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OPTOMETRY

HEARINGS
BEFORE
SUBCOMMITTEE NO. 5
OF THE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS
FIRST SESSION
ON

H.R. 595, H.R. 732, H.R. 1283, H.R. 10075,
H.R. 12251, H.R. 12276, and H.R. 12297

TO REGULATE THE PRACTICE OF OPTOMETRY IN
THE DISTRICT OF COLUMBIA

AUGUST 14, 15, AND 18, 1967

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OPTOMETRY

MONDAY, AUGUST 14, 1967

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE No. 5
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The Subcommittee met at 10:00 a.m. in Room 1310 Longworth House Office Building, the Hon. B. F. Sisk (Chairman) presiding.

Members Present:

Mr. SISK (Chairman), Mr. WHITENER, Mr. JACOBS, Mr. WALKER, Mr. HORTON, Mr. HARSHA, Mr. GUDE, and Mr. ZWACH. Also Mr. FUQUA.

Also Present:

James T. Clark, Clerk; Hayden S. Garber, Counsel; Sara Watson, Assistant Counsel; Donald Tubridy, Minority Clerk; Leonard O. Hilder, Investigator.

Mr. SISK. Subcommittee No. 5 will be in order.

The Subcommittee has met this morning to begin hearings on a series of bills regarding the licensing, registration and regulation of optometrists to practice optometry here in the District of Columbia.

(The bills referred to follow, together with staff memorandum thereon:)

H.R. 595, 90th Cong., 1st sess., by Mr. Fuqua, H.R. 732 by Mr. Hull, and H.R. 1283 by Mr. Sisk on January 10, 1967; H.R. 10075 by Mr. Springer on May 17, 1967; and H.R. 12251 by Mr. Anderson (Tenn.) on August 10, 1967

A BILL To amend the Act of May 28, 1924, to revise existing law relating to the examination, licensure, registration, and regulation of optometrists and the practice of optometry in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to regulate the practice of optometry in the District of Columbia", approved May 28, 1924, as amended (D.C. Code, secs. 501-522), is amended to read as follows:

"SECTION 1. This Act may be cited as the 'District of Columbia Optometry Act'.

"SEC. 2. Optometry is hereby declared to be a profession. The practice of optometry in the District of Columbia is hereby declared to affect the public health, welfare, and safety, thus requiring regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry be limited to qualified persons, admitted to the practice of optometry in the District of Columbia under the provisions of this Act.

"Sec. 3. As used in this Act—

"(1) 'Commissioners' means the Board of Commissioners of the District of Columbia or its designated agents;

"(2) 'practice of optometry' means, without the use of drugs, any one, any combination, or all of the following acts or practices: (a) the employment of any objective or subjective means for the examination of the human eye, including its appendages; (b) the measurement of the powers or range of human vision; (c) the determination of the accommodative and refractive powers of the human eye; (d) the determination of the scope of the functions of the human eye in general; (e) the prescription of lenses, prisms, or frames for the aid of the human eye; (f) the adaptation, utilization or furnishing of

lenses, prisms, or frames for the aid of the human eye; (g) the prescribing, directing the use of, or administering vision training or orthoptics, and the use of any optical device in connection therewith; (h) the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye; and (i) the identification of any departure from the normal condition or function of the human eye, including its appendages;

"(3) 'optometrist' means, except as otherwise provided in this Act, an individual licensed to engage in the practice of optometry in the District of Columbia;

"(4) 'person' means any natural person, corporation, association, company, firm, partnership, or society;

"(5) 'individual' means only a natural person; and

"(6) 'State' means the States of the United States, the Commonwealth of Puerto Rico, and the territories of the United States.

"SEC. 4. The Commissioners shall issue a license to practice optometry in the District of Columbia to any individual who—

"(1) is at least twenty-one years of age;

"(2) is of good moral character;

"(3) is mentally competent;

"(4) has satisfied the Commissioners that he has had a preliminary education equivalent to the completion of a four-year course of study in an accredited high school;

"(5) has completed a preoptometric course of at least two years at college level;

"(6) has graduated from a school or college of optometry approved by the Commissioners after completion of a course of study of not less than four years;

"(7) has passed written, oral, and practical examinations as prescribed by the Commissioners in the following subjects: geometric, physical, and physiological optics; theoretic optometry and optics; anatomy, physiology, and pathology, especially as they relate to the eye and to vision; general practice of optometry; special practice of optometry; practical optometric dispensing and such other subject matters as are taught in the schools and colleges of optometry and which the Commissioners deem necessary to determine the applicant's competence to practice as an optometrist. The Commissioners may accept the results of written examinations given by the National Board of Optometry, but shall conduct their own oral and practical examinations; and

"(8) has paid all the required fees.

"SEC. 5. (a) The Commissioners are authorized to issue a reciprocity license to an individual who holds a license to practice optometry in another State. An applicant for a reciprocity license may, at the discretion of the Commissioners, be licensed without a written examination but he must be given and pass a practical and oral examination. A reciprocity license shall be granted only if—

"(1) The State in which the applicant's license has been granted accords like privileges to the holder of a license to practice optometry in the District of Columbia;

"(2) the license of the applicant shall not have been suspended or revoked by any State for any cause which is the basis for suspension or revocation of a license under this Act (other than for nonpayment of fees) unless such license has been reinstated by such State and is in full force and effect at the time of the application for a reciprocity license under this section;

"(3) the applicant for a reciprocity license has not failed to pass an examination for a license under this Act in the District of Columbia after his admission to practice in another State.

"(b) If an individual holding a reciprocity license granted under this section fails to actually practice optometry in the District of Columbia within one year after such license has been granted, the Commissioners may revoke such license at any time before such individual actually begins the practice of optometry in the District of Columbia.

"SEC. 6. Every license issued in accordance with the provisions of this Act, subject to the provisions of Sec. 7 of this Act, shall automatically be renewed annually upon application by the holder of the license and payment of the annual renewal fee. Such annual renewal fee shall be fixed by the Commissioners. If the holder of a license fails to renew his license in accordance with this section, such

license shall be suspended and such individual shall not thereafter practice optometry in the District of Columbia until such license shall be reinstated or a new license issued to him under this Act. If such individual thereafter applies for reinstatement of his license, it shall automatically be reinstated upon payment of all intervening renewal and other fees. If such individual fails to have his license reinstated within five years after the date it is suspended under this section, he shall not thereafter be licensed to practice optometry in the District of Columbia until he shall have passed a practical examination given by the Commissioners and paid all intervening renewal and other fees.

"SEC. 7. (a) The Commissioners are authorized (A) to refuse to renew, or reinstate any license authorized by this Act, and (B) to suspend or revoke any license issued under authority of this Act, for any of the following causes—

"(1) the use of any title or any other word or abbreviation indicating that the licensee is engaged in the practice of medicine or surgery;

"(2) conviction of a crime involving moral turpitude;

"(3) willful violation or repeated violations of any provision of this Act or any of the regulations promulgated by the Commissioners under this Act;

"(4) gross incompetence;

"(5) chronic or persistent inebriety, or the habitual use of narcotics;

"(6) affliction with a contagious or infectious disease which, in the opinion of the Commissioners, renders the practice of optometry by the licensee or applicant for a license, dangerous to the public health;

"(7) conduct which disqualifies the licensee from practicing optometry with safety to the public;

"(8) advertising directly or indirectly the performance of optometric service or any part thereof, including the furnishing of ophthalmic or optical material, in any form, manner, or way, or through any medium whether it be printed, audible, visible, electronic, or in any other fashion, except as authorized by regulations issued under section 10 of this Act;

"(9) practicing or offering to practice optometry under any name other than that under which he has been duly licensed;

"(10) soliciting patients by offering free examinations or other gratuitous services, bonuses, premiums, discounts, credit, or any other inducements for the purpose of obtaining patronage;

"(11) the display of any spectacles, eyeglasses, or spectacle frames or mountings, goggles, sunglasses, lenses, prisms, spectacle or eyeglass cases, ophthalmic material, optometric instruments, diagnostic devices, optical tools, or machinery, or any merchandise, material, or advertising in a manner so as to make it visible from the street or the public corridor of a building;

"(12) the display of his license, diplomas, or certificate, in such manner that they may be seen from the outside of the premises where he practices;

"(13) except as provided in section 9, the use of the words 'clinic', 'infirmary', 'hospital', 'school', 'college', 'university', or 'institute' in English or any other language in connection with any activity which is essentially the practice of optometry;

"(14) to cause or permit the use of his name, profession, or professional title by or in conjunction with the advertising of his professional services in any form or manner by any person;

"(15) holding himself forth by any means or manner of possessing professional superiority or the ability to perform professional services in a superior manner;

"(16) the employment of or any arrangement, written or oral, with persons who use their efforts or influence to direct patronage to the optometrist;

"(17) practice optometry in any retail, mercantile, or commercial store;

"(18) except as provided in section 9, the practice of optometry as an employee of and pursuant to any written or oral arrangement with any person other than a duly-licensed optometrist;

"(19) any other unprofessional conduct as defined by the Commissioners in regulations issued pursuant to this Act.

"(b) The denial, suspension, or revocation of a license issued under this Act shall be made only upon specific charges in writing and after notice and hearing (unless such hearing is waived). A certified copy of any such charge and a notice of hearing, specifying the time and place thereof, shall be served upon the holder of or applicant for such license to practice as an optometrist in the District of Columbia, at least twenty days before the hearing. The respondent

may waive the requirement of hearing contained in this subsection but only in writing. The respondent shall be entitled to counsel and to call witnesses in his defense.

"(c) Upon written application and after hearing, pursuant to notice, the Commissioners may reinstate a license which has been previously revoked, except that no application for reinstatement of a license shall be accepted for consideration prior to the expiration of at least one year following the date on which the applicant's license was revoked.

"Sec. 8. (a) It shall be unlawful for any person—

"(1) to engage in the practice of optometry in the District of Columbia without a valid license issued under this Act so to do;

"(2) to practice or offer to practice optometry under the name of any company, association, corporation, trade name or business name, or any other name, except his own proper name as appears on the license issued to him under this Act by the Commissioners;

"(3) (A) to sell or fraudulently obtain or furnish any diploma, license, or record required by this Act or required by the Commissioners under authority of this Act, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;

"(B) to practice optometry as an optometrist under cover of any diploma, license, or record required by this Act or required by the Commissioners under authority of this Act, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

"(C) to use in connection with his name any designation tending to imply that he is an optometrist licensed to practice under this Act if he is not licensed to practice under this Act; or

"(D) to practice optometry as an optometrist during any time his license issued under this Act shall be suspended or revoked.

"(4) with the exception of non-prescription sunglasses or non-prescription protective eyewear, to sell or offer to sell to the public eyeglasses, spectacles, or lenses, or to fit or duplicate lenses, without a written prescription from a licensed physician or optometrist;

"(5) with the exception of non-prescription sunglasses or non-prescription protective eyewear, to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price cost or any reference thereto, whether related to any eye examination or to the cost or price of lenses, glasses, mountings, or ophthalmic articles or devices;

"(6) to solicit patients or cause patients to be solicited by means of free eye examinations or other gratuitous services, bonuses, premiums, discounts, credit, or any other inducements for the purpose of obtaining patronage;

"(7) if he writes a prescription for another, to receive any part of the sum paid or other valuable considerations paid by such person to a third person for filling such prescription; or for such third person to pay to the person writing a prescription any part of the sum paid or other valuable considerations received by such third person for filling of such prescription;

"(8) other than an optometrist to utilize the services of an optometrist on a salary, commission, lease, or any other basis, or to engage or undertake to engage, directly or indirectly, in any manner whatsoever, in the practice of optometry;

"(9) to display any sign offering ophthalmic materials for sale in violation of any regulation of the Commissioners issued under authority of section 10 of this Act;

"(10) to practice optometry without conspicuously displaying his license and his current annual renewal registration where he practices.

"(b) A violation of any of the provisions of this section shall constitute a misdemeanor and shall be punished for the first offense by a fine of not more than \$500, and upon a second or subsequent conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment in the District jail for not more than one year, or by both such fine and imprisonment.

"Sec. 9. (a) This Act shall not apply—

"(1) to any bona fide student of optometry in the clinic rooms of a school of optometry approved by the Commissioners;

"(2) to any commissioned officer in the armed services who is engaged in the practice of optometry in the District of Columbia insofar as such practice is in the performance of his military duties;

"(3) to an individual licensed in another jurisdiction who is in the District of Columbia to make a clinical demonstration before a professional society, convention, professional association, school, or college, or agency of government.

"(b) This Act shall not be deemed to require a physician or surgeon licensed under the laws of the District of Columbia for the practice of medicine or surgery to have a license under this Act to perform those services defined by this Act as the practice of optometry.

"(c) This Act, other than section 8, shall not apply to any person who fills the written prescription of a physician, surgeon, or an optometrist, or who repairs or restores eyeglasses or spectacles to their previous condition of usefulness, or who practice optometry as defined in Sec. 3(2) (f), and who does not otherwise practice optometry, but this subsection shall not be deemed to authorize such a person to fit contact lenses.

"(d) Nothing in this Act shall be deemed to prevent—

"(1) an optometric clinic approved by the Commissioners from being conducted on a nonprofit basis by a school or college of optometry or by an association of optometrists;

"(2) an optometrist from being employed by or associated with any hospital, clinic, group health practice, nonprofit health service, health expense indemnity corporation or group, or any department, agency, or instrumentality of the Government of the United States or of the government of the District of Columbia, or as an employee of any person to render optometric service and care solely to employees of such person;

"(3) the executor or administrator of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased licensee during the administration of the estate, or the legal representative of a mentally disabled optometrist from employing a licensed optometrist to carry on the practice of such licensee for a period not to exceed one year;

"(4) vision screening programs conducted under the direction or supervision of a licensed optometrist or physician.

"(e) Nothing in this Act shall be deemed to prohibit an optometrist from using the title 'doctor' or any abbreviation thereof except that if he uses such title or such an abbreviation it must be with such qualifications as may be necessary to clearly indicate to the public that he is an optometrist.

"SEC. 10. (a) The Commissioners from time to time shall prescribe and adopt such rules and regulations as may be necessary to carry out this Act and govern the practice of optometry and the sale of ophthalmic materials which shall include but not be limited to rules and regulations governing the number, size, location, and illumination of signs offering the services of (1) an individual as an optometrist and (2) ophthalmic materials for sale. With respect to the offering of services of an individual as an optometrist, such regulations shall limit the offering thereof to the carrying or publishing of a modest professional card and the display of a modest window or street sign at the location of the individual's practice, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections, and if the practice is so limited the specialty practiced by the individual, and in the case of change of address or the starting of practice, to modest announcements thereof. With respect to the offering for sale of ophthalmic materials, such regulations shall limit the offering for sale thereof to a modest window or street sign at the location of the person's place of business and other modest advertisements. Nothing in this section shall be deemed to authorize any optometric service or ophthalmic materials to be advertised in any manner which includes or contains any price, cost, or reference thereof.

"(b) (1) The Commissioners are authorized and empowered, after public hearing, to establish, abolish, increase, or decrease, from time to time, such fees and charges as are necessary to defray the approximate cost of administering the provisions of this Act.

"(2) All funds derived from fees and charges collected in connection with the administration of this Act shall be paid into the Treasury of the United States to the credit of the District of Columbia.

"(c) The Commissioners shall design and adopt a seal to be used for authenticating records and papers pertaining to the licensing and regulation of optometrists in the District of Columbia. Copies of all records and papers duly certified and authenticated by such seal shall be received in evidence in all courts of the District of Columbia equally and with like effect as the original. Records kept by the Commissioners pertaining to the licensing and regulation of optometrists in the District of Columbia shall be open to public inspection under reasonable rules and regulations prescribed by the Commissioners.

"SEC. 11. The Commissioners may make such inspections, studies, and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this Act, or in the administration or enforcement of this Act and any regulations or rules or orders thereunder. For such purposes, the Commissioners may administer oath and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses, and the production of documents at any designated place within the District of Columbia. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may make application to the District of Columbia Court of General Sessions for an order requiring obedience thereto. Thereupon, the Court, with or without notice and hearing, as it, in its discretion, may decide, shall make such order as is proper and may punish as a contempt, any failure to comply with such order in accordance with section 11-982 of the District of Columbia Code.

"SEC. 12. Whenever, in the judgment of the Commissioners, any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Act, the Commissioners may make application to the District of Columbia Court of General Sessions for an order either temporarily or permanently enjoining such act or practice, and upon showing by the Commissioners that such person has engaged in or is about to engage in any such act or practice, an injunction, restraining order, or such other order as may be appropriate shall be granted by the court, without bond.

"SEC. 13. (a) Prosecutions for violations of any of the provisions of this Act shall be conducted in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants.

"(b) An optometrist licensed under this Act shall be considered competent after qualification by the court to present testimony relating to the practice of optometry as defined in this Act. Certificates of visual condition, acuity, and efficiency issued by any duly licensed optometrist under this Act, shall be accepted as qualified evidence of the visual condition, acuity, and efficiency of the person to whom such certificate shall relate, by officers or employees of the government of the District of Columbia in the performance of their duties.

"SEC. 14. No officer or employee of the District of Columbia shall, in the administration of any law applicable to the District of Columbia, deprive any person of his right to exercise his freedom of choice of an optometrist or a physician.

"SEC. 15. The Commissioners are authorized to delegate to the Board of Optometry established by Reorganization Order No. 59 all or any part of the powers, duties, and functions vested in them by this Act. The Commissioners are authorized to delegate to any other officer or employee of the government of the District of Columbia all or any part of such powers, duties, and functions. Any delegation made under authority of this section shall be for such periods and subject to such conditions as the Commissioners determine necessary."

SEC. 2 Every license to practice optometry in the District of Columbia which is valid on the effective date of this Act shall continue to be valid under the District of Columbia Optometry Act, as amended by this Act, until such date within one year of the effective date of this Act as the Commissioners of the District of Columbia fix as the date for the automatic annual renewal for such license under the District of Columbia Optometry Act, and any such license which would have expired between the effective date of this Act and the annual renewal date fixed for such license by the Commissioners under this section shall continue in effect until such renewal date, unless sooner suspended or revoked in accordance with the District of Columbia Optometry Act.

SEC. 3. Subsection (a) of section 11-742 of the District of Columbia Code is amended (1) by striking out "and" at the end of paragraph (9); (2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon; and (3) by adding at the end thereof the following new paragraph:

"(11) final decision and orders of the Commissioners of the District of Columbia denying, suspending, or revoking any license, denying any renewal of a license or reinstatement of a license, pursuant to the District of Columbia Optometry Act."

SEC. 4. This Act shall take effect on the ninetieth day after the date of its enactment.

H.R. 12297, 90th Cong., 1st sess., by Mr. Nelsen and Mr. Clausen, on August 10, 1967

A BILL To amend the Act of May 28, 1924, to revise existing law relating to the examination, licensure, registration, and regulation of optometrists and the practice of optometry in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to regulate the practice of optometry in the District of Columbia", approved May 28, 1924, as amended (D.C. Code, secs 501-522), is amended to read as follows:

"SECTION. 1. This Act may be cited as the 'District of Columbia Optometry Act'.

"Sec. 2. The practice of optometry as a profession in the District of Columbia is hereby declared to affect the public health, welfare, and safety, thus requiring regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry as a profession be limited to qualified persons admitted to the practice of optometry in the District of Columbia under the provisions of this Act.

"Sec. 3. As used in this Act—

"(1) 'Commissioners' means the Board of Commissioners of the District of Columbia or its designated agents;

"(2) 'practice of optometry' means, any one, any combination, or all of the following acts or practices as they are included in the curriculum of recognized schools and colleges of optometry: (a) the employment of any objective or subjective means for the examination of the human eye, including its appendages; (b) the measurement of the powers or range of human vision; (c) the determination of the accommodative and refractive powers of the human eye; (d) the prescription of lens, prisms, or frames for the aid of the human eye; (e) the adaptation, utilization, or furnishing of lenses, prisms, or frames for the aid of the human eye; (f) the prescribing, directing the use of, or administering vision training or orthoptics, and the use of any optical device in connection therewith; (g) the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye; and (h) the identification of any departure from the normal condition or function of the human eye, including its appendages:

"(3) 'optometrist' means, except as otherwise provided in this Act, an individual licensed to engage in the practice of optometry in the District of Columbia;

"(4) 'person' means any natural person, corporation, association, company, firm, partnership, or society;

"(5) 'individual' means only a natural person; and

"(6) 'State' means the States of the United States, the Commonwealth of Puerto Rico, and the territories of the United States.

"Sec. 4. The Commissioners shall issue a license to practice optometry in the District of Columbia to any individual who—

"(1) is at least twenty-one years of age;

"(2) is of good moral character;

"(3) is mentally competent;

"(4) has satisfied the Commissioners that he has had a preliminary education equivalent to the completion of a four-year course of study in an accredited high school;

"(5) has completed a preoptometric course of at least two years at college level.

"(6) has graduated from a school or college of optometry approved by the Commissioners after completion of a course of study of not less than four years;

"(7) has passed written, oral, and practical examinations as prescribed by the Commissioners in the following subjects: geometric, physical and

physiological optics; theoretic optometry and optics; anatomy, physiology, and pathology, especially as they relate to the eye and to vision; general practice of optometry; special practice of optometry; practical optometric dispensing and such other subject matters as are taught in the schools and colleges of optometry and which the Commissioners deem necessary to determine the applicant's competence to practice as an optometrist. The Commissioners may accept the results of written examinations given by the National Board of Optometry, but shall conduct their own oral and practical examinations. The Commissioners are authorized and empowered to alter, amend, and otherwise change the educational standards at any time, but in altering, amending, or changing said standards, the Commissioners shall not be permitted to lower the same below the standards herein set forth; and

"(8) has paid all the required fees.

"Sec. 5. (a) The Commissioners are authorized to issue a reciprocity license to an individual who holds a license to practice optometry in another State. An applicant for a reciprocity license may, at the discretion of the Commissioners, be licensed without a written examination but he must be given and pass a practical and oral examination. A reciprocity license shall be granted only if—

"(1) the State in which the applicant's license has been granted accords like privileges to the holder of a license to practice optometry in the District of Columbia;

"(2) the license of the applicant shall not have been suspended or revoked by any State for any cause which is the basis for suspension or revocation of a license under this Act (other than for nonpayment of fees) unless such a license has been reinstated by such State and is in full force and effect at the time of the application for a reciprocity license under this section;

"(3) the applicant for a reciprocity license has not failed to pass an examination for a license under this Act in the District of Columbia after his admission to practice in another State.

"(b) If an individual holding a reciprocity license granted under this section fails to actually practice optometry in the District of Columbia within one year after such license has been granted, the Commissioners may revoke such license at any time before such individual actually begins the practice of optometry in the District of Columbia.

"Sec. 6. Every license issued in accordance with the provisions of this Act, subject to the provisions of section 7 of this Act, shall automatically be renewed annually upon application by the holder of the license and payment of the annual renewal fee. Such annual renewal fee shall be fixed by the Commissioners. If the holder of a license fails to renew his license in accordance with this section, such license shall be suspended and such individual shall not thereafter practice optometry in the District of Columbia until such license shall be reinstated or a new license issued to him under this Act. If such individual thereafter applies for reinstatement of his license, it shall automatically be reinstated upon payment of all intervening renewal and other fees. If such individual fails to have his license reinstated within five years after the date it is suspended under this section, he shall not thereafter be licensed to practice optometry in the District of Columbia until he shall have passed a practical examination given by the Commissioners and paid all intervening renewal and other fees.

"Sec. 7. (a) The Commissioners are authorized (A) to refuse to renew, or reinstate any license authorized by this Act, and (B) to suspend or revoke any license issued under authority of this Act, for any of the following causes—

"(1) the use of any title or any other word or abbreviation indicating that the licensee is engaged in the practice of medicine or surgery;

"(2) conviction of a crime involving moral turpitude;

"(3) willful violation or repeated violations of any provisions of this Act or any of the regulation promulgated by the Commissioners under this Act;

"(4) gross incompetence;

"(5) chronic or persistent inebriety, or the habitual use of narcotics;

"(6) affliction with a contagious or infectious disease which, in the opinion of the Commissioners, renders the practice of optometry by the licensee or applicant for a license, dangerous to the public health;

"(7) conduct which disqualifies the licensee from practicing optometry with safety to the public;

"(8) advertising directly or indirectly the performance of optometric service or any part thereof, including the furnishing of ophthalmic or optical

material, in any form, manner, or way, or through any medium whether it be printed, audible, visible, electronic, or in any other fashion, except as authorized by regulations issued under section 10 of this Act;

"(9) practicing or offering to practice optometry under any name other than that under which he has been duly licensed;

"(10) soliciting patients by offering free examinations or other gratuitous services, bonuses, premiums, discounts, credit, or any other inducements for the purpose of obtaining patronage;

"(11) the display of any spectacles, eyeglasses, or spectacle frames or mountings, goggles, sunglasses, lenses, prisms, spectacle or eyeglass cases, ophthalmic material, optometric instruments, diagnostic devices, optical tools, or machinery, or any merchandise, material, or advertising in a manner so as to make it visible from the street or the public corridor of a building;

"(12) the display of his license, diplomas, or certificate, in such manner that they may be seen from the outside of the premises where he practices;

"(13) except as provided in section 9, the use of the words 'clinic', 'infirmary', 'hospital', 'school', 'college', 'university', or 'institute' in English or any other language in connection with an activity which is essentially the practice of optometry;

"(14) to cause or permit the use of his name, profession, or professional title or in conjunction with the advertising of his professional services in any form or manner by any person;

"(15) holding himself forth by any means or manner of possessing professional superiority or the ability to perform professional services in a superior manner;

"(16) the employment of or any arrangement, written or oral, with persons who use their efforts or influence to direct patronage to the optometrist;

"(17) practice optometry in any retail, mercantile, or commercial store;

"(18) except as provided in section 9, the practicing of optometry as an employee of and pursuant to any written or oral arrangement with any person other than a duly licensed optometrist;

"(19) any other unprofessional conduct as defined by the Commissioners in regulations issued pursuant to this Act.

"(b) The denial, suspension, or revocation of a license issued under this Act shall be made only upon specific charges in writing and after notice and hearing (unless such hearing is waived). A certified copy of any such charge and a notice of hearing, specifying the time and place thereof, shall be served upon the holder of or applicant for such license to practice as an optometrist in the District of Columbia, at least twenty days before the hearing. The respondent may waive the requirement of hearing contained in this subsection but only in writing. The respondent shall be entitled to counsel and to call witnesses in his defense.

"(c) Upon written application and after hearing, pursuant to notice, the Commissioners may reinstate a license which has been previously revoked, except that no application for reinstatement of a license shall be accepted for consideration prior to the expiration of at least one year following the date on which the applicant's license was revoked.

"Sec. 8. (a) It shall be unlawful for any person—

"(1) to engage in the practice of optometry in the District of Columbia without a valid license issued under this Act so to do;

"(2) to practice or offer to practice optometry under the name of any company, association, corporation, trade name, or business name, or any other name, except his own proper name as appears on the license issued to him under this Act by the Commissioners;

"(3) (A) to sell or fraudulently obtain or furnish any diploma, license, or record required by this Act or required by the Commissioners under authority of this Act, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;

"(B) to practice optometry as an optometrist under cover of any diploma, license, or record required by this Act or required by the Commissioners under authority of this Act, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

"(C) to use in connection with his name any designation tending to imply that he is an optometrist licensed to practice under this Act if he is not licensed to practice under this Act; or

"(D) to practice optometry as an optometrist during any time his license issued under this Act shall be suspended or revoked.

"(4) with the exception of nonprescription sunglasses or nonprescription protective eyewear, to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price cost or any reference thereto, whether related to any eye examination or to the cost or price of lenses, glasses, mountings, or ophthalmic articles or devices;

"(5) to solicit patients or cause patients to be solicited by means of free eye examinations or other gratuitous services, bonuses, premiums, discounts, credit, or any other inducements for the purpose of obtaining patronage;

"(6) if he writes a prescription for another, to receive any part of the sum paid or other valuable considerations paid by such person to a third person for filling such prescription; or for such third person to pay to the person writing a prescription any part of the sum paid or other valuable considerations received by such third person for filling of such prescription;

"(7) other than an optometrist or a physician or surgeon licensed under the laws of the District of Columbia to utilize the services of an optometrist on a salary, commission, lease, or any other basis, or to engage or undertake to engage, directly or indirectly, in any manner whatsoever, in the practice of optometry;

"(8) to display any sign offering ophthalmic materials for sale in violation of any regulation of the Commissioners issued under authority of section 10 of this Act;

"(9) to practice optometry without conspicuously displaying his license and his current annual renewal registration where he practices.

"(b) A violation of any of the provisions of this section shall constitute a misdemeanor and shall be punished for the first offense by a fine of not more than \$500, and upon a second or subsequent conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment in the District jail for not more than one year, or by both fine and imprisonment.

"SEC. 9. (a) This Act shall not apply—

"(1) to any bona fide student of optometry or medicine in the clinic rooms of a school of optometry or medicine approved by the Commissioners;

"(2) to any commissioned officer in the armed services who is engaged in the practice of optometry in the District of Columbia insofar as such practice is in the performance of his military duties;

"(3) to an individual licensed in another jurisdiction who is in the District of Columbia to make a clinical demonstration before a professional society, convention, professional association, school, or college, or agency of government.

"(b) This Act shall not be deemed to require a physician or surgeon licensed under the laws of the District of Columbia for the practice of medicine or surgery to have a license under this Act to perform those services defined by this Act as the practice of optometry.

"(c) This Act, other than section 8, shall not apply to any person who fills the written prescription of a physician, surgeon, or an optometrist, or who repairs or restores eyeglasses or spectacles to their previous condition of usefulness, or who practices optometry as defined in section 3(2)(f), and who does not otherwise practice optometry, but this subsection shall not be deemed to authorize such a person to fit contact lenses.

