

Opinion No. 58-158

July 29, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: James R. Nicholson, O.D., Secretary-Treasurer, Board of Examiners in Optometry,
227 East Palace, Santa Fe, New Mexico

QUESTION

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1. Can optometrists licensed under the New Mexico Optometry law test for hearing losses and fit hard of hearing patients with hearing aids?
2. Can an optometrist licensed under the New Mexico Optometry law legally fit contact or corneal lenses either independently or under the supervision of a licensed practitioner in the ophthalmic field?

CONCLUSIONS

1. No.
2. Yes.

OPINION

ANALYSIS

In answer to both questions raised above, we believe Sec. 67-7-1, N.M.S.A., 1953 Comp., wherein "Optometry" is defined is pertinent thereto. This section relates:

"The practice of optometry is hereby defined within the meaning of this act [67-7-1 to 67-7-14], as the employment of any subjective or objective means or methods, other than the use of drugs or surgery, for the purpose of determining the refractive condition of the human eye or any muscular or visual anomalies thereof; or the employment, adapting or prescribing of lenses, prisms, or other optical appliances, or other means, modalities or methods, not including drugs, medicines or surgery for the correction or relief of disturbances in and anomalies of the human visual system and its supportive functions.

Further Sec. 67-7-2 states what constitutes the practice of optometry:

"(a) A person shall be deemed as practicing optometry within the meaning of this act [67-7-1 to 67-7-14] who, by any means or methods other than the use of drugs, diagnoses any optical deformity or deficiency, or visual or muscular anomaly of the human eye, or prescribe lenses, prisms or ocular exercises for the correction or relief of the same, or who represents himself or offers his services as being able to do so.

(b) The replacement or duplication of an ophthalmic lens, frame or mounting without a prescription, or written authority from a person authorized under the laws of New Mexico to practice optometry, or medicine.

An ophthalmic lens within the meaning of this act shall be any lens which has a spherical, cylindrical or prismatic value, and which is ground pursuant to a prescription.

A prescription, within the meaning of this act, shall be a written formula by a person duly licensed under the provisions of this act and which shall contain the following essential elements, viz.: (1) Dioptric power of spheres, cylinders and prisms, axis of cylinders and position of base prism; (2) designation of pupillary distance; (3) type, form, size and shape of lenses; (4) placement of optical centers for distance seeing and near work; (5) in double vision lenses designation of type, and placement of reading segments; (6) type and quality of frame or mounting; type of bridge and distance between lenses, type, length and angling of temples; (7) name of patient, date of prescription and name and office location of prescriber."

From the foregoing, we come to the conclusion that optometry and the practice of optometry relate basically to the testing of the loss of eyesight and the correction thereof by the use of optical appliances or other means, not including drugs, medicines, or surgery. In regard to the first question posed, we are asked whether an optometrist can legally fit a patient with a hearing aid after conducting a test for hearing loss or through a referral from a qualified practitioner. On the grounds of public policy, we believe that audiometric testing should not be undertaken by an optometrist because we believe that the various healing arts professions should stay within the confines of their individual professions as defined by the separate licensing acts enacted by the State Legislature. We further believe that the mere fitting of a hearing aid properly belongs in the field of otology rather than the field of optometry. In other words, we believe that an optometrist should limit his practice to optometry as defined by Secs. 67-7-1 and 67-7-2, supra.

As indicated in our conclusion to question No. 2, it is the opinion of this office that a retail ophthalmic dispenser can legally fit contact or corneal lenses under Secs. 67-7-1 and 67-7-2. Although contact lenses are not specifically named in the present optometric law, the defining paragraph of optometry allows the employment, adapting or prescribing of lenses, prisms, or **other optical appliances**. Certainly, contact lenses could be considered a lens or other optical appliance. It is our understanding that the fitting of corneal lenses is not always a simple procedure nor one to be undertaken by an inexperienced practitioner. Negligency in such fitting could result in litigation but nevertheless under our law, we believe that any licensed optometrist can undertake such fittings.