

806

ПРЕС

НВ

79

22

STATE OF ALASKA



BOARD OF EXAMINERS IN OPTOMETRY

OPTOMETRY STATUTE, AS 08.72.

OPTOMETRIST REGULATIONS, 12 AAC 48.

\*\*\*\*\*

Department of Commerce and Economic Development

Division of Occupational Licensing

Pouch D

Juneau, Alaska 99811

08.72.010.

08.72.020.

CHAPTER 72. OPTOMETRY LAW.

Article

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

Article. 1. Board of Examiners in Optometry

| Section   | Section   |
|---|---|
| 10. Creation of board of examiners                | 60. Miscellaneous powers and duties of board      |
| 20. Membership of board and terms of office       | 70. Applicability of Administrative Procedure Act |
| 30. Source of appointments                        | 80. [Repealed]                                    |
| 40. Qualifications                                | 90. Record of proceedings                         |
| 50. Power of board to adopt rules and regulations | 100. [Repealed]                                   |

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

Am. Jur., ALR and C.J.S. references.-41 Am. Jur., Physicians and Surgeons, sec 28.

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

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

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

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

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

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

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

Sec. 08.72.020. Membership of board and terms of office. The board consists of three persons, appointed by the governor. The term of each member is three years. One member only is appointed each year, except when vacancies for unexpired terms are filled. (sec 35-3-132 ACIA 1949)

08.72.030.

08.72.090.

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

Sec. 08.72.040. Qualifications. A board member shall be a licensed, practicing optometrist residing in the state who has been a resident for at least three years. (sec 35-3-132 ACLA 1949)

Sec. 08.72.050. Power of board to adopt rules and regulations. The board shall adopt rules and regulations (1) necessary for the proper performance of its duties; (2) governing the applicants and applications for licensing; (3) for the registration of optometrists; (4) necessary to govern the practice of optometry. (sec 35-3-133 ACLA 1949)

Chapter contains sole powers of board. -The board, being purely a creature of the legislature, has no powers other than those contained in this chapter. Edmunds v. Board of Examiners in Optometry, 9 Alaska 462, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (1939). And must be strictly construed. -This chapter and the powers invested in the board are to be strictly construed. Edmunds v. Board of Examiners in Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (1939)

Sec. 08.72.060. Miscellaneous powers and duties of board. (a) The board or a member designated by the board, may issue subpoenas, administer oaths and take testimony concerning any matter within its jurisdiction. (b) The board may adopt a seal. (c) The board shall elect a president and secretary from among its members. (d) Repealed by sec 3 ch 59 SLA 1966. (e) The board may define professional conduct and adopt rules of professional conduct. (f) Repealed by sec 3 ch 59 SLA 1966. (secs 35-3-133, 35-3-140 ACLA 1949; am sec 3 ch 59 SLA 1966)

Effect of amendment. -The 1966 amendment repealed subsections (d) and (f).

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

Sec. 08.72.080. Compensation of board and secretary. Repealed by sec 3 ch 59 SLA 1966.

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

(2)

08.72.100.

08.72.125.

Sec. 08.72.100. Bond of Secretary. Repealed by sec 3 ch 59 SLA 1966

Article 2. Licensing and Registration.

| Section   | Section  |
|---|--|
| 110. License required   | 191. Fees  |
| 120. Registration   | 200. [Repealed]  |
| 125. Registration of branch office                            | 210. [Repealed]  |
| 130. Optometry register                                       | 220. [Repealed]  |
| 140. Qualifications for examination                           | 230. Fees and disbursements                              |
| 150. Application for and issuance of certificate              | 240. Revocation of registration certificate or exemption |
| 160. Examination  | 250. Board action on revocation and renewal              |
| 170. Issuance of certificate by waiver of written examination | 260. Revocation of license by court                      |
| 180. [Repealed]   | 270. Practice not at place of business                   |
| 190 [Repealed]  |  |

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

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

C.J.S. reference. -70 C.J.S. Physicians and Surgeons sec 10.

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

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

(3)

office certificate of registration. (ch 76 sec 2 SLA 1969)

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

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

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

Effect of amendment.—The 1966 amendment substituted "is a graduate of recognized" for "has had professional training in optometry of not less than 2,000 hours in attendance at a reputable" in paragraph (5) and deleted former paragraph (6), which required a certificate of registration in the basic sciences.

Cited in *Edmunds v. Board of Examiners in Optometry*, 9 Alaska 627, 106 F.2d 904 (1939)  
C.J.S. references.—53 C.J.S. Li-  
censes sec 34; 70 C.J.S. Physicians  
and Surgeons sec 12.

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

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

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

(c) An applicant who fails the written portion of the exam-

(4)

ination may take a re-examination in the written portion upon payment of an additional examination fee.

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

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

- (1) meets the qualifications of sec. 140 of this chapter;
- (2) holds a current license by examination in another state, territory or foreign country and has been established in ethical optometric practice for at least three years before the application, or shows satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry; and
- (3) has not had a certificate or license revoked for cause in any state, territory or foreign country.

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

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

Sec. 08.72.180. Annual renewal of license. Repealed by sec 7 ch 94 SLA 1968.

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

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

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

(d) Before a license may be renewed the licensee shall submit to the board evidence of 24 hours post graduate education as prescribed by regulations of the board. (ch 76 sec 9 SLA 1969)

Sec. 08.72.190. Fee for license by reciprocity. Repealed by ch 76 sec 10 SLA 1969.

Sec. 08.72.191. Fees. The following fees shall be imposed

(5)

under this chapter when applicable:

- (1) examination fee. . . . . \$35
  - (2) re-examination fee for written portion . . . 25
  - (3) waiver of examination fee. . . . . 25
  - (4) certificate fee . . . . . 50
  - (5) biennial renewal fee . . . . . 50
  - (6) branch office biennial registration fee . . 25
- (ch 76 sec 11 SLA 1969)

Sec. 08.72.200. Examination fee. Repealed ch 76 sec 10 SLA 1969.

Sec. 08.72.210. Certificate fee. Repealed ch 76 sec 10 SLA 1969.

Sec. 08.72.220. Renewal fee. Repealed ch 76 sec 10 SLA 1969.

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

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

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

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

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

(6)

ation. (sec 35-3-140 ACIA 1949)

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

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

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

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

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

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

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

Article 3. Unlawful Acts.

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

Sec. 08.72.275. Lenses and frames for eyeglasses and sunglasses. (a) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses unless they are fitted with plastic lenses or with glass lenses

(7)

08.72.275.

which are tempered or case hardened. Glass lenses shall have a minimum thickness of two millimeters.

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

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

Revisor's note.-Section 2, ch 220, SLA 1968, provides; "The provisions of this bill take effect one year after date of passage." Legislative

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

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

C.J.S. reference.-53 C.J.S. Licenses secs 62 to 65.

Article 4. General Provisions.

Section 300. Definitions

Section 310. Short title

Sec. 08.72.300. Definitions. As used in this chapter (1) "board" means the Board of Examiners in Optometry; (2) "optometry" is the employment of means or methods, other than the use of drugs, for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye; (3) "practicing optometry" means the diagnosis, by means or methods other than the use of drugs, of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so; (4) "lenses" means conventional or contact lenses. (sec 35-3-13) ACLA 1949; am sec 2 ch 95 SLA 1966)

(U)

08.72.300.

08.72.300.

08.72.310.

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

(6) "department" means the Department of Commerce. (sec 35-3-131 ACLA 1949; am sec 2 ch 95 SLA 1966; am by adding (5) & (6) sec 13 SLA 1969)

Effect of amendment.-The 1966 amendment added paragraph (4). Examiners in Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (1939).

This chapter is a valid exercise of the legislative power. Edmunds v. Board of

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

(9)

12 AAC 48.010  
12 AAC 48.020

BOARD OF EXAMINERS IN OPTOMETRY

Board of Examiners in Optometry

TITLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 48. BOARD OF EXAMINERS IN OPTOMETRY

Section

- 10. Board membership
- 20. Biennial license
- 30. Branch office certificates
- 40. Display of certificate
- 50. When a practice is conveyed to another
- 60. Visual analyses records
- 70. Unprofessional conduct further defined
- 80. Definitions

12 AAC 48.010. BOARD MEMBERSHIP. The secretary shall notify the office of the governor of Alaska whenever a vacancy occurs. The secretary shall supply the governor with a list of all Alaska registered optometrists who have resided in Alaska for a period of three years or more, and are qualified as the statute provides, AS 08.72.040. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21; am 4-25-71, Register 37)

Authority: AS 08.72.030  
AS 08.72.050(1)

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

(b) Courses that will be accepted are: educational courses given at the American Optometric Association Annual Convention or any AOA affiliate state optometric convention; seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes; post graduate courses offered by recognized schools or colleges of optometry. Other post graduate courses may be approved by the board if course titles, instructors' names, and a brief description of the course material is submitted to the board 30 days before the commencement of the educational program. Licensees who submit satisfactory proof that they were prevented from attending an educational program because of illness or other reasons may be exempted from this requirement. A form shall be provided with the biennial renewal application that must be validated by the instructor teaching the course. Correspondence courses will not be accepted as fulfilling the requirements of AS 08.72.101. (Eff. 4-25-71, Register 37)

Authority: AS 08.72.101

(10)

12 AAC 48.030. BRANCH OFFICE CERTIFICATES. (a) A branch office certificate may be issued for the purpose of serving some community in the state, which cannot support an optometrist and which can be shown to the satisfaction of the board to need the service of a licensed optometrist on a part-time basis may be issued a semi-annual branch office certificate of registration. The name of an associate practicing in a branch office shall appear on the entrance door to the office used and upon all stationery; no commercial name or designation may be used in connection with any branch office nor may such a practice have any commercial lay connections, nor may there be anything in the nature of "chain exploitation" of licenses. Nothing in this section requires an active licensee to obtain a branch office certificate for the purpose of rendering necessary optometric services for his patients confined to their homes.

(b) No branch office certificate will be issued in a community where a full time optometric practice is available and any certificate in force when a full-time practice is established will not be renewed.

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

(d) Optometrists who participate in vision and eye screening projects may not receive remuneration for their services other than for travel and living expenses and for emergency care as required. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21; am 4-25-71, Register 37)

Authority: AS 08.72.125(c)

12 AAC 48.040. DISPLAY OF CERTIFICATE. A licensee's registration certificate and renewal certificate shall be displayed in the office in which the holder practices optometry, but not in such a manner that the certificate may be seen from the street. Every licensee, whenever requested, shall exhibit the certificate to a member of the board or person authorized to represent the board and shall notify the department or board of his address and changes of his address. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21, am 4-25-71, Register 37)

Authority: AS 08.72.050(4)

12 AAC 48.050. WHEN A PRACTICE IS CONVEYED TO ANOTHER. When an optometrist disposes of his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery, and directories connected with the practice he has acquired or is acquiring, all words or phrases such as "successor to", "associate of", or words of like import.

(11)

BOARD OF EXAMINERS IN OPTOMETRY

Under no circumstances may the use of these signs, cards, stationery or advertising continue for more than two years. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21, am 4-25-71, Register 37)

Authority: AS 08.72.050(4)

12 AAC 48.060. VISUAL ANALYSES RECORDS. Every optometrist shall keep a record of examinations and visual analyses made and prescriptions issued and for whom the prescriptions were prepared. The record shall be preserved for a period of at least five years from the date services were rendered, except in the case of death of the patient. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21, am 4-25-71, register 37)

Authority: AS 08.72.050(4)

12 AAC 48.070. UNPROFESSIONAL CONDUCT. (a) "Unprofessional conduct", referred to in AS 08.72.240(3), includes:

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

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

(3) Using display or bold face type or type that is in any way dissimilar in size, shape or color to that used for others of the healing arts in the same directory. Announcements in directories may not contain more than one specialty for each optometrist listed.

(4) Advertising regardless of means or media employed, the price or any type or style of ophthalmic prosthetic device, or any of the materials entering into the assembling thereof, or the price of optometric professional services, when the service of prosthetic devices, of necessity must vary in quality and cost.

(12)

BOARD OF EXAMINERS IN OPTOMETRY

(5) Using "bait" advertising such as "low prices", "moderate prices", "discounts", "liberal credit terms", "glasses on credit", "guaranteed glasses", "satisfaction guaranteed", or words or phrases of similar import which are not in keeping with ethical practice of a learned profession.

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

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

(8) Soliciting, personally or through agents, from house to house for the rendering of optometric services or advertising for sale prosthetic devices or materials including contact lenses or ophthalmic aids or devices.

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

(10) Advertising by any means or media in a manner contrary to the professional standards, lending, leasing, renting or in any other manner placing his certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this state.

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

(13)

BOARD OF EXAMINERS IN OPTOMETRY

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

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

(e) No optometrist may display a sign containing other than his name, profession, one specialty, and office hours, which sign may be used only on office windows or at an entrance to his office. Letters may not be luminous or illuminated. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21, am 4-25-71, Register 37)

Authority: AS 08.72.050(4)

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

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

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

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

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

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

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

(14)

BOARD OF EXAMINERS IN OPTOMETRY

(7) "prescription" means a written formula prepared by a person licensed under AS 08.72 and which contains the following essential elements when applicable to eyeglasses, contact lenses or other visual therapy, dioptic power of spheres, cylinders and prisms, axis of cylinders and position of prism base; designation of inter-pupillary distances; size, base curve, power, color and type, when a contact lens; and the name of the patient, date of prescription and name and office location of prescriber. (in effect before 7-28-59; am 5-19-62 and 10-20-62; am 9-10-65, Register 21, am 4-25-71, Register 37)

Authority: AS 08.72.050

12 AAC 1100 - 12 AAC 1121 are repealed. (Eff. 4-25-71, Register 37)

(15)

1 AVRUM M. GROSS  
Attorney General

2 By: JOSEPH K. DONOHUE  
3 Assistant Attorney General  
4 Pouch K, Capitol Building  
Juneau, Alaska 99811

5 (907) 465-3600

6 Attorney for Defendants

7 Henry C. Resm, Jr.  
8 Frederick Torrii  
9 William B. Schendel  
10 Alaska Legal Services Corporation  
763 Seventh Avenue  
Fairbanks, Alaska 99701  
11 (907) 456-5401