"(d) Nothing in this Act shall be deemed to prevent—

"(1) an optometric clinic approved by the Commissioners from being conducted on a nonprofit basis by a school or college of optometry or by an association of optometrists;

"(2) an optometrist from being employed by or associated with any hospital, clinic, group health practice, nonprofit health service, health expense indemnity corporation or group, or any department, agency, or instrumentality of the Government of the United States or of the government of the District of Columbia, or as an employee of any person to render optometric service and care solely to employees of such person;

"(3) the executor or administrator of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased licensee during the administration of the estate, or the legal representative of a mentally disabled optometrist from employing a licensed optometrist to carry on the practice of such licensee for a period not to exceed one year;

"(4) a person from acting as an assistant under the direct personal supervision of a person licensed to practice optometry or medicine and surgery provided that such assistant does not perform an act which would require professional judgment or discretion;

"(5) vision screening programs conducted under the direction or supervision of a person licensed to practice optometry or medicine;

"(6) persons from supplying spectacles or eyeglasses on prescription from any licensed optometrist or physician;

"(7) a person from selling nonprescription sunglasses or nonprescription protective eyewear.

"(e) Nothing in this Act shall be deemed to prohibit an optometrist from using the title 'doctor' or any abbreviation thereof except that if he uses such title or such abbreviation it must be with such qualifications as may be necessary to clearly indicate to the public that he is an optometrist.

"(f) Nothing in this Act shall be construed as conferring upon the holder of any license issued by the Commissioners the right to perform surgery upon or to treat diseases of the human eye by the use of drugs or medicine or to write or issue prescriptions for the obtaining of drugs or medicine in any form for the treatment or examination of the human eye.

"Sec. 10. (a) The Commissioners from time to time shall prescribe and adopt such rules and regulations as may be necessary to carry out this Act and govern the practice of optometry and the sale of ophthalmic materials which shall include, but not be limited to, rules and regulations governing the number, size, location, and illumination of signs offering the services of (1) an individual as an optometrist and (2) ophthalmic materials for sale. With respect to the offering of services of an individual as an optometrist, such regulations shall limit the offering thereof to the carrying or publishing of a modest professional card and the display of a modest window or street sign at the location of the individual's practice, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections, and if the practice is so limited the specialty practiced by the individual, and in the case of change of address or the starting of practice, to modest announcements thereof. With respect to the offering for sale of ophthalmic materials, such regulations shall limit the offering for sale thereof to a modest window or street sign at the location of the person's place of business and other modest advertisements. Nothing in this section shall be deemed to authorize any optometric service or ophthalmic materials to be advertised in any manner which includes or contains any price, cost, or reference thereof.

"(b) (1) The Commissioners are authorized and empowered, after public hearing, to establish, abolish, increase, or decrease, from time to time, such fees and charges as are necessary to defray the approximate cost of administering the provisions of this Act.

"(2) All funds derived from fees and charges collected in connection with the administration of this Act shall be paid into the Treasury of the United States to the credit of the District of Columbia.

"(c) The Commissioners shall design and adopt a seal to be used for authenticating records and papers pertaining to the licensing and regulation of optometrists in the District of Columbia. Copies of all records and papers duly certified and authenticated by such seal shall be received in evidence in all courts of the District of Columbia equally and with like effect as the original. Records kept by the Commissioners pertaining to the licensing and regulation of optometrists in the District of Columbia shall be open to public inspection under reasonable rules and regulations prescribed by the Commissioners.

"Sec. 11. The Commissioners may make such inspections, studies, and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this Act, or in the administration or enforcement of this Act and any regulations or rules or orders thereunder. For such purposes, the Commissioners may administer oath and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses, and the production of documents at any designated place within the District of Columbia. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may make application to the District of Columbia Court of General Sessions for an order requiring obedience thereto. Thereupon, the court, with or without notice and hearing, as it, in its

discretion, may decide, shall make such order as is proper and may punish as a contempt, any failure to comply with such order in accordance with section 11-982 of the District of Columbia Code.

"SEC. 12. Whenever, in the judgment of the Commissioners, any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Act, the Commissioners may make application to the District of Columbia Court of General Sessions for an order either temporarily or permanently enjoining such act or practice, and upon showing by the Commissioners that such person has engaged in or is about to engage in any such act or practice, an injunction restraining order, or such other order as may be appropriate shall be granted by the court, without bond.

"SEC. 13. (a) Prosecutions for violations of any of the provisions of this Act shall be conducted in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants.

"(b) An optometrist licensed under this Act shall be considered competent after qualification by the court to present testimony relating to the practice of optometry as defined in this Act. Certificates of visual condition, acuity, and efficiency issued by any duly licensed optometrist under this Act, shall be accepted as qualified evidence of the visual condition, acuity, and efficiency of the person to whom such certificate shall relate, by officers or employees of the government of the District of Columbia in the performance of their duties.

"SEC. 14. No officer or employee of the District of Columbia shall, in the administration of any law applicable to the District of Columbia, deprive any person of his right to exercise his freedom of choice of an optometrist or a physician.

"SEC. 15. The Commissioners are authorized to delegate to the Board of Optometry established by Reorganization Order Numbered 59 all or any part of the powers, duties, and functions vested in them by this Act. The Commissioners are authorized to delegate to any other officer or employee of the government of the District of Columbia all or any part of such powers, duties, and functions. Any delegation made under authority of this section shall be for such periods and subject to such conditions as the Commissioners determine necessary."

SEC. 2. Every license to practice optometry in the District of Columbia which is valid on the effective date of this Act shall continue to be valid under the District of Columbia Optometry Act, as amended by this Act, until such date within one year of the effective date of this Act, as the Commissioners of the District of Columbia fix as the date for the automatic annual renewal for such license under the District of Columbia Optometry Act, and any such license which would have expired between the effective date of this Act and the annual renewal date fixed for such license by the Commissioners under this section shall continue in effect until such renewal date, unless sooner suspended or revoked in accordance with the District of Columbia Optometry Act.

SEC. 3. Subsection (a) of section 11-742 of the District of Columbia Code is amended (1) by striking out "and" at the end of paragraph (9); (2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon; and (3) by adding at the end thereof the following new paragraph:

"(11) final decision and orders of the Commissioners of the District of Columbia denying, suspending, or revoking any license, denying any renewal of a license or reinstatement of a license, pursuant to the District of Columbia Optometry Act."

SEC. 4. This Act shall take effect on the ninetieth day after the date of its enactment.

H.R. 12276, 90th Cong., 1st sess., by Mr. Sisk (for himself, Mr. Dole, Mr. Adams, Mr. Teague of Texas, Mr. Fuqua, Mr. Walker, and Mr. Skubitz) on August 10, 1967

A BILL To amend the Act of May 28, 1924, to revise existing law relating to the examination, licensure, registration, and regulation of optometrists and the practice of optometry in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to regulate the practice of optometry in the District of Columbia", approved May 28, 1924, as amended (D.C. Code, secs. 501-522), is amended to read as follows:

"SECTION 1. This Act may be cited as the 'District of Columbia Optometry Act'.

"SEC. 2. The practice of optometry as a profession in the District of Columbia is hereby declared to affect the public health, welfare, and safety, thus requiring regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry as a profession be limited to qualified persons admitted to the practice of optometry in the District of Columbia under the provisions of this Act.

"SEC. 3. As used in this Act—

"(1) 'Commissioners' means the Board of Commissioners of the District of Columbia or its designated agents;

"(2) 'practice of optometry' means, any one, any combination, or all of the following acts or practices as they are included in the curriculum of recognized schools and colleges of optometry: (a) the employment of any objective or subjective means for the examination of the human eye, including its appendages; (b) the measurement of the powers or range of human vision; (c) the determination of the accommodative and refractive powers of the human eye; (d) the prescription of lenses, prisms, or frames for the aid of human eye; (e) the adaptation, utilization, or furnishing of lenses, prisms, or frames for the aid of the human eye; (f) the prescribing, directing the use of, or administering vision training or orthoptics, and the use of any optical device in connection therewith; (g) the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye; and (h) the identification of any departure from the normal condition or function of human eye, including its appendages;

"(3) 'optometrist' means, except as otherwise provided in this Act, an individual licensed to engage in the practice of optometry in the District of Columbia;

"(4) 'person' means any natural person, corporation, association, company, firm, partnership, or society;

"(5) 'individual' means only a natural person; and

"(6) 'State' means the States of the United States, the Commonwealth of Puerto Rico, and the territories of the United States.

"SEC. 4. The Commissioners shall issue a license to practice optometry in the District of Columbia to any individual who—

"(1) is at least twenty-one years of age;

"(2) is of good moral character;

"(3) is mentally competent;

"(4) has satisfied the Commissioners that he has had a preliminary education equivalent to the completion of a four-year course of study in an accredited high school;

"(5) has completed a preoptometric course of at least two years at college level;

"(6) has graduated from a school or college of optometry approved by the Commissioners after completion of a course of study of not less than four years;

"(7) has passed written, oral, and practical examinations as prescribed by the Commissioners in the following subjects: geometric, physical and physiological optics; theoretic optometry and optics; anatomy, physiology, and pathology, especially as they relate to the eye and to vision; general practice of optometry; special practice of optometry; practical optometric dispensing and such other subject matters as are taught in the schools and colleges of optometry and which the Commissioners deem necessary to determine the applicant's competence to practice as an optometrist. The Commissioners may accept the results of written examinations given by the National Board of Optometry, but shall conduct their own oral and practical examinations. The Commissioners are authorized and empowered to alter, amend, and otherwise change the educational standards at any time, but in altering, amending, or changing said standards, the Commissioners shall not be permitted to lower the same below the standards herein set forth; and

"(8) has paid all the required fees.

"SEC. 5 (a) The Commissioners are authorized to issue a reciprocity license to an individual who holds a license to practice optometry in another State. An applicant for a reciprocity license may, at the discretion of the Commissioners, be licensed without a written examination but the must be given and pass a practical and oral examination. A reciprocity license shall be granted only if—

"(1) the State in which the applicant's license has been granted accords like privileges to the holder of a license to practice optometry in the District of Columbia;

"(2) the license of the applicant shall not have been suspended or revoked by any State for any cause which is the basis for suspension or revocation of a license under this Act (other than for nonpayment of fees) unless such a license has been reinstated by such State and is in full force and effect at the time of the application for a reciprocity license under this section;

"(3) the applicant for a reciprocity license has not failed to pass an examination for a license under this Act in the District of Columbia after his admission to practice in another State.

"(b) If an individual holding a reciprocity license granted under this section fails to actually practice optometry in the District of Columbia within one year after such license has been granted, the Commissioners may revoke such license at any time before such individual actually begins the practice of optometry in the District of Columbia.

"Sec. 6. Every license issued in accordance with the provisions of this Act, subject to the provisions of section 7 of this Act, shall automatically be renewed annually upon application by the holder of the license and payment of the annual renewal fee. Such annual renewal fee shall be fixed by the Commissioners. If the holder of a license fails to renew his license in accordance with this section, such license shall be suspended and such individual shall not thereafter practice optometry in the District of Columbia until such license shall be reinstated or a new license issued to him under this Act. If such individual thereafter applies for reinstatement of his license, it shall automatically be reinstated upon payment of all intervening renewal and other fees. If such individual fails to have his license reinstated within five years after the date it is suspended under this section, he shall not thereafter be licensed to practice optometry in the District of Columbia until he shall have passed a practical examination given by the Commissioners and paid all intervening renewal and other fees.

"Sec. 7. (a) The Commissioners are authorized (A) to refuse to renew, or reinstate any license authorized by this Act, and (B) to suspend or revoke any license issued under authority of this Act, for any of the following causes—

"(1) the use of any title or any other word or abbreviation indicating that the licensee is engaged in the practice of medicine or surgery;

"(2) conviction of a crime involving moral turpitude;

"(3) willful violation or repeated violations of any provisions of this Act or any of the regulations promulgated by the Commissioners under this Act;

"(4) gross incompetence;

"(5) chronic or persistent inebriety, or the habitual use of narcotics;

"(6) affliction with a contagious or infectious disease which, in the opinion of the Commissioners, renders the practice of optometry by the licensee or applicant for a license, dangerous to the public health;

"(7) conduct which disqualifies the licensee from practicing optometry with safety to the public;

"(8) advertising directly or indirectly the performance of optometric service or any part thereof, including the furnishing of ophthalmic or optical material, in any form, manner, or way, or through any medium whether it be printed, audible, visible, electronic, or in any other fashion, except as authorized by regulations issued under section 10 of this Act;

"(9) practicing or offering to practice optometry under any name other than that which he has been duly licensed;

"(10) soliciting patients by offering free examinations or other gratuitous services, bonuses, premiums, discounts, credit, or any other inducements for the purpose of obtaining patronage;

"(11) the display of any spectacles, eyeglasses, or spectacle frames or mountings, goggles, sunglasses, lenses, prisms, spectacle or eyeglass cases, ophthalmic material, optometric instruments, diagnostic devices, optical tools, or machinery, or any merchandise, material, or advertising in a manner so as to make it visible from the street or the public corridor of a building;

"(12) the display of his license, diplomas, or certificate, in such manner that they may be seen from the outside of the premises where he practices;

"(13) except as provided in section 9, the use of the words 'clinic', 'infirmary', 'hospital', 'school', 'college', 'university', or 'institute' in English or any other language in connection with an activity which is essentially the practice of optometry;

"(14) to cause or permit the use of his name, profession, or professional title or in conjunction with the advertising of his professional services in any form or manner by any person;

"(15) holding himself forth by any means or manner of possessing professional superiority or the ability to perform professional services in a superior manner;

"(16) the employment of or any arrangement, written or oral, with persons who use their efforts or influence to direct patronage to the optometrist;

"(17) practice optometry in any retail, mercantile, or commercial store;

"(18) except as provided in section 9, the practicing of optometry as an employee of and pursuant to any written or oral arrangement with any person other than a duly licensed optometrist;

"(19) any other unprofessional conduct as defined by the Commissioners in regulations issued pursuant to this Act.

"(b) The denial, suspension, or revocation of a license issued under this Act shall be made only upon specific charges in writing and after notice and hearing (unless such hearing is waived). A certified copy of any such charge and a notice of hearing, specifying the time and place thereof, shall be served upon the holder of or applicant for such license to practice as an optometrist in the District of Columbia, at least twenty days before the hearing. The respondent may waive the requirement of hearing contained in this subsection but only in writing. The respondent shall be entitled to counsel and to call witnesses in his defense.

"(c) Upon written application and after hearing, pursuant to notice, the Commissioners may reinstate a license which has been previously revoked, except that no application for reinstatement of a license shall be accepted for consideration prior to the expiration of at least one year following the date on which the applicant's license was revoked.

"Sec. 8. (a) It shall be unlawful for any person—

"(1) to engage in the practice of optometry in the District of Columbia without a valid license issued under this Act so to do;

"(2) to practice or offer to practice optometry under the name of any company, association, corporation, trade name, or business name, or any other name, except his own proper name as appears on the license issued to him under this Act by the Commissioners;

"(3) (A) to sell or fraudulently obtain or furnish any diploma, license, or record required by this Act or required by the Commissioners under authority of this Act, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;

"(B) to practice optometry as an optometrist under cover of any diploma, license, or record required by this Act or required by the Commissioners under authority of this Act, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

"(C) to use in connection with his name any designation tending to imply that he is an optometrist licensed to practice under this Act if he is not licensed to practice under this Act; or

"(D) to practice optometry as an optometrist during any time his license issued under this Act shall be suspended or revoked.

"(4) with the exception of nonprescription sunglasses or nonprescription protective eyewear, to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price cost or any reference thereto, whether related to any eye examination or to the cost or price of lenses, glasses, mountings, or ophthalmic articles or devices;

"(5) to solicit patients or cause patients to be solicited by means of free eye examinations or other gratuitous services, bonuses, premiums, discounts, credit, or any other inducements for the purpose of obtaining patronage;

"(6) if he writes a prescription for another, to receive any part of the sum paid or other valuable considerations paid by such person to a third person for filling such prescription; or for such third person to pay to the person writing a prescription any part of the sum paid or other valuable considerations received by such third person for filling of such prescription;

"(7) other than a person licensed to practice optometry, medicine, or osteopathy under the laws of the District of Columbia, to utilize the services of an optometrist on a salary, commission, lease, or any other basis, or to engage or undertake to engage, directly or indirectly, in any manner whatsoever, in the practice of optometry;

"(8) to display any sign offering ophthalmic materials for sale in violation of any regulation of the Commissioners issued under authority of section 10 of this Act;

"(9) to practice optometry without conspicuously displaying his license and his current annual renewal registration where he practices.

"(b) A violation of any of the provisions of this section shall constitute a misdemeanor and shall be punished for the first offense by a fine of not more than \$500, and upon a second or subsequent conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment in the District jail for not more than one year, or by both fine and imprisonment.

"SEC. 9. (a) This Act shall not apply—

"(1) to any bona fide student of optometry, medicine, or osteopathy in the clinic rooms of a school of optometry, medicine, or osteopathy approved by the Commissioners;

"(2) to any commissioned officer in the armed services who is engaged in the practice of optometry in the District of Columbia insofar as such practice is in the performance of his military duties;

"(3) to an individual licensed in another jurisdiction who is in the District of Columbia to make a clinical demonstration before a professional society, convention, professional association, school, or college, or agency of government.

"(b) This Act shall not be deemed to require a physician or surgeon licensed under the laws of the District of Columbia for the practice of medicine or osteopathy to have a license under this Act to perform those services defined by this Act as the practice of optometry.

"(c) This Act, other than section 8, shall not apply to any person who fills the written prescription of a person licensed to practice optometry, medicine, or osteopathy, or who repairs or restores eyeglasses or spectacles to their previous condition of usefulness, or who practices optometry as defined in section 3(2)(f), and who does not otherwise practice optometry, but this subsection shall not be deemed to authorize such a person to fit contact lenses.

"(d) Nothing in this Act shall be deemed to prevent—

"(1) an optometric clinic approved by the Commissioners from being conducted on a nonprofit basis by a school or college of optometry or by an association of optometrists;

"(2) an optometrist from being employed by or associated with any hospital, clinic, group health practice, nonprofit health service, health expense indemnity corporation or group, or any department, agency, or instrumentality of the Government of the United States or of the government of the District of Columbia, or as an employee of any person to render optometric service and care solely to employees of such person;

"(3) the executor or administrator of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased licensee during the administration of the estate, or the legal representative of a mentally disabled optometrist from employing a licensed optometrist to carry on the practice of such licensee for a period not to exceed one year;

"(4) a person from acting as an assistant under the direct personal supervision of a person licensed by the District of Columbia to practice optometry, medicine, or osteopathy provided that such assistant does not perform an act which would require professional judgment or discretion;

"(5) vision screening programs conducted under the direction or supervision of a person licensed to practice optometry, medicine, or osteopathy;

"(6) persons from supplying spectacles or eyeglasses on prescription from a person licensed to practice optometry, medicine, or osteopathy;

"(7) a person from selling nonprescription sunglasses or nonprescription protective eyewear.

"(e) Nothing in this Act shall be deemed to prohibit an optometrist from using the title 'doctor' or any abbreviation thereof except that if he uses such title or such abbreviation it must be with such qualifications as may be necessary to clearly indicate to the public that he is an optometrist.

"(f) Nothing in this Act shall be construed as conferring upon the holder of any license issued by the Commissioners the right to perform surgery upon or to treat diseases of the human eye by the use of drugs or medicine or to write or issue prescriptions for the obtaining of drugs or medicine in any form for the treatment or examination of the human eye.

"SEC. 10. (a) The Commissioners from time to time shall prescribe and adopt such rules and regulations as may be necessary to carry out this Act and govern the practice of optometry and the sale of ophthalmic materials which shall include, but not be limited to, rules and regulations governing the number, size, location, and illumination of signs offering the services of (1) an individual as an optometrist and (2) ophthalmic materials for sale. With respect to the offering of services of an individual as an optometrist, such regulations shall limit the offering thereof to the carrying or publishing of a modest professional card and the display of a modest window or street sign at the location of the individual's practice, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections, and if the practice is so limited the specialty practiced by the individual, and in the case of change of address or the starting of practice, to modest announcements thereof. With respect to the offering for sale of ophthalmic materials, such regulations shall limit the offering for sale thereof to a modest window or street sign at the location of the person's place of business and other modest advertisements. Nothing in this section shall be deemed to authorize any optometric service or ophthalmic materials to be advertised in any manner which includes or contains any price, cost, or reference thereof.

"(b) (1) The Commissioners are authorized and empowered, after public hearing, to establish, abolish, increase, or decrease, from time to time, such fees and charges as are necessary to defray the approximate cost of administering the provisions of this Act.

"(2) All funds derived from fees and charges collected in connection with the administration of this Act shall be paid into the Treasury of the United States to the credit of the District of Columbia.

"(c) The Commissioners shall design and adopt a seal to be used for authenticating records and papers pertaining to the licensing and regulation of optometrists in the District of Columbia. Copies of all records and papers duly certified and authenticated by such seal shall be received in evidence in all courts of the District of Columbia equally and with like effect as the original. Records kept by the Commissioners pertaining to the licensing and regulation of optometrists in the District of Columbia shall be open to public inspection under reasonable rules and regulations prescribed by the Commissioners.

"SEC. 11. The Commissioners may make such inspections, studies, and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this Act, or in the administration or enforcement of this Act and any regulations or rules or orders thereunder. For such purposes, the Commissioners may administer oath and affirmations, may require by subpoena or otherwise the attendance and testimony of witnesses, and the production of documents at any designated place within the District of Columbia. In the event of contumacy or refusal to obey any such subpoena or requirement under this section, the Commissioners may make application to the District of Columbia Court of General Sessions for an order requiring obedience thereto. Thereupon, the Court, with or without notice and hearing, as it, in its discretion, may decide, shall make such order as is proper and may punish as a contempt, any failure to comply with such order in accordance with section 11-982 of the District of Columbia Code.

"SEC. 12. Whenever, in the judgment of the Commissioners, any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Act, the Commissioners may make application to the District of Columbia Court of General Sessions for an order either temporarily or permanently enjoining such act or practice, and upon show-

ing by the Commissioners that such person has engaged in or is about to engage in any such act or practice, an injunction restraining order, or such other order as may be appropriate shall be granted by the court, without bond.

"Sec. 13. (a) Prosecutions for violations of any of the provisions of this Act shall be conducted in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants.

"(b) An optometrist licensed under this Act shall be considered competent after qualification by the court to present testimony relating to the practice of optometry as defined in this Act. Certificates of visual condition, acuity, and efficiency issued by any duly licensed optometrist under this Act, shall be accepted as qualified evidence of the visual condition, acuity, and efficiency of the person to whom such certificate shall relate, by officers or employees of the government of the District of Columbia in the performance of their duties.

"Sec. 14. No officer or employee of the District of Columbia shall, in the administration of any law applicable to the District of Columbia, deprive any person of his right to exercise his freedom of choice of an optometrist or a physician.

"Sec. 15. The Commissioners are authorized to delegate to the Board of Optometry established by Reorganization Order Numbered 59 all or any part of the powers, duties, and functions vested in them by this Act. The Commissioners are authorized to delegate to any other officer or employee of the government of the District of Columbia all or any part of such powers, duties, and functions. Any delegation made under authority of this section shall be for such periods and subject to such conditions as the Commissioners determine necessary."

Sec. 2. Every license to practice optometry in the District of Columbia which is valid on the effective date of this Act shall continue to be valid under the District of Columbia Optometry Act, as amended by this Act, until such date within one year of the effective date of this Act, as the Commissioners of the District of Columbia fix as the date for the automatic annual renewal for such license under the District of Columbia Optometry Act, and any such license which would have expired between the effective date of this Act and the annual renewal date fixed for such license by the Commissioners under this section shall continue in effect until such renewal date, unless sooner suspended or revoked in accordance with the District of Columbia Optometry Act.

SEC. 3. Subsection (a) of section 11-742 of the District of Columbia Code is amended (1) by striking out "and" at the end of paragraph (9); (2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon; and (3) by adding at the end thereof the following new paragraph:

"(11) final decision and orders of the Commissioners of the District of Columbia denying, suspending, or revoking any license, denying any renewal of a license or reinstatement of a license, pursuant to the District of Columbia Optometry Act."

Sec. 4. This Act shall take effect on the ninetieth day after the date of its enactment.

STAFF MEMORANDUM RE BILLS TO REGULATE THE PRACTICE OF OPTOMETRY, H.R. 1283 (SISK), H.R. 595 (FUQUA), H.R. 732 (HULL), H.R. 10075 (SPRINGER)

PURPOSES OF BILLS

To amend 1924 D.C. Optometry Law (approved May 28, 1924, 43 Stat. 177, D.C. Code, Title 2, Secs. 501-522) and set up new and improved standards to conform to those in the fifty states and territories which now require higher qualifications than the District of Columbia.

MAIN PROVISIONS OF BILLS

(1) The bills limit the *practice of Optometry* as a profession to qualified persons admitted under the Act (Sec. 2)—and declare the practice of optometry to affect the health, welfare, and safety of the public, thereby requiring regulation.

Present Law: Optometry is defined as application of optical principles through technical methods and devices (2-501).

(2) *Practice of Optometry is defined* by listing specific acts, or practices included in curriculums of recognized schools and colleges of optometry (Sec. 3(2))—and expands and extends definition to bring it up to date with definitions of other states.

Present Law: Optometry is defined as application of optical principles through technical methods and devices (2-501).

(3) *Requirements for licensure* (Sec. 4)—requires high school diploma *plus* two years college level courses preparatory to professional study and four years professional training at accredited institutions.

Present Law: Requires two year high school course and graduation from a course in optometry of not less than 1000 hours (2-511).

(4) *Reciprocity* with other states (Sec. 5)—provides reciprocity privileges to an individual licensed to practice in another state who passes a practical and oral examination.

Present Law: Does not require examination of applicant for reciprocity license (2-518).

(5) *Revocation, suspension and refusal to grant licenses* (Sec. 7)—prohibits advertising, displays, signs (other than modest announcements) by holders of license, and similar arrangements to solicit or induce patronage. Also prohibits practice as an employee of a person other than a duly licensed optometrist.

Present law: Specifically names the following reasons only for suspension, revocation, cancellation or refusal of a license: crime involving moral turpitude or habitual use of narcotics.

(6) *Unlawful for other persons to engage in practice of Optometry* (Sec. 8)—prohibits the advertising of optometric services or materials which contain price, cost or reference thereto; rebates or kickbacks; other inducements to induce patronage; the payment for the services of an optometrist except by another optometrist; and deceptive practices. Provides penalties for such unlawful acts.

Present law: Is limited to the following: practice of optometry without a license prohibited—misrepresentation—false impersonation—penalties.

(7) *Exemptions from the Act* (Sec. 9)—sets forth a series of exemptions. It provides that a physician or surgeon shall not be required to have a license under the optometry law. Opticians are permitted to fill the written prescription of a physician or an optometrist.

Present law: Physicians, surgeons, persons selling spectacles or eye glasses are not governed by the Act.

(8) *Power of injunction* (Sec. 12)—Commissioners have right to invoke an injunction to restrain a violation.

Present law: No provision for injunction.

(9) *Freedoms of Choice* (Sec. 14)—persons with visual problems related to the practice of optometry cannot be denied their right to obtain the services of an optometrist by any agent or employee of the District of Columbia.

Present law: Does not contain any provision relating to the deprivation of a person's freedom to select between the licensed disciplines who provide vision care.

(10) *Current licenses continue to be valid* (Sec. 15)—holders of licenses on the effective date of the Act continue to be in effect.

Mr. SISK. I might say that several Members have introduced bills on this subject:

H.R. 595 by the gentleman from Florida, Mr. Fuqua; H.R. 732 by the gentleman from Missouri, Mr. Hull; H.R. 10075 by the gentleman from Illinois, Mr. Springer; H.R. 12297 by the gentleman from Minnesota, Mr. Nelsen, along with the gentleman from California, Mr. Clausen; and also as cosponsors of my bill, H.R. 12276, we have the gentleman from Texas, Mr. Teague; the gentleman from Florida, Mr. Fuqua; the gentleman from New Mexico, Mr. Walker; the gentleman from Kansas, Mr. Skubitz; the gentleman from Kansas, Mr. Dole; and the gentleman from Washington, Mr. Adams.

BACKGROUND

The Chairman would like to make a brief statement, prior to hearing testimony this morning, in order to give a little background on this particular legislation.

During the 89th Congress, Subcommittee No. 4, under the chairmanship of the Honorable John Dowdy of Texas, held detailed hearings on similar legislation in March and May 1966. The printed hearing record on optometry before Mr. Dowdy's subcommittee contains almost 400 pages. That record will be incorporated by reference with the testimony which is presented before this subcommittee on the pending bills.

During the last Congress, this Committee received testimony, professional data and exhibits, and arguments from essentially every professional or other occupational group, organization and person directly or indirectly interested in the practice of optometry. Although the record on this legislation is quite complete, the Committee is holding these additional hearings to receive any new and important information which may not already be in the evidence before the Committee.

I strongly suggest that the witnesses who will appear this morning devote themselves to any new information they desire to present to the Committee, and to avoid unnecessary duplication of material already a part of the Committee record.

Let me make it very clear at this point, and I believe I speak for every Member of the Committee, that our concern in these hearings is the visual health of the citizens of the Nation's Capital. Good vision is probably the most important element in the health, safety, and welfare of the people of the community. The public should be assured that the eye care available to the public in the District of Columbia will offer the highest standards and professional skills.

The attention of this Committee will be directed toward progress in this public health area as we consider the statements and testimony on the bills before us today. The public is entitled to the assurance that any person engaged in the practice of optometry achieves his patronage from his skill, ability, and the reputation he creates for the excellence of his professional service and the good visual health of his patients.

PRESENT LAW

The present law governing the practice of optometry in the District of Columbia was enacted in 1924. (Act of May 28, 1924, 43 Stat. 177; D.C. Code Title 2, Sec. 501 et seq.) This Act has not been amended by the Congress since that date. During the 43 years since that law was enacted, every other State in the Union and our territories have amended their laws relating to the practice of optometry or in other ways improved the laws governing such practice to bring them more closely into conformity with modern education and new technical skills developed in the practice of optometry.

