



**THE ATTORNEY GENERAL
OF TEXAS**

**PRICE DANIEL
ATTORNEY GENERAL**

AUSTIN, TEXAS

July 23, 1949

Mr. Nelson Greeman, Secretary
Texas State Board of Examiners in Optometry
201 Majestic Building
San Antonio, Texas

Opinion No. V-860

Re: The legality of persons other
than licensed optometrists or
licensed physicians or sur-
geons fitting "contact lenses."

Dear Sir:

Your recent letter, in which you requested
the opinion of this office, contained the following:

"Under the provisions of Article 4552,
et seq., may persons other than licensed
optometrists or licensed physicians or sur-
geons fit 'contact lenses'?"

"The problem immediately before us is
whether a 'dispensing optician' is author-
ized to fit without a prescription from a
licensed physician or optometrist contact
lenses in this State. A 'dispensing opti-
cian' is an individual or firm filling pre-
scriptions of physicians and surgeons or
optometrists licensed by the respective
boards for ophthalmic lenses and kindred
products, and incidental to the filling of
such prescriptions, taking facial measure-
ments and fitting and adjusting lenses or
frames."

We quote the following provisions of law from
Vernon's Civil Statutes:

"Art. 4552. The practice of optometry
is defined to be the employment of objective
or subjective means, without the use of
drugs for the purpose of ascertaining and

measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this State. Nothing herein shall be construed to prevent selling ready-to-wear spectacles or eye glasses as merchandise at retail, nor to prevent simple repair jobs."

"Art. 4565c. For the purpose of this Act, the words 'ascertaining and measuring the powers of vision of the human eye', as employed in Article 4552, shall be construed to include:

"(1) The examination of the eye to ascertain the presence of defects or abnormal conditions which may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied or relieved by the use of lenses or prisms, or

"(2) The employment of any objective or subjective means to determine the accommodative or refractive condition, or the range or powers of vision of muscular equilibrium of the human eye, or

"(3) The employment of any objective or subjective means for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist or a licensed physician to do any one act or thing, or any combination of acts or things, named or described in this Article; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner,

nor to administer any drug or physical treatment whatsoever, unless said optometrist is a duly licensed physician and surgeon, under the laws of this State."

"Art. 4565d. For the purpose of this Act the words 'and fitting lenses or prisms', as employed in Article 4552, shall be construed to include:

"(1) Prescribing or supplying, directly or indirectly, lenses or prisms, by the employment of objective or subjective means or the making of any measurements whatsoever involving the eyes or the optical requirements thereof;

"(2) The adaptation or supplying of lenses or prisms to correct, relieve or remedy any defect or abnormal condition of the human eye, or to correct, relieve or remedy or attempt to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

"(3) It shall be construed as a violation of this Act for any person not a licensed optometrist, or a licensed physician to do any one thing or act, or any combination of things or acts, named or described in this article."

"Art. 4565g. Nothing in this Act shall be so construed as to prevent an optical mechanic from doing the merely mechanical work of manufacturing ophthalmic lenses or to prevent the sale of such ophthalmic lenses to those who are licensed and legally qualified to prescribe them, nor to prevent such optical mechanic, who does not practice optometry, from following the specific directions of a competently and legally signed prescription where he does no more than manufacture or dispense the spectacles or eye-glasses, or component parts thereof, called for by such

prescription. Nor shall this Act be so construed as to prevent selling ready-to-wear spectacles or eye-glasses as merchandise at wholesale to merchants for purposes of resale as merchandise, as provided for in this Act when neither the wholesaler nor merchant to whom he sells practices optometry.

"Art. 4566. Nothing in this Act shall be construed to apply to persons who sell spectacles and eye-glasses as merchandise; officers or agents of the United States or the State of Texas, in the discharge of their official duties; nor to prevent physicians and surgeons, duly licensed as such under the laws of the State of Texas regulating the practice of medicine, from treating the human eye or prescribing lenses or glasses, or fitting lenses or glasses for the aid thereof."