12 Attorneys for Plaintiffs

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1259  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1320  
1321  
1322  
1323  
1324  
1325  
1326  
1327  
1328  
1329  
1330  
1331  
1332  
1333  
1334  
1335  
1336  
1337  
1338  
1339  
1340  
1341  
1342  
1343  
1344  
1345  
1346  
1347  
1348  
1349  
1350  
1351  
1352  
1353  
1354  
1355  
1356  
1357  
1358  
1359  
1360  
1361  
1362  
1363  
1364  
1365  
1366  
1367  
1368  
1369  
1370  
1371  
1372  
1373  
1374  
1375  
1376  
1377  
1378  
1379  
1380  
1381  
1382  
1383  
1384  
1385  
1386  
1387  
1388  
1389  
1390  
1391  
1392  
1393  
1394  
1395  
1396  
1397  
1398  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419  
1420  
1421  
1422  
1423  
1424  
1425  
1426  
1427  
1428  
1429  
1430  
1431  
1432  
1433  
1434  
1435  
1436  
1437  
1438  
1439  
1440  
1441  
1442  
1443  
1444  
1445  
1446  
1447  
1448  
1449  
1450  
1451  
1452  
1453  
1454  
1455  
1456  
1457  
1458  
1459  
1460  
1461  
1462  
1463  
1464  
1465  
1466  
1467  
1468  
1469  
1470  
1471  
1472  
1473  
1474  
1475  
1476  
1477  
1478  
1479  
1480  
1481  
1482  
1483  
1484  
1485  
1486  
1487  
1488  
1489  
1490  
1491  
1492  
1493  
1494  
1495  
1496  
1497  
1498  
1499  
1500  
1501  
1502  
1503  
1504  
1505  
1506  
1507  
1508  
1509  
1510  
1511  
1512  
1513  
1514  
1515  
1516  
1517  
1518  
1519  
1520  
1521  
1522  
1523  
1524  
1525  
1526  
1527  
1528  
1529  
1530  
1531  
1532  
1533  
1534  
1535  
1536  
1537  
1538  
1539  
1540  
1541  
1542  
1543  
1544  
1545  
1546  
1547  
1548  
1549  
1550  
1551  
1552  
1553  
1554  
1555  
1556  
1557  
1558  
1559  
1560  
1561  
1562  
1563  
1564  
1565  
1566  
1567  
1568  
1569  
1570  
1571  
1572  
1573  
1574  
1575  
1576  
1577  
1578  
1579  
1580  
1581  
1582  
1583  
1584  
1585  
1586  
1587  
1588  
1589  
1590  
1591  
1592  
1593  
1594  
1595  
1596  
1597  
1598  
1599  
1600  
1601  
1602  
1603  
1604  
1605  
1606  
1607  
1608  
1609  
1610  
1611  
1612  
1613  
1614  
1615  
1616  
1617  
1618  
1619  
1620  
1621  
1622  
1623  
1624  
1625  
1626  
1627  
1628  
1629  
1630  
1631  
1632  
1633  
1634  
1635  
1636  
1637  
1638  
1639  
1640  
1641  
1642  
1643  
1644  
1645  
1646  
1647  
1648  
1649  
1650  
1651  
1652  
1653  
1654  
1655  
1656  
1657  
1658  
1659  
1660  
1661  
1662  
1663  
1664  
1665  
1666  
1667  
1668  
1669  
1670  
1671  
1672  
1673  
1674  
1675  
1676  
1677  
1678  
1679  
1680  
1681  
1682  
1683  
1684  
1685  
1686  
1687  
1688  
1689  
1690  
1691  
1692  
1693  
1694  
1695  
1696  
1697  
1698  
1699  
1700  
1701  
1702  
1703  
1704  
1705  
1706  
1707  
1708  
1709  
1710  
1711  
1712  
1713  
1714  
1715  
1716  
1717  
1718  
1719  
1720  
1721  
1722  
1723  
1724  
1725  
1726  
1727  
1728  
1729  
1730  
1731  
1732  
1733  
1734  
1735  
1736  
1737  
1738  
1739  
1740  
1741  
1742  
1743  
1744  
1745  
1746  
1747  
1748  
1749  
1750  
1751  
1752  
1753  
1754  
1755  
1756  
1757  
1758  
1759  
1760  
1761  
1762  
1763  
1764  
1765  
1766  
1767  
1768  
1769  
1770  
1771  
1772  
1773  
1774  
1775  
1776  
1777  
1778  
1779  
1780  
1781  
1782  
1783  
1784  
1785  
1786  
1787  
1788  
1789  
1790  
1791  
1792  
1793  
1794  
1795  
1796  
1797  
1798  
1799  
1800  
1801  
1802  
1803  
1804  
1805  
1806  
1807  
1808  
1809  
1810  
1811  
1812  
1813  
1814  
1815  
1816  
1817  
1818  
1819  
1820  
1821  
1822  
1823  
1824  
1825  
1826  
1827  
1828  
1829  
1830  
1831  
1832  
1833  
1834  
1835  
1836  
1837  
1838  
1839  
1840  
1841  
1842  
1843  
1844  
1845  
1846  
1847  
1848  
1849  
1850  
1851  
1852  
1853  
1854  
1855  
1856  
1857  
1858  
1859  
1860  
1861  
1862  
1863  
1864  
1865  
1866  
1867  
1868  
1869  
1870  
1871  
1872  
1873  
1874  
1875  
1876  
1877  
1878  
1879  
1880  
1881  
1882  
1883  
1884  
1885  
1886  
1887  
1888  
1889  
1890  
1891  
1892  
1893  
1894  
1895  
1896  
1897  
1898  
1899  
1900  
1901  
1902  
1903  
1904  
1905  
1906  
1907  
1908  
1909  
1910  
1911  
1912  
1913  
1914  
1915  
1916  
1917  
1918  
1919  
1920  
1921  
1922  
1923  
1924  
1925  
1926  
1927  
1928  
1929  
1930  
1931  
1932  
1933  
1934  
1935  
1936  
1937  
1938  
1939  
1940  
1941  
1942  
1943  
1944  
1945  
1946  
1947  
1948  
1949  
1950  
1951  
1952  
1953  
1954  
1955  
1956  
1957  
1958  
1959  
1960  
1961  
1962  
1963  
1964  
1965  
1966  
1967  
1968  
1969  
1970  
1971  
1972  
1973  
1974  
1975  
1976  
1977  
1978  
1979  
1980  
1981  
1982  
1983  
1984  
1985  
1986  
1987  
1988  
1989  
1990  
1991  
1992  
1993  
1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010  
2011  
2012  
2013  
2014  
2015  
2016  
2017  
2018  
2019  
2020  
2021  
2022  
2023  
2024  
2025  
2026  
2027  
2028  
2029  
2030  
2031  
2032  
2033  
2034  
2035  
2036  
2037  
2038  
2039  
2040  
2041  
2042  
2043  
2044  
2045  
2046  
2047  
2048  
2049  
2050  
2051  
2052  
2053  
2054  
2055  
2056  
2057  
2058  
2059  
2060  
2061  
2062  
2063  
2064  
2065  
2066  
2067  
2068  
2069  
2070  
2071  
2072  
2073  
2074  
2075  
2076  
2077  
2078  
2079  
2080  
2081  
2082  
2083  
2084  
2085  
2086  
2087  
2088  
2089  
2090  
2091  
2092  
2093  
2094  
2095  
2096  
2097  
2098  
2099  
2100  
2101  
2102  
2103  
2104  
2105  
2106  
2107  
2108  
2109  
2110  
2111  
2112  
2113  
2114  
2115  
2116  
2117  
2118  
2119  
2120  
2121  
2122  
2123  
2124  
2125  
2126  
2127  
2128  
2129  
2130  
2131  
2132  
2133  
2134  
2135  
2136  
2137  
2138  
2139  
2140  
2141  
2142  
2143  
2144  
2145  
2146  
2147  
2148  
2149  
2150  
2151  
2152  
2153  
2154  
2155  
2156  
2157  
2158  
2159  
2160  
2161  
2162  
2163  
2164  
2165  
2166  
2167  
2168  
2169  
2170  
2171  
2172  
2173  
2174  
2175  
2176  
2177  
2178  
2179  
2180  
2181  
2182  
2183  
2184  
2185  
2186  
2187  
2188  
2189  
2190  
2191  
21

1 not initiate administrative, civil or criminal enforcement  
2 or disciplinary action against any licensee who engages in  
3 the truthful advertisement of prices, terms of payment, dis-  
4 counts, comparative costs, credit terms, the availability  
5 and type of credit, and the valuation of ophthalmic prosthetic  
6 products and ophthalmic services unless such advertisements  
7 violate the relevant statutes or regulations of the Board  
8 restricting time, place or manner of such advertisements.

9 II

10 The defendant Board of Dispensing Opticians shall  
11 not initiate disciplinary action or revoke, suspend or deny  
12 the license of a person who engages in the truthful advertise-  
13 ment of prices, terms of payment, discounts, comparative  
14 costs, credit terms, the availability and type of credit,  
15 and the valuation of ophthalmic prosthetic products and  
16 ophthalmic services unless such advertisements violate the  
17 relevant statutes or regulations of the Board restricting  
18 the time, place or manner of such advertisements.

19 III

20 Nothing contained in this Decree shall restrict or  
21 prohibit the authority of either the Board of Examiners in  
22 Optometry or the Board of Dispensing Opticians from establish-  
23 ing minimum standards for professional advertising and/or  
24 for initial routine vision examinations. Consistent with  
25 this Decree, nothing herein shall restrict or prohibit the  
26 authority of either of the aforesaid Boards from promulgating  
27 and enforcing regulations or enforcing statutes which otherwise  
28 impose restrictions upon their respective licensees who  
29 engage in deceptive or misleading advertising of ophthalmic  
30 prosthetic products and/or ophthalmic services or which  
31 impose reasonable restrictions upon the time, place or  
32 manner of such advertisements.

ATTORNEY GENERAL - STATE OF ALASKA  
STATE CAPITOL  
POUCH K. JUNEAU, ALASKA 99511  
PHONE: (907) 485-3300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IV

The Board of Examiners in Optometry within a reasonable period shall promulgate standards for professional advertising applicable to licensed optometrists practicing in the State of Alaska.

V

For purposes of this Consent Decree and until standards for professional advertising have been promulgated by the Board of Examiners in Optometry an advertisement for "routine vision examination" as it relates to licensed optometrists means that the licensed optometrist shall at a minimum adhere to the following standard:

A.

In the initial examination of the patient, the licensed optometrist shall make and record the following findings of the condition of the patient:

- a. Complete Case History (ocular, physical, occupational, medical and other pertinent information);
- b. Chief ocular complaint;
- c. Aided and unaided visual acuity, at both near and far;
- d. External Examination (lids, cornea, sclera, etc.);
- e. Internal Ophthalmoscopic Examination (media, fundus, etc.);
- f. Ocular motility;
- g. Neurological integrity;
- h. Far Point Subjective Examination, Static retinoscopy and subjective refraction;
- i. Near Point Subjective Examination; Dynamic retinoscopy and subjective refraction;
- j. Test of accommodation and convergence and binocular coordination at far and near; test preferably made with phoropter;
- k. Confrontation Fields.



1 construed as requiring the two Boards to promulgate identical  
2 standards for professional advertising in those areas where  
3 their respective fields of practice should overlap.

4 VII

5 For purposes of the interpretation and the implemen-  
6 tation of this Decree, the following definitions shall  
7 control:

8 A. "Ophthalmic prosthetic products" shall consist  
9 of eyeglasses, lenses, contact lenses, frames or  
10 any component thereof or any other device used for  
11 or incident to the correction of any visual anomaly.

12 B. "Ophthalmic services" consist of the measuring,  
13 fitting and adjusting of ophthalmic prosthetic  
14 products to the face and eyes.

15 C. "Routine vision examination" is the process of  
16 determining the refractive condition of a person's  
17 eyes or the presence of any visual anomaly by the  
18 use of objective and subjective tests.

19 CONCLUSION

20 A. Jurisdiction

21 The jurisdiction of this cause is to be retained  
22 by the court for the purpose of making such other and further  
23 orders as may become necessary. However, with respect to  
24 defendants Board of Examiners in Optometry and members thereof  
25 this decree shall be terminated and rendered null and void  
26 upon the expiration of 30 days following the subsequent  
27 promulgation of regulations by the said Board relating to  
28 the area of professional advertising practices. Furthermore,  
29 with respect to defendants Board of Dispensing Opticians and  
30 members thereof, this decree shall be terminated and rendered  
31 null and void upon the expiration of 30 days following the  
32 subsequent promulgation of regulations by the said Board or  
33 immediately upon the effective date of any amendments to the  
34 relevant provisions of AS 08.71 which may be enacted by the

ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
POUCH K, JUNEAU, ALASKA 99811  
PHONE (907) 489-2800

ATTORNEY GENERAL STATE OF ALASKA  
STATE CAPITAL BUILDING  
POUCH 8 ANCHORAGE ALASKA 99511  
PHONE 482-3800

1 Alaska State Legislature.

2 B. Costs and Attorneys' Fees.

3 Defendants have agreed to pay reasonable attorneys'  
4 fees to plaintiffs counsel and the parties agree that all  
5 other costs and attorneys' fees incurred in the prosecution  
6 or defense of this action as of the date this Decree is entered  
7 shall be borne by each party respectively.

8 C. Notice Requirement.

9 Defendants further agree to notify all optometrists  
10 licensed under AS 08.72 and all dispensing opticians licensed  
11 under AS 08.71 of the terms of this Decree by mailing to  
12 each licensee a copy thereof within 60 days of the entry of  
13 this Decree.

14 WHEREAS, the parties having presented to the Court  
15 the instant Consent Decree and having consented to it serving  
16 as the final judgment of the Court in this cause;

17  
18 IT IS ORDERED, ADJUDGED AND DECREED that judgment  
19 be and hereby is granted pursuant to Consent Decree as the  
20 final judgment of this Court with regard to this cause.

21 DATED at Anchorage, Alaska, this  
22 13 day of December, 1977.

23   
24 JUDGE OF THE UNITED STATES  
25 DISTRICT COURT  
26  
27  
28  
29  
30  
31  
32

OREGON STATE  
ATTORNEY GENERAL OPINION  
# 5807

Use of an electronic tonometer by an optometrist does not violate the provisions of the Medical Practice Act under ORS chapter 677.

No. 5807                      May 12, 1964

Mr. Howard I. Bobbitt  
Executive Secretary  
State Board of Medical Examiners

You have requested an opinion as to whether the use by an optometrist of an instrument known as an electronic tonometer is a violation of the Medical Practice Act, ORS chapter 677.

You state that the facts indicate that an optometrist has been advertising that he uses an electronic tonometer which is a device that measures intraocular pressure by electronic means to detect certain pathological conditions but does not require use of any anesthetic or drug. The facts also indicate that other

instruments have been in use by the optometric profession for many years, such as the Wolf scleral tonometer and Schiottz type tonometer.

It appears that intraocular pressure may be an indication of various pathological or abnormal conditions of the human eye and may affect "the scope of its functions."

Under the medical practice provisions of the Oregon law ORS 677.020 provides:

"Except as provided in ORS 677.060 no person shall practice medicine or surgery in this state without being licensed so to do by the State Board of Medical Examiners." (Emphasis supplied)

ORS 677.030 provides in part:

"A person is regarded as practicing medicine and surgery if he does one of the following:

"(4) Offer or undertake to diagnose, . . . in any manner, or by any means, . . . any disease, illness, pain, . . . deformity, defect or abnormal physical . . . condition of any person."

ORS 677.010 (1)(c) defines the word "diagnose" as:

" . . . examine another person in any manner to determine the source or nature of a disease or other abnormal physical or mental condition, or to hold oneself out or represent that a person is so examining another person. . . ."

ORS 677.060 provides in part:

"This chapter shall not be construed to affect or prevent the following:

"(8) The practice of . . . optometry . . . by any person legally authorized by this state . . ."

It is clear, therefore, that ORS 677.060 (8) permits a duly authorized optometrist to render all services contemplated and included within the term "practice of optometry."

The phrase "practice of optometry" is defined in part in ORS 683.010 (2) as:

"Practice of optometry" means the employment of any means other than the use of drugs for the measurement . . . of the human vision or the determination of the accommodative and refractive states of the human eye or the scope of its functions in general . . ." (Emphasis supplied)

It is to be noted that the only limitations imposed on an optometrist with respect to determining the "accommodative and refractive" state of the human eye or the "scope of its functions" is with respect to the use of drugs. Aside from drugs, an optometrist may use "any means" to make these determinations. Obviously an electronic tonometer is not a drug.

The crucial question implicit in your request is, what activities with respect to pathology of the eye are encompassed by the term "practice of optometry."

The Supreme Court of Oregon in State ex rel. Sisemore v. Standard Optical Company, (1947) 182 Or. 452, 460-461, 185 P. (2d) 309, 312-313, has unequivocally answered that question. The court stated at page 460:

"The practice of optometry is undoubtedly one of the subdivisions of the practice of medicine . . ."

The court went on to say at page 461:

"While it is true that an optometrist is not permitted by law to treat diseases of the eye, nevertheless his training enables him to diagnose pathological conditions, and his duty requires him to refer the patient to a practitioner who is qualified to treat such conditions. The fact that he is trained to diagnose pathological conditions in itself indicates that the optometrist is not a mere skilled craftsman or mechanic. His failure to diagnose a pathological condition, with resultant delay or neglect in proper treatment thereof, might result in serious impairment of the patient's eyesight, or even in blindness." (Emphasis supplied)

It thus appears that the term "practice of optometry" as construed by our Supreme Court contemplates that an optometrist, as a part of the services he renders his patient, has a duty to use his professional training, skill and knowledge while he is performing his primary function, to determine whether his patient is afflicted with an abnormal or pathological condition of the eye which may require treatment by a person legally qualified to render such service. He is also required to advise such patient if he finds what appears to be a pathological condition so that the patient may seek treatment from a legally qualified person. This does not mean that an optometrist has a duty to subject his patient in every possible type of examination for all manner of conditions, whether apparent or hidden. Nor does the "practice of optometry" allow an optometrist to so advertise that he indicates directly or indirectly that he examines and treats diseases of the eye. It is our understanding that the questioned advertising has been withdrawn and the optometrist reprimanded by the Oregon State Board of Examiners in Optometry. Within that area, defined as the "practice of optometry," the optometrist has the right to use any instruments or aids which in his professional judgment assist him in performing his functions, provided he is not administering "drugs."

