revenues are from licensing and renewal fees. License renewals are conducted on a biennial basis in odd-numbered fiscal years. This creates a two-year cycle in board revenues, with most revenues collected in the renewal year. We reviewed the internal records maintained by the Division of Corporations, Professional and Business Licensing (division) for revenues and expenditures associated with BEO. We did not audit this information, but present it for general information purposes.

In FY 02, revenues were considerably lower than expected, \$362, for a nonrevenue-generating year. The division staff could not account for the reason for the low reported revenues. The records for BEO show only two persons were licensed that year and paid a total of \$1,150. It is unknown where the difference, \$788, was recorded.

There is a recurring cumulative surplus in nonrenewal years. The revenue generated in a renewal year must be sufficient to fund most of the board's costs for the subsequent nonrenewal year. FY 05 financial data show a significant surplus at year end. Exhibit 1 also details both a steady revenue increase in renewal years and a growing cumulative surplus. Therefore, we recommend the division and the board review the regulatory costs and licensing fees to ensure BEO licensing fees are reduced to eliminate the growing surplus. (See Recommendation No. 1)

Alaska Statute 08.01.065(c) requires *“that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.”* As Exhibit 1 reflects, the board's growing cumulative surplus is in noncompliance with this statute.

Exhibit 1

State of Alaska Board of Examiners in Optometry Schedule of License Revenues and Board Expenditures FY 02 - FY 05 (Unaudited)				
	FY 05	FY 04	FY 03	FY 02
Revenue	<u>\$ 68,285</u>	<u>\$ 9,141</u>	<u>\$ 56,090</u>	<u>\$ 362</u>
Direct Expenses				
Personal Services	12,813	12,314	15,631	12,548
Travel	3,548	4,379	3,129	8,305
Contractual	1,718	1,460	3,729	4,502
Supplies	0	49	92	18
Equipment	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Direct Expenses	18,079	18,202	22,581	25,373
Indirect Expense	<u>6,987</u>	<u>6,212</u>	<u>5,951</u>	<u>5,299</u>
Total Expenses	<u>25,066</u>	<u>24,414</u>	<u>28,532</u>	<u>30,672</u>
Annual Surplus (Deficit)	<u>43,219</u>	<u>(15,273)</u>	<u>27,558</u>	<u>(30,310)</u>
Beginning Cumulative Surplus (Deficit)	13,541	28,814	1,256	31,566
Unallocated Administrative Indirect Revenue	0	0	0	0
Ending Cumulative Surplus (Deficit)	<u>\$ 56,760</u>	<u>\$ 13,541</u>	<u>\$ 28,814</u>	<u>\$ 1,256</u>

Determine 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.

The location, date, and time of upcoming board meetings and proposed changes in regulations were advertised in the *Anchorage Daily News*, as well as posted on BEO's website. Adequate time was provided for interested individuals to plan to attend or to submit written comment for review. The board's meeting agenda sets aside suitable time for public comment. Board minutes reflect public participation at various meetings and the board's review of public written comment.

Determine 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 the *Anchorage Daily News* and the Alaska Online Public Notice System. The board minutes document that unlimited time was allotted for the scheduled public comment period. Proposed regulation changes are circulated to those affected by the changes.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period July 2001 through May 2005, the division opened 11 investigative cases related to individuals either seeking licensure or licensed by BEO. The type of complaint varied and included unlicensed practice, fraud/misrepresentation, incompetence, criminal conviction, license application problems, and continuing education; no single type dominated the complaints. Approximately 45% of the cases were filed by division staff; another 36% were filed by clients.

The 11 cases were open for an average of 222 days. At May 2005, two of the 11 cases remained open, averaging 440 days open. One of the two cases involved a lapsed license. While the issue itself was resolved in a timely manner, the case was not administratively closed by division staff and thus is reported as an active case. There was no apparent reason for the delay of action on the part of investigative staff for the second case remaining open.

We have reviewed the nature and extent of complaints filed involving optometrists. The division, in conjunction with the board, took appropriate investigative action, prioritized complaints in a reasonable manner, and proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

No complaints or investigations specifically involving the actions and activities of BEO were received or undertaken by either the Office of the Ombudsman or the Office of Victims' Rights within the past three fiscal years.

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

Exhibit 2 is a summary of new licenses issued by BEO for the period under review.

