

Opinion No. 58-176

August 26, 1958

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

TO: John W. Thomas, O.D., President, Board of Examiners in Optometry, 3108 General
Avenue, S.E., Albuquerque, New Mexico

QUESTION

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May a retail ophthalmic dispenser legally fit contact or corneal lenses either independently or under the supervision of a New Mexico licensed practitioner of optometry or medicine?

CONCLUSION

No.

OPINION

ANALYSIS

We are informed by the Optometry Board that a retail ophthalmic dispenser or optician is essentially a skilled technician in the fabrication of spectacle lenses and adapting the frame and lenses to the head and face on the basis of written authorization from a licensed practitioner of optometry or medicine. Further that he is not trained in ocular diagnosis or refraction. The majority of opticians receive their training by starting on an apprentice basis in an optical laboratory or with an established dispenser. The act of dispensing conventional spectacles is generally considered a mechanical and not a professional skill.

We are informed that to properly fit contact lenses successfully requires a high degree of professional skill, and an intimate knowledge of the anatomy and physiology of the human eye. Further, a contact lens fitting is the adaptation to the human eye of a foreign body without insult to the tissues of the eye and lids to provide maximum comfort and visual acuity. That to do this properly involves the following steps:

1. Determination of the curvature of the cornea of the eye by keratometric measurement (a keratometer is an instrument used in several phases of ocular diagnosis), and examination to determine any ocular anomalies.

2. The fabrication of a lens blank to conform to the curvature of the eye on the basis of the above keratometric reading.

3. Determination of the refractive error of the eye and grinding the lens to the proper refractive powers.

4. The final fitting and adjusting of the finished contact lens to obtain maximum, comfortable wearing time and visual acuity.

We accept the foregoing as a true statement of fact for the purposes of this opinion and thus believe that a retail ophthalmic dispenser cannot legally fit contact or corneal lenses either independently or under the supervision of a New Mexico licensed practitioner of optometry or medicine.

As to what constitutes the practice of optometry, there is stated at Section 67-7-2, N.M.S.A., 1953 Compilation, as follows.

"(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 oclar 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 lense 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) Dioptic 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."

Section 67-7-3, N.M.S.A., 1953 Compilation, prohibits the practice of optometry in New Mexico unless a certificate of registration has been obtained in accordance with the provisions of the Optometry Act, with the exception of medical physicians and surgeons.

Applying the steps necessary to fit contact lenses to our statutory definition of the practice of optometry, we think an ophthalmic dispenser who fits contact lenses as

outlined above in Steps 1, 3 and 4 is engaged in the practice of optometry. Step 1 requires a fitting to determine proper curvature and to detect physical anomalies. This requires a diagnosis and a fitting of ophthalmic lenses which Section 67-7-2, supra, defines as the practice of optometry. Step 3 requires a determination of the refracted error in the eye in grinding lenses to the proper refractory power. Said practice is prohibited by Section 67-7-2 inasmuch as determining refracted error is the diagnosing of the human eye. Step 4 which consists of the final fitting and adjusting of contact lenses involves another examination of the eye and is thus the practice of optometry within the meaning of the statute.

Although Section 67-7-14 states that the act does not apply to persons "selling spectacles or eye-glasses who do not represent themselves as being qualified to detect and correct ocular anomalies, and who do not traffic upon assumed skill in adapting lenses to the eyes," as we have indicated in this opinion previously, there is a high degree of skill and the requirement of a diagnosis in the fitting of corneal lenses. This section, we believe, merely allows spectacles or eyeglasses to be sold so long as the representation is not made that the eyeglasses will detect or correct ocular anomalies. Certainly any attempt to adapt lenses to the eyes must be done by either a medical doctor, an optometrist or osteopath physician or surgeon.