It is, therefore, our opinion that the use of the electronic tonometer by an optometrist in the circumstances described herein is encompassed within the phrase "practice of optometry" and hence not prohibited by the provisions of the Medical Practice Act.

ROBERT Y. THORNTON,  
Attorney General.  
By Louis S. Donney, Assistant

ALASKA CONSENT DECREE

Routine Visual Examination

ALASKA DRUG TERMINOLOGY RELATING TO USAGE OF  
"DIAGNOSTIC AGENTS"  
BY OPTOMETRISTS

The following reviews an accepted dictionary definition and the Alaska Statutes' definition regarding "drug" terminology.

Dorlands Medical Dictionary defines:

DRUG: Any chemical compound or any non-infectious biological substance, not used for its mechanical properties, which may be administered to or used on or for patients, either human or animal, as an aid in the diagnosis, treatment, or prevention of disease or other abnormal condition, for the relief of pain or suffering, or to control or improve any physiological or pathological condition.

From this definition one could conclude that an accepted aspect of the usage of a "drug" is in "diagnosis". However, pertinent terminology regarding drugs does not make any reference to "diagnostic drugs, or agents."

OPTOMETRISTS Section 08.72.300 (3)

(2) "Practice of optometry means the diagnosis, by means or methods other than the use of drugs . . ."

MEDICINE Section 08.64.380 Definitions:

(No specific def or drug is given but intent can be recognized under the definition of practice of medicine)

(2) Practice of medicine or practice of osteopathy means:

(D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; . . .

To clarify Medicine's definition, Dorlands Medical Dictionary defines:

CURE: 1. The course of treatment of any disease, or of a special case. 2. The successful treatment of a disease or wound. 3. A system of treating diseases. 4. A medicine effective in treating disease.

PRESCRIBING: Giving instructions concerning the use of a remedy.

TREATMENT: The means employed in effecting the cure of disease.

RELIEF: The removal of anything distressing; the alleviation of pain or discomfort.

INFIRMITY: Weakness; a disease producing feebleness.

The point here is that the term "diagnostic agent" does not come within the boundaries of the definition of "drug" within the Alaska Statutes for medicine. From this, three conclusions can be drawn:

1. At present time, the current usage of diagnostic agents by optometrists does not infringe on the Alaska Medicine Statutes.
2. If positive "diagnostic agents" wording is added to the Alaska Optometrists Statutes, no infringement will exist upon the Alaska Medicine Statutes.
3. Positive "diagnostic agents" wording should be added to the Alaska Optometrists Statutes because while § 08.72.300, "Practice of Optometry means the employment of any means other than the use of drugs . . ." does not conflict with § 08.64.380 on Medicine, it does, however, conflict with an accepted dictionary definition: "Drug is any chemical . . . used . . . as an aid in the diagnosis . . ."

08.72.275.

08.72.300.

08.72.300.

08.72.310.

which are tempered or case hardened. Glass lenses shall have a minimum thickness of two millimeters.

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

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

Revisor's note.-Section action on SCSHB 68 am (ch. 220, 2, ch 220, SLA 1968, provides; SLA 1968), was completed on April "The provisions of this bill 14, 1968 and the bill was signed take effect one year after by the governor on May 6, 1968. date of passage." Legislative

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

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

C.J.S. reference.-53 C.J.S. Licenses secs 62 to 65.

Article 4. General Provisions.

|                  |                  |
|------------------|------------------|
| Section          | Section          |
| 300. Definitions | 310. Short title |

Sec. 08.72.300. Definitions. As used in this chapter

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

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

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

(4) "lenses" means conventional or contact lenses. (sec 35-3-131 ACLA 1949; am sec 2 ch 95 SLA 1966)

(b)

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

(6) "department" means the Department of Commerce. (sec 35-3-131 ACLA 1949; am sec 2 ch 95 SLA 1966; am by adding (5) & (6) sec 13 SLA 1969)

Effect of amendment.-The Examiners in Optometry, 9 Alaska 1966 amendment added paragraph 462, aff'd, 9 Alaska 627, 106 F.2d 904 (1939).

(4). This chapter is a valid exercise of the legislative power. Edmunds v. Board of

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

(9)

Effect of amendment. — The 1974 amendment repealed paragraph (4).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 08.64.380. Definitions.** As used in this chapter

(1) "board" means the State Medical Board;

(2) "practice of medicine" or "practice of osteopathy" means

(A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or

(B) the public display of one's name and the letters "M.D.", "M.B." or "D.O." or the words "physician" or "osteopath" or "osteopathic physician", or "osteopathic surgeon", or "osteopathic physician and surgeon", or a specialist designation such as "surgeon" or "dermatologist", "psychiatrist", or the like; or

(C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or

— (D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction of disease, bodily injury, deformity, or defect; or

(F) Repealed by § 1 ch 117 SLA 1971.

(3) "unprofessional or dishonorable conduct" means

(A) a violation of the provisions of AS 11.15.060 or regulations lawfully adopted by the State Medical Board concerning abortion procedures and practice;

(B) habitual overuse of alcoholic beverages or depressant, hallucinogenic or stimulant drugs, as defined in AS 17.12.150(3), or addiction to the use of narcotic drugs as defined in AS 17.10.230(13);

(C) conviction of an offense involving moral turpitude,

(D) advertising professional services to the public except for notice of opening, closing, or removing practice, and except for directories listing physicians in a community on a uniform and nondiscriminatory basis, containing only factual, truthful descriptions of physicians and their services;

(E) making untruthful or fraudulent statements in the application for examination, or deceiving or cheating during the examination for license, or procuring a license by deceit or fraud;

(F) violating the Controlled Substances Act (P.L. 91-513; 84 Stat. 1242) or any other federal law pertaining to medical practice and drugs;

(G) violating the principles of medical ethics of the American Medical Association and of the Alaska State Medical Association;

(4) Repealed by § 27 ch 148 SLA 1970.

(5) "department" means the Department of Commerce.

this title and that covered by this chapter. *Speas v. State*, Sup. Ct. Op. No. 889 (File No. 1555), 511 P.2d 130 (1973).

Quoted in *Fresneda v. State*, Sup. Ct. Op. No. 573 (File No. 1045), 458 P.2d 134 (1969); *John Doe v. State*, Sup. Ct. Op. No.

707 (File No. 1240), 487 P.2d 47 (1971); *Egner v. State*, Sup. Ct. Op. No. 784 (File No. 1443), 485 P.2d 1272 (1972); *Gray v. State*, Sup. Ct. Op. No. 1068 (File No. 2043), 525 P.2d 524 (1974).

**Chapter 15. Drugs.**

**Article**

- 1. Sale or Other Transfer of Certain Drugs (§§ 17.15.010—17.15.050)
- 2. Seizure of Conveyances Used in Narcotics Violations (§§ 17.15.060—17.15.110)

**Article 1. Sale or Other Transfer of Certain Drugs.**

| Section  | Section                          |
|--|----------------------------------|
| 10. Written order or prescription required for dispensing of certain drugs | 30. Exceptions                   |
| 20. Authority of prescriber required for refill                            | 40. Penalty for violations       |
|  | 50. Selling poison without label |

**Sec. 17.15.010. Written order or prescription required for dispensing of certain drugs.** It is unlawful for a person to sell, give away, barter, exchange or distribute

(1) amytal, luminal, veronal, barbital, acid diethylbarbituric, or any of their salts, derivatives, or compounds, or a preparation or compound containing any of these substances, or their salts, derivatives or compounds, or a registered, trademarked or copyrighted preparation or compound registered in the United States Patent Office containing more than one grain to the avoirdupois or fluid ounce of the substances, except upon the written order or prescription of a physician, surgeon, dentist or veterinary surgeon licensed to practice in the state;

(2) chloralhydrate and para-aminobenzene, sulfonamide, sulfanilamid, sulfamidyl, prontylin, prontosil, neo prontosil, neo protylin, edimalin, sulfonamide or a salt, derivative or compound of any of them or a registered, trademarked or copyrighted preparation or compound registered in the United States Patent Office containing these substances, except upon authority, order or prescription of a physician, surgeon, dentist or veterinary surgeon duly licensed to practice in the state. (§ 40-3-31 ACLA 1949; am § 1 ch 85 SLA 1949)

**Sec. 17.15.020. Authority of prescriber required for refill.** Prescriptions composed of the substances enumerated in § 10 of this chapter shall not be refilled without the authority of the prescriber. (§ 40-3-31 ACLA 1949; am § 1 ch 85 SLA 1949)

**Sec. 17.15.030. Exceptions.** Sections 10 and 20 of this chapter do not apply to the sale at wholesale by drug jobbers, drug wholesalers and drug manufacturers to pharmacies, hospitals, physicians, dentists or veterinary surgeons, nor to each other, nor to the sale at retail in pharmacies by pharmacists to each other or to physicians, surgeons, dentists or veterinary surgeons licensed to practice in the state. (§ 40-3-31 ACLA 1949; am § 1 ch 85 SLA 1949)

**Sec. 17.15.040** and 20 of this more than \$50 both. (§ 40-3-3)

**Am. Jur. refer** Drugs and Drugg

**Sec. 17.15.050** or delivers ar without havir written or pr containing it, \$20 nor more

**Am. Jur. and Am. Jur., Drugs Liability for** swallowing pois to be eaten or ta

**Article 2. :**

- Section 60. Seizure and
- 70. Order for se
- 80. Hearing, for
- 90. Limitations

**Sec. 17.15.060** vehicle, aircr illegally pos: state. (§ 1 ch

**Am. Jur. re** Drugs and Dru;

**Sec. 17.15.070** shall be seiz court which the court be officer maki

**Sec. 17.15.080** an immedia was used in The court s cases. If the conveyance possessed n the convey to the Depa public aucti

**Sec. 17.15.090** conveyance

§ 17.15.030

P.2d 47 (1971);  
Op. No. 784 (File  
11972); Gray v.  
1068 (File No.

7.15.110)

ugs.

t label

required for  
n to sell, give

itric, or any  
10 pound  
derivatives or  
preparation or  
ice containing  
ounce of the  
cription of a  
to practice in

amide, sulfa-  
. neo protylin,  
nd of any of  
reparation or  
ice containin g  
scription of a  
ly licen i to  
SLA 1949)

d for refill.  
ed in § 10 of  
hority of the  
)

his chapter do  
ug wholesalers  
icians, dentists  
ale at retail in  
ians, surgeons,  
n state. (§

§ 17.15.040

FOOD AND DRUGS

§ 17.15.090

**Sec. 17.15.040. Penalty for violations.** A person violating §§ 10 and 20 of this chapter is punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 180 days, or by both. (§ 40-3-32 ACLA 1949)

**Am. Jur. reference.** — 17A Am. Jur.,  
Drugs and Druggists, §§ 31 to 35.

**Sec. 17.15.050. Selling poison without label.** A person who sells or delivers arsenic, corrosive sublimate, prussic acid, or other poison, without having the word "poison" and the true name of it in English written or printed upon a label attached to the vial, box, or parcel containing it, upon conviction, is punishable by a fine of not less than \$20 nor more than \$100. (§ 40-3-33 ACLA 1949)

**Am. Jur. and ALR references.** — 17A Am. Jur., Drugs and Druggists, § 41. Liability for injury or death in swallowing poison in article not intended to be eaten or tasted. 50 ALR 1462. Validity of statutes regulating sale of poisons, 54 ALR 730.

**Article 2. Seizure of Conveyances Used in Narcotics Violations.**

| Section                                   | Section  |
|---|--|
| 60. Seizure and forfeiture of conveyance  | 100. Person having interest in conveyance may appear in proceeding |
| 70. Order for seizure and forfeiture      | 110. Definition of illegally possessed narcotic drug               |
| 80. Hearing, forfeiture and sale          |  |
| 90. Limitations on seizure and forfeiture |  |

**Sec. 17.15.060. Seizure and forfeiture of conveyance.** A vessel, vehicle, aircraft or other conveyance used in the transportation of an illegally possessed narcotic drug shall be seized and forfeited to the state. (§ 1 ch 104 SLA 1961)

**Am. Jur. reference.** — 17A Am. Jur.,  
Drugs and Druggists, § 1 et seq.

**Sec. 17.15.070. Order for seizure and forfeiture.** The conveyance shall be seized and forfeited in a proceeding in rem by order of the court which issues the process under which the conveyance is seized, or the court before which the person or the conveyance is taken by the officer making the seizure. (§ 1 ch 104 SLA 1961)

**Sec. 17.15.080. Hearing, forfeiture and sale.** The court shall order an immediate hearing on the question of whether or not the conveyance was used in the transportation of an illegally possessed narcotic drug. The court shall hear evidence and determine the question as in civil cases. If the court finds from a preponderance of the testimony that the conveyance seized was being used for the transportation of an illegally possessed narcotic drug, it shall give judgment accordingly and declare the conveyance forfeited to the state. The conveyance shall be delivered to the Department of Public Safety under the court order, and sold at public auction. (§ 2 ch 104 SLA 1961)

**Sec. 17.15.090. Limitations on seizure and forfeiture.** (a) No conveyance used as a common carrier in the transaction of business as

a common carrier may be forfeited under §§ 60—110 of this chapter unless the owner or other person legally in charge of the conveyance was at the time of the illegal act a consenting party or privy to it.

(b) No conveyance may be forfeited because of an act or omission established by the owner of the conveyance to have been committed or omitted by another person while the conveyance was unlawfully in the possession of a person who acquired possession of it in violation of the criminal laws of the United States or this state.

(c) No conveyance may be forfeited under §§ 60—110 of this chapter, unless the owner of the conveyance was, at the time of the illegal act, a consenting party to the illegal act or privy to it. (§ 3 ch 104 SLA 1961)

**Sec. 17.15.100. Person having interest in conveyance may appear in proceeding.** A person holding a lien, mortgage or conditional sales contract on a conveyance seized under §§ 60—110 of this chapter may appear before the court in the proceeding for forfeiture to petition for remittance or mitigation of the forfeiture. The court shall remit or mitigate the forfeiture if it finds that the petitioner has an interest in the conveyance which he acquired in good faith and without knowledge or reason to believe that the conveyance was being or would be used in the transportation of an illegally possessed narcotic drug. (§ 3 ch 104 SLA 1961)

**Sec. 17.15.110. Definition of illegally possessed narcotic drug.** In §§ 60—110 of this chapter

(1) "conveyance" means a vessel, vehicle, trailer, aircraft or other conveyance used in the transportation of an illegally possessed narcotic drug;

(2) "illegally possessed narcotic drug" is a narcotic drug (A) possessed with intent to sell or offer for sale in violation of any law or regulation of the United States or this state, or (B) acquired, possessed, sold, transferred, or offered for sale in violation of any law of the United States or this state, or (C) acquired by theft, robbery or burglary;

(3) "narcotic drug" means a narcotic drug defined by the federal internal revenue laws and the regulation issued under them. (§§ 1, 4 ch 104 SLA 1961; am § 4 ch 225 SLA 1968)

**Chapter 20. Alaska Food, Drug and Cosmetic Act.**

**Article**

1. Food (§§ 17.20.010—17.20.070)
2. Drugs and Devices (§§ 17.20.080—17.20.130)
3. Cosmetics (§§ 17.20.140—17.20.150)
4. False Advertising (§§ 17.20.160—17.20.170)
5. Enforcement (§§ 17.20.180—17.20.280)
6. Prohibited Acts and Penalties (§§ 17.20.290—17.20.330)
7. General Provisions (§§ 17.20.340—17.20.380)

- Section**  
 10. Definitions  
 20. Adulterated  
 30. Tolerances  
     ingredien  
 40. Misbranded

**Sec. 17.20**  
 judgment of  
 of consumer  
 regulations  
 reasonable d  
 of quality, at  
 a definition  
 optional ing  
 purpose of  
 consumers, c  
 the label. Th  
 far as practi  
 authority of  
 canned food  
 or processor  
 1955)

**Am. Jur. r**  
 Food, § 1 et seq

**Sec. 17.2**

- (1) it bea  
 may render  
 added subs  
 paragraph i  
 injurious to
- (2) it be  
 substance w
- (3) it con  
 putrid, or d
- (4) it has  
 conditions i  
 which it m  
 to health;
- (5) it is,  
 animal whi  
 fed upon th
- (6) its co  
 deleterious  
 health.

