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In Kee v. Baber, 157 Tex. 387, 303 S.W. 2d 376 (1957), this court sustained the validity of three rules that the Board of Optometry promulgated. These rules regulated "bait" advertising, basic competence, and corporate practice of optometry. The court held that article 4556 was a broad delegation of regulatory powers to the Board since it authorized the Board to adopt such rules as are necessary for "the regulation of the practice of optometry." The court also held that each of the rules was consistent with, related to, and an implementation of one or more of the prohibited categories set out in article 4563. The Professional Responsibility Rule which is under attack prohibits five forms of practice by those licensed as optometrists, and as in Kee v. Baber, we shall examine each of the prohibited practices with reference to article 4563 and other optometry regulations.

[2] Section 1(a) of the rule prohibits fee-splitting by a licensed optometrist with an unlicensed person. Since the Optometry Act forbids an unlicensed person to directly charge fees for optometric services, such a person cannot undermine the act by indirectly charging and collecting fees through the device of fee-splitting. The prohibition of fee-splitting with laymen is generally related to the personal and professional relationship between optometrist and patient which is requisite to the practice of optometry and is specifically related to article 4563(b) which prohibits a "deceit or misrepresentation in the practice of optometry * * *." It is related to article 4563(h) which authorizes revocation of a license when the "licensee directly or indirectly employs solicitors, canvassers, or agents for the purpose of obtaining patronage," and article 773, Vernon's Penal Code, which provides that no optometrist may "employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, * * * for securing, soliciting or drumming patients or patronage." It is related also to article 4563(i) since a licensee who shares his professional fees with an unlicensed person "places his license at the disposal or in the service of a[ny] person not licensed to practice optometry in this State."

[3] Section 1(b) of the rule prohibits a division of fees by a treating optometrist with another optometrist. This section is subject to some exceptions but even then the fee-splitting is permissible only with the knowledge of the patient. This section is relevant to the same provisions of the Optometry Act as section 1(a). Section 1(b) protects the same personal and professional relationship between the optometrist and his patient and that purpose runs through the whole act. The section is relevant to article 4563(b) because the treating optometrist holds himself out to his patient as the one who is performing the services and is to be paid upon the basis of those services. A patient who ignorantly pays optometric fees based upon elements other than service alone and which fees are paid to absentee optometrists is misled.

[4, 5] Section 1(c) of the rule prohibits the practice of optometry under assumed or trade names. The reason for this section is that the trade or assumed name practice, like fee-splitting, disrupts the optometrist-patient relationship by concealing the identity and burying the responsibility of the licensed optometrist. The need for section 1(c) is clearly supported by substantial evidence some of which we shall now summarize since it demonstrates the relevance of this section to the provisions of article 4563. Dr. Carp operates seventy-one offices in Texas. He advertises them under the following trade names: Luck Optical, Luck One Price Optical, Mast Optical, Mesa Optical, Mack Optical, Plains Optical, Amarillo Optical, Lubbock Optical, Panhandle Optical, and Mission Optical. From time to time he adds, drops, or changes the trade name at a particular office although the licensed optometrists employed in that office remain the same. He has purchased the practices of licensed optometrists and practices under their name