Exhibit 2

New Optometrist Licenses Issued (exclusive of renewals)	FY 02	FY 03	FY 04	FY 05	Current Licenses (as of June 30, 2005)
No Endorsement	0	0	0	0	3
Therapeutic Endorsement	2	6	11	15	122
Diagnostic Endorsement	0	3	1	0	5

Optometry licensing requirements involve passing two national examinations and a state jurisprudence examination. The national exams are developed and graded by the National Board of Examiners in Optometry. Developed by BEO, the state exam tests each applicant's knowledge of state statutory and regulatory requirements pertaining to optometry. Licensure-by-credentials applicants must pass the state jurisprudence exam only.

Each applicant is required to satisfy requirements for licensing. Board meeting minutes reflect that BEO considers each applicant and verifies that the licensing requirements are met prior to issuing a license.

Determine 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.

We did not find any evidence that the board was not complying with the State personnel practices, including affirmative action, in qualifying applicants. In no instance has the board denied an applicant a license based on personal attributes.

Determine 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, BEO should support legislative changes to AS 08.72.175 to ensure that statutes and regulations pertaining to license endorsements are congruent with one another. Additionally, BEO should consider necessary regulatory changes to ensure required continuing education hours are consistent with any license endorsement changes.

As discussed in Recommendation No. 1, BEO should review its fee schedule and the costs of its regulatory operations. Currently, the board's revenues exceed its cost of regulatory operations. As required by AS 08.01.065(c), the division and the board must adjust licensing fees to bring BEO's revenues in line with the regulatory costs related to its operations.

Several optometric statutes are outdated, incongruent, or unclear, potentially hampering BEO's efforts to regulate the optometry profession. We noted several instances where optometry statutes were in need of revision, clarification, or elimination. Specifically, the following statutes need attention:

AS 08.72.181(d), Renewal of license. This statute specifies the number of continuing education hours necessary for license renewal. Such specificity should be removed from statute and left to the board to manage through the regulatory process.

AS 08.72.191(6), Fees. This portion of the statute, fees for branch office license and renewal, became obsolete with the repeal and rewrite of a portion of central licensing statute AS 08.01.065.

AS 08.72.060(c)(1), Miscellaneous powers and duties of the board. Currently, the statute reads in part, "*The board shall elect a president....*" It should be amended to read, "*The board shall elect a chair...*" to ensure the language is consistent with central licensing statute AS 08.01.020 (Board organization), which states in part, "*... the governor may designate the chair of a board....*"

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Broad objectives identified by the board included:

- Develop and offer a new state law exam.

- Send a representative to the Association of Regulatory Boards of Optometry (ARBO) meeting annually.
- Show support or opposition, as appropriate, for certain legislation.
- Ensure licensees are informed of both statutory and regulatory changes, including new and amended language.
- Review statutes and regulations for necessary changes.

Evidence suggests BEO establishes and meets its operational objectives annually, with the exception of sending a representative to the ARBO meeting annually. The board did not send a representative to the ARBO meeting for the years FY 02 through FY 04.

The board has streamlined the licensing process by allowing for licensure by credentials and by accepting a passing score on the national optometry examination in lieu of passing a state practical examination.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

Our review of the interactions among BEO, the American Optometric Association (AOA), and the Alaska Optometric Association (AKOA) did not reveal activities duplicated by two or more organizations. As discussed previously, the board took action eliminating duplicative efforts of the state BEO and the AOA by eliminating the state practical exam and accepting passing scores on the national exams.

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OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

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November 22, 2005

Ms. Pat Davidson, CPA
Legislative Auditor
Division of Legislative Audit
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, Alaska 99811-3300

Dear Ms. Davidson,

Thank you for the opportunity to respond to your Preliminary Audit Report concerning the Board of Examiners in Optometry Sunset Audit.

Please consider the following comments to your findings and recommendations.

Recommendation No. 1

The Division of Corporations, Business and Professional Licensing (the division), in conjunction with the Board of Examiners in Optometry (BEO), should decrease licensing fees to eliminate the board's current and projected operating surplus.

We agree that fees will be reviewed for possible adjustments prior to its license renewal on December 31, 2006. However, the assumption that the FY05 year end operating surplus of \$56,760 should be the cause for a fee decrease is too preliminary. Fee reviews are based on the biennial licensing cycle prior to the license renewal period. Current BEO costs (FY06) will need to be included before any adjustments to the fees can be considered, especially since FY06 is a nonrenewal year. The Board normally ends nonrenewal years in a deficit situation because the primary source of revenue derives from new licensees in those years. BEO licenses are due for renewal on 12/31/06 (FY07). A financial review will be conducted prior to the license expiration and fees will be adjusted accordingly.