(b) Food

(1) a val  
 part;

v. State, Sup. Ct. Op. No. 1848 (1979).  
v. State, Sup. Ct. Op. No. 289 (1976).

Sup. Ct. Op. No. 305 (1976).  
p. Ct. Op. No. 907 (1976);  
No. 1470 (File No. 3434);  
v. State, Sup. Ct. Op. No. 593 P.2d 634 (1978).

Sup. Ct. Op. No. 1 (1978).  
The drugs listed in the statute are similar to those listed in the statute. The phrase "of similar" used in (b) is at variance with the phrase "of similar" used in (a) of this section. See Belgarde v. State, Sup. Ct. Op. No. 1 (1978).

p. No. 1744 (File No. 378).  
punishment for did not violate the provision of cruel and unusual punishment. See Belgarde v. State, Sup. Ct. Op. No. 1206 (File No. 378).

Keller v. State, Sup. Ct. Op. No. 2330, 543 P.2d 1206 (1978).

Goals of protection of the accused and similar criminal offenses. The purpose of the provision is to protect the accused from the stigma of conviction and the punishment of imprisonment. See Belgarde v. State, Sup. Ct. Op. No. 1206 (File No. 378).

could not say that the sentencing court was clearly mistaken in imposing a five-year sentence for selling amphetamines in violation of AS 17.12.010. Thurlkill v. State, Sup. Ct. Op. No. 1279 (File No. 2735), 551 P.2d 541 (1976).

Where defendant was convicted, upon his plea of guilty, of four counts of sale and one count of distribution of marijuana, the superior court was not clearly mistaken in imposing a sentence of five years, with two suspended, on each count, to be served concurrently, the court also having fined defendant \$5000, suspending payment of \$3000. Wolfe v. State, Sup. Ct. Op. No. 1301 (File No. 2766), 553 P.2d 472 (1976).

Sentence of three years imprisonment for selling LSD was not excessive. Aceveda v. State, Sup. Ct. Op. No. 1534 (File No. 2900), 571 P.2d 1013 (1977).

Where defendant was convicted of possession of an hallucinogenic drug with intent to sell or distribute and was sentenced to seven years, with execution of the sentence suspended for five years, defendant being placed on probation for 30 months on condition that he: (1) complete school; (2) be employed while not in school or incarcerated; and (3) report to a correctional institution in September 1976 to serve six months, subject to school

Sec. 17.12.130. Forfeiture.

Difference between AS 11.45.040 and this section and AS 16.05.195. — Both this section and the fish and game forfeiture statute, AS 16.05.195, define broadly the property subject to forfeiture to include "accessories" and "paraphernalia," respectively, used to violate the law.

Sec. 17.12.150. Definitions.

Cocaine does not appear specifically in paragraph (3). State v. Erickson, Sup. Ct. Op. No. 1547 (File No. 3250), 574 P.2d 1 (1978).

Quoted in State v. Buckalew, Sup. Ct. Op. No. 1391 (File No. 3143), 561 P.2d 289 (1977).

release and credit for the 45 days he had already served, and this sentence was to run concurrently with the sentence for his conviction on an earlier offense, with probation in that case to be revoked by the judgment in the instant case, such sentence was not too lenient under the facts of the case. Clark v. State, Sup. Ct. Op. No. 1570 (File Nos. 2943, 2964), 574 P.2d 1261 (1978).

Sentence held excessive. — Imposition of two consecutive five-year terms for the sale of small quantities of marijuana was excessive. Salazar v. State, Sup. Ct. Op. No. 1404 (File No. 2567), 562 P.2d 694 (1977).

Case remanded for resentencing. — The supreme court remanded for resentencing where the trial court had improperly considered the goal of community condemnation of the offender in sentencing defendant to five years' imprisonment for possession of marijuana for the purpose of sale or distribution. Snyder v. State, Sup. Ct. Op. No. 1744 (File No. 3321), 585 P.2d 229 (1978).

Applied in Barrett v. State, Sup. Ct. Op. No. 1225 (File No. 2299), 546 P.2d 161 (1976); State v. Buckalew, Sup. Ct. Op. No. 1391 (File No. 3143), 561 P.2d 289 (1977).

Cited in State v. Erickson, Sup. Ct. Op. No. 1547 (File No. 3250), 574 P.2d 1 (1978).

Furthermore, both of them provide optional dispositions for forfeited property, unlike the gambling forfeiture statute, AS 11.45.040 which mandates destruction of property seized. One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Cited in Belgarde v. State, Sup. Ct. Op. No. 1206 (File No. 2447), 543 P.2d 206 (1975).

ELLIOT RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, FILLED A 1971 REPORT WITH THE PRESIDENT AND CONGRESS ON ADMINISTRATION OF THE HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT.

The report contained the following language concerning optometry:

"Optometrists are trained to detect any departure from the optimally healthy eye. The scope of optometric services has expanded beyond basic clinical refractions, fabricating and dispensing eyewear; now included are visual screening examinations, clinical instrumentation, contact lens fitting, visual training, orthoptics, low-vision aids for the partially sighted, artificial eyes, industrial vision consultation and public and community health. The most rapidly expanding area of service is in school consultation and remedial services for low achievers. The optometrist is trained and bound by professional ethics to refer patients in whom indications of disease have been found to a physician or other health practitioner for definitive diagnosis and appropriate medical surgical or other treatment."

ELLIOT RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, FILLED A 1971 REPORT WITH THE PRESIDENT AND CONGRESS ON ADMINISTRATION OF THE HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT.

The report contained the following language concerning optometry:

"Optometrists are trained to detect any departure from the optimally healthy eye. The scope of optometric services has expanded beyond basic clinical refractions, fabricating and dispensing eyewear; now included are visual screening examinations, clinical instrumentation, contact lens fitting, visual training, orthoptics, low-vision aids for the partially sighted, artificial eyes, industrial vision consultation and public and community health. The most rapidly expanding area of service is in school consultation and remedial services for low achievers. The optometrist is trained and bound by professional ethics to refer patients in whom indications of disease have been found to a physician or other health practitioner for definitive diagnosis and appropriate medical surgical or other treatment."

HOW THE DIAGNOSTIC AGENTS BILL IN ALASKA RELATES TO:

1. Other States:

Thirty-one states allow optometrists to use diagnostic agents. Other states such as Alaska are currently making legislative efforts to broaden this.

2. Other Countries:

- a. The large english speaking countries of Canada, Australia, and England all certify optometrists to use diagnostic drugs.
- b. England's joint declaration (February, 1970) by the ophthalmologists and optometrists of England confirm the many beneficial years as well as pronounce the future continuation for the usage of diagnostic agents by optometrists.

3. The United States Armed Forces:

All branches of the military either allow or specifically state in the regulations that optometrists shall be permitted the usage of diagnostic agents or drugs.

HOW THE DIAGNOSTIC AGENT BILL IN ALASKA  
RELATES TO OTHER STATES

1. Recent positive state law changes: (23 state law changes)
  - a. Rhode Island enacted optometry redefinition law in 1971:  
Optometrists "shall be permitted to apply drugs topically to the eye for the purpose of detecting any disease or pathological condition of the eye."
  - b. Pennsylvania enacted optometry redefinition law in 1974:  
Optometry shall include the use of "diagnostic pharmaceutical agents, known generically as cycloplegics, mydriatics, topical anesthetics and miotics."
  - c. Iowa enacted optometry redefinition law most recently in June, 1979:  
Certified licensed optometrists may employ cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied . . .
  - d. Louisiana
  - e. Oregon
  - f. Delaware
  - g. Maine
2. States which have no prohibitive laws on diagnostic agent usage by optometrists:
  - a. Florida
  - b. Idaho
  - c. Indiana
  - d. Minnesota
  - e. Nevada
  - f. New Jersey

Total of (31) states allow the use of diagnostic agents by optometrists. Map showing dates--geographic locations.

3. Experience of states where diagnostic agents are used:

Letter enclosed from E.C. Nurock, Secretary-Treasurer, Department for Law and Public Safety, Board of Optometrists, State of New Jersey.

New Jersey optometrists have had the right to use these diagnostic agents since 1919. "In the state there have been no cases reported regarding any problems caused by optometrists using any of the diagnostic drugs. The use of diagnostic drugs by optometrists is definitely in the public interest."

RHODE ISLAND DEFINITION  
(Enacted at 1971 Session)

Optometry is defined as the profession whose practitioners are engaged in the art and science of the evaluation of vision and the examination of vision and the examination and refraction of the human eye which includes:

The employment of any objective or subjective means for the examination of the human eye or its appendages;

The Measurement of the powers or range of human vision or the determination of the accommodative and refractive powers of the human eye or the scope of its functions in general and the adaptation of lenses, prisms, and/or frames for the aid thereof;

The prescribing, directing the use of or administering ocular exercises, visual training, vision training, or orthoptics, and the use of any optical device in connection therewith;

The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye;

The examination or diagnosis of the human eye to ascertain the presence of abnormal conditions or functions; and

The topical application of drugs to the eye, to wit, mydriatics, miotics, and the use of topical anesthetics, provided, however, that no optometrist licensed in this state shall treat by the use of these drugs or attempt to perform any surgery and shall be used only for the purpose of detecting any diseased or pathological condition of the eye, or the effects of any disease or pathological condition of the eye, further provided however, that with respect to presently licensed optometrists, only presently licensed optometrists who

1. have satisfactorily completed a course in pharmacology, as it applies to optometry, at an institution accredited by a regional or professional accreditation organization which is recognized by the national commission on accreditation, with particular emphasis on the topical application of drugs to the eye for the purpose of detecting any diseased or pathological condition of the eye; or the effects of any disease or pathological condition of the eye, approved by the board of examiners in optometry and the chief of pharmacy of the department of health, and

2. have successfully completed an examination given by the board of examiners in optometry in conjunction with the chief of pharmacy of the department of health, shall be permitted to apply drugs topically to the eye for the purpose of detecting any diseased or pathological condition of the eye, or the effects of any disease or pathological condition of the eye. Said chief of pharmacy shall consult and advise the board of examiners in optometry with respect to that portion of the examination dealing with pharmacology.

PENNSYLVANIA REDEFINITION

(Enacted in early 1974)

Section 1. That the practice of optometry is hereby defined to be the employment of any means or methods, other than the use of surgery, or drugs, except diagnostic pharmaceutical agents, known generically as cycloplegics, mydriatics, topical anesthetics and miotics, which are administered topically for

The examination of the human eye and the analysis of ocular functions, or

The prescribing, providing, furnishing, adapting or employing any or all kinds and types of lenses and prisms, visual training, orthoptics, ocular exercises, and any and all preventive and corrective methods for the aid, correction or relief of the human eye, its associated structures, appendages and functions, other than the use of drugs or surgery:

The Secretary of Health shall designate the specific agents to be used under the above generic classification. Provided, however, that with respect to optometrists licensed at the time of the effective date of this amendatory act, only such licensed optometrists who

1. have satisfactorily completed a course in pharmacology, as it applies to optometry, by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the National Commission on Accrediting or the United States Commissioner of Education, with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye for the purpose of examination of the human eye and analysis of ocular functions, approved by the State Board of Optometrical Examiners, and

2. who upon successful completion of such course shall be permitted by the State Board of Optometrical Examiners in Optometry to use diagnostic pharmaceutical agents topically in the practice of optometry.

Whenever an optometrist during the course of his examination shall determine the possibility of the existence of a pathological condition he shall advise the person of such opinion, and refer such person to physician for further evaluation.

XTRAS



American Optometric Association

BULLETIN  
from  
OFFICE OF COUNSEL

VOL. XXXVII, BULLETIN NO. 70

June 11, 1979

TO: O, T, DEC-C, Statutory Definition Advisory Committee, EMS, E, State Association Presidents, Executives, Legislative Chairmen, Attorneys, Legislative Counsel, Statutory Definition Chairmen, Optometric Legislators, IAB-EC, State Board Presidents, Secretaries, Attorneys, Administrative Heads of Schools and Colleges, Mr. Adams, Mr. Andrew, Mrs. Martin, GC, NE

SUBJECT: Iowa Legislation

FROM: Thomas E. Eichhorst, Counsel

On June 8, 1979, Iowa Governor Robert D. Ray, a Republican, signed into law Senate File 93. This law, entitled, "AN ACT RELATING TO THE USE OF DIAGNOSTIC PHARMACEUTICAL AGENTS BY OPTOMETRISTS" is enclosed.

The bill passed the Senate on March 7, 1979 by a vote of 29 to 17. It passed the House, as amended, on April 19, 1979, by a vote of 67 to 25. It was concurred in by the Senate on May 1, 1979 by a vote of 29 to 20.

Iowa is the twenty-third (23rd) state to enact legislation specifically authorizing optometrists to utilize pharmaceutical agents. Twenty-one (21) states authorize optometrists to utilize diagnostic pharmaceutical agents; two states authorize optometrists to utilize pharmaceutical agents for diagnostic and therapeutic purposes. The list (and dates of enactment) of these states is as follows:

American Optometric Association  
243 North Lindbergh Blvd.  
Saint Louis, Missouri 63141  
314 991 4100

Executive Offices in St. Louis and Washington, D.C.



FD F-5683

SENATE FILE 93

AN ACT  
RELATING TO THE USE OF DIAGNOSTIC PHARMACEUTICAL AGENTS BY  
OPTOMETRISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section one hundred fifty-four point one (154.1), Code 1979, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Certified licensed optometrists may employ cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under chapter one hundred forty-eight (148) or one hundred fifty A (150A) of the Code. A certified licensed optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use diagnostic agents. A certified licensed optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

Sec. 2. Section one hundred fifty-four point three (154.3), Code 1979, is amended by adding the following new subsections:

NEW SUBSECTION. A person applying to be licensed as an optometrist after January 1, 1980, shall also apply to be a certified licensed optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology and receive clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye for the purpose of examination of

the human eye, and the diagnosis of conditions of the human eye, at an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education.

NEW SUBSECTION. A person licensed as an optometrist prior to the effective date of this Act who applies to be a certified licensed optometrist shall first satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology as it applies to optometry including clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye and possible adverse reactions thereto, for the purpose of examination of the human eye and the diagnosis of conditions of the human eye, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education, and approved by the board of optometry examiners.

NEW SUBSECTION. In addition to the examination required by section one hundred fifty-four point three (154.3), subsection three (3) of the Code, a person applying to be a certified licensed optometrist shall also pass an examination prescribed by the optometry examiners in the subjects of physiology and pathology appropriate to the use of diagnostic pharmaceutical agents and diagnosis of conditions of the human eye, and pharmacology including systemic effects of ophthalmic diagnostic pharmaceutical agents and the possible adverse reactions thereto, authorized for use by optometrists by section one hundred fifty-four point one (154.1) of the Code.

Sec. 3. Chapter one hundred fifty-four (154), Code 1979, is amended by adding the following new section:

NEW SECTION. A certified licensed optometrist employing diagnostic pharmaceutical agents as authorized by this Act shall be held to the same standard of care in the use of such agents and in diagnosis as is common to persons licensed under chapter one hundred forty-eight (148) or one hundred fifty A (150A) of the Code in this state.