The laws relating to the practice of optometry for the District of Columbia need to be modernized and improved. The Board of Optometry receives numerous complaints concerning unethical prac-

tices and the quality of eye care received in some instances. The files of these complaints indicate use of unethical practices and revolving door techniques which were outlawed many years ago in connection with other health related professions.

The public is enticed into some eye care establishments on representations of high professional skills, excellent quality of optical goods, and refunds or adjustments if the patient cannot be fitted or is not satisfied with the service. When these inducements are not realized by the patient, and he is entitled to a refund or an adjustment, he may be advised by the local establishment which extracted the fee for service that he will have to arrange for any refund or adjustment with the home office in New York City. The patient is astonished that such practices exist in the District of Columbia—he is more astonished when he finds that the officials of the District of Columbia, the Board of Optometry, and the prosecuting officers of the District are powerless to act. Yet, this has been and is now going on in the Nation's Capital.

The Congress has recognized Optometry as one of the health professions which is critically short of manpower by including it in the Health Professional Educational Assistance Act in 1963, and again in the Allied Health Professions Personnel Training Act of 1966, which provided for the training of medical technologists, optometric technologists, dental hygienists, the three types of health auxiliaries most needed for health care of the Nation's population. Following the action by Congress this year in extending the Universal Military Training Act, the President singled out optometric students along with medical and dental students for special deferments from the draft in an executive order to implement the draft extension. Further, the Armed Services recently issued a special call for optometrists to serve the vision needs of our fighting forces.

It is the hope of the Committee that we may be able to complete the receiving of testimony on the pending bills today. If not hearings will continue tomorrow. To accomplish this I am asking witnesses to limit their oral testimony to ten minutes per witness and to file any longer and more amplified statements with the Committee if they do so desire. Your cooperation in this respect will be appreciated.

I might say there are several members of Congress who have introduced legislation on this subject, so at this time it is the Chair's intention to recognize any Member of Congress for such brief statement as he might desire to make.

I believe the gentleman from Florida, Mr. Fuqua, who will be sitting with us part of the time, though not a member of the Subcommittee, does have a statement to make.

The Chair recognizes the gentleman at this time.

STATEMENT OF HON. DON FUQUA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FUQUA. Thank you very much, Mr. Chairman and members of the Subcommittee.

Mr. Chairman, I am pleased that this committee is starting work on this bill to regulate optometry in the District of Columbia. I for

one agree wholeheartedly with you that such regulation is indeed a matter for careful consideration by this subcommittee and the House District Committee.

As you know, I have had concern in this area for some time, and introduced a bill last year, as well as H.R. 595 in this Congress, for the purpose of correcting the present antiquated 1924 District of Columbia Optometry Law. My bill, I might add, Mr. Chairman, is virutally identical to your bill, H.R. 1283.

I asked the Library of Congress to supply us with a point by point comparison of H.R. 595 and the existing District Optometry Law. Careful study of that comparison has convinced me of the need for passage of a revised optometry law at the earliest possible moment.

Our foremost consideration should be the good of the public. I would like to submit for the record the Library of Congress analysis of H.R. 595 for the Committee's reference.

To quote briefly from this analysis:

... H.R. 595 would substantially modify the present provisions of 2-501-522 of the District of Columbia Code. The purpose of the modifications is the imposition of exacting requirements over the profession and practice of optometry in the District of Columbia.

The comparison further points out that the present law concerns itself primarily with establishment of a Board of Optometry whose principal functions are the conduct of examinations for licensure to practice optometry and the conduct of hearings to revoke, cancel or suspend licenses. The Library of Congress report also states, "H.R. 595 makes substantial improvements on a Code which has not been significantly amended since its enactment on May 28, 1924 (43 Stat. 177)."

The comparison notes, one of the effects of these various amendments, particularly the definition of the term "the practice of optometry", is to take the adaptation and fitting of contact lenses out of the hands of opticians and placing it exclusively in the hands of physicians and licensed optometrists.

The Library of Congress summarizes the need for a new law. It says:

Significant effects of the bill's provisions setting up a code of conduct and defining unlawful acts with respect to the practice of optometry are: (1) the elimination of price-cost and other bait advertising techniques and practices; (2) the elimination of fee-splitting, rebating or other commission arrangements offered as inducements to obtain patronage; (3) the guarantee of an absolute freedom of choice of a practitioner on the part of the person needing the services of an optometrist with respect to the administration of any law of the District of Columbia; (4) the confinement of advertising of professional services to modest professional cards and announcements, and to modest street or window signs at the place of business; (5) the confinement of the practice of optometry to a professional office by prohibiting its practice in retail, mercantile or commercial stores or premises that are not exclusively devoted to the practice of optometry or other health professions.

This general description clearly outlines the need for and intent of H.R. 595 or similar legislation which we will consider today.

The comparison also points out that no provision in the bill would work to abolish the Board of Optometry. The District Commissioners could continue to delegate all or any part of their powers and authority to such a Board upon whatever terms and conditions as may appear necessary and proper.

The proposed bill clearly spells out what constitutes the practice of optometry, by defining under Section 3 a number of terms used in the Act. These specifics reflect the wide range of procedures for examination and correction of conditions of the eye as currently taught in recognized schools and colleges of optometry and as described in State laws governing the practice of the profession.

Section 4 of the bill establishes much more stringent requirements for licensing to practice optometry in the District of Columbia. The existing law fails to set forth many of the necessary requirements. To mention just one or two for which the new bill provides, the applicant for a license must be mentally competent; must have completed a two-year pre-optometric course at the college level; must pass a written, oral and practical examination in five different fields of scientific knowledge and skills . . . three of which are not spelled out in the present law. These are just a few points which will work to improve the practice of optometry in the District if this bill is enacted into law. There are some 41 additional points in the bill which are not contained in the existing law.

I will mention at this point, that in the Great State of Florida, the profession of optometry is held in high regard. The continuing legislative improvement of our State laws governing the practice of optometry helps to maintain the high quality of the professional practice. It is usually agreed that Florida has one of the better optometric laws in the United States, and we are proud of it.

By comparison with Florida optometric laws, the District of Columbia is far behind in proper control of the practice of professional optometry. Action can and should by now have been taken to clear for passage a vastly-improved optometric law for the District.

I would like to ask permission at this time to make the analyses by the Library of Congress part of the record, Mr. Chairman.

Mr. SISK. Without objection, the request is granted and it will become part of the record following your remarks.

Mr. FUQUA. As you mentioned, Mr. Chairman, it has been since 1924 that there has been any change in the law of optometry in the District of Columbia.

The present law provides mainly for the establishment of a Board of Optometry and that is about the extent of its procedure.

One of the things that I think the new bill provides is the elimination of the price, cost, and other bait advertising techniques and practices, and the elimination of fee splitting and rebating, and other commission arrangements as an inducement to obtain customers, and it also provides for the guarantee of absolute freedom of choice of a practitioner on the part of the person needing the services of an optometrist with respect to the administration of this proposed law.

Then there are changes in advertising and other things. It provides and clearly spells out what constitutes the practice of optometry and also relates to contact lenses.

I think it is very significant that we have this legislation.

(The Library study and analysis referred to follows:)

THE LIBRARY OF CONGRESS,
Washington, D.C. June 8, 1967.

To: House District of Columbia Committee, Attention: Honorable Don Fuqua.
From: American Law Division.

Subject: Comparison and Analysis of H.R. 595, 90th Congress with Corresponding Provisions of the District of Columbia Optometry Act.

Pursuant to your request, there is enclosed herewith a section analysis and comparison of H.R. 595, 90th Congress, with comparable provisions of the District of Columbia Code.

As constructed, H.R. 595 would substantially modify the present provisions of §§ 2-501-522 of the District of Columbia Code. The purpose of the modifications is the imposition of exacting requirements over the profession and practice of optometry in the District of Columbia.

Under the present provisions of the D.C. Code, the concern is primarily with the establishment of a Board of Optometry whose principal functions are the conduct of examinations for licenses to practice optometry in the District of Columbia, and the conduct of hearings to revoke, cancel or suspend licenses for any of the following causes: (1) conviction of a crime involving moral turpitude; (2) habitual use of narcotics, or other substances impairing the intellect and judgment to an incapacitating extent with respect to optometric duties; (3) a conviction for falsely representing oneself as a licensed optometrist; falsely representing oneself as capable of examining the human eye; and, the impersonation of, or claiming to be, a person duly licensed under the Code.

H.R. 595 makes substantial improvements on a Code which has not been significantly amended since its enactment on May 28, 1924 (43 Stat. 177).

In this latter regard, section 2 of the bill declares optometry to be a profession subject to regulation in the interest of public health and welfare, and limits its practice to persons meeting the substantial qualifications and requirements prescribed in the bill. From this declaration, the bill naturally progresses to a definition of the key term "practice of optometry", the educational prerequisites for taking the prescribed written, oral and practical examinations (the latter two being not presently required), and, an outlining of the code of conduct, and the prohibitions, which must be strictly adhered to, and followed, under penalty of revocation, suspension or cancellation of a valid license.

One of the effects of these various amendments—particularly, that of the definition of the term "practice of optometry"—is to take the adaptation and fitting of contact lenses out of the hands of opticians and placing it exclusively in the hands of physicians and licensed optometrists.

Significant effects of the bill's provisions setting up a code of conduct and defining unlawful acts with respect to the practice of optometry are: (1) the elimination of price cost and other bait advertising techniques and practices; (2) the elimination of fee-splitting, rebating or other commission arrangements offered as inducements to obtain patronage; (3) the guarantee of an absolute freedom of choice of a practitioner on the part of the person needing the services of an optometrist with respect to the administration of any law of the District of Columbia; (4) the confinement of advertising of professional services to modest professional cards and announcements, and to modest street or window signs at the place of business; (5) the confinement of the practice of optometry to a professional office by prohibiting its practice in retail, mercantile or commercial stores or premises that are not exclusively devoted to the practice of optometry or other health professions.

While the bill speaks in terms of vesting powers and authority in the Commissioners of the District of Columbia, nevertheless, there appears to be no provisions therein that would work an abolishment of the present D.C. Optometry Board, nor is its abolishment likely in view of the fact that specific provisions in the bill authorize the Commissioners to delegate all or any part of the powers and authority therein granted to said Board upon any terms and conditions as to them may appear necessary and proper.

There follows a comparison of the bill with its corresponding provisions, if any, of the D.C. Code.

ROBERT M. UJEVICH,
Legislative Attorney.

COMPARISON OF H.R. 595 AND PRESENT LAW

H.R. 595

Sec. 1—cites the Act as the "District of Columbia Optometry Act".
 Sec. 2—declares optometry to be a profession subject to regulation in the public interest. Limits its practice to persons qualified and licensed under this Act.
 Sec. 3—defines certain terms used in the Act. The most significant definition is that of "practice of optometry", which is defined in functional terms as: (1) an examination of the eye and its appendages by objective or subjective means; (2) the measurement of the eye's power or range of vision; (3) the determination of the eye's accommodative and refractive powers; (4) the determination of the eye's scope of functions, in general; (5) the prescribing of eye lenses, prisms or frames; (6) the adapting, utilizing or furnishing of the latter to aid the eye; (7) the prescription, application, or direction of visual training or orthoptics, and the use of related optical devices in connection therewith; (8) the prescribing, fitting, or adapting contact lenses for the eye; (9) the identification of abnormal conditions and functions of the eye.

TITLE 2, D.C. CODE

No comparable provision.
 § 502—prohibits unlicensed persons from practicing optometry. No comparable provision respecting professional status, and need for regulation, of the practice of optometry.
 §§ 501, 502—section 501 defines the "practice of optometry" as the use of "... optical principles through technical methods and devices. ..." to examine the eye for visual defects, and adapt lenses for the aid and relief thereof. Section 502 appears to clarify the above definition in making it unlawful to attempt to examine the eyes to determine the kind of eyeglasses needed—unless licensed to do so under the Code.

COMPARISON OF H.R. 595 AND PRESENT LAW—Continued

H.R. 595

Sec. 4.—establishes the requirements for licensing under the Act. In this respect, prospective licensees must: (1) be at least 21 years of age; (2) be of good moral character; (3) be mentally competent; (4) have completed high-school, or its equivalent; (5) have completed a 2 year, college level, preoptometric course; (6) have completed a 4 year course of study at an approved school of optometry; (7) have passed required written, oral and practical examinations in: (a) geometric, physical, and physiological optics; (b) theoretic optometry and optics; (c) anatomy, physiology and pathology especially as they relate to the eye and vision; (d) general and special optometry practice; (e) practical optometric dispensing; (f) such other subjects as may be deemed necessary; (8) pay the required fees. (NOTE: The results of written examinations given by the National Board of Optometry may be accepted in lieu of the written examination required above. The oral and practical examinations, however, may not be waived. There is no similar provision in the present D. C. Code.)

Sec. 5(a)—authorizes the issuance of reciprocity licenses to applicants if:

- (1) their licensing state accords like privileges to licensed District of Columbia applicants;
- (2) their current license is in full force and effect;
- (3) after licensing in another state, they have not failed an examination under this Act;

TITLE 2, D.C. CODE

§ 511—a comparison of the Code provisions with those of the proposed Act is as follows:

- (1) same
- (2) same
- (3) not specifically stated
- (4) same
- (5) No comparable provision
- (6) requires graduation from an approved school of optometry offering a 5 year course of study at college level
- (7) must pass a written examination only, covering the subjects of:
 - (a) physiologic optics—geometric and physical not stated
 - (b) same
 - (c) same
 - (d) no comparable provision
 - (e) no comparable provision
 - (f) see § 512 authorizing the Board of Optometry to change the educational standards
- (8) same. (NOTE: Examination subjects not stated above or included in the proposed Act are: theory and practice of orthoptics and visual training; theory and practice of contact lens fitting).

§ 518—authorizes issuance of reciprocity licenses to applicants if:

- (1) same;
- (2) same;
- (3) they have not previously failed to pass the District of Columbia examination;

(4) they pass the District of Columbia oral and practical examinations.

(b)—authorizes revocation of reciprocity licenses if grantee fails to practice optometry in the District within one year of its issuance.

Sec. 6—requires annual renewal of all licenses issued hereunder upon payment of fees to be prescribed. Non-payment results in *suspension*. Suspended licenses may be reinstated—up to 5 years—upon payment of all intervening renewal and other fees. After 5 years, reinstatement requires payment of all intervening renewal and other fees, plus the taking and passing of the practical examination authorized in this Act.

Sec. 7(a)—sets up 19 causes for the suspension, revocation, and refusal to renew or reinstate licenses under this Act. Briefly they are as follows:

- (1) use of records, abbreviations and titles indicating licensee practices medicine or surgery;
- (2) conviction of a crime involving moral turpitude;
- (3) willful or repeated violations of the Act, and regulations;
- (4) gross incompetence;
- (5) chronic or persistent inebriety; the habitual use of drugs;
- (6) affliction with a contagious or infectious disease dangerous to public health;
- (7) unsafe professional conduct;
- (8) unauthorized advertising of services;
- (9) practicing, or offering to practice, under a name other than that under which he was duly licensed;
- (10) soliciting by means of gratuitous offers, discounts, etc.;
- (11) displaying trade materials, devices, instruments, or advertising in a manner making them visible from the street or public corridor of a building;

(4) no comparable provision. (NOTE: In addition to the above, the licensing state's standard of requirements must be equal to that of the District. No similar provision is to be found in the proposed Act.)

No comparable provision.

§ 514—requires annual renewal of licenses upon payment of the prescribed fee, the non-payment of which may result in a *revocation* upon expiration of the required 60 day notice. Renewals of such licenses may be had upon payment of the renewal fee plus a \$5 penalty. Revocations caused by non-payment, due to retirement, may be reinstated, up to 5 years, upon payment of the renewal fee.

§ 516—sets up the causes for the suspension, cancellation, revocation, or refusal to grant, a license. A comparison of these causes with those in the proposed Act follows:

- (1) § 519 contains an identical prohibition, and extends further to prescribing, diagnosing and treating for diseases or injuries to the eye;
- (2) same;
- (3) no comparable provision;
- (4) no comparable provision;
- (5) use of narcotics, or other substances, to an extent impairing intellect and judgment;
- (6) no comparable provision;
- (7) no comparable provision;
- (8) no comparable provision;
- (9) no comparable provision;
- (10) no comparable provision;
- (11) no comparable provision;

COMPARISON OF H.R. 595 AND PRESENT LAW—Continued

H.R. 595

TITLE 2, D.C. CODE

Sec. 7(a)—Continued

- (12) displaying licenses, diplomas or certificates to outside viewing;
- (13) using certain unauthorized words in connection with the practice of optometry;
- (14) permitting or causing unauthorized advertising of services by any person;
- (15) claiming professional or service superiority;
- (16) employing or arranging with others for the solicitation of patronage;
- (17) practicing optometry in any retail, mercantile, or commercial store;
- (18) practicing optometry, or an employee or otherwise, with anyone other than a duly-licensed optometrist;
- (19) such other unprofessional conduct as may be defined in regulations issued pursuant to this Act.
- (b)—permits supervision or revocation only upon specific written charges and after notice and hearing. Respondent may waive the hearing, and may have counsel and witnesses at any hearing.
- (c)—authorizes reinstatement of revoked licenses upon expiration of one year from date of their revocation.

Sec. 8(a)—makes it unlawful for persons to:

- (1) practice optometry without a valid license;
- (2) practice optometry under other than the proper name appearing on their license;
- (3) (A) aid, abet, or engage, in selling, furnishing or fraudulently obtaining diplomas, records, or licenses required by the Act;
- (B) practice under diplomas, records, or licenses illegally or fraudulently obtained or signed, or issued unlawfully or under fraudulent representation;
- (C) append any designation to his name that implies he is licensed when, in fact, he is not;

§ 516—Continued

- (12) no comparable provision;
- (13) no comparable provision;
- (14) no comparable provision;
- (15) no comparable provision;
- (16) no comparable provision;
- (17) no comparable provision;
- (18) no comparable provision;
- (19) no comparable provision.

§ 517—same.

No comparable provision.

§ 502—makes it unlawful for persons to:

- (1) same;
- (2) no comparable provisions;
- (3) (A) no comparable provision;

(B) no comparable provision;

(C) substantially similar in that it prohibits one from representing himself to be licensed when, in fact, he is not, or, to impersonate a licensee;

- (D) practice under a suspended or revoked license;
- (4) sell prescription eyewear without a written prescription from a licensed physician or optometrist;
- (5) cause to be advertised, or to advertise the price cost of any optometric or ophthalmic material, whether related to eye examinations, the cost or price of lenses, glasses, mountings or ophthalmic articles or devices;
- (6) offer free examinations, services, bonuses, premiums, discounts, credits, etc.; as inducements to solicit, or cause the solicitation of, patients;
- (7) receive rebates or commissions on prescriptions, or to give the same;
- (8) be gainfully employed by a person who is not an optometrist;
- (9) display signs offering ophthalmic materials, for sale, in violation of regulations promulgated pursuant hereto;
- (10) fail to conspicuously display license and renewal certificate in his business premises;
- (b)—prescribes a \$500 fine for conviction of a first violation hereunder; a fine of \$1000, imprisonment for not more than 1 year, or both, for a second or subsequent conviction.
- Sec. 9 (a)—provides that the Act shall not apply:
- (1) to bona fide optometry students in approved optometry schools;
- (2) to armed services optometrists whose practice is in the performance of their military duties;
- (3) to individuals licensed elsewhere while making clinical demonstrations in the District;
- (b)—to physicians or surgeons, licensed under D.C. laws, performing services herein defined as the practice of optometry;
- (c)—to persons filling written prescriptions of physicians, surgeons and optometrists (if Sec. 8 hereof is complied with), and persons repairing or restoring eyeglasses or spectacles, and adapt, utilize or furnish lenses or prisms or frames. But such persons may not fit contact lenses;
- (D) no specific provision, but may be implied from revocation, etc. provisions of § 516
- (4) no comparable provision
- (5) no comparable provision
- (6) no comparable provision
- (7) no comparable provision
- (8) no comparable provision
- (9) no comparable provision
- (10) § 513 requires the license to be conspicuously displayed in his principal office or place of business;
- (b)—§ 502 prescribes a \$500 fine for conviction on a first offense; a fine of not less than \$500 nor more than \$100, imprisonment for not less than 3 months nor more than one year, or both, for subsequent offenses and convictions.
- § 520—provides the Act shall not apply:
- (1) no comparable provision
- (2) no comparable provision
- (3) no comparable provision
- (b)—same;
- (c)—Sec. 520 (b) makes the Act inapplicable to persons selling eyeglasses or spectacles if they do not directly or indirectly adapt them to the eye, and do not practice or profess to practice optometry;

COMPARISON OF H.R. 595 AND PRESENT LAW—Continued

H.R. 595

TITLE 2, D.C. CODE

Sec. 9—Continued

(d) —provides that nothing herein shall be deemed to prevent:

- (1) the conduct of approved non-profit clinics;
- (2) employment as an optometrist with hospitals, clinics, group health practice, nonprofit health service, health expense indemnity corporation or group, or any department, agency or instrumentality of the Federal and District governments;
- (3) employment of an optometrist by the representative of a deceased or mentally disabled optometrist to carry on such licensee's practice for a period not in excess of 1 year;
- (4) properly conducted vision screening programs (by licensed physicians and optometrists).

Sec. 9 (e)—use of the title "Doctor" when such use clearly indicates user is an optometrist.

Sec. 10 (a)—authorizes regulations necessary to carry out the purposes of this Act. Requires regulations:

- (1) limiting advertising of services to a small professional card (containing name, phone, address, specialty, office hours), to modest street or window signs at place of business, and to modest announcements of the removal of offices to a new address, or the opening of a practice;
- (2) limiting advertising (not including references to prices, cost, etc.) of ophthalmic devices, for sale, to a modest window or street sign at the place of business;

(b) (1)—authorizes, after public hearing, the increase, decrease, or abolishment of fees and charges hereunder;

(2) requires all receipts of fees and charges to be deposited in the U.S. Treasury to the credit of the District;

§ 520—Continued

(d) no comparable provision.

§ 505—empowers the Board of Optometry to make all by-laws and regulations necessary to carry out their duties properly. No other provisions in the Code are comparable to remainder of Sec. 10 (a).

§ 514—establish set fees for licenses, renewals, and examinations. No authority granted to change or abolish the set fees.

No comparable provision.

(3) requires the adoption of a seal to certify and authenticate documents. Provides that certified copies of documents shall be received in all courts in the District, and requires records to be open to public inspection.

Sec. 11—authorizes inspections, investigations and studies to gather information for needed regulations, or for the administration and enforcement of the Act. Grants authority to administer oaths and affirmations in this area, issue subpoenas for documents and witnesses, and to apply to the District of Columbia Court of General Sessions for orders to force compliance with subpoenas.

Sec. 12—grants authority to apply to the District of Columbia Court of General Sessions for temporary or permanent injunctions to restrain threatened or actual violations of this Act.

Sec. 13 (a)—requires the Corporation Counsel to prosecute violations hereof in the aforesaid Court of General Sessions;

(b)—provide that licensed optometrist, under this Act, shall be considered, after qualification by the Court, competent in their profession for testimonial purposes, and their certificates relating to visual acuity, condition and efficiency shall be accepted as qualified evidence by officers and employees of the District government in the performance of their duties.

Sec. 14—prohibits officers and employees of the District government from interfering with a person's freedom to choose his own optometrist, if the services of one is required in connection with the administration of any law applicable to the District.

§ 515—requires the Board of Optometry to adopt a seal and license. § 508 requires Board records to be open to public inspection. No specific provisions as to evidentiary quality of certified copies, but as a matter of court practice and rules, certified copies are acceptable in evidence, and § 14-501, D.C. Code provides that a document under seal of the keeper thereof is sufficient proof of the fact of the record, and is *prima facie* evidence of that fact.

No comparable provisions.

No comparable provisions.

(a)—§ 502 is the same, but carries no reference to the court.

(b)—no comparable provisions.

No comparable provisions.

COMPARISON OF H.R. 595 AND PRESENT LAW—Continued

TITLE 2, D.C. CODE

H.R. 595

No comparable provisions.

Sec. 15—authorizes and provides that:

- (1) all functions hereunder may be delegated to the present Board of Optometry, or to any officer or employee of the District government, upon such terms and conditions as may be desirable or necessary.
- (2) licenses currently in effect shall remain in effect until the newly declared renewal date, unless sooner revoked or suspended.
- (3) amends § 11-742, D.C. Code so as to rest jurisdiction in the District of Columbia Court of Appeals to review orders and decisions denying, suspending revoking, or failing to renew or reinstate any license to practice optometry.
- (4) sets the effective date of the Act (90 days after its enactment).

Mr. SISK. Are there any other statements?

Mr. HARSHA. I would like to ask Mr. Fuqua a question, if I may.

Is there any difference between your bill, H.R. 595, in the 90th Congress and the one you introduced in the 89th?

Mr. FUQUA. Yes.

Mr. HARSHA. There are changes?

Mr. FUQUA. Yes. As a result of those hearings, we tried to correct some objections that certain individuals had expressed. There are some minor changes in H.R. 12276 that the Chairman and I introduced last week.

Mr. HORTON. In that connection, could we have a breakdown from the staff for our purposes of the various bills regarding the differences between these bills and those introduced in the last Congress?

Mr. SISK. I think a breakdown is available. To the extent it is not, we shall provide that.

At this time, then, I would like to call to the witness stand our first witnesses, from the American Optometric Association, Dr. W. Judd Chapman, Chairman, Committee on Legislation, and with him Dr. Henry W. Hofstetter.

At this time I again recognize the gentleman from Florida who has some comments with regard to Dr. Chapman.

Before you testify, Dr. Chapman, I would like also to recognize our colleague, Congressman Jacobs, to make some comments.

Mr. FUQUA. I have a distinct honor this morning, gentlemen, in the opportunity to introduce Dr. W. Judd Chapman, an optometrist from Tallahassee, Florida, whom it has been my privilege to know for many years.

Dr. Chapman has attended the University of Florida, preparatory to his graduate work at the Northern Illinois College of Optometry in Chicago, where he was awarded the O.D. degree in 1949. Typical of the modern-day professional optometrist, Dr. Chapman has returned to well-respected schools of optometry to further his education on a post-graduate basis since entering practice, including post-graduate work in the contact lens field at the University of Houston School of Optometry.

Within the past decade, Dr. Chapman has served as President of the Florida State Board of Examiners in Optometry, and he knows very well the laws of our state governing practice of the profession. Within the framework of professional optometric organizations, he is a Fellow in the American Academy of Optometry, and a member of the American Optometric Foundation, as well as an active member of the American Optometric Association which he represents here today.

Indicative of the esteem of his fellow practitioners is the fact that he was chosen by them to serve as President of the American Optometric Association in 1964, and he served the profession with distinction as an outstanding spokesman for optometry and for the improvement of the profession through better education and improved standards of ethical practice.

Dr. Chapman has also given freely of his time in the service of his country, and is currently serving as National Consultant in Optometry for the U.S. Air Force.

I know Dr. Chapman's testimony here today will be most enlightening to the subcommittee, and I feel sure he will welcome any questions you may wish to direct to him.

It is a pleasure for me today to present to the Committee to enlighten us regarding some of the provisions of this bill my good friend, Judd Chapman.

Mr. SISK. I would like to recognize Mr. Jacobs for some comments.

Mr. JACOBS. As a representative from Indiana, I would like to underscore how privileged I think we are today to have with us a gentleman who has distinguished himself in this field of optometry in many ways. He graduated in 1942 from Ohio State University with a Ph.D in Physiological Optics.

Dr. Henry W. Hofstetter is Director of the Division of Optometry at Indiana University in Bloomington, Indiana. His leadership in this important area of study has brought honor to the University, certainly in matters dealing with this profession.

While Dr. Hofstetter is a native of Ohio we are proud to claim him as a full-fledged Hoosier for both his past and present contributions at Indiana University.

Having taught elementary school in the Middlefield, Ohio public schools prior to starting his optometric education, Dr. Hofstetter very early in his career gained a keen firsthand awareness of the importance of good vision, especially as it applied to the ability of students to live and work in an increasingly complex world.

His later positions as instructor and professor of optometry in some of the Nation's top optometry schools and Dean of the Los Angeles College of Optometry prepared him well for his present position with our now famous and growing Division of Optometry at Indiana University.

I might say that is my own alma mater, Mr. Chairman.

Dr. Hofstetter is one of the most requested speakers on the optometric circuit for post-graduate lecture courses around the Nation. He is one of the most published of all American optometrists, writing on a wide range of subjects relating to the scope of modern optometric education and optometric practice. His work includes an important reference work, the Dictionary of Visual Science, as well as 126 other papers, reviews, books and literature on such important aspects to optometry as Vision of the Aging Patient, Night Drivers' Vision, Careers in Optometry, Industrial Vision, and numerous other technical subjects.

Dr. Hofstetter has served in responsible positions within recognized organizations at the local, state and national levels ever since his graduation from optometry college. Currently he serves as President-elect of the American Optometric Association, an organization of over 14,000 professional optometrists, and will succeed to the AOA presidency next June.

He is a man who also has given generously of his time for the visual welfare of the Nation. For example, he recently completed a term as a member of the Advisory Council for the Education of the Health Professions, under appointment by the Public Health Service of the Department of Health, Education, and Welfare.

He is currently a consultant to the Division of Physician Manpower, Bureau of Health Manpower of the Public Health Service.

Dr. Hofstetter is here to supply any additional technical or general information that any committee members may desire after hearing the testimony of Dr. Chapman.

I am sure the committee will benefit considerably from questioning Dr. Hofstetter, particularly with reference to the affluent training of his students in optometry which they receive at Indiana University and the country's other respected schools and colleges of optometry.

I might say, Dr. Hofstetter, both literally and figuratively it is a pleasure to see you here this morning.

Mr. SISK. Thank you.

The committee will be glad to hear from you gentlemen now.

I understand you have a substantial statement which, without objection, will be made part of the record.

