

We find nothing in any of the constitutional provisions or implementing statutes relating to disenfranchisement which can be interpreted to mean that persons under the age of 21 years convicted of disqualifying crimes should receive automatic amnesty therefrom upon attainment of majority and, thus, escape application of the disenfranchisement provisions of the Constitution and the laws of this jurisdiction.

We conclude that it was the intention of the framers of the Constitution and the Legislature to disenfranchise all persons convicted in adult criminal court of the specific enumerated offenses and to exclude therefrom minors adjudicated as juvenile offenders in the Juvenile and Domestic Relations Court.

Very truly yours,

DAVID D. FURMAN
Attorney General

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MAY 25, 1961

DR. VINCENT P. BUTLER, *Secretary*
State Board of Medical Examiners
28 West State Street
Trenton, New Jersey
and

DR. EMANUEL C. NUROCK, *Secretary-Treasurer*
State Board of Optometrists
162 West State Street
Trenton, New Jersey

FORMAL OPINION 1961—No. 8

DEAR SIRs:

You have asked whether Chapter 12 of Title 45 of the Revised Statutes regulating the practice of optometry authorizes optometrists to prescribe and fit contact lenses and, if so, whether optometrists are permitted to delegate this function to ophthalmic technicians or dispensers who are not licensed to practice optometry or medicine.

The first part of this question must be answered in the affirmative. R.S. 45:12-1 sets out the statutory definition of the practice of optometry as follows:

"The practice of optometry is defined to be the employment of objective or subjective means, or both, for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its powers of vision and adapting lenses or prisms for the aid thereof.* * *"

In *Abelson's Inc. v. N. J. State Board of Optometrists*, 5 N.J. 412 (1950), the Supreme Court held that optometry was a profession in sustaining the constitutionality of regulatory legislation. The opinion stated at p. 419:

"Optometry is directed to the measurement of the range of vision and the correction by lens, of visual defects and the increase of visual power with a minimum of eye exertion. * * *"

Thus the Legislature and the Supreme Court have established and recognized the fitting of lenses as within the practice of optometry. No prescription on the authority to fit contact lenses can be construed by implication. The Legislature in 1954, at a time when contact lenses were already in widespread use, specifically referred to them in an amendment to the Optometry Act (L. 1954, c. 227) :

"The board shall have the power * * * to refuse to grant, to revoke or to suspend for a specified time * * * any license to practice optometry in the State of New Jersey for any of the following causes : * * *

- (h) * * * advertising to perform optometric services or with reference to providing glasses, spectacles, contact lenses, frames, mountings, lenses or prisms * * *."

The conclusion that optometrists enjoy a statutory sanction to fit contact lenses is based upon the law as enacted. Whether this delicate prosthesis involving the fixing of a foreign body in contact with the cornea of the eye should be entrusted to other than medical doctors is a subject for continuing legislative scrutiny. This is a developing problem and the extent and incidence of permanent eye injuries and visual impairment through the indiscriminate use of contact lenses without medical safeguards are still unknown. More and more patients are seeking contact lenses for cosmetic or emotional reasons, instead of for their original purpose to improve vision because of pathological conditions in which correction of the refractive error through the use of spectacles would not work a satisfactory improvement in vision. Every wearer of contact lenses faces the possibility at some time of injury, irritation or inflammation of the eye as a direct or indirect result of the abrasion of contact lenses upon the cornea.

The Medical Society of New Jersey has conducted a survey of medical doctors practicing ophthalmology. An appreciable incidence of permanent injury or permanent visual impairment due to the wearing of contact lenses has been reported.

The bounds of the practice of optometry stop short. While optometrists have training in the diagnosis of pathology of the eye and unquestionably have a duty to refer cases involving ocular pathology to medical doctors, *Code of Ethics*, New Jersey Optometric Association, Section 1, optometrists are prohibited from the care or treatment of injuries, growths or diseases of the eye. Medical examination and diagnosis, first an evaluation whether the use of contact lenses is medically permissible and secondly, periodic observation as long as the patient wears them to determine any physical and pathological impairments, appear to be of critical importance. This subsequent evaluation includes methods available to medical doctors and proscribed to optometrists; slit lamp biomicroscopy of the cornea with the drug fluorescein to diagnose the presence or absence of pathological change due to trauma or to metabolic disturbance.

The majority of recent judicial decisions recognize that the diagnosis but not the treatment of pathology is within the realm of the optometrist's professional competence. In *State v. Standard Optical Co.*, 182 Oregon 452, 188 Pac. 2d 309, 313 (1947), for example, the highest court of Oregon discussed optometry as follows :

"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 duties require him to refer the patient to a prac-

itioner 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."

The United States Supreme Court, in *Williamson v. Lee Optical Co.*, 348 U.S. 483, 486 (1955), commented on the subject:

"An ophthalmologist is a duly licensed physician who specializes in the care of eyes. An optometrist examines eyes for refractive error, recognizes (but does not treat) diseases of the eye, and fills prescriptions for eyeglasses."

See also *Lieberman v. Connecticut State Board of Examiners in Optometry*, 130 Conn. 344, 34 A. 2d 213, 215 (Supreme Ct. of Errors 1943) ("A properly qualified optometrist should be able to discover diseased conditions of the eye which require treatment by an ophthalmologist and should, when they are discovered, refer his patient to a doctor qualified to deal with them."); and *McMurdo v. Getter*, 298 Mass. 363, 10 N.E. 2d 139, 143 (Supreme Judicial Court, 1937) ("In recent times abnormalities of the eye, like those of the teeth, have been found sometimes to indicate and often to result in serious impairment of the general health. The work of an optometrist approaches, though it may not quite reach ophthalmology.")

In answer to the second part of the question you have posed, there is nothing in Chapter 12 of Title 45 which authorizes optometrists to employ anyone other than another duly licensed optometrist or a duly licensed physician to fit contact lenses as his agent.

Laws of 1948, Chapter 439 (R.S. 52:17(B)-41.1 to 52:17(B)-41.24 inclusive) provides for the regulation of the practice of ophthalmic dispensing, with the limitations set forth in R.S. 52:17(B)-41.1:

"* * * A person [ophthalmic dispensers or ophthalmic technicians] registered under the provisions of this act is specifically prohibited from engaging in the practice of ocular refraction, orthoptics, visual training, or fitting contact lenses; or the prescribing of subnormal vision aids or telescopic spectacles, in his own behalf or as an employee or student of another, whether under the personal supervision of his employer or preceptor or not.

"No person not licensed to practice medicine or optometry in this State shall directly or indirectly, for himself or others, do or engage in any act or practices specifically prohibited to duly registered ophthalmic dispensers and ophthalmic technicians by the provisions of this act."

The manifest legislative intent of this statute is to prohibit any person other than a medical doctor or an optometrist from the practice of fitting contact lenses.

Very truly yours,

DAVID D. FURMAN
Attorney General