Sec. 4. Section one hundred fifty-five point twenty-two (155.22), Code 1979, is amended to read as follows:

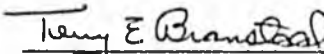
155.22 EXCEPTIONS. Sections 155.20 and 155.21 do not apply to sales by wholesalers of drugs and medicines to licensed physicians, dentists, podiatrists or veterinarians

or to sales by wholesalers to certified licensed optometrists of those diagnostic pharmaceutical agents which are authorized for use by certified licensed optometrists pursuant to this Act.

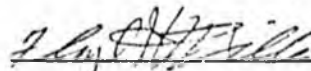
Sec. 5. Section one hundred fifty-five point twenty-six (155.26), Code 1979, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. This section shall not apply to the possession by a certified licensed optometrist of those diagnostic agents which are authorized for use by certified licensed optometrists pursuant to this Act. The dispensing by pharmacists to certified licensed optometrists of those diagnostic agents which are authorized for use by certified licensed optometrists pursuant to this Act shall be permitted.

Sec. 6. This Act is effective January 1, 1980.

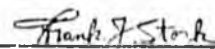


TERRY E. BRANSTAD  
President of the Senate



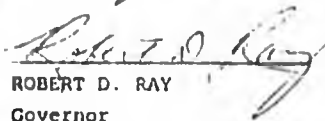
FLOYD W. MILLEN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 93, Sixty-eighth General Assembly.



FRANK J. STORK  
Secretary of the Senate

Approved  1979

  
ROBERT D. RAY  
Governor

Regular Session, 1975

HOUSE BILL NO. 107

BY MESSRS. BREAU AND J. JACKSON

ACT 123

LOUISIANA

AN ACT

To amend and reenact Paragraph (3) of Section 1041, Section 1051, and Paragraph (15) of Section 1061 of Title 37 of the Louisiana Revised Statutes of 1950 and to amend Section 1041 of Title 37 by adding thereto a new Paragraph to be designated as Paragraph (4) thereof, and to add a new Section to be designated as Section 1067 of Title 37 of the Louisiana Revised Statutes of 1950, relative to defining the practice of optometry; to provide for a definition of diagnostic pharmaceutical agent; to provide regulations for the examination required by applicants for a license as an optometrist; to provide for procedures regulating the employment of topical ocular diagnostic pharmaceutical agents by a licensed optometrist; and to provide with respect to the causes for refusal, suspension, or revocation of a certificate of license, and otherwise to provide with respect thereto.

ORIGINATED

IN THE

Rec'd by the Governor  
 June 26, 1975 at 2:15 PM  
 David C. Davenport

House of Representatives

Received by Secretary of State

this 5th day of July, 1975

*Wade D. Martin*  
 Secretary of State

*David R. Payne*  
 Clerk of the House of Representatives

Regular Session, 1975

ACT 123

HOUSE BILL NO. 107

BY MESSRS. BREUX AND J. JACKSON

AN ACT

To amend and reenact Paragraph (3) of Section 1041, Section 1051, and Paragraph (15) of Section 1061 of Title 37 of the Louisiana Revised Statutes of 1950 and to amend Section 1041 of Title 37 by adding thereto a new Paragraph to be designated as Paragraph (4) thereof, and to add a new Section to be designated as Section 1067 of Title 37 of the Louisiana Revised Statutes of 1950, relative to defining the practice of optometry; to provide for a definition of diagnostic pharmaceutical agent; to provide regulations for the examination required by applicants for a license as an optometrist; to provide for procedures regulating the employment of topical ocular diagnostic pharmaceutical agents by a licensed optometrist; and to provide with respect to the causes for refusal, suspension, or revocation of a certificate of license, and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Paragraph (3) of Section 1041 and Section 1051 of Title 37 of the Louisiana Revised Statutes of 1950 are hereby amended and reenacted to read as follows:

§1041. Definitions

\* \* \*

(3) "Optometry" means that practice in which a person employs or applies any means other than surgery, for the measurement of the powers and testing the range of vision of the human eye, and determines its accommodative and refractive state, general scope of function,

and the adaptation of frames and lenses, including contact lenses in all their phases, to overcome errors of refraction and restore as near as possible, normal human vision. The practice of optometry does not include the use of drugs or medication, except the use of topical ocular diagnostic pharmaceutical agents and then only by a licensed optometrist and in accordance with the provisions of this Chapter. The practice of optometry does not include the use of pharmaceutical agents, in the treatment of disease.

\* \* \*

§1051. Examinations and educational requirements

Examinations given by the board shall be based upon subjects taught in approved schools and colleges of optometry, such as general anatomy, physics, chemistry, biology, physiology, anatomy and physiology of the eye, general physiology, general pathology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, vision therapy, visual field charting, orthoptics, clinical optometry, contact lenses, general pharmacology and ocular pharmacology as it applies to optometry with emphasis on the topical use of diagnostic pharmaceutical agents to the eye, and the applications of the general law of optics and refraction and such other materials and subjects as are essential in the practice of optometry. Examinations shall be conducted at least once annually on dates fixed by the board.

All written examinations held by the board and the answers of applicants shall be kept as records by the board for at least one year.

Section 2. Paragraph (4) of Section 1041 and Section 1067 of Title 37 of the Louisiana Revised Statutes of 1950 are hereby enacted to read as follows:

§1041. Definitions

\* \* \*

(4) "Diagnostic pharmaceutical agent" means any chemical in solution, suspension, emulsion, or ointment base other than a narcotic which when applied topically to the eye, results in physiological

changes which permit more efficient, or otherwise facilitate, examination of the external eye or its anexa or the evaluation of vision, or which is necessary to determine normal physiological function as part of an examination regimen.

\* \* \*

§1067. Chemical agents used in examination, board  
authorization required

Prior to the employment of topical ocular diagnostic pharmaceutical agents by a licensed optometrist, that licensed optometrist must submit to the Louisiana State Board of Optometry Examiners, satisfactory evidence that the optometrist has successfully completed courses approved by the board, in pharmacology as they apply to optometry, with particular emphasis on topical application of diagnostic pharmaceutical agents to the eye.

Section 3. Paragraph 15 of Section 1061 of Title 37 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§1061. Causes for refusal, suspension, or revocation of  
certificate

\* \* \*

(15) Using, prescribing, giving away, selling or offering for sale, or having in his possession any eye remedy, lotion, salve, or medicine of any kind or description, or practicing medicine or surgery for the use of carrying on the practice of optometry; provided, however, that this Paragraph shall not prevent the possession or use of topical ocular diagnostic pharmaceutical agents by a licensed optometrist in accordance with the provisions of this Chapter.

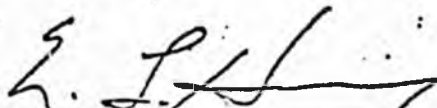
\* \* \*

Section 4. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

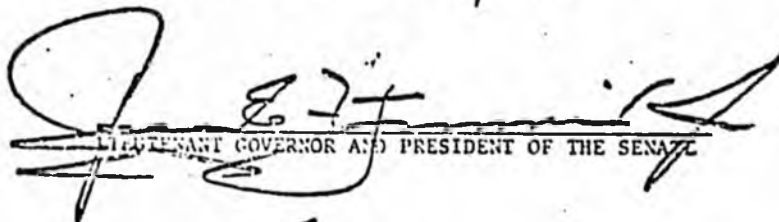
Section 5. Nothing in this bill shall in any way apply to a licensed physician or to any nurse, technician, or allied health personnel acting

under a physician's prescription, supervision, or direction nor to any screening, testing or teaching program conducted by the state of Louisiana or in any parish or city eye program.

Section 6. All laws or parts of laws in conflict herewith are hereby repealed, with the exception noted in Section 5.



SPEAKER OF THE HOUSE OF REPRESENTATIVES



LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE



GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:

July 6, 1975

Enrolled  
**House Bill 2740**

Sponsored by Representatives OTTO, GRANNELL, GWINN, WALDEN,  
Senators HOWARD, JERNSTEDT

CHAPTER \_\_\_\_\_

AN ACT

Relating to the practice of optometry; amending ORS 683.010, 683.040,  
683.060 and 683.270.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 683.010 is amended to read:

683.010. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Oregon Board of Optometry.

(2) "Practice of optometry" means the employment of any means other than the use of drugs, except diagnostic agents, topically applied, known generically as cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and, for emergency use only, miotics, for the measurement or assistance of the powers or range of human vision or the determination of the accommodative and refractive states of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof, subject to the limitations of ORS 683.040.

(3) "Trial frames" or "test lenses" means any frame or lens used in testing the eye which is not sold and not for sale.

Section 2. ORS 683.040 is amended to read:

683.040. (1) Every person desiring to commence the practice of optometry in this state must show by satisfactory evidence that he is of good moral character and has graduated from a school of optometry which is recognized and approved by the board and which maintains a standard of four school years of at least nine months each.

(2) Every person desiring to commence the practice of optometry after January 1, 1976, or employ the use of diagnostic agents shall in addition to the requirements of subsection (1) of this section have satisfactorily completed a course in pharmacology, as it applies to optometry, by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the National Commission on Accrediting or the United States Commissioner of Education, with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions, approved by the Oregon Board of Optometry.

Section 3. ORS 683.060 is amended to read:

683.060. (1) Any person who has signified to the board his desire to be examined by it and who has filed proof that he is qualified under this chapter and the rules of the board to take such examination shall appear before the board at such time and place as the board may designate, and before beginning the examination the applicant shall pay \$50 to the secretary of the board. At the examinations the board shall examine applicants in the anatomy of the eye, in the use of diagnostic agents as used topically, in normal and abnormal refractive and accommodative and muscular conditions and coordination of the eye, in subjective and objective

optometry, including the fitting of glasses, the principles of lens grinding and frame adjusting, and in such other subjects as pertain to the science and practice of optometry, such subjects to be enumerated in a publication by the board.

(2) The board may, in its discretion, accept the certificate of successful examination of the National Board of Examiners in Optometry in one or more areas of the examination in lieu of its written examination in such areas.

(3) If an applicant shall fail to pass a second examination, the board may permit additional examinations upon compliance by the applicant with the law and the rules of the board.

Section 4. ORS 683.270 is amended to read:

683.270. The powers and duties of the board are as follows:

(1) To organize and elect from its membership a president and secretary of the board, each of whom shall hold office for one year, or until the election and qualification of a successor.

(2) To adopt and use a common seal.

(3) To employ agents, attorneys and inspectors to secure evidence of, report on, and prosecute all violations of this chapter and to employ other necessary assistance in the carrying out of the provisions of this chapter, and to pay the same from the funds provided in this chapter.

(4) To hold regular meetings at least once a year at which an examination of applicants for certificates of registration shall be held at such places as the board shall from time to time designate, and special meetings upon request of a majority of the members of the board or upon the call of the president.

(5) To keep an accurate record of all proceedings of the board and of all of its meetings, of all prosecutions for violations of this chapter, and of all examinations held for applicants for certificates of registration, with the names and addresses of all persons taking examinations and their success or failure to pass such examinations. All the records of the board shall be public and shall be kept in the office of the board.

(6) To keep an accurate inventory of all property of the board and of the state in the possession of the board and to obtain a receipt therefor from its successor.

(7) To keep a register of optometrists which shall contain the names and addresses of all persons to whom certificates of registration have been issued in the State of Oregon, together with the date of the issuance of such certificate and the place or places of business in which each optometrist is engaged, and all renewals, revocations and suspensions thereof.

(8) To grant or refuse to grant certificates of registration as provided in this chapter and to revoke the certificate of registration of any optometrists for any of the causes specified in ORS 683.140.

(9) To designate diagnostic pharmaceutical agents for topical use in the practice of optometry from among the generic categories enumerated within subsection (2) of ORS 683.010. Said designation shall take place not later than January 1, 1976, and shall be with the advice and guidance of the Board of Medical Examiners for the State of Oregon.

[(9)] (10) To administer oaths and take testimony upon granting and revoking or suspending any certificate of registration.

[(10)] (11) To make rules not inconsistent with the laws of this state as are deemed necessary or proper to carry out the lawful powers and duties of the board, as may be necessary or proper to determine the qualifications of applicants for a certificate to practice optometry in this state, and to establish educational, moral and professional standards for such applicants, subject to the laws of this state. If an applicant fails to pass a second examination the board may adopt rules which may provide the required courses of study before further examination.

Chapter

Oregon Laws 1975

ENROLLED

House Bill

Passed by House

Repassed by House

*[Signature]*

Chief Clerk of House

*Philip D. Kang*

Speaker of House

Passed by Senate

Repassed by Senate

*ASON BOE*

President of Senate

Received by Executive Department:

3:15 P.M., May 14, 1975

Approved: 12:07 P.M. May 20, 1975

*Robert M. ...*

Governor

Filed in Office of Secretary of State:

M., 1975

Secretary of State



HOUSE OF REPRESENTATIVES

128TH GENERAL ASSEMBLY

FIRST SESSION - 1975

HOUSE BILL NO. 63

AS AMENDED BY

HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 21 OF TITLE 24, DELAWARE CODE, RELATING TO THE USE OF DRUGS OR SURGERY IN EXAMINATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2116 of Chapter 21, Title 24, Delaware Code, by striking said section in its entirety and substitute a new section to read as follows:

§2116. Use of Drugs or Surgery in Examinations

Nothing in this Chapter shall be construed as conferring on the holder of any certificate of registration for license, issued by the Board the right to make use of drugs or surgery in the treatment of eye diseases. He may employ topical ophthalmic drugs for diagnostic purposes only, the drugs that he may use for such diagnosis will be limited to the following four classes of drugs: Topical Anesthetics, Mydriatics, Cycloplegics and Myotics; provided however, that the Delaware State Board of Examiners in Optometry will include an examination on the subject of pharmacology as it relates to optometry and

the use of topically applied diagnostic drugs for all new applicants  
for licensure; further provided that no presently licensed optometrist  
shall be permitted to make use of topically applied diagnostic drugs  
until he shall have completed a refresher course in pharmacology as it  
relates to optometry and the use of topically applied diagnostic drugs  
given by an institution accredited by a regional or professional accredi-  
ting organization which is recognized by the National Commission on Ac-  
creditation, and is approved by the Delaware State Board of Examiners in  
Optometry."

1  
2  
3  
4  
5  
6  
7  
8  
9

STATE OF MAINE

APPROVED

JUN 24 '75

BY GOVERNOR

CHAPTER

563

PUBLIC LAW

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

S. P. 169 — L. D. 556

AN ACT to Further the Conservation of Vision.

*Be it enacted by the People of the State of Maine, as follows:*

Sec. 1. 32 MRSA § 2411, as enacted by PL 1973, c. 788, § 156, is repealed and the following enacted in place thereof:

§ 2411. Definitions

1. Practice of optometry. The practice of optometry is defined as any one or any combination of the following practices:

A. Eye examination. The examination of the eye and related structures to ascertain defects or abnormalities and to detect the presence of eye diseases.

B. Functional examination. The determination of the accommodative or refractive states of the human eye and evaluation of visual functions.

C. Correctional treatment. The correction of vision problems without the use of drugs, medicine or surgery by prescribing or adapting ophthalmic lenses, including contact lenses and other optical aids, and by using other corrective procedures to preserve, restore or improve vision.

D. Fitting of eyeglasses. The fitting, bending and adjusting of eyeglasses with ophthalmic lenses, except that this subsection shall not be considered as the practice of optometry providing the fitting, bending and adjusting is by order of and under the responsibility of an optometrist or ophthalmologist.

E. Replacement of lens. The replacement or duplication of an ophthalmic lens without a written prescription from a person licensed under the laws of this State to practice either optometry or medicine.

Nothing in this section shall be construed to prevent an optical mechanic from doing the merely mechanical work associated with adapting, fitting, bending, adjusting, replacing or duplicating of eyeglasses with ophthalmic lenses.