**STATEMENT OF DR. W. JUDD CHAPMAN, CHAIRMAN, COMMITTEE
ON LEGISLATION OF THE AMERICAN OPTOMETRIC ASSOCIATION;
ACCOMPANIED BY DR. HENRY W. HOFSTETTER, DIRECTOR OF
THE DIVISION OF OPTOMETRY, INDIANA UNIVERSITY; AND
HAROLD KOHN, GENERAL COUNSEL, AMERICAN OPTOMETRIC
ASSOCIATION**

Mr. SISK. You may proceed to make any other statement you desire.
(Dr. Chapman's prepared statement follows:)

**STATEMENT OF W. JUDD CHAPMAN, O.D., ON BEHALF OF THE AMERICAN OPTOMETRIC
ASSOCIATION**

Mr. Chairman, members of Subcommittee Number Five, of the House District Committee, it is a pleasure to appear before you today and to speak in support of H.R. 1283.

I am Dr. W. Judd Chapman, practicing optometrist from Tallahassee, Florida, and Chairman of the American Optometric Association's Committee on Legislation.

PURPOSE OF BILL

The purpose of the bill is simple. It elevates the practice of optometry in the District of Columbia to the level of a profession as recognized in the other states and territories of our Union. By doing so, it takes away from the unlicensed, the unqualified and the unscrupulous the power to use the license of an optometrist for selfish profit-motivated purposes. It also places some limits on those who would lure the public to a commercial establishment for the primary purpose of selling them a pair of glasses at a profit.

Those who oppose this bill do so because it limits their ability to make a gain from the practice of optometry. I submit, Mr. Chairman, that the usual rule of the market place should not apply to the practice of optometry. The classical, free market, supply-and-demand system of economics, cannot, by itself, effectively control or regulate today's practice of optometry. An essential feature of a free market operation is wide open competition to contain prices and to promote quality of the product. We, of the American Optometric Association, recognize the great value of the American system of free competition. We are an organization of competing individuals but we have banded together for the purposes of better service to the public and we recognize that there must be limitations placed on the manner and scope of our competition for the protection of the public.

The consumer finds it far more difficult to judge the quality of health service he receives than he does the quality of other types of services and products of the market place. He usually has only a vague and often erroneous understanding of the kind of optometric service he needs, and a very inadequate basis for judging the qualities of service he receives. Usually in the fields of medicine and dentistry he can at least judge whether there is less or more pain or discomfort

following the services received. This is not generally true in the field of optometry where there is rarely any pain connected with the abnormalities or deficiencies requiring correction. We submit there is need for greater regulation of the practice of optometry than in most of the other health services and that there is less of it in the District of Columbia than in the other states and territories.

The end product of optometric service—good vision—is essential to the every day work, education and pleasure of the consumer. The only real competition is among its providers who compete with each other for a larger sale of nearly guaranteed sales (almost everyone needs vision care at some point in a lifetime). This type of competition does little to contain costs; frequently it tends to drive costs up rather than down. Moreover, there is little cause-and-effect relation between the quality of the usual end product of service—eyeglasses or contact lenses—and the price to the consumer.

Mr. Chairman, eyeglasses have no resale value to a consumer as have most of the marketplace products. I would not give you a dime for any eyeglasses you may be wearing and you probably would not give me one red cent for mine. Their value is unique and individual to the consumer and tied to the quality of the examination and prescription which lies within them. Any possible other value would have to lie in the gold or precious metal content of the frame or in any valuable stones such as diamonds or rubies that might be imbedded in the frame. This is why, early this year, in the AOA's testimony to the Senate Subcommittee on Anti-Trust and Monopoly, holding hearings on "Medical Restraint of Trade," we agreed with the view that a doctor should not profit from the sale of products to patients. It is the position of the American Optometric Association that its members should supply any material items required by their patients at the actual laboratory cost charged optometrists by their suppliers. The Association's "Manual of Professional Practice for the American Optometrist" states: "The optometrists' records should show clearly that his net income is based on fees for professional service, not on markup of ophthalmic materials." We challenge any of those opposing this bill last year or this year to show that they have a comparable policy.

The most stringent of the regulations over the providers of optometric service are in Section 7 of the bill beginning on page 6. Since this section relates only to how an optometrist's license can be suspended, revoked, renewed or reinstated it pertains solely to members of my profession. Mr. Chairman, many of our members in the District of Columbia will have to change their mode of practice, and in some instances it will be expensive for them to do so, yet all agree that for the protection of the public these restrictions should be placed upon their practice.

There are those opposing this bill who have said that Section 7 is all right because it restricts only the optometrists of the District. They oppose any restrictions, however, which are in other parts of the bill. Mr. Chairman, I submit that if it is important to regulate optometrists in the practice of optometry, how much more important it is that those not possessing the six years of training in optometric schools and colleges be regulated. They are not examined or licensed as are our members each year. The Act exempts them from these requirements yet they may engage in all or part of the practice which is dedicated to care of God's most priceless gift to us—our vision. This description may help you understand why we in the AOA feel so strongly about protecting the consumer from exploitation by poorly trained, non-licensed entrepreneurs who would reap an unnecessary profit from the distress of the visually needy. Government intervention is necessary if appropriate controls are to be effective. It is indeed unfortunate that voluntary controls are inadequate but such is the case and it will always be so because of the differences between the "health industry" and other industries, and especially because of the essentiality of good health to human endeavor and progress. Among all the goods and services in today's marketplace, vision care is the most difficult for the ordinary customer to shop for intelligently.

The practice of optometry as defined in Section 3 on page 2 is limited to acts or practices that are included in the curriculum of recognized schools and colleges of optometry. There are ten of these schools and colleges accredited by the Council on Optometric Education through the National Commission on Accrediting which is recognized by the U. S. Office of Education for that purpose. Each grants the Doctor of Optometry degree upon completion of the course. The length of pro-

fessional curriculum is the same four years required for medical, osteopathic, dental, veterinary and podiatry doctors, with an additional two years of pre-optometry training at the collegiate level. You will find that we have as many or more years of actual professional training than any other professional discipline and the curriculum is as difficult if not more difficult than most.

Yet, there are many of those opposing the bill who oppose it on the basis that it recognizes optometry as a profession thereby expanding the scope and definition of the practice of optometry. This is probably the most important question before your committee. Is optometry a profession with all that word implies in terms of responsibility for the public welfare?

LEGAL OPINIONS

Recently the Corporation Counsel for the District of Columbia in the brief for appellee in *Norman Fields v. District of Columbia*, quoting the United States Court of Appeals in *Evers v. Baubaum* (1958) 102 U.S. App. D.C. 334, 235 F. 2d 356, stated that the primary aim of Congress in enacting the optometry statute " * * * was to insure that the service would be rendered by competent and licensed persons and thereby to protect the public from inexperience."

We of the American Optometric Association, concur with this statement but believe it is not sufficiently stated. The care of vision requires the use of professional judgment and discretion and should be limited to professional persons whose education has been accredited as that required for members of a health profession by the nationally-recognized accrediting authorities.

We prefer the statement made by Justice Heher, speaking for the New Jersey Supreme Court, in the matter of *Abelsons, Inc. v. N.J. Board of Optometrists*, 5 N.J. 412, 418 (1950), " * * * optometry is not a mere trade or craft; rather it is 'an applied branch of the science of physiological optics, directed to the improvement of visual acuity through the correction of refractive errors.' Thus, the practice of optometry is subject to regulation for the protection of the public against ignorance, incapacity, deception, and fraud, 'equally with the practice of ophthalmology and other learned professions.'" *Id.*, at p. 419.

Of all the arguments set forth before this Committee we are most distressed by the opposition from Walter N. Tobriner, President of the D.C. Board of Commissioners, who must administer and enforce this Act. We believe the arguments Mr. Tobriner makes are based on antiquated and outworn decisions coupled with those he has received from medical and optical friends. To help him and you determine the professional status or lack of it for optometry in the District I would like to refer you to the statements he has made in opposition to this bill and, hopefully, to counter them.

First let me state that the characterization of optometry as a profession serves more than a merely honorific purpose. It carries with it significant legal consequences. Recently the Supreme Court of Georgia handed down a ruling against the commercial employment of optometrists by noting that the legislature had declared optometry to be a learned profession [*Pearle Optical of Monroeville, Inc., et al v. Georgia State Board of Examiners in Optometry*, (1963), Case No. 22109, Docket No. 611.] A case upholding a prohibition of "bait" advertising before the Supreme Court of Michigan turned on the finding that optometry was a profession, despite the lack of any express legislative statement to that effect. (*Seifert v. Buhl Optical Co.*, 275 Mich. 692, 286 N.W. 784.)

Even where the courts have not explicitly referred to optometry as a learned profession, they have shown no hesitance in thrusting upon optometrists the responsibilities and liabilities which are derived from this legal category. The extent of the optometrist's duty to recognize ocular pathology serves as a case in point. A definite responsibility in this area commensurate with the status of medicine, has been created by the rulings in state courts within the past thirty years. (*Hampton v. Brackin's Jewelry and Optical Co.*, 237 Ala. 212 [1939]; *Liebman v. Conn. State Board of Examiners in Optometry*, 130 Conn. 344 [1943]; *State v. Standard Optical Co.*, 182 Oregon 452 [1947]; *Evers v. Baubaum*, 102 App. D.C. 334, 253 Fed. 356 [1958].) It is interesting to note that this trend of decisions coincides, with the tendency, originating at the same time, to define optometry as a profession, by legislation.

Mr. Tobriner's statement in opposition to this bill begins with a court decision [*Silver v. Lansburgh and Bros. et al.*, 72 App. D.C. 77, 111F. 2d 518 1940]. The key paragraph in that decision which has given the most difficulty is the one which states:

"We find nothing in this statute to indicate that Congress intended to prohibit corporations from employing licensed optometrists. Its primary purpose was to insure that the services would be rendered by competent and licensed persons and thereby to protect the public from ineptness. * * *

I break the quotation at this point to say that this is about all that can be accomplished for the public under the present law. The problem this bill attempts to attack is how to also protect the public from the unscrupulous. To continue the quotation:

"* * * That purpose may be fully accomplished, though the person rendering the service is employed by a corporation."

The American Optometric Association believes this decision is one of the biggest obstacles to protecting the public from those who would employ the license of an optometrist primarily for their own selfish gain.

The court in *Silver v. Lansburgh* said further:

"Appellants, in the main, have their claim for injunctive relief upon the ground that optometry is a learned profession, the very nature of which, they say, prohibits the practitioner thereof from any affiliation or connection with a corporation or non-optometrist. * * *

"The [trial] court found that optometry is a mechanical art which requires skill and a knowledge of the use of certain mechanical instruments and appliances designed to measure and record the errors and deviations from the normal found in the human eye, but is not a learned profession comparable to law, medicine, and theology, and that, though certain standards of education are prescribed by the statute and by rules of the board created under it, optometry is not a part of medicine. The court was, therefore, of opinion that neither defendant is engaged in the practice of optometry contrary to the statute. * * *

Mr. Chairman, we believe the court in this case was not adequately informed of the scope of optometry or its training and erred in its judgment that optometry is solely a mechanical art using mechanical instruments and appliances. The definition is one dating before 1924. The decision further appears to be predicated upon the wording of the definition of optometry as contained in the 1924 Act and not upon the modern day practice of the profession.

To buttress its case, the Court stated that optometry is not a part of the practice of medicine. We agree. Optometry is an independent coordinate health profession and it is so recognized by the U.S. Department of Health, Education and Welfare. With this statement you will find a letter addressed to the Hon. Henry Helstoski, Congressman from the Ninth District of New Jersey, from Dr. Philip R. Lee, Assistant Secretary for Health and Scientific Affairs. I wish to quote only one sentence from that letter which comes under the heading "*H. Acceptance of optometry as a coordinate discipline and profession.*"

"The profession of optometry is accepted by the Department as a legitimate and essential health profession which is performing highly useful functions in promoting solutions to the eye health needs of this Nation."

Following its statement that optometry is not a part of medicine, the court then reasoned that optometry might therefore be "subjected to commercialization and exploitation" in the following line of argument:

"* * * In the recent case of *United States v. American Medical Association* (decided March 4, 1940) [72] App. D.C. [12 110F. 2d, 703, we pointed out that the practice of medicine in the District of Columbia is subject to licensing and regulation, and we stated that, in our opinion, it might not be lawfully subjected to commercialization and exploitation. We cited many authorities holding that a corporation engages unlawfully in the practice of medicine when it employs licensed physicians to treat patients, itself receives the fee, and the profit objective is its main purpose, the arrangement being such as to divide the physician's loyalty and destroy the well recognized confidential relation of doctor and patient. This brings us, then, to consider whether this rule applies to the practice of optometry.

"Many states have similar or nearly similar statutes, but their courts have disagreed on whether optometry is a learned profession. We have considered the

cases, and are of the opinion the best considered adopt the view that optometry is not 'one of the learned professions'."

May I break in here again, Mr. Chairman, to say that despite the court's statement in the *Silver v. Lansburgh* case, there is ample legal authority for the proposition that optometry is a profession rather than a narrow technical calling or trade as defined in the 1924 District of Columbia Optometry Law. A significant number of jurisdictions have enumerated this idea as a principle of judge-made or statutory law. The Colorado law is an example of such a statutory expression of policy:

"The practice of optometry in the State of Colorado is hereby declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is hereby declared to be a learned profession and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article be limited to qualified persons admitted to the practice of optometry in the State of Colorado under the provisions of this article. This article shall be liberally construed to carry out these effects and purposes in accordance with this declaration of policy."

A judicial example to the same effect is *State ex rel. Standard Optical Company v. Superior Court for Chelan County*, (135p. 2d 839, 841, 17 Wash. 2d 823). In its holding that Court stated:

"* * * The legislative intent to place optometry in the same general category as the profession of law, medicine and dentistry clearly appears. Beyond question, the practice of optometry affects the public health and welfare. "The Supreme Court of Massachusetts, in the case of *McMundo v. Getter*, 298 Mass. 363, 10 N.E. 2d 139, followed many cases cited in the opinion, held that optometry is a profession rather than a trade. With this holding we are in entire accord."

In the case of *State ex rel. Beck v. Goldman Jewelry Co.*, 142 Kan. 881, 51 p 2d 995, 1001, 102 A.L.R. 334, the Supreme Court of Kansas held:

"It is our judgment that under our statutes, the legislature, having in mind the protection of eyesight is just as important as the protection of property rights and advice thereon, as the protection of the teeth, as the protection against improper and unauthorized methods of healing, by the enactment of the statutes with reference to optometry, recognized it as a profession and accordingly regulated it, and an examination of those statutory regulations conclusively shows that the practice of the profession is limited to individuals, and that corporations cannot be chartered to engage therein. Not only is the holding a necessary consequence of our statutes, but it is in accord with the weight of authority. * * *"

"Stronger language might be used to characterize them, but as we view them, the contract of employment and the lease in connection with it are devices to avoid the provisions of our statutes with reference to practicing optometry, and cannot avail the defendants."

The approach to the practice of optometry by these authorities is far more modern than that of the U.S. Court of Appeals in *Silver v. Lansburgh*. The court quoted a 1929 history of optometry as the expert source of its information about our profession. As quoted by Commissioner Tobriner in his letter to the Chairman of this Committee the *Silver v. Lansburgh* court said:

"Optometry is said by a well known writer on the subject not to be a part of medicine 'either by inheritance, basic principles, development of practice.' It is 'an applied arm of optical science resting upon the work and discoveries of physicists and opticians through the ages down to modern times. It does not treat the eye, whether in health or disease, but adapts the light waves which enter the eye, in accordance with optical principles so as to produce focused and single vision with the least abnormal exertion on the part of the eye.'"

Arrington's History of Optometry, p. 24 (1929)

"* * * There is no more reason to prohibit a corporation, organized for the purpose, from employing licensed optometrists, than there is to prohibit similar employment of accountants, architects, or engineers. We know of no instance in which the right in any of those cases has ever been challenged, though universally all are deemed professions."

"* * * We think the lower court was right in denying injunctive relief, and the decree is, therefore, affirmed with costs."

We have been informed, Mr. Chairman, that it will take an Act of Congress to

overcome the judgment of the court in *Silver v. Lansburgh*. That is why we are here before you again today.

In response to the Court's argument in that case, we also point out that accountants, architects, or engineers, although members of laudable professions, are not engaged in the field of health as are optometrists.

I submit, Mr. Chairman, that the optometrist is in a special position to safeguard public health. Every year millions of people receive eye examinations by optometrists. It is safe to assume that the great majority of these do not suspect the existence of physical ailments and would not ordinarily have an examination for symptoms of ill health. But, among these millions are many whose eyes reveal incipient pathological conditions which special attention might check or cure.

Every vision examination should be initiated by a careful examination of the eyes with the sole purpose of determining the exact status of those eyes in regard to the presence or absence of pathology. Optometry has done this for many years and their educational centers have taught optometrists to make the necessary diagnostic tests and even more important have taught them to do the skillful diagnostic work necessary to differentiate the normal eyes, free from pathology, from the abnormal pathological ones.

Tests to investigate and study the interior of the living eye by means of an instrument called the ophthalmoscope are taught to every optometrist. He is also taught to make a searching examination or inspection of the interior or outer portion of the eye using high magnification and focal illumination to assist him in this portion of this investigation. He is taught to explore the visual fields by means of perimeters and tangent screens, a form of diagnostic technique of value in certain cases of serious involvements. These are all tests used to determine the presence or absence of disease. In fact, all of the diagnostic tests which can be made of the living eye are taught optometrists who are then examined by state boards of optometry on their proficiency in making these tests.

The majority of pathology affecting the eyes is revealed by use of the ophthalmoscope. The medical student receives only a few hours in the use of the ophthalmoscope whereas an optometry student uses an ophthalmoscope clinically for two years before he graduates, and all during this time he is studying ocular pathology as well as general pathology. Mr. Chairman, I would like, at this point, to submit for the record of your hearing a paper entitled "Optometric Training in Detection of Ocular Pathology."

In the text book *The Optometrists' Handbook of Eye Diseases* written by two eminent physicians, Joseph I. Pascal, M.D. and Harold C. Noyes, M.D., printed by C. V. Mosby Company, the authors on page 19 stated the following:

"In any survey of the care of the eyes in civilized communities, it will be found that the great majority of citizens depend for the relief of their common visual disturbances on refracting opticians, ophthalmic opticians, and, in America, optometrists. *This means that the first line in detecting early disease processes and frequently in preventing blindness is held by these practitioners.* Hence, the great importance of learning (is) to detect signs which point to derangements of the eyes or to the body in general * * *

The authors state in their preface:

"* * * The importance of the subject can be appreciated from the fact that the optometrist in the course of his professional work is bound to come in contact with eyes which may be diseased. In fact, he may be the first to come across diseases of the eye which, because of their unobtrusive nature, that is, *lack of startling objective or subjective symptoms*, may send the patient to the optometrist first: e.g., glaucoma simplex, diabetic retinopathy. Sometimes the eyes he sees may be in a stage of active inflammation, or they may present the sequela of some previous disease which has already run its course.

"Thus, the optometrist is the most important member of the healing profession with regard to the patient getting the quickest medical or surgical service. To perform this service successfully, he need only know, sometimes merely suspect, pathological deviations from the normal. This is his principal concern. Of course, he must also be sufficiently familiar with the physiological deviation from the normal so as to know when a referral to the medical practitioner is necessary and when it is not. Differential (pathological) diagnosis is only of secondary interest to him.

"Differential diagnosis is a large and difficult field. A medical specialist with all his training in this direction, with many facilities for making all kinds of auxiliary tests, is sometimes unable to make a differential diagnosis."

The Commissioner expressed the view that the prohibitions relating to advertising by optometrists do not serve the best interests of the general public and should be deleted from the bill.

The Commissioners testified for deletion of those provisions of the bill relating to advertising and the hiring of an optometrist by anyone other than another optometrist. We do not believe the Commissioners would have made the same recommendation if the bills before you were to regulate either the practice of medicine or dentistry. We do not understand their objection when the issue is the regulation of the practice of optometry.

Because of the highly personal nature of services rendered and the unique individual needs of each patient, adequate vision care is a highly complex service which does not lend itself to production line methods. The advice of efficiency experts and the short-cuts resulting from time-motion studies do not lend themselves to an environment where professional services are rendered according to individual needs and where each patient must have as much time as required in order to adequately care for his particular vision problems.

Section 4 of the Oklahoma Optometry Act reads as follows: "No person, firm, or corporation engaged in the business of retailing merchandise to the general public shall rent space, sublease departments, or otherwise permit any person purporting to do eye examinations or visual care to occupy space in such retail store."

In upholding this section of the Oklahoma Optometry Act, the U.S. Supreme Court in *Williamson v. Lee Optical* said in part, and I quote:

"It seems to us that this regulation is one the same constitutional footing as the denial to corporations of the right to practice dentistry. It is an attempt to free the profession, to as great an extent as possible, from all taints of commercialism. It certainly might be easy for an optometrist with space in a retail store to be merely a front for the retail establishment. In any case, the opportunity for the nexus may be too great for safety if the eye doctor is allowed inside the retail store."

The members of the American Optometric Association subscribe to and abide by the Rules of Practice as adopted by its House of Delegates on June 28, 1950, among which are rules:

"(B) No member shall practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

"(J) No member shall use other than his professional card on or in any publication or in any public display; said card shall not exceed two (2) columns by two (2) inches, and it shall not contain any more than his name, profession, address, telephone number, office hours, eye examinations by appointment, practice limited to * * * (any one optometric specialty). Educational materials may be published only when it has been specifically approved by the Executive Committee of the respective state association.

"(K) No member shall use bold face type or in any other manner attempt to attract special attention to himself in any telephone or other public directory.

"(L) No member shall display any merchandise, ophthalmic material or advertising of any kind in windows or in any room of his office for the purpose of inducing patronage."

In the mercantile atmosphere, the level of vision care is lowered to the level of the average marketplace where the philosophy of *caveat emptor* (let the buyer beware!) prevails. The hallmark of this type of operation is big-splash advertising claiming "low prices," "easy credit," "fast and accurate service."

An article appearing in REDBOOK magazine, November, 1952, was titled the "Racket in Eyeglasses." It reported:

"Featuring for the most part, low prices and speedy service, these unethical practitioners attract the very patients who can least afford to tamper with their eyesight—young people just starting their careers, young marrieds just beginning to shoulder enormous responsibilities, and—this perhaps, is the most serious of all—an alarming number of young children. In all I visited more than 50 eyecare

shops—those with the biggest signs, the biggest advertisements, those that seemed to be getting the bulk of the trade.

"The routine with small variations was the same—a quickie examination leading inevitably to a pair of glasses * * *. A complete eye examination on an initial visit requires an hour or more. Yet the longest examination received lasted fourteen minutes and the rest averaged about eight minutes * * *. If (the optometrist) is a mere employee in a mass production eye-care shop and has a profit-minded boss urging him to rush the patients through, he cannot possibly do a competent job, even if he wants to."

GOOD HOUSEKEEPING in its April, 1959 issue wrote:

"As a rule, cut-rate eyeglass dispensers have examiners on the premises. The examination they give rarely takes more than 15 minutes. Most ophthalmologists and optometrists say a complete examination requires at least 45 minutes."

An article in SCIENCE DIGEST, September, 1960, said:

"One firm, for example, claims that it can fit (contact) lenses for \$29.95 in one sitting with 'satisfaction guaranteed' * * *. A third concern says about its contacts: 'We wear them up to six months without removal.'"

TIME MAGAZINE reported on February 8, 1960:

"Get-rich-quick operators swarmed into the (contact lenses) field, advertising directly to eyeglass wearers through the lay press and classified telephone directories * * *. In an uphill fight to crack down on these fringe operators, the Federal Trade Commission found most of their claims untrue."

Dozens of articles have appeared in our nation's leading magazines, such as those just highlighted, which sound a warning to the public of the dangers of unscrupulous operators in the field of vision care.

The problems involved with unethical practices in this area are: (1) "bait" advertising, (2) the lack of adequate time for thorough examination and service, (3) the lack of quality materials and (4) consideration of profit motive above consideration of the patients best interest.

The materials used in spectacles from commercialized eyecare shops are usually rejects of such a low quality that no ethical professional person would think of prescribing them for a patient. This would be comparable to a physician prescribing rejected drugs or medicines. These reject glasses wholesale for about \$1.00 per paid and are "retailed" for about \$15.00.

Unfortunately, many thousands of our elderly citizens, attempting to save on their pensions, are baited into mercantile and unethical establishments hoping to save a few pennies on their vision care for a rainier day. Many of them lose their vision because of unsuspected pathological conditions which went undetected during the quickie examinations they received. Changes in vision in the elderly may be symptomatic of eye conditions or bodily diseases, most of which would be disclosed by a thorough eye examination and many of which could be corrected if discovered and given early treatment.

No one questions the professional status of lawyers, physicians or clergymen. They would not be confident in these professions, however, if they found that their religious services, legal advice, or medical care were advertised or marketed by a mercantile establishment. Similarly, the specialized health care practiced by optometrists is suspect in such locations.

So far we have described the legal status of optometry as a profession according to the determinations of courts or legislatures. I should point out here that at least five states qualify optometry as a "learned" profession in their state statutes. But, it is not necessary to rely on the citation of bare legal authority to establish that optometry is a profession. There is extra-legal basis for this view.

An analysis of a profession would show the following as key factors:

1. The professional defines the need of his patients, rather than does the recipient of the services.
2. There is a proper rapport between the professional person and the recipient of his services. Thus the efforts of a physician, a clergyman, or a lawyer are very ineffective if the one requesting the service has no confidence in his ability.
3. Generally, the professional person gives services which are terminal and conclusive, while the tradesman can repeat his service or sale if there is error.

4. The trades usually can create subdivisions of labor or services as represented by assembly-line techniques. The professional must be a generalist, with overlapping and only general divisions possible. Only menial aspects are delegable.

5. The criteria of excellence and satisfactory service in the trades are usually related to material products, while in the professions these criteria are most characteristically in the physical or spiritual factors of life, itself.

6. Usually, the tradesman can make use of the actual number of clock hours of work or the profit on the quantity unit of the material product as a basis of computing his earnings, whereas the income of the professional person usually is based on a multiplicity of factors not so clearly related to the immediate sales value of his services.

7. The most extensive educational programs are found only among the professional, and the shortest ones among the trades. The objective of the trade or technical occupation is production. In the professions there is characteristically a broad foundation course which precedes a program of integration of the sciences related to the profession and a program of indoctrination related to the functions of the profession.

8. Another differentiation criterion of some merit is the related freedom of judgment in making decisions and in the choice of techniques accorded the professional man as compared to the technician.

9. It is easier for a lay person to evaluate the quality of the service rendered by a technician or a tradesman than that of a professional because it is predicated upon intangibles such as the character, qualifications, and the judgment of the professional.

10. Professional skill is not improved by mere repetition; it generally requires supplementary study or research in technical work. The experience gained in doing the work itself constitutes the major basis for developing further or superior skills.

If you will apply the criteria just given to the field of optometry I believe that you must classify optometry among the highest levels of the professions. It is quite apparent that the recipient of vision care does not prescribe the service he is to receive. The diagnosis, the "evaluation of the actual vision needs," must be made by a professional person. An effective accomplishment of the necessary service, successful vision care, depends to a great extent upon the relationship between the optometrist rendering the services and the person receiving them—an all-important empathy. The important element in the service of the optometrist is the process, the evaluation, through the exercise of professional judgment. Unlike the services of a technician who is engaged in a mechanical art, the services of an optometrist do not culminate in an end to the process itself. The vision services are comprehensive. They overlap, without an assembly-line allocation possible, as in a technical process. The process of examination, diagnosis, and care depends upon the skill, character and education of the optometrist. That is why the optometrist does not place a price tag on the appliance that he dispenses, but instead charges on the basis of the intangibles that go into his professional service. Vision care requires a broad educational background, interdisciplinary in scope, coupled with theoretical, laboratory, and clinical training.

The basic decision before your committee is whether optometry in the District of Columbia in this year of 1967 is an independent co-ordinate health profession to be regulated in the same fashion as the other health professions such as medicine, osteopathy and dentistry or whether it is simply a mechanical art as described in the Act of 1924.

Mr. Chairman, we have faith that the judgment of this Subcommittee will be for optometry as a profession and that it will favorably act upon the bill before it making only minor amendments to clarify its intent which is to improve the practice of optometry in the District of Columbia for the benefit of persons who reside therein or visit our Nation's Capital City. If there are any questions, both Dr. Hofstetter and I will be pleased to attempt to answer them. Thank you for giving me this opportunity to speak on behalf of the American Optometric Association.

ATTACHMENT I

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

Washington, August 1, 1966.

Hon. HENRY HELSTOSKI,
House of Representatives,
Washington, D.C.

DEAR MR. HELSTOSKI: This is in further reply to your letter of March 22, 1966, addressed to Secretary Gardner, concerning a brief prepared by the American Optometric Association, dated February 18, 1964, charging the Department of Health, Education, and Welfare with discrimination against the profession of optometry.

I have reviewed the brief prepared by the American Optometric Association and in this letter will deal with the conclusions contained in the brief.

A. Recommendation that the Department, and its member agencies, avoid discrimination against the profession of optometry.—This conclusion pertains to the American Medical Association Resolution Number 77 (June 1955), * * * provides that associations between doctors of medicine and optometrists are unethical * * * that physicians faithful to the ancient tenets of the medical profession, are ever cognizant of the fact that they are trustees of medical knowledge and skill and that they must dispense the benefits of their special attainments in medicine to all who need them, that it is a futile gesture to consult on a professional level with one who does not possess the same knowledge, training, experience and ideals as the doctor of medicine."

The American Medical Association is an independent organization and does not request Departmental consultation on its actions. Resolutions passed by the American Medical Association are not binding upon either the Department or its employees.

Since 1950 the provisions of Title X of the Social Security Act authorizing grants to States for aid to the blind have required that State plans for this program "provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select." The Public Welfare Amendments of 1962 established Title XVI of the Social Security Act authorizing grants to states for aid to the aged, blind, or disabled, or for such aid and medical assistance for the aged. Identical language with that contained in Title X is included in this new title. The Social Security Amendments of 1965 included a new Title XIX of the Social Security Act authorizing grants to States for medical assistance programs. Section 1905, which defines the term "medical assistance" includes the language "eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select."

