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that the rule bears any reasonable relationship to the public health and welfare. Respondents pleaded in the trial court that the rule is arbitrary and capricious in that it does not have or bear any substantial relationship to the protection of the public in its dealings with persons licensed to practice optometry under the laws of the State of Texas." The Court of Civil Appeals quotes some of the evidence on this question. The record contains evidence concerning the care exercised in the selection of employee-optometrists by one of the Respondents' organizations. This evidence relates to the educational background of the optometrists selected, the fact that they were licensed by the Board and their practical experience, etc. With reference to the "Professional Responsibility" phase of the rule under attack, one of the Respondents, who is also a member of the Board, testified:

"Q. Now, Dr. Rogers, when a man is employed, an optometrist in your organization, do you have any standing instructions as to how he shall conduct the practice and to whom his first and primary allegiance and responsibility is?

"A. Yes, we do.

"Q. And what is that?

"A. Well, number one, the man, as I mentioned is solely responsible for his action with that patient, for his—whatever he does or doesn't do with regard to the patient and his sole allegiance, his sole responsibility, is to do what in his opinion is necessary or best or in the best interest of that patient or that patient's visual care. This is the basis upon which all of our offices operate and this is the way a man conducts himself, just as though he were in his own office."

The Board wholly failed to establish its contention that a person employed by another optometrist in a trade-name organization lacks professional responsibility to this pa-

tient. In fact this contention was refuted by the following testimony:

"Q. Now in all of your experience, Dr. Rogers, as an optometrist, and as a Board member, now something in excess of six years, I will ask you the point blank question, are optometrists practicing on a salary, or a compensatory basis, on a solely employed basis, and in a trade name organization such as yours, are they just as competent, just as sincere, just as diligent as those who practice solely or individually?

"A. Yes, I think so, I sincerely do."

The Respondent, Dr. Carp, also testified:

"Q. Doctor, let me ask you this question: As an optometrist, who is the primary responsibility of an individual doctor associated with you in one of your offices where is his primary responsibility, to you or to the patient whose eyes he examines?

"A. By all means to the patient."

There is a complete absence of testimony given by patients or others which even remotely suggested that the care given to patients in Respondents' establishments located throughout the State was any less satisfactory to the patient, than the care given in the offices of individual practitioners. There is no evidence that the practice of optometry under trade or assumed names in multiple offices injuriously affects the public health.

It is argued that other jurisdictions have adopted rules similar to the one under consideration. Grant this is true, still the Board has made no showing that conditions were the same in each instance. There is no showing that the Legislatures in the other jurisdictions have refused to adopt the essential proscriptions contained in the rule under attack. On the other hand, it is clear that the Texas Legislature has consistently declined to include in its enactments the unconstitutional proscriptions