An ophthalmic lens within the means of this section shall be any spectacle lens or contact lens which has a spherical, cylindrical or prismatic power or value or any lens ground pursuant to a written prescription.

2. Optometrist. "Optometrist" means a person who has obtained a certificate of registration from the Maine State Board of Optometry and a license to practice optometry in the State of Maine.

3. Diagnostic drug. "Diagnostic drug" means a diagnostic pharmaceutical agent known generically as topical anesthetic and mydriatic which is

administered topically. The Commissioner of Health and Welfare shall designate the specific agents to be used under the generic classifications.

Sec. 2. 32 MRSA § 2419 is enacted to read:

§ 2419. Use of drugs

1. Diagnostic drugs. The use of diagnostic drugs is permitted only by an optometrist who has obtained a diagnostic drug license under section 2427 or who has passed the examination under section 2422.

2. Standards for use of diagnostic drugs. The following shall constitute the minimum standards for use of diagnostic drugs:

A. The optometrist shall complete or have completed a course in general and ocular pharmacology as it applies to optometry approved by the board.

B. The diagnostic drug shall be used solely for the purpose of detecting any pathological condition or functional abnormality of the eye.

C. Each use of a diagnostic drug shall be noted in writing and shall be made part of the permanent record of each examination and placed on file in accordance with section 2417, subsection 3.

Sec. 3. 32 MRSA § 2422, as enacted by PL 1973, c. 788, § 156, is amended by adding after the 2nd sentence 2 new sentences to read:

The board shall include an examination on the subject of general and ocular pharmacology as it relates to optometry and the use of topically applied diagnostic drugs for all new applicants for a certificate of registration and license. Presently licensed optometrists shall be permitted to use diagnostic drugs only if they obtained a diagnostic drug license under section 2427.

Sec. 4. 32 MRSA § 2427 is enacted to read:

§ 2427. Diagnostic drug license

Every presently licensed optometrist desiring to use diagnostic drugs shall:

1. Have satisfactorily completed a course and examination in general and ocular pharmacology as it applies to optometry approved by the board.

2. Upon satisfying the foregoing requirements, an optometrist shall be granted a diagnostic drug license.

Sec. 5. 32 MRSA § 2432, sub-§§ 13 and 14 are enacted to read:

13. If such person uses diagnostic drugs without first obtaining either a diagnostic drug license or passing the examination under section 2424 after the effective date of this Act;

14. If such person fails to display his diagnostic drug license issued under section 2427.

Sec. 6. 32 MRSA § 2446 is enacted to read:

§ 2446. Drugs

Any optometrist who uses diagnostic drugs, without first having obtained a license under section 2427 or being duly registered as provided in section 2421 and 2424 after the effective date of this Act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$200.

UTILIZATION OF PHARMACEUTICAL AGENTS BY OPTOMETRISTS

| <u>NAME</u>     | <u>DATE OF ENACTMENT</u>       |
|-----------------|--------------------------------|
| Rhode Island    | July 16, 1971                  |
| Pennsylvania    | March 1, 1974                  |
| Tennessee       | May 8, 1975                    |
| Oregon          | May 20, 1975                   |
| Maine           | June 24, 1975                  |
| Louisiana       | July 6, 1975                   |
| Delaware        | July 10, 1975                  |
| *West Virginia  | March 4, 1976                  |
| California      | July 9, 1976                   |
| Wyoming         | February 17, 1977              |
| New Mexico      | March 4, 1977                  |
| Montana         | April 12, 1977 (at 10:10 a.m.) |
| Kansas          | April 12, 1977 (at 2:00 p.m.)  |
| *North Carolina | June 3, 1977                   |
| Kentucky        | March 29, 1978                 |
| Wisconsin       | April 29, 1978                 |
| Nebraska        | February 13, 1979              |
| South Dakota    | March 15, 1979                 |
| Utah            | March 21, 1979                 |
| North Dakota    | March 22, 1979                 |
| Arkansas        | April 2, 1979                  |
| Nevada          | May 25, 1979                   |
| Iowa            | June 8, 1979                   |

\*both diagnostic and therapeutic

[In addition, there are eight (8) other states that do not statutorily prohibit the use of DPAs by optometrists; several of these states have attorney general opinions (+favorable) (-unfavorable) on this point: Alabama (AG-), Florida (AG+), Idaho (State Board Statement +), Indiana (AG+), Michigan, Minnesota, New Jersey (AG+), Virginia (AG-).]

For your information we are including an updated map showing geographically the utilization of pharmaceutical agents by optometrists as of June 8, 1979.



UTILIZATION OF PHARMACEUTICAL AGENTS BY OPTOMETRISTS



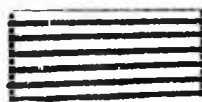
Authorized by Optometrists by Statute



Permitted by Opinion of Attorney General or State Board Statement



No Statutory Prohibition



No Statutory Prohibition but Negative A.G. Opinion

ENGLAND, FEBRUARY 1970

JOINT DECLARATION ON BEHALF OF  
OPHTHALMOLOGISTS AND OPHTHALMIC OPTICIANS (OPTOMETRISTS)

Following discussions between the General Optical Council, the Faculty of Ophthalmologists and the Joint Committee of Ophthalmic Opticians, the following declaration on matters relating to Hospital and the practice of orthoptics has been agreed on behalf of ophthalmologists and ophthalmic opticians.

1. Hospital Experience for Ophthalmic Opticians

It is desirable in the public interest that ophthalmic opticians should, in their pre-registration year and subsequently, have the opportunity of hospital experience to enable them, in the course of eye examinations, to widen their clinical experience in the recognition of deviations from the normal.

2. Contact Lenses - The Faculty accepts the policy of the General Optical Council in respect to the fitting of contact lenses.

3. Drugs

It is proper for an ophthalmic optician, if necessary, to use appropriate drugs for eye-examination or for first-aid treatment in emergencies.

(The following are examples of appropriate drugs for particular purposes:

- a. Atropine - 1% or an alternative cycloplegic for refraction in children up to school-learning age.
- b. An appropriate mydriatic and cycloplegic e.g. homatropine 1% for examination of the eye in older children and adults up to the age of 45.
- c. A weaker mydriatic such as cyclopentolate hydrochloride 0.5% for patients over 45 years of age.
- d. A miotic such as eserine 0.25% or pilocarpine 2% for use when required to overcome the effect of a mydriatic or cycloplegic.
- e. In contact lens fitting a suitable local anesthetic such as amethocaine 0.5%.

On pages 8 and 9 of this issue, AOA Trustees Albert A. Bucar, O.D., of Antioch, IL, and Gerald J. Easton, O.D., of Coronado, CA, give some frank, honest and personal answers to questions posed during a recently-conducted AOA *News* interview session concerning their first year in office.

An interprofessional "Older Americans Health Fair Day" screening program is being offered May 5 in more than 200 communities throughout the nation. Doctors of optometry and members of the Auxiliary to the AOA will have the opportunity to participate since vision screening has been suggested as an important part of the program, which is being sponsored by the U.S. Administration on Aging, state and local Agencies on Aging, the Red Cross and the National Health Screening Council for Volunteer Organizations (NHSCVO). The event is one of several public service suggestions the AOA has offered in observance in next month's celebration of Older Americans Month. All suggestions are contained in a planning guide which has been distributed to state and auxiliary public information chairmen and state leaders. O.D.s and auxiliary members interested in participating in Older Americans Month and/or the May 5 event should contact their state association office, which has been furnished with a list of screening sites and local sponsors by the AOA through the NHSCVO.

The next issue of the AOA *News* will be an expanded one featuring several items of interest to doctors of optometry. Included in the May 1st issue will be the "Continuing Education Quarterly" supplement. Prepared by the Education & Manpower Division, this supplement will list about 150 continuing education courses which will be offered throughout the United States from July through September. The next issue of the *News* will be devoted partially to the upcoming AOA Congress. Numerous photos and articles, including highlights of the June 17-23 event, will be published. The May 1st issue also will contain several stories on membership services for association members, including results of the recent readership survey on the AOA *News*.

*AOA News Apr. 15, 1979.*

determined by the doctor involved, the FDA said, and it is recommending leaving the contact lenses in place for 30 days at a time under normal circumstances.

Europeans, Australians and Canadians have been able to buy prolonged-wear contact lenses for three to six years, with mixed results reported. A handful of people have gone blind in one eye or required corneal transplants because of serious infections caused by the lenses. A more significant proportion of wearers — half or more in some instances — stopped using the

lenses. And, the lenses can be dropped and lost as easily as conventional ones, although manufacturers expect replacement of the lenses won't cost as much as the first pair.

Major companies and firms expected to be vying for a share of the anticipated market for the new lenses include Danker & Wohlk, Inc.; American Hospital Supply's subsidiary, Heyer-Schulte Corp.; Continuous Curve Contact Lenses, Inc.; Rynco Scientific Corp.; Dow Corning; Syntex Ophthalmics, and Cooper Laboratories, Inc.

## *Arkansas okays DPA legislation*

LITTLE ROCK, AR — Gov. Bill Clinton has signed into law H.B. 843, making Arkansas the 9th state in the nation to specifically authorize optometrists to utilize pharmaceutical agents.

The April 2nd signature by Gov. Clinton makes Arkansas the fifth state this year to enact such legislation. An additional six states do not prohibit, either statutorily or administratively, such utilization.

According to Virgil L. Rhodes,

O.D., of Manchester, TN, chairman of the AOA Statutory Definition Advisory Committee, the Arkansas law has special significance because a diagnostic pharmaceutical agent (DPA) bill was vetoed in 1977 by the previous governor.

The Arkansas bill was passed, in final form, by the state Senate by a 20 to 10 vote and in the state House of Representatives by a 77 to two vote.



# NEWS

American Optometric  
Association

**Vol. 18, No. 7**  
**April 1, 1979**

## ***DPA laws***

(See map, page 4)

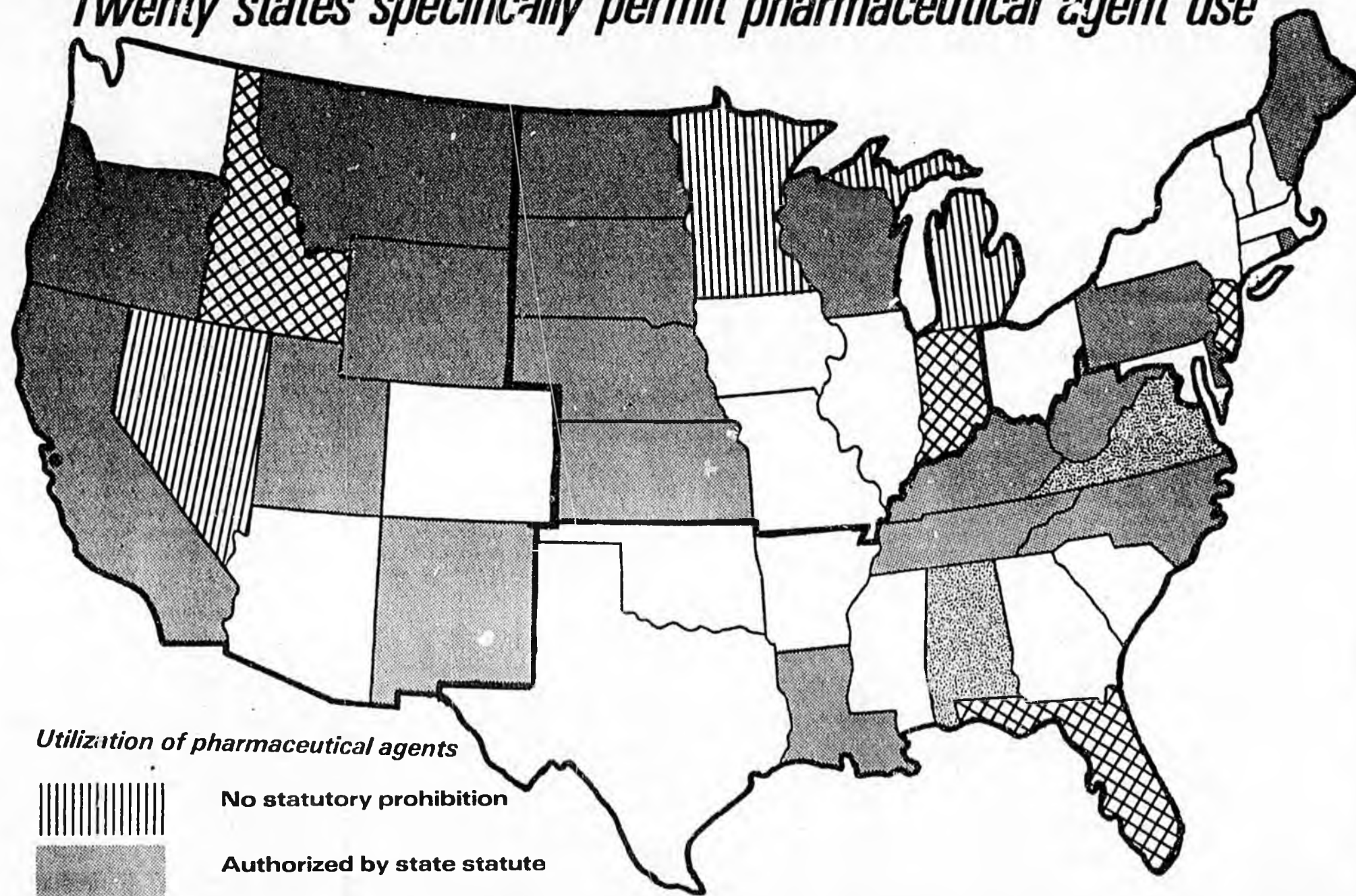
Diagnostic pharmaceutical agent (DPA) bills in North Dakota, South Dakota and Utah have become law, creating 20 states which specifically authorize the use of pharmaceutical agents by O.D.s. An additional six states do not prohibit, either statutorily or administratively, such utilization.

South Dakota became the 18th state when Gov. William J. Janklow signed into law S.B. 85, a measure which had passed the State Senate by a 22:11 vote and, in the House, by a 64:2 vote.


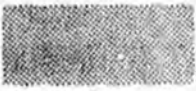


Utah's H.B. 98 became the 19th law on March 21, when the governor did not sign or veto the measure. The legislation had passed the State House by a 50:12 vote and by a 20:4 in the Senate.

North Dakota Gov. Arthur Link signed S.B. 2356 the following day, making the 20th such enactment. The bill passed the Senate earlier by a 41:7 vote and, in the House by an 85:10 vote.

# Twenty states specifically permit pharmaceutical agent use



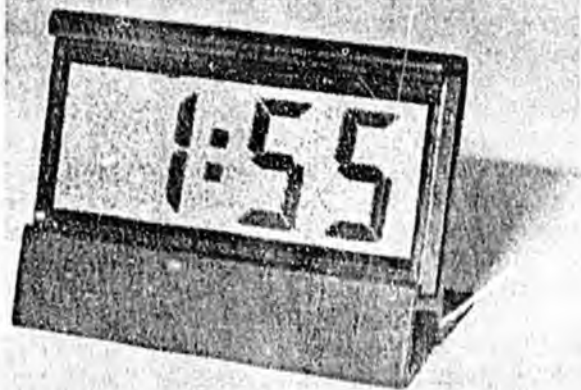
Utilization of pharmaceutical agents

-  No statutory prohibition
-  Authorized by state statute
-  No statutory prohibition but negative attorney general opinion
-  Permitted by opinion of attorney general or state board statement

Four successful enactments this year of legislation permitting the use of pharmaceutical agents by optometrists bring to 20 the number of states with laws specifically authorizing such usage. An additional six states do not prohibit such utilization, either statutorily or administratively. According to Virgil L. Rhodes, O.D., of Manchester, TN, chairman of the AOA Statutory Definition Advisory Committee, similar legislation is pending in 12 other states, with several pieces reported near passage. Bills in Arizona and Arkansas have been approved by their respective House of Representatives, while bills in Iowa and Oklahoma have been passed by their respective state Senates, Dr. Rhodes said.

