

It is my position that the broad regulatory powers given to the Board in Article 4556 were to be exercised by the Board in a manner consistent with Article 4563. The Legislature has not only enumerated specific grounds for license revocations, it has also set forth detailed and specific offenses which would constitute violations of the Act. The Legislature has pre-empted the field of punishable offenses as well as grounds for license revocation. This action prevails over its general grant of power to the Board "to make such rules and regulations not inconsistent with this law as may be necessary for * * * the regulation of the practice of optometry and the enforcement of this Act."

To further demonstrate that the Board is seeking rule-making power in the field of license revocation regardless of statutory limitations, I take up its argument that the Board has the same license revocation powers as those given to the Supreme Court and the State Bar. In advancing this argument, the Board fails to distinguish between the fact that the Optometry Act enumerates the reasons for revocation of licenses, whereas the State Bar Act does not do so. Article 320a-1, Sec. 4, subdivision (a) provides:

"From time to time as to the Court may seem proper, the Supreme Court of Texas shall prepare and propose rules and regulations for disciplining, suspending, and disbarring attorneys at law; for the operation, maintenance and conduct of the

State Bar and prescribing a code of ethics governing the professional conduct of attorneys at law. * * *

The 46th Legislature enacted both the State Bar Act and the Optometry Act. The State Bar Act authorizes the Supreme Court to enumerate the grounds and procedures for suspension or cancellation of licenses and the means of enforcement. This is not true with the Optometry Act. Whatever its reasons for making this distinction might have been is beside the point; the fact remains that the Legislature in adopting the Optometry Act deliberately enumerated the grounds for cancellation and revocation and set up by penal statute the means of enforcement. Therefore, the Board has no authority to add new grounds and new procedures for license revocations under the general powers set out in Article 4556. See *Kentucky State Board of Dental Examiners v. Crowell*, 220 Ky. 1, 294 S.W. 818, 819 (Ct. of App. Ky. 1927); 2 Am. Jur. 2d 130, Administrative Law § 301; *Cherry v. Board of Regents of the University of the State of New York*, supra.

Respondents in their conditional application for writ of error and in a supplemental brief filed herein present additional points¹ for declaring the rule under attack invalid. I think these points merit consideration. In my opinion the rule is arbitrary and capricious and bears no relationship to the health and well being of the citizens of Texas. The rule is invalid because there was no substantial evidence to support a finding

I. "STATEMENT OF RESPONDENTS' CROSS-POINTS"

"FIRST CROSS-POINT"

"The rule is arbitrary and capricious and bears no reasonable relationship to the health and wellbeing of the citizens of Texas, and the Trial Court and the Court of Civil Appeals erred in not so holding.

"SECOND CROSS-POINT"

"The rule is invalid because there was no substantial evidence to support a finding that the rule bears any reasonable relationship to the public health and welfare, and the Trial Court and Court of Civil Appeals erred in not so holding.

"THIRD CROSS-POINT"

"The rule is invalid because the same would impair the obligation of contracts in violation of both the state and federal constitutions and would take Respondents' property without due process of law, and the Trial Court and the Court of Civil Appeals erred in not so holding.

"FOURTH CROSS-POINT"

"The rule is invalid because its arbitrary and capricious nature would take Respondents' property without due process of law, and the Trial Court and the Court of Civil Appeals erred in not so holding."