Recommendation No. 2

The legislature should consider amending the optometry statutes to ensure they support license endorsements for diagnostic use of pharmaceutical agents.

We concur that statutory amendments are needed to address pharmaceutical agent endorsements. We also support the need to ensure the legality of licensees with DPA endorsements (diagnostic pharmaceutical agent endorsement).

The Department also support the Board's desire to delete of the number of continuing education hours required in AS 08.72.181(d) and to grant authority to establish CE requirements by regulations, as is the practice with many other licensing programs. This will help to smooth transition in granting optometry licensees to prescribe and use therapeutic pharmaceutical agents as their normal scope of practice, and prohibit licensees who fail to meet CE requirements from attempting to practice at the status of a licensee with a DPA endorsement.

Consideration of these statutory changes during the sunset review process will enhance the practice of optometrists in Alaska.

Sincerely,



Richard K. Urion
Director of Corporations, Business and Professional
Licensing
for
William C. Noll
Commissioner

September 15, 2005

Pat Davidson
Legislative Budget and Audit Committee
P O Box 113300
Juneau, AK 99811-3300

Re: Preliminary Audit Report Response
Board of Examiners in Optometry

Dear Ms. Davidson:

I have had the opportunity to read the Preliminary Audit Report. In response, I would like to restate the Board's desires, as there are some discrepancies between the report and the Board's actual wishes.

1. The Board agrees that extending the Board of Examiners to June 30, 2014 appears reasonable.
2. Regarding Recommendation #1 to lower fees: the BEO had briefly discussed at the last meeting that it would be seeking to lower licensing fees in light of the budget surplus. This surplus has been due to the decreased expense of giving an in-state board examination. The BEO will act on this at the next meeting on December 1, 2005.
3. Regarding Recommendation #2 to amend the optometry statutes to ensure they support diagnostic use of pharmaceutical agent endorsements: While it appears that regulation 12AAC 48.021 is not consistent with statute AS 08.72.175, it is not in the BEO's interest to change statute AS 08.72.175 to allow diagnostic use. The BEO has discussed at length a desire to go to one level of licensure, that is, to have all new licenses as of a specified date (we have discussed 2009) be at the prescribe and use (aka therapeutic) level. License renewals would not be eligible for "downgrading" to DPA or no endorsement. Current lower levels of licensure would be grandfathered as restricted licenses. Changing the said statute to include diagnostics would actually take us farther from our goal. The BEO will, however, look at ways to remove the inconsistency between the regulation and the statute while considering a way to provide for the legality of DPA endorsements issued since the 1992 statute amendment.
It appears the legislative audit agency is concerned that fewer optometrists will either choose to or be able to meet the requirements for TPA only licensure. While the agency is looking at this only from an economic standpoint, the BEO is looking at what is in the best interests of the patients. All optometrists since the early 1990's have been educated to be TPA licensed doctors. We are committed to using that education to protect the eye health and vision of all citizens, and a TPA licensed optometrist can provide a higher level of care. The very few numbers of DPA endorsed licenses and no endorsement licenses means that the economic impact to the state's coffers would be minimal.
4. Another BEO desire is to change 08.72.181 (d). The BEO discussed eliminating "of 24 Hours". The statute would then read "...submit to the board evidence of postgraduate continuing education instruction as prescribed by regulations of the

board.” This gives the BEO the ability to change the hours of continuing education without legislative approval as needs arise.

5. The BEO needs legislation to grant therapeutic prescriptive authority to applicants applying for license by credentials. We are hoping this can be accomplished with a regulation change.
6. Currently, there is nothing in the practice act authorizing the BEO to deny or put stipulations on new licenses by examination. Under AS 08.72.170(8), the BEO cannot grant a license if the applicant by credentials has had any disciplinary actions regardless of the level of severity, how long it has been since the action was taken, or if the licensee is currently under investigation in another state. Under License by Credentials and License by Examination, the BEO needs authority to either deny or put stipulations on a license for an applicant who currently has disciplinary action, had disciplinary action in the past, or who is being investigated at the time of application in another state. Our only legal possibility at this time is to grant the license if the applicant is by examination, or deny the license if the applicant is by credentials.
7. The BEO supports legislation to widen the scope of therapeutic prescriptive authority to include oral and systemic pharmaceutical agents for the treatment of ocular conditions. This would allow Alaska optometrists to practice at the same level as over 35 other states which leads to fewer referrals and decreased economic impact of eye health care in the state.

Please contact me if you have further questions.

Sincerely,

Jill Geering Matheson, OD, Chair
Board of Examiners in Optometry