Thus, in the determination of blindness as a factor of eligibility for public assistance payments and in the prescription of eyeglasses under the new medical assistance program the Federal law requires States to give an individual his free choice of an optometrist or a doctor of medicine. While such a requirement does not exist with respect to other aspects of public welfare programs, the silence of the Federal statute in no way limits the freedom of States to use optometrists in such other ways as they may find appropriate.

B. Freedom of choice in selection of a practitioner.—The Department agrees that the American public should continue to have freedom of choice in the selection of a practitioner to care for vision problems.

C. Training of ophthalmic assistants or technicians.—The Public Health Service has funded two pilot projects for the training of ophthalmic assistants. The primary reason for considering the training of various types of professional assistants and technicians in general is to extend the effectiveness of professional personnel who are in short supply by relieving those professionals of certain routine duties which can be adequately carried out by individuals with lesser training. Assistants and technicians may be useful in the offices of any eye specialist. The two projects mentioned were undertaken as pilots and a careful evaluation of them is to be carried out before other similar projects are considered.

D. Departmental publications.—Publications of the Department will continue

to be reviewed for fairness and consistency in statements concerning optometry. The Department has no desire to favor one profession at the expense of another.

E. *Employment of optometrists.*—The Department recognizes the need for the full utilization of all health disciplines in meeting the health needs of all people in this country. The Surgeon General, in his address before the White House Conference on Health, spoke of the great need for upgrading the status of and providing vertical mobility to allied health and medical manpower. In this address he also mentioned the existence of artificial barriers separating one stratum of the health manpower pyramid from another, and the need to devise methods and techniques for the utilization of existing trained personnel. At this time the Public Health Service is actively studying ways in which optometrists can be used more effectively in accomplishing its medical care responsibilities. In preparation for their greater utilization, the Service has recently modified the standards for the Health Service Officer category to include the appointment of optometrists to the Commissioned Corps. One optometrist is now employed by the National Institutes of Health, and several others will be employed by the Public Health Service later this year.

F. *Technical review committees.*—The Public Health Service uses a wide variety of persons from the professions and from the general public as consultants and members of review committees and panels. At the present time there are six optometrists serving on three Public Health Service advisory review bodies. These advisory groups are:

1. Construction of Schools of Optometry Review Committee.
2. National Advisory Council on Education and Health Professions.
3. National Advisory Council for Medical, Dental, Optometric and Podiatry Education.

The Department is continually evaluating review committees and representations required to provide necessary technical competence. As the need for additional optometrists is manifested, most certainly they will be asked to serve.

G. *Establishment of optometric advisory committees.*—The Department and its agencies have established advisory committees which deal with many of the complex health, welfare, and education problems of this country. These committees are set up on an interdisciplinary basis. It is generally undesirable to constitute broad based service and service training committees having only one common discipline. One of the programs of the Public Health Service is now planning a discussion meeting by vision experts on standards for preschool vision screening of children. It is my understanding that optometrists will be included in this discussion group. Optometric consultants have been requested to assist in Public Health Service project site visits and to assist in the review of certain vision projects.

H. *Acceptance of optometry as a coordinate discipline and profession.*—The profession of optometry is accepted by the Department as a legitimate (sic) and essential health profession which is performing highly useful functions in promoting solutions to the eye health needs of this Nation.

Sincerely yours,

PHILIP R. LEE, M.D.,

Assistant Secretary for Health and Scientific Affairs.

OPTOMETRIC TRAINING IN DETECTION OF OCULAR PATHOLOGY

The optometry student enters optometry school with approximately the same preparation as students entering medical and dental schools. Subjects entering students must complete for admission include chemistry, bacteriology, physics, psychology, physiology and biology.

In optometry schools, courses in general anatomy, physiology or pathology furnish only the background necessary for the study of vision. The medical student's first contact with ophthalmology (science of the eye) also comes through courses in general anatomy, physiology and pathology. Students in both medical and optometry schools are exposed to the same materials on the eye in these basic science courses.

Because the same material is taught in these courses in both schools, the content varies little. The difference comes not with content, but rather with the relation to overall curriculum. Optometry deals with the science of vision; medicine deals with the science of preserving health. The medical student learns of the eye as it relates to the entire human system; the optometry student learns of the entire human system as it relates to the eye as the means of vision.

The optometry school curriculum is concerned solely with the eye, approached from the perspective of the visual system. All subject-matter relevant to the eye has its place within the optometry school curriculum. The optometry student considers the eye as an anatomical structure, as a topic of pathology, as a physiological mechanism, as an organ of the human system, and as the vehicle which endows the human being with the capacity of vision.

The medical school curriculum is oriented toward detection of bodily disorders and their manifestations in all parts of the body including the eye, rather than concentration on abnormalities of the eye itself. Rarely does the formal class instruction on subject-matter on the eye exceed fifteen class hours in medical school curriculum.

The optometry student in his first year studies general human anatomy, anatomy of the eye and surrounding structures, general physiology and physiology of mammals. During his second year, classes include the formation and functions of the eye, introductory pathology, plus manifestations of disease and pharmacology as influences on disease and body function—especially as they relate to the eye and vision.

The third year optometry student is instructed in ocular diseases and their detection, symptoms and signs of ocular disease including external and internal examination of the eye. Further study encompasses systematic study and classification of ocular diseases and their differentiation.

Class room instruction on anatomy and pathology is augmented by weekly laboratory participation. In the fourth year of optometry school the student applies in a supervised clinical situation his class room and laboratory theory learned in the preceding three years. Detection and recognition of ocular diseases occupy a prominent place in the student's clinical training. By the time the student completes his fourth year of optometry school he possesses both the training and experience to recognize abnormal conditions of the eye.

As with other practitioners who provide service to the public, the optometry school graduate must demonstrate his knowledge and competence to serve the public before he is allowed to practice. The optometry bill for the District of Columbia currently under consideration requires written, oral and practical examinations. The District of Columbia Board examination for optometrists includes anatomy, physiology and pathology, especially as they relate to the eye and vision.

Each of the several States require an examination for licensing to practice and 24 of the States accept passage of a uniform examination given by the National Board of Examiners in Optometry as a substitute for their own examination. The bill for the District of Columbia allows certification by the National Board for the written examination.

A review of the National Board examination reveals some of the subjects in which applicants are expected to be proficient. The section dealing with anatomy of the eye, for example, requires descriptions, functions, blood and nerve supplies of all parts of the eye and surrounding areas. Another section deals with diseases of the eye itself and general diseases which manifest in the eye. Some of the areas covered in the section are knowledge of diseases, congenital defects and anomalies of the eye and ability to differentiate and recognize each.

Because 24 states accept the National Board Examination passage, graduates from all the schools of optometry take the examination. Therefore, the areas of information covered in the examination are the areas of instruction taught at all optometry schools and colleges.

A topical outline made from a National Board Examination follows. The areas covered in the outline are designed to be very specific and exacting. The practice of optometry is very specific and exacting. Only those individuals who successfully complete such an examination can be entrusted to practice optometry in the Dis-

trict of Columbia. The public deserves to be protected from inferior practitioners who are unable to meet adequate standards.

The emphasis given anatomy and diseases of the eye in optometry school instruction constitutes a sizable portion of the curriculum. Training in both the classroom and the clinic equip the optometry student to recognize eye conditions which deviate from the normal. Exacting examination assures the public that the licensed optometrist possesses this training and ability.

EXHIBITS

NATIONAL BOARD OF EXAMINERS IN OPTOMETRY—TOPICAL OUTLINE¹

ANATOMY OF THE EYE (PT. 1, SEC. III)

1. The bones of the orbit and accessory nasal sinuses.—Orbital foramina and structures transmitted.
2. Fibrous tunic.—Cornea: General description, minute anatomy, physiology, nerve and blood supply, function; limbus; sclera; canal of sclern, pectinate ligament, scleral spur.
3. Vascular tunic.—Choroid; ciliary body; iris; general description, minute anatomy, nerve and blood supply function.
4. Neural tunic.—Retina: General description, location, histological structure, blood supply, function.
5. Anterior and posterior chambers.—Aqueous formation, circulation and drainage.
6. The lens.—General description, location, histological structure, function physiology of the lens; zonule of Zinn.
7. Vitreous humor.
8. The appendages of the eye.—Eyelids: General description, location, histological structure, blood and nerve supply, function, medial, lateral; eyebrows; Conjunctiva: Histology and gross anatomy, glands, blood and nerve supply caruncle, plica semi lunaris; lacrimol apparatus.
9. The extrinsic muscles.—Origin, insertion, primary action, secondary action, nerve and blood supply, reciprocal innervation, synergistic and antagonistic actions, yoke muscles, detection of impaired muscle actions; lavator palpebrae superioris, tenon's capsule, check ligaments, orbital fat.
10. Cranial nerves, II, III, IV, V, VI, VII nerves.—Nucleus of origin, course, components, consequences of its impairment, ciliary ganglion.
11. Automatic nervous system.—Path of light reflex, near reflex, Argyll-Robertson pupil.
12. Visual pathway, minute anatomy, fiber distribution.
13. Vessels of the eye.
14. Development of the eye.—Organogeny of the nervous system, differentiation of the component parts of the eyeball.

THEORY AND METHODS OF OPTOMETRY

1. Refractive status.—Hyperopia, myopia, astigmatism; causes, classification, prevalence, hereditary influences, eye changes, etc.
2. Functional status.—Accommodation, convergence, anisometropia, aniseikonia, presbyopia; norms, relationships, classifications, prevalence, etc.; test procedures and significance.
3. Examination procedures.—History, external ocular, ophthalmoscopy, field charting.
Norms, significance, relation to systemic, occupational and aging influences.
Specific techniques and instrumentation.

¹ The topical outlines provided by the national board are intended merely as a guide, not as a rigorous plan of examination. The individual topics and subtopics serve only to suggest the general coverage and possible areas of emphasis in each examination. In the design of the examination, attempts are made to word the questions, and to allow sufficient choice of questions to be answered, so as to compensate for differences in curriculum emphasis and recognized differences in doctrines prevailing in the different schools and colleges.

Ophthalmometer, retinoscopy, static and dynamic, subjective routines, phorometry.

Techniques and instrumentation; evaluation, significance, and comparisons. Analysis and prescription.

Specific case applications, comparisons; isolated procedures and significance; problems of prescription, such as prism problems, etc.; lenses and multifocal selection.

Strabismus, orthoptics, visual training.

Training procedures; diagnostic and differentiating techniques and implications.

(a) Paralytics from functional cases.

(b) Correctable functional indications from noncorrectable indications, etc.

Fitting of contact lenses.

Aids to subnormal vision.

Occupational and industrial vision problems.

DISEASES OF THE EYE (PT. II, SEC. IV)

1. The eyelids.—Congenital defects; diseases of the lid margin; diseases of the glands of the lid; diseases of the skin of the lid; diseases of the cilia of the lid; tumors of the lid; injuries of the eyelid.

2. The orbit.—Congenital anomalies, displacement of the eyeball, periostitis, cellulitis, thrombosis of the cavernous sinus, ocular manifestations of accessory sinus diseases.

3. The lacrimal apparatus.—Diseases of the lacrimal gland and ducts.

4. The conjunctive.—Pinguecula, concretions, subconjunctival hemorrhage, chemosis, dry catarrh, anomalies of circulation. Types of conjunctivitis: Catarrhal purulent, membranous, inclusion, trachoma, phlyctenular, vernal, allergic, angular; symblepharon, pterygium; differential diagnoses; tumors; injuries of conjunctiva.

5. The cornea.—Congenital anomalies; degenerative processes—arcus senilis, dystrophies, keratoconus, etc. Inflammation of the cornea—ulcers, superficial keratitis, deep keratitis; foreign bodies on cornea; wounds of the cornea.

6. The sclera.—Pigmentation; ectasia and staphyloma. Inflammations: Scleritis, episcleritis; injuries.

7. The iris, ciliary body, and pupil.—Congenital anomalies; reactions of iris and ciliary body. Inflammations of iris and ciliary body; types of endogenous uveitis; diagnosis of specific types of iridocyclitis; tumors; sympathetic ophthalmia; disturbances in pupillary reaction.

8. The choroid and vitreous body.—Congenital anomalies of the choroid; degenerations of the choroid; inflammations of the choroid; tumors and injuries; fluidity, opacities, muscle volitantes, hemorrhages, abscess, foreign bodies in vitreous.

9. The lens.—Congenital anomalies. Cataract: Symptoms, types, differential diagnosis, secondary involvements; dislocation of the lens.

10. Glaucoma.—Intraocular pressure. Types of glaucoma: Primary, secondary, open-angle glaucoma, congenital; visual field changes; differential diagnoses.

11. The retina.—Congenital anomalies, injury, inflammations, circulatory disturbances, degenerations, detachment of the retina; tumors; retrolental fibroplasia.

12. The optic nerve.—Inflammatory changes, hyperemia, papilledema, toxic amblyopias, optic atrophy, tumors of nerve and sheaths, injuries, visual field defects.

13. Ocular manifestations of general disease.—Syphilis, tuberculosis, rheumatism, nephritis, diabetes, arteriosclerosis, cardiac affections, diseases of metab-

olism, chronic intoxications, infective diseases, diseases of the central nervous system, head injuries.

14. Disturbances of ocular motility.—Paralysis of ocular movements—supra-muscular paralysis, of individual ocular muscles paralysis of the III nerve: The ophthalmoplegias.

15. Ocular therapeutics.—Local anesthetics, antiseptics, mydriatics, cyclophics, miotics, staining agents, eyewashes, use of ACTM.

DISEASES OF THE EYE

1. The eyelids.—Congenital defects; diseases of the lid margin; diseases of the glands of the lid; diseases of the skin of the lid; diseases of the cilia of the lid; tumors of the lid; injuries of the eyelid.

2. The orbit.—Congenital anomalies, displacement of the eyeball, periostitis, cellulitis, thrombosis of the cavernous sinus, ocular manifestations of accessory sinus diseases.

3. The lacrimal apparatus.—Diseases of the lacrimal gland and ducts.

4. The conjunctive.—Pinguecula, concretions, subconjunctival hemorrhage, chemosis, dry catarrh, anomalies of circulation. Types of conjunctivitis: Catarrhal, purulent, membranous, inclusion, trachoma, phlyctenular, vernal, allergic, angular; symblepharon, pterygium; differential diagnoses; tumors; injuries of conjunctiva.

5. The cornea.—Congenital anomalies; degenerative processes—arcus senilis, dystrophies, keratoconus, etc. Inflammation of the cornea—ulcers, superficial keratitis, deep keratitis; foreign bodies on cornea; wounds of the cornea.

6. The sclera.—Pigmentation; ectasia and staphyloma. Inflammations: Scleritis, episcleritis; injuries.

7. The iris, ciliary body, and pupil.—Congenital anomalies; reactions of iris and ciliary body. Inflammations of iris and ciliary body; types of endogenous uveitis; diagnosis of specific types of iridocyclitis; tumors; sympathetic ophthalmia; disturbances in pupillary reaction.

8. The choroid and vitreous body.—Congenital anomalies of the choroid; degenerations of the choroid; inflammations of the choroid; tumors and injuries; fluidity, opacities, muscle volitantes, hemorrhages, abscess, foreign bodies in vitreous.

9. The lens.—Congenital anomalies. Cataract: Symptoms, types, differential diagnosis, secondary involvements; dislocation of the lens.

10. Glaucoma.—Intraocular pressure. Types of glaucoma; Primary, secondary, open-angle glaucoma, congenital; visual field changes; differential diagnoses.

11. The retina.—Congenital anomalies, injury, inflammations, circulatory disturbances, degenerations, detachment of the retina; tumors; retrolental fibroplasia.

12. The optic nerve.—Inflammatory changes, hyperemia, papilledema, toxic amblyopias, optic atrophy, tumors of nerve and sheaths, injuries, visual field defects.

13. Ocular manifestations of general disease.—Syphilis, tuberculosis, rheumatism, nephritis, diabetes, arteriosclerosis, cardiac affections, diseases of metabolism, chronic intoxications, infective diseases, diseases of the central nervous system, head injuries.

14. Disturbances of ocular motility.—Paralysis of ocular movements—supra-muscular paralysis, of individual ocular muscles paralysis of the III nerve: The ophthalmoplegias.

15. Ocular therapeutics.—Local anesthetics, antiseptics, mydriatics, cyclophics, miotics, staining agents, eyewashes, use of ACTM.

COURSES REQUIRED FOR ADMISSION TO MEDICAL SCHOOLS APPROVED BY THE AMERICAN MEDICAL ASSOCIATION

[In semester hours]

	Total pre- medi- cal years re- quired	English com- posi- tion	Social sci- ences	Lan- guages	Gen- eral math	College algebra	Trigo- nom- etry	Inte- gral cal- culus	Ana- lytic geom- etry	Physics	Inor- ganic chem- istry	Organic chem- istry	Quan- tita- tive analy- sis	Biology	Zoology	Embry- ology	Psy- chology	Ad- vanced science elec- tives
State University of New York, Downstate.....	3	6	---	---	---	---	---	---	---	6	6	6	---	3	3	3	---	---
Washington University.....	3	6	---	---	---	---	---	---	---	6	6	6	---	4	4	4	---	---
State University of New York, Upstate.....	3	6	---	---	---	---	---	---	---	6	6	6	---	6	6	6	---	---
University of New York.....	3	6	---	---	---	---	---	---	---	6	6	6	---	8	8	8	---	---
University of Mississippi.....	3	9	---	---	---	---	---	---	---	8	8	8	---	3	3	3	---	---
Louisiana State University.....	3	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
New York Medical College—Flower & 5th Avenue.....	3	6	---	---	---	---	---	---	---	6	6	6	---	---	---	---	---	---
University of Minnesota.....	3	8	18	---	---	---	---	---	---	6	6	6	---	4	4	4	---	---
University of Cincinnati.....	(1)	3	---	---	---	---	---	---	---	8	8	8	---	3	3	3	---	---
University of Nebraska.....	3	6	---	---	---	---	---	---	---	8	8	8	---	4	4	4	---	---
University of Texas, Southwestern Medical.....	4	12	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Baylor University.....	(1)	6	3	---	---	---	---	---	---	8	8	8	---	12	12	12	---	---
University of Vermont.....	4	6	---	---	---	---	---	---	---	6	6	6	---	6	6	6	---	---
University of Texas, Galveston.....	4	12	---	---	---	---	---	---	---	6	6	6	---	3	3	3	---	---
Yale University.....	3	---	---	---	---	---	---	---	---	6	6	6	---	4	4	4	---	---
Georgetown University.....	3	12	---	---	---	---	---	---	---	6	6	6	---	16	16	16	---	---
Western Reserve University.....	4	---	---	---	---	---	---	---	---	8	8	8	---	8	8	8	---	---
University of Missouri.....	3	6	---	---	---	---	---	---	---	6	6	6	---	3	3	3	---	---
Hahnemann Medical College.....	3	6	---	---	---	---	---	---	---	6	6	6	---	8	8	8	---	---
Temple University.....	3	6	---	---	---	---	---	---	---	8	8	8	---	8	8	8	---	---
Indiana University.....	3	---	---	---	---	---	---	---	---	8	8	8	---	---	---	---	---	---
University of Wisconsin.....	3	---	---	---	---	---	---	---	---	6	6	6	---	3	3	3	---	---
Jefferson Medical College.....	3	6	---	---	---	---	---	---	---	8	8	8	---	---	---	---	---	---
University of North Carolina.....	3	12	---	9	---	---	---	---	---	8	8	8	---	8	8	8	---	---

University of California at Los Angeles.....																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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Source: Official course catalogs, 1962-64.

¹ Not available.

COURSES REQUIRED FOR ADMISSION TO OPTOMETRY SCHOOLS APPROVED BY THE AMERICAN OPTOMETRIC ASSOCIATION

[In semester hours]

	Total pre- optom- etry years re- quired	English of com- posi- tion	Social sci- ences	Lan- guage	Gen- eral math	College algebra	Trigo- nom- etry	Inte- gral cal- culus	Ana- lytic geom- etry	Physics	Inor- ganic chem- istry	Organic chem- istry	Quant- ita- tive analysis	Biology	Zoology	Embry- ology	Psy- chology	Ad- vanced science elec- tives
Pacific University College of Optometry (This school also requires for admis- sion: 4 hr. of comparative anatomy of vertebrates; 3 hr. of human anatomy of vertebrates; 3 hr. of human anatomy; 4 hr. of human physiology; and 2 hr. of histology)	2 2 2	8 6 5	----- ----- -----	----- ----- 6	----- ----- -----	3 3 2	3 3 2	----- ----- -----	3 ----- 2	8 6 8	4 6 8	----- ----- -----	----- ----- -----	4 6 14	----- ----- -----	----- ----- -----	----- ----- 4	3 ----- -----
Pennsylvania State College of Optometry	2	6	-----	-----	-----	-----	-----	-----	-----	6	10	6	-----	-----	6	8	-----	4
Indiana University Division of Optometry	(*) 2	6	-----	-----	-----	3	3	3	3	6	8	-----	-----	-----	-----	-----	-----	3
Ohio State University School of Optom- etry	2	6	-----	-----	-----	3	3	-----	-----	-----	6	-----	-----	-----	-----	-----	-----	-----
Massachusetts College of Optometry	2	6	-----	-----	-----	-----	-----	-----	-----	-----	8	-----	-----	-----	-----	-----	-----	-----
Illinois College of Optometry	2	6	-----	-----	-----	-----	-----	-----	-----	-----	8	-----	-----	-----	-----	-----	-----	-----
Los Angeles College of Optometry (this school also requires for admission: 3 hr. of bacteriology; 3 hr. of human physiology)	2	6	-----	-----	-----	-----	-----	-----	3	8	8	-----	-----	3	-----	-----	6	-----
University of California at Berkeley, School of Optometry (this school also requires for admission: 4 hr. of bac- teriology; 5 hr. of human physiology)	2	6	-----	8	3	-----	-----	-----	-----	8	9	-----	-----	-----	-----	-----	6	-----
University of Houston College of Optom- etry	2	12	12	-----	-----	3	3	-----	-----	8	4	3 4	-----	-----	-----	-----	-----	-----
Southern College of Optometry	2	6	-----	-----	-----	3	3	-----	-----	6	6	-----	-----	6	-----	-----	3	-----

¹ And 3 hr. of comparative anatomy.
² 1 to 4 or 2 to 3.

³ Also 4 hr. of bacteriology.

Source: Official course catalogs, 1962-64.

REQUIRED UNDERGRADUATE COURSES IN OCULAR PATHOLOGY AND OCULAR ANATOMY AND RELATED STUDIES IN THE OPTOMETRY SCHOOLS APPROVED BY THE AMERICAN OPTOMETRIC ASSOCIATION

[In semester hours]

	Micro- biology	Anat- omy	Physi- ology	General path- ology	Func- tional anat- omy	Psy- chology	Ocular path- ology	Ocular anat- omy and physi- ology	General histol- ogy	Ocular histol- ogy	Neurol- ogy	General bacteri- ology	Animal biology	Genetics	Bio- chem- istry	Organic chem- istry
Ohio State University College of Optom- etry	6	10	6	6			3	4								
Southern College of Optometry	3	3	3	2	6		4	7								
Massachusetts College of Optometry		8	8	4			4	10	6	3	3					
Pacific College of Optometry				3			6	5	13			3				
University of Houston College of Optom- etry		7	3	3			6	7								
University of California, Berkeley, School of Optometry		3	6					7	4							
Los Angeles College of Optometry		4		2			10	7		2	3					
Illinois College of Optometry		4	4	4			6	7	3	3	6	2				
Indiana University, Division of Optom- etry		9	5	4			11	8				5	5	3		
Pennsylvania State College of Optometry		8	3	3			8	10			3	4	3			5

Source: Official course catalogs, 1962-1964.

CLASS HOURS REQUIRED IN OPHTHALMOLOGY AT THE UNDERGRADUATE LEVEL IN MEDICAL COLLEGES APPROVED BY THE AMERICAN MEDICAL ASSOCIATION.

Source: Official Course Catalogues 1962-63-64.

Loyola University of Chicago (Stritch School of Medicine)

14 hours of didactic lectures on anatomy and diseases of the eye. 6 sessions of 2 hours each at Cook County Hospital in practical ophthalmology.

University of Puerto Rico

10 didactic lectures on diseases of the eye. 40 hours of practical demonstrations of examination of the eye.

Tulane University

Ophthalmology is given as one of 17 courses during the second year as part of a general physical diagnosis course. It is also a required course in trimester A of the third year.

Duke University

During the second year ophthalmology is given as part of a physical diagnosis course, where the student is exposed to the ophthalmoscope, perimeter, and other diagnostic instruments. In the fourth year the student receives 39 hours of clinical work as part of a surgery course.

State University of Iowa

10 hours of didactic lectures on diseases of the eye are given during the second year. In the third year, the student takes a clinical course without credit for two of three trimester terms. Clinical work is also offered in sections during the fourth year.

University of Wisconsin

In the third year 8 didactic lectures plus 2 group meetings in a two-week period are offered the student. One week of clinical eye care is required in the fourth year.

Indiana University

The undergraduate medical student is required to take 12 hours of didactic lectures in diseases of the eye as well as 44 hours in the surgery clinic.

Temple University

In the third year the student attends 19 class hours of discussion type lectures on diseases of the eye, and instrumentation connected with eye examination. In the fourth year, the student works in the out-patient eye clinic.

Hahneman Medical College (Philadelphia)

There is no special course in ophthalmology, except what may be learned as part of a surgery course.

University of Alabama

In the third year the undergraduate medical student has 10 hours of didactic lectures on diseases of the eye. In the fourth year the student is required to spend 72 hours in the eye clinic as part of a surgery program.

Howard University

Ophthalmology is undertaken as part of a series of surgery lectures during the third year.

State University of New York at Buffalo

During the third year the student undertakes out-patient work in eye care and observes surgery.

Emory University

During the second year the student is required to attend 7 class hours of lectures on ophthalmology of which 2 hours are devoted to the ophthalmoscope. During the third year the student undertakes 16 hours of clinical work in the eye.

University of California at Los Angeles

Ophthalmology is taught as part of a surgery course. In the second year the student is required to attend lectures in clinical medicine at which time his training in ophthalmology commences. In the third year he participates in out-patient surgery and in the fourth year in ward surgery.

University of North Carolina

If anything is offered in ophthalmology, it is part of a course in the surgery department.

Stanford University

Fifth year conferences as electives in surgery are offered, but the course catalog omits mention of ophthalmological training as a requisite for the M.D. degree.

Woman's Medical College of Pennsylvania

12 hours of didactic lectures plus ward recognition of pathology are given.

University of Oklahoma

The student takes 15 hours of didactic lectures on pathology of the eye.

Vanderbilt University

14 hours of didactic lecture are devoted to the eye followed by ward review work.

Marquette University

98 hours of clinical-surgical clerkship are offered in the fourth year for the purpose of achieving a clinical mind.

University of Maryland

In the third year, weekly section work is combined with lectures and clinical work discussing pathology of the eye and the use of the ophthalmoscope. In the fourth year, ward rounds and clinical demonstrations are available.

McHarry Medical College

22 hours of didactic lectures on systemic ophthalmology are offered in the third year.

University of Pittsburgh

12 hours of didactic lectures on diseases of the eye are offered during the third year. In the fourth year, clinical work in eye care stressing diagnosis of eye diseases is offered.

University of Virginia

3 class hours of didactic lectures are presented in a surgery course in the second year. In the third year, 16 didactic lectures on pathology of the eye with lantern slides are required. In the fourth year, 36 hours of clinical work are given.

University of Southern California

During the third year, 9 hours of conferences are conducted in ophthalmology. In the fourth year, $\frac{1}{2}$ day per week for 9 weeks are devoted to surgical ophthalmology in out-patient clinics.

University of California, San Francisco Medical Center

In the first year, 2 hours of didactic lectures are devoted to anatomy of the eye. In the second year, there are 3 lectures of 1 hour each on neurology and surgery of the eye, plus 6 hours of clinical and sectional demonstrations. In the third year, 5 hours of a surgery course are devoted to diseases of the eye.

University of Rochester

There is no ophthalmology department. No courses in ophthalmology are listed

University of Michigan

In the third year, 32 class hours of didactic lectures and demonstrations are devoted to diseases of the eye, instruments used in examination of the eye, physiological optics, pathology the eye, and neurology of the eye. In the fourth year 80 class hours of clinical work are required.

Medical College of Virginia

In the third year combined lectures of the diseases of the eye are given and clinical work which continues into the fourth year is commenced.

University of Washington

Fourth year clinical work is all that is required.

Cornell University

A third year clinical surgery course satisfies the undergraduate requirements.

Tufts University

In the third year, 28 hours of didactic lectures on practical problems in eye care satisfy the undergraduate requirements.

University of Miami

There is no special course in ophthalmology, but the catalog declares that this subject matter is covered by lectures in anatomy, physiology, pathology, and physical diagnosis. A fourth year clinic on eye care is offered for a one-week period.

University of Missouri

There is no special course in ophthalmology. Whatever work in the subject acquired by the student comes in part of a surgery clinic.

Western Reserve University

There are no special courses offered in ophthalmology. However, the student is exposed to such eye care as part of a surgery course and during his clinical work.

Yale University

During the second clinical year, students visit clinics 2 afternoons weekly, for 6 weeks as part of a surgery course.

University of Texas, Galveston, School of Medicine

There are no special courses in ophthalmology. This subject matter is deemed to be undertaken as part of a clinical course.

University of Vermont

Ophthalmology is taught in the second, third and fourth years by means of lectures, ward rounds, and clinics.

Jefferson Medical College

In the second year the student is required to take 2 class hours of didactic lectures on diseases of the eye. 24 class hours of lectures and demonstrations are given in the third year, as well as 12 hours of eye clinical work.

University of Cincinnati

In the third year the student takes 17 hours of didactic lectures on diseases of the eye. In the fourth year, 17 hours of clinical work are required. The student may also have 19 hours of ophthalmological surgery in his senior year.

University of Minnesota

The student has a total of 24 hours of didactic lectures on diseases of the eye.

University of Mississippi

There is no ophthalmology department. No special courses in the subject are listed in the course catalog.