In a related development, the Virginia Senate has decided not to vote on overriding Gov. John Dalton's recent veto of a bill which would have allowed O.D.s in the state to use diagnostic pharmaceutical agents. According to the Virginia Optometric Association, the State Democratic Caucus made the decision in a recent closed session, basing the action on the grounds the legislation was a health issue and not a political partisan one. The legislation, which was supported by more than 30 sponsors from the Virginia House of Delegates, had passed both legislatures by large majorities — by a 74 to 19 vote in the House and a 25 to 15 vote in the Senate. The bill was identical to legislation the Republican governor vetoed last year.

**NEW!**  
**MITY**  
**TIME**



Don Hostak, Director  
Div. of Occupational Licensing

~~XXXXXXXXXX~~

02 13 79

Byron Perkins *BP*  
Licensing Examiner

I spoke with Eldon Ulmer, President of the Board of Pharmacy, and he asked me to convey the following to you in response to your teletype to him last week.

RE House Bill 79 ~~XXXXXXXXXXXXXXXXXXXX~~ regarding optometrists and particularly their ability to prescribe legend drugs and pharmaceuticals, the Alaska Board of Pharmacy has not changed its position on this issue. The board is not primarily concerned with whether or not an optometrist should be given this privilege, but rather, that the proposed bill in no way addresses the legal question of how they are to obtain legend drugs. Current Federal and State statutes do not permit pharmacists to fill prescriptions for legend drugs by any one but Medical Doctors, Veterinarians, and Dentists.

Re House Bill 101 and Senate Bill 65, the Uniform Controlled Substances Act, this is the number one legislative priority for the Board of Pharmacy, and the board supports it conceptually. However, the current bill is primarily a police bill, and needs to be amended substantially to make it palatable to the industry. There is not enough language addressing the rights and responsibilities of professionals authorized to handle controlled substances. The Board of Pharmacy is pushing for a Uniform Controlled Substances Act that parallels the federal guidelines.

cc: Eldon Ulmer, R.Ph.  
Chairman, Board of Pharmacy

*Rep. Buchholdt*

# Alaska State Legislature



POUCH V  
JUNEAU, ALASKA 99811

P. O. BOX 9  
KENAI, ALASKA 99611

REPRESENTATIVE HUGH MALONE



24 January 1979

Peter E. Cannava, M.D.  
Box 1629  
Soldotna, AK 99669

Dear Peter:

I received your letter and court brief regarding the optometric drug bill and have forwarded a copy to Rep. Thelma Buchholdt. She is the new chairperson of the Health, Education and Social Services Committee. As yet, no legislation has been introduced regarding this issue, however, I expect it will be soon.

Thank you for the information.

Sincerely,

A handwritten signature in dark ink, appearing to be "Hugh Malone".

Hugh Malone

jk

*Peninsula Eye Clinic*

PETER E. CANNAVA, M.D.  
OPHTHALMOLOGY  
BOX 1629  
SOLDOTNA, ALASKA 99669  
TELEPHONE 262-4462

Hugh Malone  
State Capitol Building  
Pouch V  
Juneau, Alaska 99811

Dear Hugh:

I gave the enclosed talk to the legislators present at our political meeting and I thought it would be helpful to you to receive a copy of it considering your vote of last session.

The case illustrates the fact that the optometric drug bill represents more than a political "power play" but in fact has and will mean loss of eyes of our fellow Alaskans. We have at least two other cases documented where vision was lost because of inadequate medical knowledge on the part of optometrists.

The judges decision clearly states that there is no reason why optometrists can be permitted to make medical diagnosis on a legal basis. In addition the testimony by the "professor of optometry" clearly illustrates the lack of medical knowledge on the part of optometrist educators.

Sincerely,

*Peter*

Peter E. Cannava, M.D.

PEC/bc

Hugh,  
Please have one of your staff save this  
court brief as it will have to be used  
for the "HESS" committee hearings & also  
for future discussions I will have to you.  
Good Luck this yr & I wish you a short  
90 day session. P

13 Dec 78.

J COPY DR

American medicine has established a tradition which dates back well over 200 years! Despite the ups and downs of certain aspects of American medicine the very basic integrity of the system has never and will never be challenged. This is fact because the system rests upon a foundation of sound scientific principle. American people may not like what type of treatment is offered them but they at least can rest assured that any prescription promulgated by our traditional medical system is based upon a scientific method, and those practitioner licensed with-in the system have completed a satisfactory curriculum approved by both private and governmental bodies who attest to the fact that medical practitioners are qualified to practice with the use of drugs and other modalities. In addition to the traditional modality of medical care there are two other broad categories of health care which our people choose to utilize. One is not based upon scientific methodology, cannot be supported by established objective data. Examples of these would be naturopathic healing and chiropractic.

The second category of non-medical health care sought by Americans is based upon scientific principles but is not traditionally associated with medical education. Examples of those are psychology and optometry. In past years no major conflict has arisen between traditional medicine and other forms of health care. However, of late there is a movement on by non medical people to seek enactment of legislation which would grant them privileges which traditionally have been the provence of medical practitioners. Examples would include attempts by chiropractors to utilize medical facilities for laboratory testing and more germane to our state the attempt by optometry to seek legislation approved for their use of drugs within their practice.

Legislators must be aware of the short and long term implications of such legislation! Granting non-medical practitioners medical priveleges obscures the traditionally clear cut lines between the dicipline of medicine and the non-medical practices. Such obscuration of lines of deliniation serves to thoroughly confuse the public as to what type of health care is to be expected from each type of practitioner! In such confusion the public will have no clear concept of what type of "product" to expect of each health care practitioner. I wish now to focus upon a problem which confronted last years legislators and may surface again! Optometrists as you may be aware are non-medical practitioners by viture of their ancestry, training, current definition and as of several months ago defined by U.S. District judge for Alaska. They are requesting the legislature to grant them privilege of using drugs in their practice! Such a privilege would have two fold effect and firstly it would set a precedent with-in our state and open the door to all non-medical health personell to seek similar privilege. Secondly it would further endanger the people of Alaska to the risk of loss of sight because of the injudicious use of drugs and false sense of security the use of drugs imparts upon the recipients of such treatment. Indeed as time goes on I will supply you with case histories of Alaska residents who have lost eyes because they were lured into feeling they had been examined by eye physicians or ophthalmologists. I will also supply you with a legal suit prompted by such a loss of eye and additional pertinent information. I urge you not to grant non-medical health practitioners by legislation what they should rightfully earn by education that is the right to join the ranks of traditional medicine thru time honored institutions, established testing procedures and time tested licensing procedures.

PE Cammava, M.D.

Rep. Buchholdt

5 February 1979

Peter E. Cannava, M.D.  
Peninsula Eye Clinic  
Box 1629  
Soldotna, AK 99669

Dear Pete:

Yes, I did receive your packet of information and I apologize for the length of time it took me to respond.

I will forward the new information to Rep. Buchholdt as I did earlier for her files.

Again, thank you.

Sincerely,

Hugh Malone

jk

*Peninsula Eye Clinic*

PETER E. CANNAVA, M.D.  
OPHTHALMOLOGY  
BOX 1629  
SOLDOTNA, ALASKA 99669  
TELEPHONE 262-4462

February 1, 1979

Representative Hugh Malone  
Pouch V  
Juneau, Alaska 99811

Dear Hugh:

I hope you received my last packet of information on HB79 (optometric drug bill) As you will recall it included a copy of Judge Fitzgeralds decision regarding the loss of a childs eye because of optometric mis-managment! Since I have not heard from you I presume you are quite busy and I wish you luck in your difficult task.

Enclosed please find two items: 1. the copy of "P E N" describing optometric education, 2. Veto message of Gov. Rhodes, Ohio.

Sincerely,

*Peter Cannava M.D.*  
Peter E. Cannava, M.D.

PEC/bc

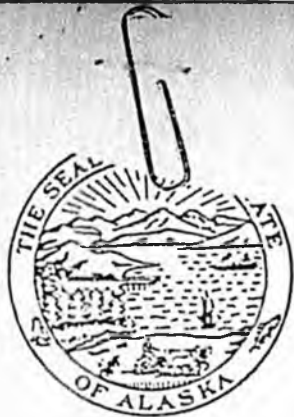
Governor's Veto Message  
(Unofficial Copy)

December 15, 1978

Pursuant to Article 2 Section 16 of the Constitution of Ohio, I return herewith to the Clerk of the Senate for presentation to the Senate Amended Substitute Senate Bill 163 which I disapprove and have not signed. Amended Substitute Senate Bill No. 163 would expand the definition of the practice of optometry to allow the use by optometrists of specific diagnostic drugs to the eye in the form of eyedrops. If the specified drugs are used solely for the purpose of detecting disease and are of a specific level of potency the matter of health care is of vital concern they must insure to all Ohio citizens that they receive the highest quality health care possible. Health care is an area in which we can take no risks because any mistakes can bring tragic and irreversible results. We must be committed to our citizens to provide practitioners that are highly skilled individuals and who will at the same time provide the best health care at the lowest cost.

Optometrists have been doing an excellent job in working with the medical profession to bring quality eye care to Ohio citizens. The tools that the optometrists are presently using are not dangerous and are effective in screening for eye disease. However, Amended Substitute Senate Bill No. 163 would allow optometrists to use drugs in order to make a full diagnosis of the medical condition of the eye. If the individuals involved were properly trained this procedure would be in the best interest of Ohio citizens, however without proper training the bill would allow unwarranted risks without corresponding benefits. The drugs involved are dangerous and have a potential of causing a great deal of pain including blindness. The adverse reactions associated with these drugs are not common but they do occur and medical and emergency treatment must be administered in those instances. While this bill does provide for mandatory training of 180 clock hours this amounts to little more than a month of isolated training in a clinical use of the drugs involved. The goal of this legislation should be to build a working relation between optometrists and the medical community. The issue of using drugs should be an issue decided by the professions rather than by the legislature. Both professions have taken an oath to provide quality health care, they should work together toward that end. I pledge the aid of my office for that purpose. For the foregoing reasons I have vetoed Amended Substitute Senate Bill No. 163 and urge the General Assembly to sustain my veto.

James A. Rhodes  
Governor



Official Business

House  
Committee on  
Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 7, 1979

Peter E. Cannava, M.D.  
Peninsula Eye Clinic  
Ophthalmology  
Box 1629  
Soldotna, Alaska 99503

Dear Dr. Cannava:

Thank you very much for your letter and back up material regarding HB-79. I do appreciate your taking the time to send this information to the committee.

We have, to date, received this same information from Rep. Hugh Malone, and I am sure it will be of help to members of this committee.

At this time, I have not yet scheduled the bill for hearing, but I will keep you informed as to when the bill will be up for a hearing.

Again, thank you for your interest.

Sincerely yours,

THELMA BUCHHOLDT  
Chairman  
House HESS Committee

TB/ch

*Peninsula Eye Clinic*

PETER E. CANNAVA, M.D.  
OPHTHALMOLOGY  
BOX 1629  
SOLDOTNA, ALASKA 99669  
TELEPHONE 262-4462

February 1, 1979

Thelma Bucholt, Representative  
Pouch V  
Juneau, Alaska 99811

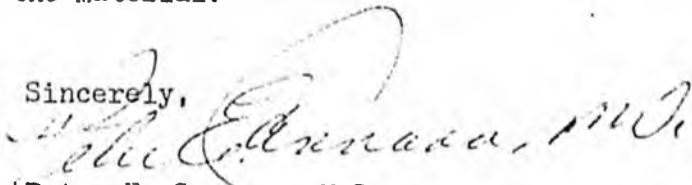
Dear Mrs. Buckhodt:

HB 79 (optometric drug bill) has been sent to your committee for review. It is essential that you review the enclosed court decision concerning the loss of a young Alaskan's eye due to optometric irresponsibility. As you will recall the issue last year was whether or not optometrists were qualified to use dangerous drugs on the eyes of Alaskans. Judge Fitzgerald's decision should settle that question in the minds of Alaskans.

In addition you will find enclosed the Ohio Governor's veto message of such a dangerous bill.

I would appreciate your response to the material.

Sincerely,

  
Peter E. Cannava, M.D.

PEC/bc

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

*Re: Steele*

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
Deputy

(70)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

RECEIVED

OCT 24 1978

Parrish Law Office

ROBERT K. STEELE, as the Natural  
father and next friend of JIMOTHY  
R. STEELE, and ROBERT K. STEELE,  
individually,

Plaintiffs,

UNITED STATES OF AMERICA,

Defendant.

NO. F 75-27 Civil

OPINION

Timothy Steele is an eight year old boy whose father is a soldier in the United States Army. Timothy received medical care as a medical dependent at the Eye Clinic, Bassett Army Hospital, Fort Wainwright, Alaska, in 1973 and 1974. This litigation stems from a claim brought on Timothy's behalf by his father against the United States for loss of Timothy's right eye. The Federal Tort Claims Act<sup>1/</sup> furnishes the required jurisdiction.

In October and November of 1973, Timothy's mother noticed Timothy's eyes crossing. On December 19, 1973, she took Timothy to the Eye Clinic, Bassett Army Hospital. There Timothy saw Dr. John Shank, an optometrist in charge of the clinic.

<sup>1/</sup> 28 U.S.C. 1346(b). Plaintiffs' original complaint founded jurisdiction on the Federal Tort Claims Act but mistakenly cited the section as 1366(b).

Dr. Shank made an extended examination and diagnosed Timothy's eye condition as an accommodative esotropia correctable by eyeglasses. Following his examination of Timothy, Dr. Shank wrote Mrs. Steele a prescription for eyeglasses and made an appointment for her to return Timothy to the clinic January 29, 1974, for a checkup.

What  
ever  
for

During the January visit to the clinic Timothy's mother reported to Dr. Shank that she thought the eyeglasses were helping since Timothy's right eye was not crossing as frequently. However, Dr. Shank's clinical record noted "no good reflex" in Timothy's right eye. The optometrist wrote a different prescription for eyeglasses and instructed Mrs. Steel to make a follow-up appointment for Timothy four months after Timothy would begin wearing the new eyeglasses.

By early May, Mrs. Steele noticed that Timothy frequently removed his eyeglasses. When questioned Timothy told her that sometimes he wasn't able to see well. An appointment at the eye clinic was scheduled for Timothy on June 10. When Dr. Shank examined Timothy on that date he found vision in Timothy's right eye limited to light perception. At this point Dr. Shank made an appointment for Timothy with ophthalmologist, Dr. Bruce Wolf, close by in Fair

When Dr. Wolf examined Timothy on June 17th he found Timothy's visual acuity in the right eye limited to hand motion although capable of perceiving light. Essentially Timothy's right eye was blind. The doctor diagnosed Leucocoria, right eye, with right esotropia. In his medical opinion the inflammatory cause was a vitreous hemorrhage with possible involvement of toxocara cecis or retinoblastoma. Since either disease was extremely serious, Dr. Wolf ordered a complete workup by a pediatrician hoping to rule out one or both. The pediatric workup proved negative and Dr. Wolf then arranged for ophthalmologist, Dr. William Kim, as consultant

Dr. Kinn, a highly qualified ophthalmologist, before opening a practice in ophthalmology at Fairbanks spent ten years as a military medical officer. His last three years of military service were spent at Fort Wainwright where he was chief of ophthalmology and supervised the optometrists assigned to Bassett Army Hospital.

On examination of Timothy July 9th, Dr. Wolf and Dr. Kinn observed a retinal detachment of the right eye with a sub-retinal tumor. "Tumor" in this context was defined as a mass rather than a malignancy. Their diagnosis was possible retinoblastoma, but toxocara canis was also to be considered. The doctors concluded specific tests were necessary so that the precise identity of the disease might be known.

Arrangements were made to airvac Timothy from Fairbanks to Letterman Army Medical Center at the Presidio in San Francisco. At Letterman, Timothy was examined July 12 by a team of medical doctors, including Dr. Michael Hogan who was internationally recognized in the field of ophthalmologic pathology.