Since the term "dispensing optician" is not found in the statutes governing the practice of optometry and since the activities ascribed to such optician by you are similar to those which may be exercised by an "optical mechanic", as provided in Article 4565g, heretofore quoted, we must presume the provisions of this Article are applicable to your question. This Article exempts certain enumerated activities of an optical mechanic from the provisions of the other statutes governing the practice of optometry. Such activities are:

(a) doing the merely mechanical work of manufacturing ophthalmic lenses;

(b) the sale of ophthalmic lenses to those who are licensed and legally qualified to prescribe them;

(c) If he does not practice optometry, he may follow the specific directions of a competently and legally signed prescription, where he does no more than manufacture or dispense the spectacles or eye-glasses, or component parts thereof, called for by such prescriptions.

The fourth exception contained in the Article is not applicable to your question.

From information received by this department, it is our understanding that contact lenses are worn under the eyelids and in direct contact with the forward part of the eyeball, touching the sclera surrounding the cornea with the corneal area of the lens usually not in contact with the surface of the eyeball. The lens itself, made either of glass or plastic, is so ground as to focus light in accordance with the requirements of the individual patient and to correct his individual visual variations from normal. The contact lens is made from molds which are prepared by placing over the eyeball an impressionable material into which the form and surface conditions of the eyeball of the particular patient are impressed. From this mold the lens is cast and the corrective qualities required for the particular patient incorporated into the lens by grinding or other means to develop the proper refractive qualities. When the lens has been prepared and the necessary refractive qualities incorporated therein, it is then fitted to the eye and corrections made to secure a proper fit, irregularities being removed by grinding. When the contact lens is complete and properly fitted, it is necessary to instruct the patient in its use.

Under the provisions of Articles 4552, 4565c and 4565d, Vernon's Civil Statutes, it is clear that the fitting of contact lenses constitutes the practice of optometry in so far as such includes an examination of the eye to ascertain defects or abnormal conditions of the eye which may be corrected by the use of contact lenses; the taking of an impression mold of the eyeball from which contact lenses are to be cast; the determination of the corrective qualities to be incorporated in the lenses by grinding or other means to develop the proper refractive qualities; or the adjusting or fitting of lenses to the eye. In view of what we have said constitutes the practice of optometry in the fitting of contact lenses, it necessarily follows that an "optical mechanic" or a "dispensing optician" may not lawfully fit contact lenses in this State, unless he does so in the discharge of his duties as an officer or agent of the United States or the State of Texas, or is a physician and surgeon, duly licensed as such under the laws of the State of Texas regulating the practice of medicine, or is duly licensed to practice optometry in this State. Articles 4552 through 4566, Vernon's Civil Statutes; Articles 735 through 738, Vernon's Penal Code.

However, a person, whether he be known as an "optical mechanic" or a "dispensing optician" may lawfully engage in any one or all of the three activities, referred to above, authorized by Article 4565g, subject to the conditions, limitations and restrictions imposed therein.

SUMMARY

The fitting of contact lenses constitutes the practice of optometry. An "optical mechanic" or "dispensing optician" may not lawfully fit such lenses in this State, unless he does so in the discharge of his official duties as an officer or agent of the United States or the State of Texas or is a physician or surgeon, duly licensed under the laws of the State of Texas regulating the practice of medicine, or is duly licensed to practice optometry in this State. Articles 4552 through 4566, Vernon's Civil Statutes; Articles 735 through 738, Vernon's Penal Code.

A person, whether he be known as an "optical mechanic" or a "dispensing optician" may lawfully engage in any or all of the activities authorized by Article 4565g, Vernon's Civil Statutes, subject to the conditions, limitations, and restrictions contained therein.

Yours very truly

ATTORNEY GENERAL OF TEXAS

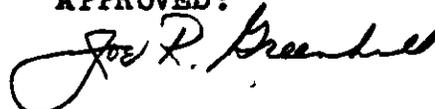
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