Baylor University

In the second year 4 one-hour lectures are given on the eye as part of a physical diagnosis course. In the fourth year there are 24 hours of didactic lectures and demonstrations followed by a certain amount of clinical work.

University of Texas, Southwestern Medical School

The only ophthalmological work undertaken is in the fourth year as part of a clinical clerkship at which time some lectures on eye care are given.

Columbia University

The only ophthalmological work given consists of 42 class hours, of which 30 hours are practical instruction at the eye clinic and 12 hours are straight didactic lectures.

New York Medical College (Flower & 5th Avenue Hospital)

23 hours of didactic lectures in ophthalmology are given during the third year. In the fourth year clinical ward work is required.

Louisiana State University

In the third year 18 hours of lecture are devoted to the embryology, anatomy, and physiology of the eye. This work is followed by 36 hours of clinical clerkship.

State University of New York, Downstate Medical Center

In the second year, a student has an introductory lecture on diseases of the eye as part of a course in Minor Medicine. In the third year there are 10 one-hour lectures in diseases of the eye. A clerkship in ophthalmology is available in the fourth year.

Washington University (St. Louis)

7 hours of lectures are devoted to diseases of the eye in the second year as part of a Conjoint Medical Course. In the third year the student takes 12 hours of lectures in ophthalmology, and in the fourth year, he has 18 hours of clinical work.

State University of New York, Upstate Medical Center

The student is required to take 9 hours of lectures and demonstrations on diseases of the eye in the second year. In the third year he has 24 hours of clinical work in ophthalmology.

University of Nebraska

The undergraduate medical student is required to take 17 hours of didactic lectures on diseases of the eye, 24 hours of clinical work in ophthalmology, and 48 hours in the eye dispensary.

University of Pennsylvania

In the first year, there are 2 hours of didactic lectures on physiology of the eye as well as 1 hour in the correlation clinic. In the second year, 9 hours are devoted to lectures in ophthalmology in a clinical diagnosis course. In the fourth year there are 11 hours of lectures in ophthalmology followed by 12 hours of practical out-patient clinical work.

Medical College of South Carolina

Clinical case studies are offered during the third and fourth years with some didactic instruction on diseases of the eye with lantern slides. In the out-patient department, students are taught how to make eye examinations, how to test the vision, and use of the ophthalmoscope.

Boston University

In the first year there is 1 class lecture on pathology of the eye and 2 class hours of lectures devoted to physiology and optics of the eye. In the third year, 6 class hours are devoted to lectures of diseases of the eye as well as 36 hours of out-patient case study and surgical observation.

University of Chicago

All work in ophthalmology is clinical, taking place during several quarters of the under-graduate years.

University of Illinois

There are 24 class hours of didactic lectures illustrating common diseases of the eye which are given during the fourth year.

University of Colorado

In the second year the student takes 6 class hours in diagnosis of diseases of the eye at which time he is exposed to the ophthalmoscope. Also in the second year, the student takes 10 clinical lectures covering ocular diseases, injuries, refractive errors, and ocular movements. During the fourth year, clinical clerkships are available for case study.

Yeshiva University (Albert Einstein, School of Medicine)

In a third year 12 hours of lectures on the diseases of the eye are presented as well as 30 hours of clinical clerkship.

Loma Linda University

In the third year, the student takes 9 hours of didactic lectures on diseases of the eye as well as 7 hours in the ophthalmology clinic. In the fourth year, 36 hours of clinical work are required.

University of Oregon

12 hours of didactic lectures are given in the third year. In the fourth year there are 12 hours of lecture on systemic pathology as detectable in the eye as well as 22 hours of out-patient clinic. There is also available a 52 hour clerkship as part of a surgery course in the fourth year.

Johns Hopkins University

In the third year, lectures on ophthalmology are offered as part of a course in clinical physiology, and 6 class hours are given on eye care as part of a course in techniques of examination. In the fourth year, 12 full days are devoted to surgery of the eye in a clinical clerkship program.

The five-year curriculum taken from the catalog of the Los Angeles College of Optometry and representing typical course requirements.

FIRST YEAR

First Semester

Chemistry
College Algebra
English
Foreign Language
Physical Education
U.S. History & Constitution

Second Semester

Chemistry
Trigonometry
English
Foreign Language
Physical Education
Philosophy

SECOND YEAR

First Semester

Art, Music or Literature
Psychology
General Physics
Zoology or Biology
Physical Education
Analytical Geometry

Second Semester

Health Educ. (Hygiene)
Bacteriology
Psychology
General Physics
Human Physiology
Physical Education

THIRD YEAR

First Semester

Human Anatomy & Histology
Ocular Anatomy & Embryology
Geometric Optics
Mechanical & Ophthalmic Optics
Psychophysiological Optics
History & Survey of Ophthalmic Profession

Second Semester

Statistics
Physiology of the Eye
Ocular Genetics
Physical Optics
Geometric Optics
Mechanical & Ophthalmic Optics
General Pathology
Pre-Clinical Optometry
Psychophysiological Optics

FOURTH YEAR

First Semester

Neurology
Mechanical and Ophthalmic Optics
Dispensing
Applied Ocular Pathology
Practical Optometry
Orthoptics
Psychophysiological Optics

Second Semester

Mechanical & Ophthalmic Optics
Dispensing
Clinical Pathology of the Eye
Applied Ocular Pathology
Practical Optometry
Orthoptics
Vision and Reading
Psychophysiological Optics

Summer Session

Clinical Orientation

FIFTH YEAR

First Semester

Vocational Vision
Illumination
Contact Lenses
Dispensing
Clinical Pathology of the Eye
Clinical Optometry
Orthoptics

Second Semester

Industrial Vision
Contact Lenses
Dispensing
Histopathology of the Eye
Clinical Optometry
Orthoptics
Socio-Economic & Legal Aspects of Optometry
Practice Management & Development

Dr. CHAPMAN. Thank you very much, Mr. Chairman, and my thanks also to my Congressman, Don Fuqua, and to Mr. Jacobs, for being here.

Mr. Chairman and members of the Subcommittee No. 5 of the House District Committee: It is a pleasure to appear before you today to speak in support of H.R. 1283 and H.R. 12276.

As the Chairman has indicated, I do have a full statement which has been submitted for the record with attachments.

The purpose of the bill is simple. It elevates the practice of optometry in the District of Columbia to the level of a profession as recognized in all other states and territories of our Union. By so doing, it takes away from the unlicensed, the unqualified and the unscrupulous the power to use the license of an optometrist for selfish profit-motivated purposes. It also places some limits on those who would lure the public to a commercial establishment for the primary purpose of selling a pair of glasses at a profit.

Those who oppose this bill do so because it limits their ability to make a gain from the practice of optometry. I submit, Mr. Chairman, that the usual rule of the market place should not apply to the practice of optometry.

The consumer finds it far more difficult to judge the quality of the health service he receives than the quality of other types of services and products of the market place. He usually has only a vague and often erroneous understanding of the kind of optometric service he needs, and a very inadequate basis for judging the quality of the service he receives.

The end product of optometric service—good vision—is essential to the every day work, education and pleasure of the consumer. Mr. Chairman, eyeglasses have no resale value to a consumer as have most commercial products. Their value is unique and individual to the consumer and tied to the quality of the examination and prescription which lies within them. Any possible other value would have to lie in the precious metal content of the frame or in any valuable stones that might be imbedded in the frame.

Earlier this year, in optometry, statement to the Senate Subcommittee on Anti-Trust and Monopoly holding hearings on "Medical Restraint of Trade," we agreed with the view that a doctor should not profit from the sale of products to patients. The Association's "Manual of Professional Practice for the American Optometrist" states: "The optometrists' records should show clearly that his net income is based on fees for professional service, not on markup of ophthalmic materials." We challenge any of those opposing this legislation either last year or this to show that they have a comparable policy.

There are those opposing this bill who have said that Section 7 is unobjectionable because it restricts only the optometrists in the District. They oppose, however, any restrictions contained in other parts of the bill. If it is important to regulate optometrists in the practice of optometry, how much more important it is that regulation be adopted for those who do not have the training given in optometric schools and colleges. They are not examined or licensed as are our members.

Many oppose the bill on the basis that it recognizes optometry as a profession, thereby expanding the scope and definition of the practice of optometry. This is probably the most important question before your Committee. Is optometry a profession—with all that word implies in terms of responsibility for the public welfare? We emphatically maintain that it is.

This characterization of optometry as a profession serves more than a merely honorific purpose. It carries with it significant legal consequences.

LEGAL OPINIONS

Recently, the Corporation Counsel for the District of Columbia in the brief for appellee in *Norman Fields v. District of Columbia*, quoted the United States Court of Appeals in *Evers v. Buxbaum* which stated that the primary aim of Congress in enacting the optometry statute * * * “was to insure that the service would be rendered by competent and licensed persons and thereby to protect the public from inexpertness.”

Even courts which have not explicitly referred to optometry as a learned profession, have hesitated in thrusting upon optometrists the responsibilities and liabilities derived from such legal status. The extent of the optometrist's duty to recognize ocular pathology serves as an example. A definite responsibility in this area commensurate with the status of medicine has been created by state court rulings within the past thirty years.

It is interesting to note that this trend of decisions coincides with the tendency, originating at the same time, to define optometry as a profession by legislation.

Of all the earlier arguments set forth before this Committee, we are most distressed by the opposition from Walter N. Tobriner, President of the D.C. Board of Commissioners, who must administer and enforce this Act. We believe the arguments Mr. Tobriner makes are based on antiquated and outworn decisions coupled with opinions he has received from medical and optical friends. To help him and you determine the professional status or lack of it for optometry in the District, I refer you to statements he made in opposition to similar legislation last year and, hopefully, counter them.

Mr. Tobriner's statement in opposition to this legislation deals with a 1940 court decision, *Silver v. Lansburgh and Bros. et al.* The American Optometric Association believes this decision is one of the biggest obstacles to protecting the public from those who would employ the license of an optometrist primarily for their own selfish gain.

Mr. Chairman, we believe the court in this case was not adequately informed of the scope of optometry or its training, that it erred in its judgment that optometry is solely a mechanical art using mechanical instruments and appliances. Such a definition predates 1924. The decision further appears to be predicated on the wording of the definition of optometry as contained in the 1924 Act, 43 years ago, and not upon the contemporary practice of the profession.

Despite the court's statement in the *Silver v. Lansburgh* case, there is ample legal authority for the proposition that optometry is a profession rather than a narrow technical calling or trade as defined in the

1924 District of Columbia Optometry Law. A significant number of jurisdictions have enumerated this idea as a principle of either judge-made or statutory law.

We have been informed, Mr. Chairman, that it will take an Act of Congress to overcome the judgment of the court in *Silver v. Lansburgh*; that is why we are here before you again today.

The Commissioners last year testified for deletion of those provisions relating to advertising and hiring of an optometrist by anyone other than another optometrist. We do not believe the Commissioners would have made the same recommendation if the bills under consideration were to regulate either the practice of medicine or dentistry. We do not understand their objection when the issue is to regulate the practice of optometry.

Because of the highly personal nature of services rendered and the unique individual needs of each patient, adequate vision care is a highly complex service which does not lend itself to production line methods frequently used in mercantile establishments. The hallmark of this type of operation is big-splash advertising claiming "low prices," "easy credit," "fast and accurate service."

Dozens of articles have appeared in our nation's leading magazines which sound a warning to the public of the dangers of unscrupulous operators in the field of vision care.

The problems involved with unethical practices in this area are (1) "bait" advertising, (2) the lack of adequate time for thorough examination and service, (3) the lack of quality materials and (4) consideration of profit motive above consideration of the patient's best interest.

The basic decision before your Committee is whether optometry in the District of Columbia in this year of 1967 is an independent coordinate health profession to be regulated in the same fashion as the other health professions such as medicine, osteopathy, dentistry and podiatry or whether it is simply a mechanical art as described in the 1924 Act.

Mr. Chairman, we believe that the judgment of this Subcommittee will be for optometry as a profession. We have faith that the Committee will act favorably on the bill before it and make only minor amendments to clarify its intent—to improve the practice of optometry in the District of Columbia for the benefit of those who reside here and those who visit our Nation's Capital City.

Both Dr. Hofstetter and I will be pleased to attempt to answer any questions. Thank you for giving me this opportunity to speak on behalf of the American Optometric Association.

Mr. SISK. That completes your oral statement, Dr. Chapman?

Dr. CHAPMAN. It does, Mr. Chairman.

Mr. SISK. Thank you for a very excellent statement, Dr. Chapman.

I note your prepared statement here is a good deal more elaborate than what you presented orally.

Mr. HORTON. Is Dr. Hofstetter going to testify, too, or do you appear together?

Dr. HOFSTETTER. I have no statement, Mr. Chairman.

Mr. JACOBS. Dr. Chapman, with reference to the legislation which has been introduced, which I must confess I have not perused as completely as I perhaps should have, it has been suggested to me that

prohibition would be made so that an optometrist could not practice his profession in a retail department store. Is that correct?

Dr. CHAPMAN. That is correct, Mr. Jacobs.

Mr. JACOBS. Would you elucidate as to the reason for that provision?

Dr. CHAPMAN. Yes, sir, I can.

The care of the human vision process is one of the most complex activities that a professional person can involve himself in. The proper caring of human vision and the total examination of a pair of eyes in all aspects is time-consuming, requires far more than just the brief refraction span which sometimes and most of the time is used in the practices which you describe which we are trying to eliminate from this District.

There is far more to this business of seeing than just the wearing of a pair of glasses. The optometrist of today in this modern age of practice will take 45 minutes to an hour to examine a patient adequately and do far more than just a refraction. He will include within his procedures all of the many techniques which delve into the psychological element of seeing, which delve into the efficiency of seeing, the effectiveness of it, and the comfort of it.

It may demand far more than glasses. It undoubtedly would in many instances require the use of vision training in orthoptics. It may require the use of subnormal vision aids, the determination of perceptual abilities of this patient to see.

I could go on and on, Mr. Congressman, with a description of the differences between the two types of practices I am describing, and particularly there is no way in the world that anyone, no matter how capable or competent, can take a patient and in five minutes make any determination whatsoever accurately of his vision status.

This is the type of practice that is so common and which are exhibited in the District of Columbia which commercially exploit optometry and that this bill is designed in part to eliminate.

Mr. JACOBS. From your response I would gather and infer that it is the procedure and not the geography which is objectionable, and therefore I would propound my next question—as to whether the procedure of the practice by a licensed optometrist should not be the subject of the regulation rather than the place where this occurs.

Let me go further by saying this: In my own profession of law there are some of us who practice with firms and some of us who practice, as I did, as a sort of country lawyer in general practice, and there are others who work for large corporations, so-called house lawyers.

I am wondering—and I know the analogy is not apt so far as house lawyers are concerned because they serve the corporation rather than the public in most cases—but my question in essence is this: Is the location of a reputable licensed optometrist what we are really getting at or the procedures followed in any given place?

Dr. CHAPMAN. Particularly, Mr. Jacobs, we are keenly interested in this matter of geography. I could make other comments about your question but I think that the subject is going to be answered in other testimony which will be given by Dr. Berlin of the District of Columbia Society, and it might be more answerable at that time when you hear it given in testimony, so if it is all right with you I would prefer we wait until then.

Mr. JACOBS. I think it is a matter of great importance.

Dr. CHAPMAN. It is.

Mr. JACOBS. I might say to the Chairman that I appreciate very much your summarizing your statement and I appreciate your prepared remarks.

Mr. SISK. The gentleman from New York, Mr. Horton.

Mr. HORTON. I have not had a chance to read this new bill, either, Mr. Chairman. I am not sure just how it ties in with others except as has been stated generally.

I wonder if this bill does not give the optometrists a monopoly with regard to the sale of eyeglasses, sun glasses, and the like?

Dr. CHAPMAN. No, sir, it does not.

Mr. HORTON. It is a pretty restrictive bill in so far as the ophthalmologists and the opticians are concerned.

Dr. CHAPMAN. The bill is restrictive only in the sense that it is protective to the general public which must use the services of the optometrists of the District of Columbia.

Mr. HORTON. Under this bill, could any outlet sell sunglasses?

Dr. CHAPMAN. Yes, they can.

Mr. HORTON. How about other glasses which do not require a prescription.

Dr. CHAPMAN. The only others permitted under this bill would be those which are protective and corrective eye wear which would be the safety type of glasses which could be dispensed.

Mr. HORTON. That is quite different from what exists in the District now?

Dr. CHAPMAN. Yes, that is quite different.

Mr. HORTON. And much more restrictive than what it is now, is it not?

Dr. CHAPMAN. No, I think it is actually a bit more permissive in some areas—permissive in the sense, and I don't know how to get this across to you as I want to—permissive in the care of human vision. It is not restrictive except only as it applies to the caring of people substandardly, if that makes any sense at all.

I use this type of statement only to indicate to you that the purpose in the bill itself is to insure that the public in the District can have assurances that that which they receive in the vision care performance is accurate, is complete, is thorough, is sound for their human vision.

Mr. HORTON. Does not this bill expand the definition of the profession of optometry from statutes of other states?

Dr. CHAPMAN. No, sir, it is less than in my state and less than a number of other states. It would be an expansion over some other states as well, yes, but not generally so in my opinion.

Mr. HORTON. How many states would you say have broader definitions than what is in this bill? You mentioned your own state.

Dr. CHAPMAN. Yes, and I can think of several other states. I would be taking just a poor guess. I don't know all the laws that well.

Mr. HORTON. What is the relationship between this bill which we have before us and as it pertains to the profession of optometry and the profession of ophthalmology?

Dr. CHAPMAN. You will have to ask the first part again.

Mr. HORTON. I am trying to get the relationship between the definition of the profession of optometry and the profession of those who practice ophthalmology.

Dr. CHAPMAN. I have for the record if you would like me to submit it, or I will answer it verbally, a breakdown of the differences between the two groups as they are defined.

Mr. HORTON. If you do have this breakdown I think it would be helpful to insert it in the record.

Dr. CHAPMAN. We have such a breakdown.

Mr. HORTON. Can that be supplied?

Mr. SISK. Without objection the statement will be made part of the record.

(The statement follows:)

THREE EYECARE VOCATIONS AND PROFESSIONS

Some confusion exists with regard to the types of persons serving the vision care needs of the public. There are three such groups and they can be simply defined as follows:

(1) *An optometrist*.—is a person licensed to independently examine the eyes and related structures to determine the presence of vision problems, eye diseases or other abnormalities. He prescribes and adapts lenses, contact lenses, or other optical aids, and utilizes vision training to preserve, restore and enhance vision efficiency. His doctorate degree is O.D., an abbreviation for Doctor of Optometry.

(2) *An ophthalmologist*.—is a duly licensed physician who specializes and is certified by a Board of his peers in the pathological and surgical care of the eyes. His doctorate degree is either M.D. or D.O. These abbreviations stand for Doctor of Medicine or Doctor of Osteopathy.

(3) *An optician*.—is a skilled technician, auxiliary to either the optometrist or physician, who grinds, supplies, and fits glasses or other optical appliances only on the doctor's prescription.

Generally, the optician acquires his trade by apprenticeship in an optical shop or by training in a technical school. Only a few states provide for the licensing of opticians and generally this license can be acquired by the simple expedient of securing the signature of several physicians, who may be from the general population and who certify to his competency. This is the procedure used in California for example.

An optometrist is required to have completed at least high school, two years of collegiate-level pre-optometric curriculum, and four years of graduate level professional training in one of the ten U.S. accredited schools or colleges of optometry. He must pass written, practical, and oral examinations to be licensed in any one of the states or territories of the United States of America.

An ophthalmologist acquires approximately sixty hours of specialized training in the eye by the time he graduates from medical school. The largest part of his specialty training is received when he is a hospital intern or resident following his graduation. Any physician, regardless of his medical specialty, can practice in the field of vision care by his exemption from the optometry licensing requirements found in all state laws.

Mr. HORTON. That is all I have at this time.

Mr. SISK. The gentleman from New Mexico, Mr. Walker.

Mr. WALKER. I have no questions at this time.

Mr. SISK. The gentleman from Ohio.

Mr. HARSHA. Dr. Chapman, as I understood you, you said you were here in behalf of H.R. 1283 and H.R. 12276. Is that correct?

Dr. CHAPMAN. Yes, sir.

Mr. HARSHA. What is the difference, if any, between those two bills?

DIFFERENCES BETWEEN H.R. 1283 AND H.R. 12276

Dr. CHAPMAN. H.R. 12276 was only just recently introduced and I cannot give you all the differences. There are several changes in that bill over H.R. 1283 but I do not know how I would be able to describe those to you unless I went page by page through the bill, Mr. Harsha.

This bill H.R. 12276 has been considered and discussed and has been made as competent and as carefully planned as we can make it. As Mr. Sisk has been able to design it, the changes which are made in this current bill, over the H.R. 1283, we feel will in most instances take care of numerous objections which were put against the bill introduced in the last session of Congress.

There are changes in this recent legislation, the newest bill, H.R. 12286, as introduced by Mr. Sisk and others, which will in my opinion readily answer effectively and affirmatively some of the objections to the original testimony in the original bill we had.

Mr. HORTON. Would you specify what changes are in this new bill? This was introduced on August 10 and I got a copy of it only today.

Will you specify what those changes are and indicate to us what effect they will have?

Dr. CHAPMAN. Yes, I can.

Mr. HORTON. You worked on the bill?

Dr. CHAPMAN. I have read this bill several times, to say the least, yes.

Mr. HORTON. Did you work with Mr. Sisk in making these changes?

Dr. CHAPMAN. I personally did not.

Mr. HORTON. I mean your organization.

Dr. CHAPMAN. Yes.

Mr. HORTON. Can you tell us what those differences are?

Dr. CHAPMAN. Yes, I can.

Do you have the bill before you?

Mr. HORTON. I have a bill.

Dr. CHAPMAN. The first change was on page 2.

Mr. HORTON. I am not talking about just technical changes. I am talking about substantial changes. I don't mean changing the word "and" and so on.

Dr. CHAPMAN. These would be substantial changes. These would be changes from H.R. 1283 now.

On page 2—

Mr. SISK. If I may comment briefly to clarify this. H.R. 1283 to which you refer, is substantially different from the original bill of the 89th Congress because the gentleman from New York will recall after considerable discussion we agreed to a number of recommendations.

Then in this Congress I introduced H.R. 1283, and I believe my good friend from Florida introduced a similar bill.

Then as we continued to work on it I introduced this latest bill, H.R. 12276, which you are now comparing; it does have some additional changes.

Mr. HORTON. That is why I asked earlier that we have a staff memorandum for the benefit of the members of the Subcommittee and also for the full Committee, if we get to the full Committee, to set out changes made between the 89th Congress bills that were the subject of the hearings before the Dowdy Subcommittee in the 89th Congress and these. Those printed hearings are before us and were held through May 31 of 1966.

I want the differences between those bills and those introduced January 10 in the 90th Congress, and also the changes which have been made in H.R. 12276 as they differ from H.R. 1283 which was the bill introduced in the early part of the 90th Congress.

That is why I want something so we will have a pretty good analysis of what we are talking about here.

I don't know how closely these witnesses are tied in with the differences but I thought Dr. Chapman could relate to us what some of these changes are and the position of his group with regard to them.

Dr. CHAPMAN. I will be glad to try that. There have been several bills and I will do my best to quickly give you the salient points of the major differences in this newest one, but particularly as changed from the last one which you discussed here last year.

On page 2, line 20, item (d), of H.R. 1283 the determination of the scope of the functions of the human eye in general, has been deleted. The current bill will not have——

Mr. HORTON. What line?

Dr. CHAPMAN. Line 20.

Mr. HORTON. Item (d) has been deleted from H.R. 12276?

Dr. CHAPMAN. Yes.

Mr. HORTON. Determination of the scope of the function of the human eye in general?

Dr. CHAPMAN. Yes, sir. There was some renumbering but that was incidental.

Mr. HORTON. Was this the recommendation of your organization?

Dr. CHAPMAN. We are so very anxious in my Association to somehow bring the antiquity of optometry out of the dust from 1924 up to the modern day period that we have been perfectly willing to sit with and try as best we can to work out the objections to the original bill. Where we could we were willing to accept the feelings of other groups interested in this piece of legislation and we tried to cooperate as completely as we could.

Mr. HORTON. This has to do with the definition of the profession of optometry in the District of Columbia. Do you have in your statement, which we have not had an opportunity to read, do you have anything in your statement which would cover the deletion of that part of H.R. 1283?

Dr. CHAPMAN. No, sir, I don't believe there is reference made to deletions from the bill in my statement.

Mr. HORTON. I meant with regard to the change of the definition of the practice of optometry.

Dr. CHAPMAN. No, sir.

Mr. HORTON. Do you have any comments to make with regard to the deletions and the effect of them?

Dr. CHAPMAN. I think the effect would simply be that item (d) was not clear. It left a considerable amount of conjecture on the part of someone reading the words in it, and it was not definite enough to the point that people would be absolutely certain of just exactly what it included.

Have you any further comment, Dr. Hofstetter?

Dr. HOFSTETTER. Not at this time.

Dr. CHAPMAN. The statement itself was not meaningful. It had various meanings to those who read it and it was eliminated. It is as simple as that.

Shall I move to another?

Mr. HORTON. Yes. Under this practice of optometry in the new bill are there any additions?

Dr. CHAPMAN. Not in the definition, no, sir.

On page 4, at line 19, there is inserted the language that the Commissioners are authorized and empowered to alter, amend and otherwise change the educational standards at any time, but in altering, amending or changing said standards the Commissioners shall not be permitted to lower the same below the standards herein set forth.

I am sure you remember at the conclusion of the hearings last time practically every group which testified had various amendments which they cared to make. The Commissioners were among that group.

This was one of the amendments they wanted to see in the bill.

On page 11 of H.R. 1283, at line 12, item 4 was deleted and reworded with the following language: "With the exception of non-prescription sun glasses" and this applies to—

Mr. HORTON. Are you reading the new language now?

Dr. CHAPMAN. Yes, sir, this is at page 11, line 8 of H.R. 12276.

Mr. HORTON. What page is that on?

Dr. CHAPMAN. Page 11, under Section 8 which has to do with the statement "It shall be unlawful for any person to do" these various things:

(4) * * * With the exception of non-prescription sun glasses or non-prescription protective eye wear to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price, cost or any reference thereto whether related to any eye examination or to the cost or price of lenses, glasses, mountings, or ophthalmic articles or devices.

Mr. HORTON. Is the effect of that just to eliminate nonprescription sunglasses and nonprescription protective eyewear? Is that the effect of it?

Dr. CHAPMAN. Yes, sir; that is the effect of it.

On page 12 at line 12, striking "optometrists," the new wording would be: "It shall be unlawful for any person other than a person licensed to practice optometry, medicine or osteopathy under the laws of the District of Columbia," and it continues, "to utilize the services of an optometrist on a salary, commission," and so forth. The language remains the same thereafter at that point.

Mr. HORTON. Do you want to define these terms, other than a person licensed to practice optometry, as set forth in this bill? I am trying to determine what these definitions are. Do you want to read what you have in the language there?

Dr. CHAPMAN. The one I just read?

Mr. HORTON. The new language.

Dr. CHAPMAN. "It shall be unlawful for any person other than a person licensed to practice optometry, medicine or osteopathy * * *."

Mr. HORTON. What are medicine and osteopathy?

Dr. CHAPMAN. It is a matter of exemption.

Mr. FUQUA. This was to clarify an objection, I believe.

Dr. CHAPMAN. There was an objection to the original language of the bill which included only "other than an optometrist". This is exemptive language which was asked for.

Mr. HORTON. What about an ophthalmologist?

Dr. CHAPMAN. He would be included in the term "medicine".

Mr. HORTON. What is an osteopath?

Dr. CHAPMAN. He is a doctor of osteopathic medicine.

Mr. HORTON. Does that include the eyes?

Dr. CHAPMAN. Yes, there are osteopathic ophthalmologists.

Mr. HARSHA. If I have my eyes examined by the ophthalmologist and he sends me to an optician to make my glasses, he is exempted under this provision?

Dr. CHAPMAN. The ophthalmologist, yes.

Mr. HARSHA. How about the optician?

Dr. CHAPMAN. The optician is permitted to fill prescriptions under the terms of this Act.

Mr. HORTON. Go ahead to the next one.

Dr. CHAPMAN. On page 13, lines 7 and 8 of H.R. 1283, place a comma after the word "optometry" and delete the word "or" before the word "medicine" and insert the phrase "or osteopathy" after the word "medicine" in both lines, so it would read as on page 12, line 24 of H.R. 12276: "This Act shall not apply (1) to any bona fide student of optometry, medicine or osteopathy in the clinic rooms of a school of optometry, medicine, or osteopathy approved by the Commissioners."

The original language of the bill only said optometry, and the purpose was to make certain there would be no question about whether or not these students in these other disciplines could have the same privilege.

On page 13, line 21 of H.R. 1283 has been amended in H.R. 12276 to read:

This Act shall not be deemed to require a physician or surgeon licensed under the laws of the District of Columbia for the practice of medicine or osteopathy to have a license under this Act to perform those services defined by this Act as the practice of optometry.

These are exemption clauses that have been asked for, and that is what we are trying to provide in this change of language.

On page 13, line 25, and page 14, line 1, delete the phrase "physician, surgeon, or an optometrist" and replace with the phrase "person licensed to practice optometry, medicine, or osteopathy".

Mr. HARSHA. That change is at page 13, line 20, of H.R. 12276.

Dr. CHAPMAN. Yes.

Mr. FUQUA. It is somewhat redundant. You are putting in the word "osteopathy".

Mr. HORTON. On line 20, page 13, of the new bill, H.R. 12276.

Mr. SISK. Dr. Chapman, there is apparently a little difference. Actually, it goes back to line 20, page 13, of the new bill.

Dr. CHAPMAN. Mr. Horton, I will be frank to admit I am using some original notes on other bills, and I am sure it is not as accurate as what you have before you in the new bill. I have it all compiled, but it is not numbered exactly as you have it.

Mr. HORTON. We will have to transcribe what you are saying from the old bill to the new bill.