On examination the medical team observed a retinal detachment involving a grayish yellow tumor. The doctors diagnosed the cause of the tumor as possibly retinoblastoma or toxocara canis. Eye condition at that point in time made it impossible to differentiate between either disease. Because of the danger of retinoblastoma, a particularly fast-spreading and life-threatening malignancy, the doctors recommended to Timothy's parents that his right eye be removed. Timothy's parents immediately consented to the operation and Major Bradley C. Black, a resident assigned to the ophthalmology unit at Letterman, performed the surgery.

After the eye was enucleated it was sent to the ophthalmologic pathology laboratory at the University of California, Berkeley, California, for examination. The laboratory report revealed total retinal detachment of the eye with giant reaction and massive disorganization of the retina. The pathological examination ruled out a

retinoblastoma but concluded the cause of the disease to be: granulomatous retinitis,<sup>2/</sup> etiology unknown. Unlike as in most eye removals, an implant was not inserted into the socket of Timothy's right eye immediately following surgery as there was a substantial possibility that the pathology report might confirm retinoblastoma. The malignancy would necessarily require radiation treatment and a follow-up examination not possible with an implant. When the pathological report ruled out retinoblastoma Timothy was returned to surgery and an implant was placed in the socket.

Dr. Black continued to treat Timothy following the second operation until Timothy returned to Fairbanks. After Timothy returned to Fairbanks he was treated by Dr. Wolf who noted that Timothy's recovery was excellent with the exception of periodic socket inflammation.

Timothy returned in September to Letterman where a prosthesis was inserted into the eye socket with good cosmetic result. Probably the prosthesis will never appear similar to a natural eye since it could not be inserted immediately following the operation.

It is claimed in this litigation that the optometrist, Dr. Shank, failed to provide adequate care required of an optometrist when he treated Timothy in December of 1973 and January of 1974.

#### OPTOMETRIC RESPONSIBILITY

Dr. Shank graduated with a degree in optometry from Pacific University at Forest Grove, Oregon, in 1971. He was commissioned in the United States Army as a Captain in the medical services and during the summer of 1973 was assigned to Fort Wainwright, Alaska. In November of 1974 he left the Army and now is in the practice of optometry at Kodiak, Alaska.

---

2/. Retinitis is an inflammation which chiefly involves the retina. "Granulomatous" is a type of inflammation. Thus, the pathology conclusion was that of a general retinal inflammation of unknown origin.

When Dr. Shank made his first examination of Timothy's eyes on December 17, 1973, he recorded a brief history:

History  
Past history mother states that is  
cross-eyed. Father amblyopic. Age of  
also noted. Rubs eyes after playing  
close. Vision normal. Rubs eyes. No blurring

In addition he also tested Timothy's unaided vision using a standard AO chart (pictures) for children. The best possible visual acuity when measured with an AO chart is 20/30. Dr. Shank recorded Timothy's visual acuity 20/30 OD and OS (both eyes). After dilating Timothy's eyes he made an internal examination and noted:

Internal  
Exam. Rubin - Scoping Shows  
acuity OD. Distance 100%  
Also at 1/30  
OD (A) with  
Dmg. from lens

What  
the  
in

Upon completing the examination, Dr. Shank concluded that Timothy's eye problem was caused by an accommodative esotropia<sup>3/</sup> correctable by a prescription for eyeglasses. He did not think it necessary to refer Timothy to an ophthalmologist.

Dr. Willard Bleything, Dean of the College of Optometry, Pacific University, Forest Grove, Oregon, who was called as a government witness at trial, agrees with Dr. Shank. According to Dr. Bleything, the findings of Dr. Shank's December examination are entirely consistent with an accommodative esotropia, hence, there was no need to send Timothy to a medical doctor.

Refract  
E

<sup>3/</sup> Esotropia, meaning pointing inward.

In his testimony Dr. Bleything touched on the scope of training provided in a school of optometry. A significant part of optometric training is given over to recognition of diseases in the eye. In this case no one questions the principle requiring optometrists to refer their patients to medical doctors once disease is detected in the eye. In Timothy's case, however, Dr. Bleything would distinguish between an active vitreous hemorrhage and an inactive vitreous hemorrhage. He classifies an inactive vitreous hemorrhage as a scar and suggests referral to a medical doctor is indicated only in the event that an active vitreous hemorrhage were detected. It is implicit by this reasoning that to Dr. Bleything a scar is not an indication of existing disease. Scar tissue, according to Dr. Bleything's opinion, when old or inactive, is typically black. This is consistent with Dr. Stuart's testimony that the vitreous hemorrhage detected in his December examination was old because it appeared black or dark.

Actually a black or dark color in a vitreous hemorrhage has nothing at all to do with its age, but rather is a result of its magnitude or extent. The black or dark color indicates a lack of reflected light from the retina behind the hemorrhage. Blood in a vitreous hemorrhage is not black; it is only the shadow that appears black. Indeed, as Dr. Black states in his deposition, an old vitreous hemorrhage would appear as white strands in the vitreous and settle to the lower part of the vitreous. And Dr. Kinn testified that he had personally observed hemorrhages in the vitreous more than a year old which were red in color. He explained that a hemorrhage would appear to be black because it was sufficiently thick with blood to absorb all the light reflecting off the retina during an examination, not because of an innate darkness of color.

The interrelationship between optometric and medical responsibility is discussed in considerable depth in the scientific text referred to at trial, "The Optometric Profession," by Hirsch

OO's  
only need  
refer active  
hemorrhage  
??

wrong  
Professor!

& Wick. The text notes that responsibility for recognizing eye disease has not always been a part of optometry, nor indeed is it now a part of optometric services in parts of the world outside of the United States and English speaking countries. In some European countries an optometrist is expressly forbidden to examine the eye to determine whether it is healthy or not.<sup>4/</sup>

Some of the diseases which may be discovered by examination of the eye are brain tumors, diabetes, kidney disorders, hypertension, as well as some diseases caused by micro-organisms such as tuberculosis. Optometrists study about these and other diseases in order to recognize eye manifestations of diseases. An optometrist should not attempt to complete a definitive diagnosis but recognize this responsibility is part of the practice of medicine. This principle is clearly stated in "The Optometric Profession."

The difference between optometric and medical responsibility to the patient may be clarified by example. If an optometrist observes a hemorrhage in the fundus, he recognizes that it may be due to any of the diseases already enumerated. It also may have resulted from a vascular accident or from undue capillary fragility. The important consideration for the optometrist, however, is that he see and identify the hemorrhage. It is his responsibility to refer the patient to the appropriate medical practitioner for diagnosis and treatment of the disorder. The optometrist's understanding about disease is sufficient to recognize the various diseases that can cause hemorrhage. He does not attempt to differentiate between them. Medical technology has advanced so greatly in the past few decades that there are now many laboratory tests the physician can use in making the correct diagnosis. Disease is diagnosed by many procedures. The appearance of the eyeground is only one of them.

The Optometric Profession

I am not persuaded with Dr. Bleything's reasoning that referral to a medical doctor ought to depend on whether the optometrist

---

4/ The Optometric Profession by Monroe J. Hirsch and Ralph E. Wick, (1963 edition) Chilton Book Co. at page 17.

has diagnosed a vitreous hemorrhage as active or inactive. The authors, Hirsch & Wick, suggest in their text that the important consideration is that the optometrist be able to see and identify the hemorrhage. It then becomes his responsibility to refer the patient to a medical doctor for diagnosis and treatment. Since Dr. Shank detected the vitreous hemorrhage of the right eye during his December examination, it was his immediate responsibility to promptly refer Timothy to a medical doctor. In point of fact, ophthalmological services were then readily available to military personnel at Fort Wainwright and to their dependents under a federal contract with Dr. Wolf.

Dr. Shank was aware of symptoms other than vitreous hemorrhage which are of significance to an optometrist. Esotropia in a child of four, Timothy's age in 1973, is a serious matter. Dr. Black states that esotropia in a four year old child is very rare. Most cases of congenital esotropia caused by muscle imbalance develop before age two. This condition is correctable by an operation on the muscles of the eye. Accomodative esotropia, such as diagnosed by Dr. Shank in December, 1973, develops in most cases at age two to two and a half, although it occasionally develops as late as age four or five. This condition is correctable by eyeglasses and the esotropia usually corrects itself after eyeglasses are worn. But esotropia may also indicate some type of retinal or vitreous pathology in the visual axis. This will often involve a disease in the macula, the central part of the retina. This condition reduces visual acuity in the eye and as a result the eye turns inward. In Dr. Black's opinion the most important thing to rule out when a child does present an esotropia is retinal or vitreous pathology. But even more, when a vitreous hemorrhage is observed in a child, it is very important that retinoblastoma be immediately considered until that disease can be completely ruled out.

Dr. Wolf, who treated Timothy at Fairbanks before and after his hospitalization at Letterman, agrees with Dr. Black that Dr. Shank should have referred Timothy to an ophthalmologist in December. Dr. Wolf believes that referral to a medical doctor ought to have been made immediately when Dr. Shank learned of the esotropia from Timothy's mother. Dr. Kinn, who consulted with Dr. Wolf, also agrees that referral was indicated in December. Indeed, Dr. Zimmerman, an eminent ophthalmic pathologist, who testified for the government at trial, concurs that further investigation should have been undertaken at the time the lesion was observed in Timothy's right eye.

I am persuaded from credible, convincing medical opinion, as well as the scientific publication referred to, that Dr. Shank failed to meet the standards required of his profession when he examined Timothy in December of 1973. He knew that Timothy presented an esotropia and in the course of his examination he observed a vitreous hemorrhage in the right eye. An optometrist's responsibility is to observe during his eye examinations any manifestation of disease visible in the eye. Upon detecting disease in the eye, it is then his obligation and duty to the patient to make known what the optometrist has observed. In such cases he may not undertake to diagnose the disease, but should inform his patient that the matter is beyond his competence and advise the patient to see a qualified medical doctor. Certainly in January when Dr. Shank detected the poor reflex in Timothy's right eye, he should have sent Timothy to a medical doctor. Instead, he delayed making a referral to an ophthalmologist until after his last examination in June, 1974. By that time Timothy was essentially blind in his right eye, and by then the retina had pulled away from the rear of Timothy's right eye. As it was to turn out, nothing thereafter could be done to save the vision or to save the eye. Time had run out.

Several questions arise at this juncture. Was the disease which ultimately caused the eye to be removed present when Dr. Shank made his examination in December, 1973?.. What was the nature of the malady and could it have been diagnosed? Could the disease have been treated had it been timely discovered?

There is general agreement in the testimony of the physicians that the disease which brought about the removal of Timothy's right eye was present when Dr. Shank made his initial examination.

When Dr. Wolf examined Timothy in June, 1974, he diagnosed a vitreous hemorrhage with the possibility of either retinoblastoma or toxocara canis. The team of medical doctors who examined Timothy at Letterman Hospital in July considered four possibilities. The first was persistent hyperplastic primary vitreous, a congenital defect of the eye present at birth and generally noticed shortly after birth. With such a condition as persistent hyperplastic primary vitreous, the eye is usually a bit smaller. The front part of the eye is ordinarily not normal so there are distinguishing factors for that disease. The medical doctors at Letterman were able to rule out this possibility. They were also able to rule out a vitreous hemorrhage as a cause since the vitreous of the eye was fairly clear when the doctors made their examination. The two remaining considerations related to some type of inflammatory response, most probably either toxocara canis or retinoblastoma.

Retinoblastoma is an extremely dangerous malignancy, sometimes found in the eyes of young children. When diagnosed, retinoblastoma requires removal of the diseased eye to prevent the malignancy from escaping outside the eye, possibly through the optic nerve into the brain.

Retinoblastoma was ruled out in the University of California pathological report following examination of the eye after the operation. A negative finding of retinoblastoma eliminated any

need for radiation treatment. In Dr. Black's medical opinion the cause of the inflammation of Timothy's eye was probably toxocara canis. Dr. Black observed that although the larva was never found in the few sectionings of the eye, it is known that the larva may disintegrate or completely disappear in the eye.

Toxocara canis is a parasitic round worm frequently found in dogs. The eggs of the parasite may be ingested by children playing in dirt and the eggs hatch in the intestines of the child into a larva. The larva bores through the intestinal wall and enters the blood stream and is disseminated to different parts of the body. In every instance, with possible rare exception, the parasite is not able to complete its life cycle in a human host and the larva dies without developing into an adult worm. The most common locations where it has been found are in the liver or the lungs. Inflammation of the eye by toxocara is fairly rare.

But when it does appear it tends to result in a massive inflammation which usually involves the retina and sometimes may intrude into other structures inside the eye. The presence of toxocara in the body often leads to visceral larva migrans syndrome. The child can have a fever and may have some type of lung disorder, his liver may be enlarged and tender and there may be some abnormalities in certain blood tests. However, an ocular toxocara inflammation frequently occurs without a visceral larva migrans syndrome occurring at the same time. Some studies suggest that in only three or four percent of ocular toxocara inflammation is the syndrome present. With ocular toxocara, so long as the larva remains alive, there is usually not much effect on the eye. There may be a local inflammation in the retina or a small whitish elevated lesion in the retina at the site of the larva or where it penetrated the retina, but the stage at which the parasite usually becomes very damaging is when the larva dies and decomposes. This leads to an extensive lesion in the eye eventually.

resulting in a massive scar. If the larva is able to work itself into the vitreous cavity of the eye, it brings about an even more severe inflammatory process.

Dr. Iris Krupp of Tulane University in New Orleans, Louisiana, is a widely renowned expert in the field of parasitology. She began her work on toxocara as a graduate student in 1954. Since then, she, in association with several ophthalmologists, has done extensive work in the detection and treatment of toxocara. She developed a reliable serologic test for the detection of toxocara which was announced in an article<sup>5/</sup> published in the "American Journal of Tropical Medicine" in May, 1974.<sup>6/</sup> After examining the medical records, including the pathology report, in Dr. Krupp's opinion the probability was 90 percent that the disease in Timothy's right eye was toxocara.

Ophthalmic pathologist Dr. Lawrence Zimmerman was a principal government witness at trial. He agreed that the University of California pathological report required that retinoblastoma be ruled out as a cause. However, he noted Dr. Helenor Foerster, a widely known ophthalmic pathologist also performed a pathological examination on Timothy's eye. Dr. Foerster has published a number of important scientific papers, one of which presented the initial description of toxocara infection of the eye. Dr. Foerster prepared a pathological report in connection with a paper which she presented to the Western Ophthalmic Club. In her report Dr. Foerster observed many pigment-

---

5/ Hemagglutination Test for the Detection of Antibodies Specific for Ascaris and Toxocara Antigens in Patients with Suspected Visceral Larva Migrants.

6/ Since the article did not appear until May, 1974, the physicians who treated or examined Timothy were probably not aware of Dr. Krupp's serological test.

laden macrophages and giant cells in the retina. Dr. Zimmerman believed this was significant since it implied substantial bleeding into the eye, or alternatively, that a foreign body containing iron might have been introduced into the eye. He postulated that bleeding may have been brought about by several causes, including persistent hyperplastic primary vitreous. In addition, Dr. Zimmerman suggested another possibility of the cause of the inflammation might be a low grade bacterial infection. He did not, however, conclusively rule out toxocara as a possible cause but noted that the larva was not found in either pathological examination. Also, in Dr. Zimmerman's opinion the iron pigment described by Dr. Peester in her pathological report would not be characteristic of toxocara infection. For these reasons he discounted toxocara as the cause.

Dr. Zimmerman concluded that in this instance it is unlikely that the cause of Timothy's eye inflammation can ever be reliably known, hence the doctor's final diagnosis was chronic sclerosing endophthalmitis, cause undetermined.

It is true that the larva was not found during pathological examination. But as Dr. Fack explained, the larva may decompose and disintegrate. The University of California pathological report following examination of the eye was prepared by Dr. Joseph Eliason, an ophthalmologist. In his deposition testimony Dr. Eliason stated the pathological diagnosis was granulomatous retinitis, etiology unknown. As stated above, this is a general inflammation involving the retina. Toxocara canis characteristically causes this type of inflammation although other causes are possible.

In the course of the pathological examination,