Dr. CHAPMAN. On page 15 is the area where the greatest number of changes, I think, will be found. There is a new subsection (4) inserted between lines 2 and 3, following the words "practice of such license for a period not to exceed one year." We have reference, here again, to nothing in this Act shall be deemed to prevent the following things from happening. There is a new subsection (4) which reads

as follows, immediately following the words "not to exceed one year."

Mr. HORTON. That is shown starting on line 22 of page 14 of H.R. 12276.

Dr. CHAPMAN (reading) :

(4) a person from acting as an assistant under the direct personal supervision of an individual licensed by the District of Columbia to practice optometry, medicine, or osteopathy, provided such assistant does not perform an act which would require professional judgment or discretion.

That is the addition of a new subsection (4).

Mr. HORTON. Yes.

Mr. HARSHA. On line 23 page 14 of the new bill, H.R. 12276, the phrase "direct personal supervision" appears. Does that mean the optometrist or the ophthalmologist, whoever it may be, has to be in the room overseeing what the nurse or the assistant is doing?

Dr. CHAPMAN. I know the question is well asked. The point I would make here is simply that there has been a great deal of question, and in many instances court proceedings, regarding this question of direct personal supervision. As applied to subsection (4), I would have to interpret this out of my own knowledge as to what I envision for the ophthalmologist to have at his disposal, the use of technicians and people within his office, that any act which literally did take professional judgment or discretion, he would be the only one able to do, and other acts would be where he would have definite control over or overseeing what these people are doing.

Whether it is in the same room, I cannot answer. In my understanding of words, I would say perhaps in the same room, but I understand, too, there is considerable question about direct supervision.

Mr. FUQUA. I think it was intended this would be similar to the dental hygienist or nurse assisting the doctor, that they could not be 10 miles away in another branch office making professional decisions with the doctor somewhere else; that they would have to work under his direct supervision. I do not know whether it means in the same room. They probably could give certain eye chart readings or something like that.

Mr. HARSHA. Suppose you are conducting an examination of school students, and you have a nurse or assistant there who has not the degree of training that you have. Does it take medical judgment to interpret an eye chart?

Dr. CHAPMAN. In that sense, it does not, and this bill provides that the screening system, and so forth, utilized by nurses under supervision, but under supervision only in the sense that supervision comes from the direction of the program, the design of the method, and so forth. No, there would not have to be a professional man in attendance at that time, and this bill so provides.

Mr. HORTON. How many more changes do you have, Doctor?

Dr. CHAPMAN. I shall have to follow the original bill. We are looking at the copy of the bill you have.

Vision screening programs, on page 15 line 3, of H.R. 12276, involves the question you just asked about, Mr. Harsha.

Mr. HORTON. That is simply a language change. That is now No. (5) on line 3, page 15.

Dr. CHAPMAN. Correct. Line 6 subsection (6), on page 15 of H.R. 12276 is new: "persons from supplying spectacles or eye glasses on

prescription from an individual licensed to practice optometry, medicine, or osteopathy”.

Mr. HORTON. That is new?

Dr. CHAPMAN. Yes.

And there is also a new item, (7), line 9, page 15 of H.R. 12276: “a person from selling nonprescription sunglasses or nonprescription protective eyewear.”

Mr. HORTON. That is lines 9 and 10 on page 15, section (7)?

Dr. CHAPMAN. Yes. Then the final change will be item (f), line 16, in H.R. 1283. Adding following “medicine,” line 14, the words “or to write or issue prescriptions for the obtaining of drugs or medicine in any form for the treatment or examination of the human eye.” This is shown as lines 20 to 22 of H.R. 12276, page 15.

Mr. HARSHA. How do you justify that when back on page 2, line 15, you say the practice of optometry means “(a) the employment of any objective or subjective means for the examination of the human eye, including its appendages”? Does that authorize you to use drugs to make an objective examination of the eye?

Dr. CHAPMAN. No, sir, it does not, Mr. Harsha. In fact, that language is in a great number of the statutes defining optometry throughout the nation. That is very common language. In optometry there are two basic systems. The first is the objective method whereby you use instrumentation to make your judgment. It is a little more complicated than that, but that is the simplest way to say it. The second would be the subjective method where you are asking the patient and having the patient respond. No, sir, that does not include the use of drugs.

Mr. HARSHA. Do you interpret this new subsection (7) you just added to limit this subsection (a)? Does it make it quite clear you are not permitted to use drugs?

Dr. CHAPMAN. This subsection is inserted for the purpose of indicating in the section that for the treatment or the handling of the individual patient, drugs or medicines are not to be used.

Mr. HARSHA. Does not this subsection (a) on page 2 authorize you to get into the pathology of the eyes?

Dr. CHAPMAN. Mr. Harsha, of course one of the prime responsibilities of the optometrist, because of the numbers of patients he sees, is the matter of the care of the patient professionally to make certain there is no pathology present. He is taught and trained in that area, as Dr. Hofstetter, who can amplify if you want him to, can tell you. Because he is the very first line of defense against blindness for the great bulk of the American people, this is part of the responsibility that he must have. This the profession has recognized for a long time and has so trained its people to do.

There is no intent in this Act to expand the philosophy of optometry into the drug field.

Mr. HARSHA. On page 3, subsection (h) reads: “the identification of any departure from the normal condition or function of the human eye.” You do not think that would broaden your field or scope of inquiry?

Dr. CHAPMAN. No, sir, I do not think so at all. I think this is an absolute necessity and requirement.

Mr. HORTON. Would your Association agree to the elimination of subsections (a) and (h) under section 3 subdivision (2)? Those are the two Mr. Harsha just read.

Dr. CHAPMAN. No, sir, we couldn't, Mr. Horton. The optometrist sees approximately 70 percent of the patients who walk in his office for vision care, and he must be equipped to have at his disposal the methods that optometrists are trained in to determine the facts about the human eye.

Mr. HORTON. I am concerned that there perhaps is some confusion here between the practice of optometry as defined here and the field of ophthalmology. I am not an expert, and that is why I am asking your opinion whether or not your Association would be willing to drop those two sections.

Dr. CHAPMAN. No, sir, we couldn't possibly drop those two sections and still live up to the principles of what an optometrist is supposed to do and live up to the demands of the patient in coming to us for care. There is no intent whatsoever to use drugs for the purpose of treating the human eye. The optometrist is trained in the vision care of this patient, but he must in the original determine the health of this eye so he can then proceed with the techniques which are given to him to utilize.

Mr. HORTON. When you get into that field, then you are getting into the field of medicines, are you not?

Dr. CHAPMAN. Which field?

Mr. HORTON. What you just said.

Dr. CHAPMAN. The recognition of pathology or the detection of it?

Mr. HORTON. Yes.

Dr. CHAPMAN. No, sir, we do not consider that in the field of medicine at all.

Mr. SISK. As I recall the testimony last year, when the American Medical Association was before our committee they discussed the necessity of optometrists making referrals to doctors of medicine in cases where medical attention was required. Is that correct?

Dr. CHAPMAN. Yes, sir.

Mr. SISK. How could you make a referral without the ability to detect some departure from the normal?

Dr. CHAPMAN. There would be no way whatsoever.

Mr. SISK. I understand optometrists take care of around 70 to 75 percent of all Americans as far as their visual care is concerned. If the optometrist was not required to have the ability to detect such departure from the norm and that medical care was required, he would have no possible way of referring the patient to an ophthalmologist or a doctor of medicine.

Dr. CHAPMAN. I would like to ask Dr. Hofstetter to amplify on this for a moment, if he will.

Dr. HOFSTETTER. Traditionally, medicine has not been peculiarly concerned with the detection but, rather, with the treatment and care of disease. The detection is largely anybody's business and, in fact, it is farmed out to all sorts of programs.

The optometrist has the detection problem. If we do not permit the optometrist the legal privilege of detecting and making such tests as are necessary to detect pathology or pathological processes or inter-

ferences with vision, then we will be creating a situation where the great mass of people who go to the optometrist will have to go to two people in order to get the complete visual care. By removing these sections that are in question, it would be necessary then that each patient who now goes to the optometrist and trusts him to make the necessary detection for pathology, would have to be cleared through a physician as well. This, I think, would be economically costly.

Mr. HARSHA. Have you any more amendments or changes to offer?

Dr. CHAPMAN. No, sir, I believe that is the final one.

Mr. HARSHA. You said you urged the subcommittee to approve this bill or one similar to it with certain minor amendments, as I remember your testimony. What additional amendments have you to offer?

Dr. CHAPMAN. I have none, Mr. Harsha. I used that terminology only because I doubted very seriously that the bill as presently drafted would have all of the questions answered properly, and there might still have to be some clarifying amendments to it, but only in that sense. As far as I know, there are no major changes anticipated at all in H.R. 12276.

Mr. HARSHA. I have one other question as to page 2, subparagraph (2) under section 3, "‘practice of optometry’ means any one, any combination, or all of the following acts or practices as they are included in the curriculum of recognized schools and colleges of optometry".

Does this mean that a school of optometry can change the law, so to speak, by changing its curriculum?

In your definition, it is left to the curriculum of the school to determine what optometry is. Every time the curriculum changes, so changes the definition of optometry, does it not?

Dr. CHAPMAN. I will ask Dr. Hofstetter to answer that because it is a matter of education.

Dr. HOFSTETTER. I do not know the legal interpretation of the phrase, but when I read it I thought that meant provided that these are taught in the curriculum. It had not occurred to me that it might be the other way.

I really cannot answer that. I can only say that had not occurred to me. I am sure that is not the intent.

Mr. HARSHA. Then you would not object to an amendment to clarify that to make sure?

Dr. HOFSTETTER. I would like to see it clarified.

Mr. HARSHA. That is all I have.

Mr. SISK. The gentleman from Maryland, Mr. Gude.

Mr. GUDE. On the first page of your testimony you say, "It elevates the practice of optometry in the District of Columbia to the level of a profession as recognized in the other States and territories of our Union."

Do you mean there all the States recognize optometry as a profession?

Dr. CHAPMAN. Yes, sir.

Mr. GUDE. The District of Columbia is the only jurisdiction which does not?

Dr. CHAPMAN. As far as I know, it is the only jurisdiction that does not so identify it.

Mr. GUDE. On page 11 of the new bill, H.R. 12276, it says, "with the exception of the nonprescription of sun glasses or nonprescription of protective eyewear, to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price cost or any reference thereto," and so on. Should that not be rephrased? Is that not ambiguous? I do not believe that is what is intended. If it does not include the price, then you could advertise. That appears on page 11, subsection (4). It is unlawful only if the advertising includes or contains the price. The inference would be if it does not include or contain the price, then you could advertise the things referred to.

Mr. SISK. As I understand his concern, interprets the language to say that if it does not contain the price then it could be advertised.

Mr. GUDE. "To advertise or cause to be advertised to the public any material of any character," is the language. I think it is just a matter of wording.

Mr. SISK. In other words, you feel it should be more restrictive.

Mr. HARSHA. I think what he is trying to get at is that you do not include the price in the advertising. Is that not what he wants?

Mr. SISK. We will have to study this language. I agree with the gentleman, it should be studied if that is a loophole.

Dr. CHAPMAN. That is probably the type of amendment that I had reference to that might come up.

Mr. GUDE. You made the statement that the recognition of symptoms of illness was something that is farmed out by the professions of medicine and dentistry. Could you give examples of that?

Dr. CHAPMAN. I believe Dr. Hofstetter made reference to the farming out. I do not believe I said that.

Dr. HOFSTETTER. I do not understand the question.

Mr. GUDE. You made reference that recognition of symptoms of disease is something that is farmed out by the professions, and very often it does not take a professional man to recognize the symptoms of disease.

Dr. HOFSTETTER. I was referring to screening programs that are often done on the detection side, the work that is done in detection in T.B. screening, and that sort, of thing, where the work is done by technical people without a physician being present. I made the remark that it is almost anybody's business. The fact remains that most of us detect our own illness before we call a physician. One does not have the privilege, particularly. A mother, neighbor, someone makes the assumption or the detection that all is not well. That is quite different from the recognition of the specific disease.

Mr. GUDE. A dental hygienist, a person who cleans teeth, does not have to practice under a dentist.

Dr. HOFSTETTER. I do not know. I would have to guess. I just don't know precisely. In the case of a nurse, the nurse frequently is called upon to make judgments which require the calling of a physician, who leaves the hospital or the nurse with the patient and says, "Call me if and when."

This is what I mean by farming out the decision to detect anomalies or variations which call for medical attention. This detection of variations I think is almost a class of skill in itself as distinct from making diagnoses appurtenant to the treatment and care.

Mr. GUDE. Why does optometry have to be a profession when they can carry out this farming-out function? Can they do this job without being in the status of a profession? Is it necessary to have professional status to carry out this function?

Dr. HOFSTETTER. I am not speaking legally now, but I suspect it is a matter of clarification of what one holds himself out to be able to do. In the case of the optometrist, as a part of his traditional practice and reflecting the decisions that have been made along this line for the better part of a century, it is, I think, so that he can first of all assume this responsibility. If this is not a part of the license or spelled out responsibility, then he has no obligation to assume it, but it is important that he have this obligation assigned to him. Otherwise, we will have to create a clearance. That is to say, if he has no implied or spelled out obligation to detect pathology, then it becomes in the public interest important to make some other provision to take care of this. This is, I think, why it is important to put it in this licensing provision.

Mr. GUDE. In other words, by having professional status, he can better do this job?

Dr. HOFSTETTER. Yes.

Mr. GUDE. Is that what you are saying?

Dr. HOFSTETTER. Yes.

Mr. GUDE. Thank you.

Mr. HARSHA. The mere fact that you have professional status would not enable you to do the job better?

Dr. HOFSTETTER. It would not enable him to do the job better.

Mr. HARSHA. It would depend upon his background and training.

Dr. HOFSTETTER. No, the background—

Mr. HARSHA. I mean the education.

Dr. HOFSTETTER. The education that he gets might be effective for a year or so, but the professor's influence diminishes very rapidly if the climate is not satisfactory.

Mr. HARSHA. May I ask one other question, as to page 12, subsection (7) of the latest bill, H.R. 12276, which reads:

other than a person licensed to practice optometry, medicine, or osteopathy under the laws of the District of Columbia, to utilize the services of an optometrist on a salary, commission, lease, or any other basis or to engage or undertake to engage, directly or indirectly, in any manner whatsoever, in the practice of optometry.

Apparently this is designed to eliminate the practice in stores like Sears Roebuck—I do not know whether Montgomery Ward does it or not—where they have an optometrist in their store and he prescribes and fits glasses right there, but he does it on a commission basis or salary basis. You are opposed to that practice?

Dr. CHAPMAN. Yes, sir.

Mr. HARSHA. Why, if he is a licensed optometrist?

Dr. CHAPMAN. Because the motivation for the practice that is evident by this type of individual is purely from the profit-making side. His responsibility is not to the individual as a patient but, rather, to his employer. It depends upon speed, how fast it can be done, how many people can be seen.

Statistics will prove the thousands that are seen. There is not given the climate for thorough professional eye care under circumstances

such as that. You are making a commercial product out of a pair of glasses, and they were never designed to be that.

Mr. HARSHA. To the same degree that would occur with a person practicing in his own office. He did not get into the business of optometry because he was so deeply interested in my eyesight. He got into it primarily because it was a way of livelihood or a way of earning a living for himself.

Dr. CHAPMAN. Yes, sir. I would certainly say that.

Mr. HARSHA. Of course, under your oath, if you have one—I assume in other States they would have one, or at least a code of ethics.

Dr. CHAPMAN. Yes, sir.

Mr. HARSHA. You do all that is humanly possible properly to treat the eye with that in mind, but I think it is a matter of degree. If you have a man of high morals, of high integrity, who cannot for financial reasons build up an office and equipment of his own—in many cases he might be married, because a lot of us get married before we get out of school, so he has family responsibilities—could he not practice under these circumstances just as well?

Dr. CHAPMAN. No, Mr. Harsha, I do not believe he could, by any stretch of the imagination, no more than I believe a medical practitioner or anyone else could do it on that basis. The only way that this young man with all of his problems—and this Association is designed and prepared to assist in every way it can to make certain he is successful in the practice of optometry—the only way that he can do that is to go into his office and learn and to give the best to the patient.

In the commercial element, the only way the practice is developed is through the advertising. There is no concern with the patient. If the patient does not come back, it does not make any difference. So many other people are coming right behind, it is not of any significance at all.

This profession is designed to render total vision care, and that young man is taught to do that. The professions are regulated. The legal profession and the medical profession are regulated, and certain demands are placed upon the practitioner. Demands are placed upon our practitioners throughout this country, but they are not placed on them here. He is in the market place with a commercial product. The people's needs are not uppermost in his mind. It just cannot be, under those circumstances.

Mr. HARSHA. I do not quite agree with you on that, but let us take this case. Could he lease office space in there, regardless of his volume of business, and have no other connection with the firm at all? Let us say he wants to locate there because a lot of people move in and out of the store. He cannot advertise, as you want to prohibit advertising in this bill. Like any other professional man, he cannot advertise his profession or his availability, but he wants to locate in that store because there is a volume of traffic there with which he may be able to do business. Would that be precluded under this bill?

Dr. CHAPMAN. Yes, it would.

Mr. HARSHA. Would you have the same objection to that as the man working on salary for the company itself?

Dr. CHAPMAN. He cannot render professional care under that circumstance, I do not believe, using that as the device by which people

come to you as the practitioner. In other words, you have to render the service and you have to do it so well that that patient will go out and send someone else in.

Mr. HARSHA. He could do that, too. You have to have the first patient.

Dr. CHAPMAN. Medical doctors do not do that to start their practice. Dentists do not do that to start theirs. Lawyers do not do that to start theirs.

Mr. HORTON. It might not necessarily be someone starting out in practice. He might have been in practice for 10 or 15 years and go to Sears.

Mr. HARSHA. That was the example I gave him.

Dr. CHAPMAN. I would like to make this statement regarding certain of the questions you have raised. Perhaps I should have said this sooner. In testimony to follow, which will be from our District of Columbia Society Board, I suspect other elaboration on your question in this area, particularly as applies to Washington, will be provided, and you will have the opportunity to question further exactly the statistics on the practice as carried on here in the District of Columbia when Dr. Berlin testifies.

Mr. HARSHA. I do not find any quarrel with your efforts to elevate your profession, to make it more capable of serving the public, to the highest or best condition it should be, but I do not ascribe the same motives as you do to a man trying to do business in a Sears Roebuck store.

Dr. CHAPMAN. It is not a business, Mr. Harsha.

Mr. HARSHA. Or profession, or whatever you want to call it.

Dr. CHAPMAN. The very word "profession" connotes certain characteristics which this man must have. Our men are taught these things.

Mr. HARSHA. That is my point. If he has these characteristics that you want him to have, I cannot see where he is going to be so changed by the fact that he is located in one of these stores.

Dr. CHAPMAN. Do you want me to answer further?

Mr. SISK. I do not doubt a man could go to work for Sears Roebuck and be just as dedicated and sincere and do a job. However, evidence from last year indicated they do not last with Sears Roebuck because it does not pay off with a corporate entity. At least, that is what the evidence indicated.

Dr. HOFSTETTER. I think I can answer in part in terms of the experiences of our own graduates. I am naturally close to the students and follow them for some time. If they go into clinical practice or private practice where they are free to serve the patient personally and to make their own judgment as to what is needed, their whole attitude is different than when they go into the employment of a lay corporation where they have to comply with the time limitation, the sales policies, and so forth, of the organization which is geared toward the sale of frames and lenses.

Mr. HARSHA. He works on a commission basis, and the motivating force would be very strong. I can see that.

Dr. HOFSTETTER. Our students are not angels, by any means. Optometrists are human, like anyone else, I would hope. The result is that within a very short time they are doing an extremely abbreviated examination, omitting important parts of the professional procedure.

Mr. HORTON. Along this line, is not the difficulty with regard to the present requirements for qualification to practice optometry and those that are enumerated in the new proposal? In other words, the proposal has more requirements for the practice of optometry rather than a definition of what it is. The problem in the District, as I understand it, is that there are not the requirements that are in the new bill. If you had the requirements for the practice of optometry which are in section 4 of the new bill—21 years of age, 4-year course of study in high school, completed a preoptometric course of at least 2 years at college level, and then it goes on—this would raise the standard, would it not, over what the District requires at the present time?

Dr. HOFSTETTER. That would raise the standard, but it would not solve anything in particular, I do not believe.

Mr. HORTON. I do not know what the standard is at the present time, but I think without having anything other than just a college degree—

Dr. HOFSTETTER. There is no other source of new optometrists except from the schools that provide these standards, so the stipulation of the educational requirements in the proposed law simply recognizes the present situation.

Mr. HORTON. I am saying if you left in these requirements in section 4 of the new bill and eliminated the ones Mr. Harsha was talking about on page 12, eliminate section (7), to utilize the services of an optometrist on a salary basis, by raising your standards you probably in the long run would solve this problem as set forth in section (7).

Dr. CHAPMAN. I do not believe so, Mr. Horton. I do not believe there is that much time. In the first place, that does not help the situation at all for the protection of the public who is being worked into these practices.

Mr. HORTON. It is claimed that the optometrists are not qualified as they would have to be under this Act. That is part of the objective, as I recall it. If the requirements are raised to a professional status, which is what you are asking here, then Sears Roebuck and the others would have to have someone who is qualified under this section, under section 4, and better, more competent, and more professional services would be provided at these stores.

Dr. HOFSTETTER. I think this proposition assumes that the training will control the man's behavior throughout his career, and this is his problem. Our educational facilities are simply not so effective that we influence the behavior for 30 or 40 years. If the climate in which he can operate, if his freedom to exercise professional judgment, if his freedom simply to consume an extra 20 minutes on an individual patient without throwing a monkeywrench into the machinery of the organization, if that freedom is not allowed, he soon begins to abbreviate the examination, to leave out large portions of his services, to eliminate offerings that patients want which it is not expedient to offer under the objectives of the corporation that he is working for, and he becomes unprofessional.

Mr. HORTON. You are saying section (7) is for the protection of the neophyte optometrist, too, because if he is in that atmosphere he will be corrupted and will not do the job as well as he would if he were out in private practice.

Dr. CHAPMAN. In my opinion, that is exactly right. I do not know whether we have made this clear or not. We have tried. This may be the basic principle involved here. What we are talking about is not a commercial product here, a salable item in the sense that some piece of merchandise is salable. You would not give me anything for these glasses because for you they are absolutely valueless, nor would I give you anything for yours because I could not see out of them. There is so much more to the understanding of human vision and the care of it than just the quick prescription of a pair of eyeglasses that might make you see a little better.

Mr. HORTON. That may be perfectly true, and I would admit that, except we are going to have an optometrist in charge of this department, one of your own, a man who has this ability.

Dr. CHAPMAN. But he does not have the opportunity to utilize that ability. Why would he want to utilize it when his patient load is coming in because of advertising, price, and so forth? He has no reason to serve the patient well when he builds the practice on that basis. He has more patients generally than he can see. He has to see them quickly and rapid to see the next one and the next one and on and on and on. This is a purely commercial operation owned by people who couldn't care less about human vision, who have no concern whatsoever for the welfare of the individual patient in his office. They are not set up on that basis. They were not designed that way.

If you put this kind of product in the market place with five minutes' service, trade in your old eyeglasses and all of the many gimmicks that go into getting people into this place, there is no atmosphere or climate whatsoever for this optometrist, whoever he may be, to practice in the full, thorough way that he should to take care of the vision of the individual patient.

You are dealing with the most precious possession we have, and you cannot deal with it in the market place. That is the purpose of this bill, among others, as it is in my own State and many others where this is not allowed.

Mr. GUDE. I have one more question. The requirements that you have outlined for the profession of optometry are lower than would be required for a physician.

Dr. CHAPMAN. I do not think we have ever made an analysis of their level. There are differences. I do not think they are any lower, but they are different.

Mr. GUDE. The thrust of your argument is that the eye is probably one of the most sensitive organs in the body, and it requires the very best attention that a person is able to get, and for this reason the optometrist should be a professional man.

Dr. CHAPMAN. There is no question about that. The only question—and it is not a question because you are absolutely right. Yet, we think so much more in terms of the vision care of the patient than we do of eye care as such, because that is not the field of the optometrist. I want to make that point, because so often they will say, "Are you an eye doctor as such?" Of course, we are deeply concerned with the eye, but more particularly our training is in the area of the vision problem after ascertaining the health of the eye.

Mr. GUDE. It seems to me the thrust of your argument is that optometry should be just a branch of the field of medicine—for example,

an eye, ear, nose and throat physician or a person treating some other area, some other specialty.

Dr. CHAPMAN. Not really, at all, because optometry is fully intending to stay independent and a coordinate profession along with the other health care fields, particularly because the whole emphasis of all of our training is dealing with the eye and vision. The systems and the methods and design of how we proceed with this thing are purely optometric in scope. It has been developed that way, and we are proud of where we are with it. It has gained the right to maintain itself as an independent, coordinate profession. We have no desire whatsoever to be a part of the medical team, because it is not in that sense that we operate.

Mr. GUDE. Is not the eye so much a part of the body that you cannot separate it and treat it independently, any more than a person treating the throat? I cannot see why it should not be a branch of medicine.

Dr. CHAPMAN. You do not see why it cannot be a branch of medicine?

Mr. GUDE. Why it should not be branch of medicine.

Dr. CHAPMAN. Do you want to amplify that?

Mr. GUDE. It seems to me there are professional requirements.

Dr. HOFSTETTER. I think the answer lies in the economy of education in the sense that visual science contains in it a core of knowledge that is not in the standard medical curriculum and requires a different emphasis. So, for the physician to become familiar with visual science, he would have to take a great many courses, materials, and topics that are now included in the optometry curriculum but are not in the medical curriculum. For this to be a branch of medicine, which is a perfectly reasonable question, would mean that on top of the medical education, he would have to introduce a whole body of knowledge which he does not now have, the whole area of mechanical optics, ophthalmic optics, physical optics, environmental optics, and so forth, which are not included in the medical curriculum but are the heart of the optometry curriculum.

To oversimplify it just a little bit, let me say that the medical treatment of the eye can proceed without knowing what the eye sees. That is, the treatment of the eye may take place and the information on how well the eye sees or the visual skill of the person may be quite incidental to the treatment or the surgery involved in the care of the eye as an organism or as a tissue complex.

The optometrist is concerned with the visual function, color vision, dark adaptation, image formation, diopters, and so forth, as a performance of the eye which can be affected by pathological deviations. In that sense the optometrist must know incidentally the visual phenomena related to pathological deviations.

The physician, on the other hand, may be concerned with the visual phenomena incidental to the pathological deviations.

Mr. GUDE. You were mentioning the specialty. Is it not true of every particular specialty in the medical profession that it takes additional training and work to accumulate knowledge which pertains to, for example, allergy, or a person who specializes in ear, throat or chest specialties? It requires additional training and additional knowledge.

Dr. HOFSTETTER. It is true. In this situation I think there is an added distinction in that the training is not only added training, but very differently founded training, founded on optics, mathematics, and psychology as well as physiology, biology, anatomy, and so forth, which are not characteristically included in the medical training or in the selection of medical students.

Mr. HORTON. Why, then, if there is such a concern with the practice of the profession, that those who are in the optometric field handle such a large volume of the sale of eyeglasses? Most of those in medicine tend to refer a person to opticians for eyeglasses. They write out prescriptions for them. Why do you have in the field of optometry such a concern about the sale of eyeglasses? This is not part of the profession as such.

Dr. HOFSTETTER. Are you asking me?

Mr. HORTON. Yes. Either one. By this bill you are creating a monopoly for the optometrist to sell eyeglasses, and it does not seem to me it makes any difference who sells the eyeglasses, whether he buys them at Sears, the opticians, or where he gets them. If you are able to do the work that you have to do as a profession, what difference does it make who sells the eyeglasses?

Dr. HOFSTETTER. To answer the second question first on the monopoly, with the bill exempting the 1200 or 1500 physicians and osteopaths in the District, I do not think the 60 or 70 optometrists would ever hope to have any monopoly in this area.

To get to the question of why we are concerned about the lenses, this brings out the distinction I am talking about, the distinction between visual science as a science and the medical care of the eyes, or ophthalmology as a science.

The lens becomes a very integral part of the visual performance of the eye.

Mr. HORTON. Do you grind the lens?

Dr. HOFSTETTER. We can but we would at least specify how it is to be ground. We would specify the shape and character, the topology, and the details of the lens would be specified by the optometrist if he does not actually grind it himself. Rarely does an optometrist actually do the grinding.

Mr. HORTON. Then why can't you refer the patient to some store, Sears or wherever it might happen to be?

Dr. HOFSTETTER. It could be done. It would require a great deal of specification of details which most of these places are not prepared—

Mr. HORTON. Ophthalmologists do this, do they not?

Dr. CHAPMAN. I am getting ready to answer that.

Mr. HORTON. In my area where they practice that is the general procedure, an ophthalmologist examines you, you get a prescription, you get to the optician, and they grind the glasses. You never go back to the ophthalmologist.

Dr. HOFSTETTER. This was true but it is not now. Most ophthalmologists now provide their own dispensing.

Dr. CHAPMAN. It would be unfair to say categorically one way or the other.

Mr. HORTON. I don't agree with that, at least not as it applies to my area.

Dr. CHAPMAN. I think the trend will be shown if we can get the statistics, and I think they are available at other places, that the trend is for the ophthalmologist dispensing through his own optician. That is true in my city. All of them do, as a matter of fact.

Whether it is the majority over the nation it is another story, but historically the caring of human vision as cared for by the optometrist has been interpreted to require the use of the finest in optical systems and devices we can utilize for the purpose of correcting these problems, and therefore the training that the optometrist receives includes a great deal of this area as well as the other studies that are necessary to do this job as we think it should be done.

Therefore you also have to remember, and this would make you talk in my language and that would be hard to do because you would have to be an optometrist to do it, that we don't think in terms of selling eyeglasses. It is not the sale of the eyeglass that is the important thing. It is what is in it. It is the prescription within that eyeglass which is the important thing and what the optometrist is selling is vision and not eyeglasses.

Mr. HORTON. My constituent, Bausch and Lomb, is interested in selling eyeglasses.

Dr. CHAPMAN. He should be because I use a lot of his eyeglasses, too.

Mr. HORTON. That is why I am asking this question with regard to the reference of your purchase of eyeglasses. What difference does it make what the frames look like or anything like that? As long as you get the prescription this can be referred to someone else. Why should you be concerned about the sale of eyeglasses as long as they have the proper prescription and so long as the prescription is controlled by an ophthalmologist or an optometrist?

Dr. CHAPMAN. The concern of the sale of eyeglasses in this instance is the way they are being sold in the District of Columbia in the commercial establishments, and we have been through that.

Mr. HORTON. Then we come back to what I said before—if we have somebody who has the training and ability what difference does it make?

Dr. CHAPMAN. Because he doesn't utilize that training and ability as he should in these circumstances.

Mr. HORTON. He would under this bill where you raise the standard. That is the point I was trying to make.

Mr. GUDE. It would seem to me that you license pharmacists, you license people who grind glasses to be sure they are doing an accurate job on the prescription of the optometrist.

Mr. HORTON. That is the thrust of what I was getting at.

Mr. GUDE. It would seem to me the most important thing is to be sure that glasses that are ground are ground according to the prescription of the optometrist. You don't expect a physician to mix up the medicine he prescribes for a particular disease.

Dr. CHAPMAN. As I indicated it is purely a matter of the philosophy of the practice of optometry which maintains that that part of the service is important enough that he makes that determination. That is the way we started at the beginning. That is why we existed at the outset—to be able to take these devices and be certain they were

ground and specified properly for the care of the patient and trained so to do.

Mr. GUDE. Would you not reach the same end if you say that people who grind glasses on prescription be governed by certain regulations so they would follow the prescription?

Dr. CHAPMAN. I don't think it is impossible for someone else to grind a pair of glasses to prescription and to have it done accurately and done well. I find no fault with that at all.

Mr. SISK. The gentleman from North Carolina.

Mr. WHITENER. Would this bill permit a local optician to fill a prescription from an out of District optometrist?

Dr. CHAPMAN. Yes, sir.

Mr. WHITENER. The bill says "except as otherwise prescribed in this Act" he is not allowed to engage in the practice of optometry in the District of Columbia. This is page 3, line 5, subsection (3) of HR 12276.

Dr. CHAPMAN. Except as otherwise provided in this Act—

Mr. WHITENER. Where is that "except as otherwise provided"?

Dr. CHAPMAN. I was afraid you would ask me that.

As I quickly look at it, Mr. Whitener, the exception I speak of does not prevent persons from providing eyeglasses on prescription from an individual licensed to practice optometry, medicine or osteopathy. That is later on in the bill.

Mr. WHITENER. Where is that? I have read page 13 and I don't interpret it as you do.

Dr. CHAPMAN. That is not what I have reference to, Mr. Whitener.

Mr. WHITENER. As I see it, the only exception you make is for military officers, and others shown here on pages 12 and 13.

Dr. CHAPMAN. Would this statement satisfy what you are questioning—and I can't find it in the new bill but it is in there just the same—"Persons from supplying spectacles or eyeglasses on prescription from an individual licensee to practice optometry, medicine, or osteopathy."?

That is in the bill.

Mr. HORTON. Page 15, line 6.

Mr. WHITENER. My point is that in the definition of optometry on page 3 the language is limited to an optometrist licensed and engaged in the practice of optometry in the District of Columbia.

I submit that there is nothing in the provisions on either page 13 or page 15 which goes beyond that specific definition.

Mr. FUGUA. Would not "as otherwise provided" take care of that?

Mr. WHITENER. It says nothing about that.

Dr. CHAPMAN. If there is some doubt we would be willing to clarify it for you.

Mr. SISK. There is no question about our intent on this.

Mr. WHITENER. But we are dealing now with language. We are not dealing with intent. If we pass this bill the court will look at the language and not what might be in the back of our minds.

I don't think it is clear at all.

Dr. CHAPMAN. There is no question at all, Mr. Whitener, about that fact. We hope we can have it clarified to take care of it for you.

Mr. WHITENER. I suppose you have been into this, but the "adaptation" of a lens is referred to. What does that mean?

Dr. CHAPMAN. You will have to tell me where you are, sir.

Mr. WHITENER. Page 2, subsection (e), lines 21 through 23.

Dr. CHAPMAN. The adaptation——

Mr. WHITENER. We had an optometrist testify here last year that if my glasses got twisted in some way that to bend them back so they would be comfortable would be an adaptation.

I told him I bent mine many times and that perhaps would be in violation of the law.

Dr. CHAPMAN. You would not be violating this law.

There is a provision in this law which permits that to be done without any question.

Mr. WHITENER. "Adaptation" does not mean straightening the frame?

Dr. CHAPMAN. Not in that sense, Mr. Whitener. Adaptation is more in the sense of the result of the examination, and therefore determining what lens is required from that examination, types of lenses you would use to adapt to the patient's visual needs.

Mr. WHITENER. "Utilization of lenses" means what?

Dr. CHAPMAN. You have to use lenses, prisms, or frames.

Mr. WHITENER. I am utilizing my glasses when I put them on here to read.

Dr. CHAPMAN. This means that the practitioner who sees the patient will do these things, among others.

Mr. WHITENER. It says the practice of optometry means "utilization of lenses." That is the way I read it.

Dr. CHAPMAN. For the purpose of and for the aid of the human eye.

Mr. WHITENER. That is the only reason I wear these things.

Dr. CHAPMAN. In the sense that it spells out those items in section (e) that is just another segment of the overall activity of optometry.

Mr. WHITENER. What does "utilization of lenses for the aid of the human eye" mean?

Dr. HOFSTETTER. I think your illustration comes within that definition. That is in fact optometry.

Mr. WHITENER. Perhaps I am practicing optometry.

Dr. HOFSTETTER. That is right, in that sense. This is the original use of the word "optometer."

Mr. WHITENER. Perhaps we should look at that language a little.

Dr. HOFSTETTER. This is the overall definition, and the law must provide for appropriate exceptions and privileges.

Mr. WHITENER. Going over to page 5, at the top of the page——

Mr. HARSHA. Would the gentleman yield?

The next word is the one that concerns me "or furnishing of lenses, prisms, or frames."

You will make the optician become an optometrist, then. All the optician does is to furnish the frame——

Dr. CHAPMAN. There is no intent in that way.

Mr. HARSHA. The practice of optometry means furnishing of lenses, prisms, or frames. You will give the optician the same privilege?

Dr. HOFSTETTER. This is all optometry, that is true. What the optician does is also within the total definition of optometry, and therefore it is important to spell out the exemptions in the total definition.

What we have to do is define what optometry is as a whole, what its activity is as a whole, and then make the appropriate exceptions.

Mr. HORTON. The answer is whether or not they are exempt under the other provisions of the bill so that they can furnish frames——

Dr. HOFSTETTER. This is the intent.

Mr. HORTON. Is it there?

Dr. CHAPMAN. We believe it is.

Mr. WHITTENER. Over on page 5, at the top of the page—"An applicant for a reciprocity license may at the discretion of the Commissioners be licensed without a written examination but must be given and pass a practical and oral examination."

That would make it more stringent than the local law for lawyers, medical doctors, and any other profession, would it not?

Dr. CHAPMAN. More restrictive than those?

Mr. WHITTENER. I am a member of the District Bar by reciprocity. No such examination was required of me upon admission.

Dr. CHAPMAN. I am not familiar with the restrictions in the Columbia Bar.

This has been purely a matter of general understanding in the granting of reciprocity among optometrists throughout the United States. We think from a practical standpoint that this is protection for the public of the District of Columbia.

Mr. WHITTENER. Is it really protection of the District or protection of the optometrists?

Dr. CHAPMAN. I think it is protection of the public.

Mr. WHITTENER. At the bottom of that page, on line 21, you state that if he fails to actually practice optometry in the District for one year the Commissioners may revoke this license.

That is more restrictive than any other professional rule in the District. I have been a member of the Bar of the District for seven years but I have never practiced here. Once I am licensed I am licensed forever.

What is the purpose of that?

Dr. HOFSTETTER. I don't know what the purpose is. I am not familiar with it.

Dr. CHAPMAN. As I said earlier, the District of Columbia Board will testify before this Committee, and there are a number of questions which already have been raised on the subject pertaining to the District which they would be perhaps better able to answer than we would.

Mr. WHITTENER. Suppose a young man were permitted to practice here under the reciprocity provision and went into the military service for three years and served in Vietnam? He came back. He would be subject to having his license revoked while he was gone, would he not?

Dr. CHAPMAN. There is no intent in this Act——

Mr. WHITTENER. We are not talking about intent but what it says, what it states. That would be the practical application of the Act, would it not?

Dr. CHAPMAN. If you will give me a moment to read it over perhaps I can give you an answer.

Mr. WHITTENER. If an individual holding a reciprocity license granted under this section fails to actually practice optometry in the

District of Columbia within one year after such license has been granted, the Commissioners may revoke such license at any time before such individual actually begins practice in the District of Columbia.

Here is a young man off in Vietnam serving his country and the Commissioner just sits down here and as a matter of policy adopts a fixed policy to revoke all licenses after one year under this provision.

Dr. CHAPMAN. It doesn't say "He shall" but it says "He may". I think the Commissioners——

Mr. WHITENER. You are giving somebody a discretionary right to take away from this individual a very valuable thing without his even having any recourse to the courts.

Mr. SISK. Of course here we are talking about a human need and something having to do with perhaps the most precious thing we have, our eyesight.

I think we can all recognize that an individual may have been out of practice. I don't think my colleague would want to send his children to someone who may have been out of practice for five years, unless he was fairly sure that that individual had not lost——

Mr. WHITENER. It says nothing about five years.

Mr. SISK. The point I make is that we are trying to be sure that the individual who presents himself to the public as capable of taking care of eyes can do it.

Mr. WHITENER. This young man I am talking about may be over in Vietnam as a military officer practicing optometry every day on servicemen, or he may be in California or North Carolina practicing every day.

Here you are giving the Commissioners the authority to just adopt a policy, if they want to, without anybody having any rights to object to the revocation of such licenses.

Mr. HORTON. A doctor of medicine does not have his license revoked if he does not practice here for a year, does he?

Mr. WHITENER. I don't believe so. A lawyer does not.

Mr. HORTON. I think the gentleman from North Carolina has a very good point.

Mr. WHITENER. On page 7, lines 3 through 5, you give to the Commissioners a right to take away a person's license in violation of any of the regulations promulgated by the Commissioners under this Act.

What do you have in mind there? Can the Commissioners say he shouldn't wear a moustache?

Maybe he is inclined toward having some of these long hairdo's that some folks wear.

Dr. CHAPMAN. I don't know how it is conceivable—and perhaps if there is a way we can attempt to do it—but how in every instance in each of these you can spell out a moustache or long hair or long fingernails; I don't know.

Mr. WHITENER. Going down to lines 13 and 14 you state "Conduct which disqualifies the licensee from practicing optometry with safety to the public."

Maybe that is where the long hair would come in. Perhaps he has some other whim.

It seems to me if you are going to take a man's license away you should spell out exact grounds in the statute. We had this discussion a year ago.

Dr. CHAPMAN. There is extensive privilege given in the bill to the practitioner who has before him the charge of qualifying himself to practice. He is given every alternative and every opportunity with the Board to give testimony to substantiate his case.

Mr. WHITENER. Page 9, lines 4 and 5 "Practice optometry in any retail, mercantile, or commercial store."

I don't know how it is in your town, but down my way I can name one town where there are three different lawyers who are friends of mine, and very ethical. One has an office in his father's building supply store. Another is a banker and has his law office right in the banking house, you go through the main banking room into his office. Another is an automobile dealer and he has his law office right in his automobile agency. It is all in one facility.

What is the evil with regard to a professional man having his office in a retail or mercantile store as long as he is a private practitioner of the profession?

Dr. CHAPMAN. Because he utilizes the location and the geographic area where he is for the purpose of enticing people within his practice, and the purpose for being there is to have a great deal of traffic so they can see his place and come into it.

Mr. WHITENER. Did you ever see a lawyer or an optometrist try to rent a corner office on a lower floor of an office building in the square of town of 25,000 to 30,000 people, with windows on each side of the main street and side street?

Dr. CHAPMAN. This is permissible.

Mr. WHITENER. Then he puts up a nice goldleaf sign on his window—"John Doe, Attorney at Law. John Smith, Optometrist." What is the purpose of that?

Dr. CHAPMAN. As long as they are not advertising that they are on that corner with flashing neon signs they would be permitted to be in that location, depending upon the individual state, the law involved, and the requirements of it.

He can practice in such a place in my own state as long as he does not advertise and as long as he maintains the rules and regulations of the Board of Optometry.

What we are trying to do here is to make certain that the public is protected by jurisdiction of the optometrist by a board, simply trying to make the profession of optometry to be practiced in a way that it will be protective to the public in the District of Columbia.

Mr. WHITENER. There may be other reasons for being in that store. In the case of one of my lawyer friends the reason he is in the building is that this is his family business and he can practice law as a private practitioner, but yet he can be available to help his father and other members of the family run that business.

This is not dragging people in off the streets because he is not on the main thoroughfare.

There can be other reasons for being in the store.

Dr. CHAPMAN. There may well be but in this particular instance our concern is with the blatant advertised, commercial environment for the practice of optometry which we believe—

Mr. WHITENER. On page 11, line 11, you use the term "ophthalmic materials." What are ophthalmic materials? Would that include Murine?

Dr. CHAPMAN. No, sir, it does not refer to medicines or drugs. Ophthalmic applies to lenses, frames, prisms.

Mr. WHITENER. You mean materials?

Dr. CHAPMAN. It might be a case, an eyeglass cleaner.

Mr. WHITENER. An eyeglass cleaner could not be advertised at a price? Under this bill could they advertise some of these little bottles of what you use to clean the glasses?

Dr. CHAPMAN. It should not be unless it is used by the optometrist for the furtherance of his practice.

Mr. WHITENER. This does not limit itself to the optometrist. It states it shall be unlawful for any person. Look at section 8, line 6. "It shall be unlawful for any person", and then go to line 8: "With the exception of nonprescription sunglasses or nonprescription protective eyewear, to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price cost or any reference thereto, whether related to any eye examination or to the cost or price of lenses, glasses, mountings, or ophthalmic articles or devices;".

If you mean to include these little eyeglass wipers such as Mr. Horton has, or a plastic bottle which contains material you can squirt on your glasses in a drug store, this would be a little harsh, would it not?

Dr. CHAPMAN. We have no intention of that at all in this Act.

Mr. WHITENER. Why would not "optometric material" be adequate to cover your problem? You have "optometric or ophthalmic."

Mr. SISK. What is the definition of "ophthalmic material"? I have an idea what it is, but what is the actual definition?

Dr. HOFSTETTER. In the legal framework, I am not sure. I rather suspect, off the cuff, that "optometric material" by itself would be adequate. I am not sure.

Mr. WHITENER. When you say "optometric material," we know you mean frames, lenses, and that type of thing.

Dr. HOFSTETTER. I think so.

Mr. WHITENER. When you say "ophthalmic material," we might mean Murine or eyeglass wash. I think we ought to give that some consideration.

On page 13, line 13, I wonder if the language is adequate, "This Act shall not be deemed to require a physician or surgeon licensed . . . for the practice of medicine or osteopathy," instead of making the statement that it does not require? What is the magic of the words "shall not be deemed"?

Dr. CHAPMAN. Purely to clarify that portion of the Act, Mr. Whitener, where there was some question.

Mr. WHITENER. "This Act does not require" seems to me to be a better piece of draftsmanship.

Dr. HOFSTETTER. I am not sure of your question.

Mr. WHITENER. You note in line 13 it says "This Act shall not be deemed to require a physician," and so forth. A little ahead of that, in section 9, at the beginning, it says, "This Act shall not apply to . . .

Why should you not say, "This Act shall not apply to a physician or surgeon licensed under the laws of the District of Columbia for the practice of medicine," and so forth?

Dr. CHAPMAN. I think it could be.

Dr. HOFSTETTER. I am not sure. I think there may be a distinction.

Mr. WHITENER. I think this is something you might consider. Frankly, I think it would be better draftsmanship, as I suggested.

On page 14, lines 12 and 13, you say that nothing in this Act shall be deemed to prevent "an employee of any person to render optometric service and care solely to employees of such person." What is the purpose of that?

Dr. HOFSTETTER. That, I believe, is to permit a company to employ an optometrist to provide optometric services to its employees in the same way that he head of a family employs an optometrist to provide services to his family.

Mr. WHITENER. You also give that right to nonprofit health services and to health expense indemnity corporations. Why is that so different from Sears Roebuck?

Dr. HOFSTETTER. It is my understanding that is nonprofit health services, such as—

Mr. WHITNER. You have nonprofit health services. Then you have health expense indemnity corporation or group, which is a form of insurance. It is not really insurance, I guess. It is a group health program in which the individual pays a fixed amount per month and this gives him medical and health services.

Dr. HOFSTETTER. As I understand it, such programs provide special arrangements for preventing the commercial exploitation of it.

Mr. WHITENER. Suppose the bill gave the right to the policyholder to have his eyes examined, but he still must buy glasses, would that be and different from, say, Sears Roebuck giving a free examination?

Dr. HOFSTETTER. Would you repeat that?

Mr. WHITENER. Let us say the Whitener-Hofstetter Health Insurance Corporation had certain members, and we charged them a fee for the over-all medical services, which they pay for on a monthly basis. In our contract we give our policyholders, such as Mr. Fuqua, the right to have his eyes examined, but then if our corporation finds he needs glasses, he must buy those glasses. What is the difference between that and a private corporation saying, "We will give you a free examination, but we are going to sell you the glasses"?

Dr. HOFSTETTER. I think it could be the same. As you describe it, I think it could present the same problem, but I do not know whether that arrangement is permissible under the laws of most States.

Mr. WHITENER. This is what is proposed to be the law, as I asked the question.

Dr. HOFSTETTER. I think the law that controlled such insurance arrangements might preclude this.

Mr. WHITENER. A health insurance policy may pay for a stay in the hospital. It may pay for a semi-private room. The contracts of insurance differ.

Dr. HOFSTETTER. But would the hospital be required to limit its price to \$5, to the amount that you state?

Mr. WHITENER. Of course it wouldn't. That is what I am talking about right there. If the arrangement or agreement for the health expense indemnity corporation or group were confined solely to an eye examination and not to the appliances, then would you not have the same situation that you now complain about where some private indi-

vidual or group says, "We will give you a free eye examination, but if you need glasses, you must pay for them yourself"?

Dr. HOFSTETTER. In this arrangement, are you proposing that the optometrist can only get that amount which the agency pays, or that the agency merely pays up to that amount?

Mr. WHITENER. I am assuming, for the purpose of my question, that under the contract Mr. Fuqua has with the Whitener-Hofstetter Health Group, Inc., he has the right to have his eyes examined. Of course, there would be other provisions. He would be entitled to outpatient treatment and hospitalization and other things, but let us limit our discussion to optometry. What would be the difference if you and I go out here and organize a health expense indemnity group?

Dr. CHAPMAN. I would like to suggest at this point, Mr. Sisk and Mr. Whitener, I have others of our staff in the room. May I call upon them at this time to answer this question for Mr. Whitener?

Mr. WHITENER. If someone could.

Mr. SISK. If you want to ask someone to comment on that, go right ahead.

Mr. MACCRACKEN. I am ashamed to say I did not get the question.

Dr. CHAPMAN. It is pretty involved.

Mr. HAROLD KOHN (General Counsel, American Optometric Association). I did not quite hear the question accurately, but the purpose of that provision is in the event the Blue Shield wishes or Group Health Association or any similar organization, according to the present philosophy of comprehensive health care, wishes to give an optometric examination, the optometrist be not precluded from joining that comprehensive health care merely because the organization happened to be in corporate form.

Mr. WHITENER. He would be an employee.

Mr. KOHN. No, sir, he is not an employee. In Group Health, that is true. It depends. Being employed by a group health organization or a hospital, that is true, because it is figured and believed by optometry that an optometrist has a place in a hospital, and he has. He is in hospitals. He does have a place in all of these health care programs.

Mr. WHITENER. You are a good lawyer, Mr. Kohn.

Is not a health expense indemnity corporation a private insurance company?

Mr. KOHN. Not in my State, sir, no. A health indemnity group comes under the insurance law merely to give the superintendent of insurance or commissioner of insurance, as he might be called, the opportunity of preventing exorbitant annual charges. That is about the only reason for its being insurance. It is not considered as being an insurance corporation. It is entirely different. The insurance corporation furnishes money. If you have an accident and health policy, you get so much per day, and with that you can buy whatever you want.

Mr. WHITENER. I have a family indemnity policy with the Government of the United States, with Blue Cross or Red Cross or Aetna Life Insurance Company, and it is called health indemnity insurance.

Mr. KOHN. Health indemnity insurance.

Mr. WHITENER. That is right here in the District of Columbia, right through the office of the Sergeant at Arms of the House of Representatives.

Mr. KOHN. In the District, health indemnity? What do they give you, sir?

Mr. WHITENER. They indemnify me for health expenses.

Mr. KOHN. For health expenses they give you money?

Mr. WHITENER. It is a private corporation. It is a health expense indemnity corporation.

Mr. KOHN. Health expense indemnity corporation, in my respectful opinion, means the particular type of nonprofit corporation that is formed under the special statutes of the various States, of which there are many.

Mr. WHITENER. We will have our staff look into that phase of it, and I think you would want to look into it, too.

Mr. KOHN. The point is that we simply wish to have the optometrist free to be employed by a nonprofit corporation which gives comprehensive health care.

Mr. WHITENER. Certainly you do not want to take away from a private corporation, such as the one that you mentioned here practicing optometry, that right, and turn around and give it to insurance companies or groups that might set up some drumhead organization.

Mr. KOHN. The philosophy is entirely different, because presumably Blue Cross and Blue Shield make no profit.

Mr. WHITENER. On page 19, lines 7 through 13 state:

Certificates of visual condition, acuity, and efficiency issued by any duly licensed optometrist under this Act, shall be accepted as qualified evidence of the visual condition, acuity, and efficiency of the person to whom such certificate shall relate, by officers or employees of the Government of the District of Columbia in the performance of their duties.

When you say as qualified evidence, do you mean as conclusive evidence?

Mr. KOHN. It is not conclusive. It is qualified.

Mr. WHITENER. When you say "qualified evidence," I interpret that as meaning it is evidence which has a quality which could not be questioned.

Mr. KOHN. Oh, no, sir.

Mr. WHITENER. Why not say "may be accepted"?

Mr. KOHN. If that be so, we will run against the same problem that we discussed last year and which we changed, if you notice, about the courts.

Mr. WHITENER. That was to make it subject to absolute acceptance.

Mr. KOHN. We changed that because your objection was very good.

Mr. WHITENER. Suppose that the Welfare Department has a certain visual standard, and if a person is found not to meet it, he is automatically entitled to aid to the blind. I do not believe you intend to do it, but under this language it seems that a District of Columbia official should not even question your certificate. If an optometrist certified it, they would have to accept it.

Mr. KOHN. There is no attempt to do that. That is merely accepted for face value as what it is.

Mr. WHITENER. In other words, it may be accepted.

Mr. KOHN. It may be accepted.

Mr. WHITENER. Section 14 is the one we deleted last time.

Mr. KOHN. I do not recall that. Was section 14 deleted?

Mr. WHITENER. I am looking at the hearings, page 134. You will find there that it was deleted. That is one about which we had a great deal of discussion. You still think it should be retained, do you?

Dr. CHAPMAN. I will be glad to answer. We do think it should be retained, yes, sir.

Mr. WHITENER. In view of the Virginia evidence we had last time, I wonder if you think it should be retained.

Dr. CHAPMAN. The Virginia evidence?

Mr. WHITENER. That the school folks over in Fairfax County sent a note home with the child to his parents to see his family physician about his eyes.

Dr. CHAPMAN. This section is in there, not to create the problem for the patient to go and get care, but simply it is a matter that he be given freedom of choice to choose one or the other.

Mr. WHITENER. Were you here last time, Dr. Chapman?

Dr. CHAPMAN. Yes, I was here last time for most of it.

Mr. WHITENER. On page 189 of the 1966 hearings of Subcommittee No. 4, it is stated that in Virginia they sent a little note to the parents reading:

The results of the routine vision screening at school show that your child may need an eye examination. We suggest that you discuss this with your family physician and get his advice about an examination by an eye specialist.

The Virginia Optometric Association wrote to Earl C. Funderburk, head of the schools in Fairfax County, and said:

It is our sincere hope that the situation, if it does exist, will be remedied locally for we certainly do not wish to seek relief through the courts.

Would you object to the principal or the director of health and physical education sending a note to the parents saying, "We suggest you discuss this with your family physician and get his advice about examination by an eye specialist"?

Dr. CHAPMAN. Yes, sir, we do in that sense. We certainly do.

Mr. WHITENER. Why?

Dr. CHAPMAN. Particularly because the patient then is not given any freedom of choice in selection.

Mr. WHITENER. Why isn't he? Your schools are turning out eye specialists, are they not, Dr. Hofstetter?

Dr. HOFSTETTER. It depends upon what you mean by eye specialists. In the vernacular, "eye specialists" is often interpreted as eye surgeons or a physician engaged in the treatment and care of the eyes. We are in perhaps a more meaningful sense general practitioners in vision, just to bring out the distinction.

I think these advices on the part of school personnel, principals, nurses and others, specifically to send the child to a physician who in turn must almost in every instance refer him to an optometrist or an ophthalmologist, introduce one additional expense to the parent. I think it is not justifiable for a school official to do this unnecessary steering toward the general physician, because the general physician, as I pointed out earlier, has almost no specific training in the field of vision.

Mr. WHITENER. I guess I am an average parent. I hope I am at least

average. Three of my four children have been taken to an optometrist a number of times. I figure he is a specialist in determining what kind of glasses they need.

Dr. HOFSTETTER. If you are asking whether optometry is a specialty or not, I would certainly say it is a specialty by general definition. If you are thinking of it as a medical specialty—

Mr. WHITENER. If you or I got that same note from a school official suggesting that our children had bone trouble going to the family physician, the chances are we would get on the phone and immediately call an orthopedic man or, if it was ear trouble, we would probably call the eye, ear, nose, and throat man. I do not see what you are quarreling about on this.

Dr. HOFSTETTER. May I ask you a question?

Mr. WHITENER. Yes. I do not know if I can answer it.

Dr. HOFSTETTER. We are partners in this insurance firm, you know.

Mr. WHITENER. That is right.

Dr. HOFSTETTER. Would you see any objection to the school official who himself is neither an optometrist nor a physician—

Mr. WHITENER. He may be a public health physician.

Dr. HOFSTETTER. He may be. Would you see any objection to the referral form stating simply that he is advised to seek professional attention, without naming a specific profession?

Mr. WHITENER. I do not see any objection to that. I do not see any objection to seeing an eye specialist, either.

Dr. HOFSTETTER. I think the distinction is that we would favor the expression "seek professional attention." This is what we want, but we do not like the steering feature of the phrase "see your family physician."

I would hope he could direct them.

Mr. SISK. Let me thank Dr. Chapman, Dr. Hofstetter, and also Mr. Kohn, for your contribution. We appreciate very much your testimony this morning. I think you have been very excellent witnesses. I think the committee will find the record will be fairly substantial with reference to the positions you have taken.

The committee will meet again in the morning at 10:00 o'clock for the continuation of the hearings in this room.

I might say it is my understanding that there might be one or two individuals who, because of the fact that they are from some distance, would particularly like to be sure to get their testimony in tomorrow. I do not wish to shift this list any more than absolutely essential. Our first witnesses in the morning will be the District of Columbia Optometric Society, Dr. Berlin and Dr. Warren. However, I do wish to indicate on behalf of the committee that we will be as cooperative as possible. I have already had one individual from some distance away who would like to get his testimony in tomorrow, and we will certainly do our best to arrange that.

With that, the committee stands adjourned until 10:00 o'clock in the morning.

(Whereupon, at 1:00 o'clock p.m., the subcommittee adjourned, to reconvene at 10:00 o'clock a.m., Tuesday, August 15, 1967.)

OPTOMETRY

TUESDAY, AUGUST 15, 1967

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
SUBCOMMITTEE No. 5,
Washington, D.C.

The Subcommittee met at 10:00 a.m., in Room 1310, Longworth House Office Building, the Hon. B. F. Sisk (Chairman of the subcommittee) presiding.

Present: Messrs. Sisk (Chairman of the subcommittee), Whitener, Walker, Nelsen, Horton, Harsha and Gude.

Also Mr. Fuqua.

Also present: James T. Clark, Clerk; Hayden S. Garber, Counsel; Sara Watson, Assistant Counsel; Donald Tubridy, Minority Clerk; Leonard O. Hilder, Investigator.

Mr. SISK. The committee will be in order.

This morning, in order to accommodate one of our witnesses from out of town, we are making a slight change in schedule, and at this time the committee will hear from Mr. Richard Weinmann, an attorney, representing the United Optical Workers Union of New York City.

I believe, Mr. Weinmann, you mentioned yesterday that you had a statement and that the other gentlemen would not be making a formal statement, but are here to answer questions, is that correct?

STATEMENT OF RICHARD A. WEINMANN, REPRESENTING UNITED OPTICAL WORKERS UNION LOCAL 408, INTERNATIONAL UNION OF ELECTRICAL WORKERS, AFL-CIO, NEW YORK CITY, ACCOMPANIED BY HENRY McKINNEL, ADMINISTRATIVE ASSISTANT, INTERNATIONAL UNION OF ELECTRICAL WORKERS, AND JOHN GOLIA, BUSINESS REPRESENTATIVE FOR LOCAL 408

Mr. WEINMANN. That is correct, Mr. Chairman.

What I have to say is somewhat different from what appears in my statement.

Mr. SISK. Your full statement will be made a part of the record, without objection, and if you will proceed to summarize and keep your statement within ten minutes, we would appreciate it in order to expedite these hearings.

At this time the committee will be very happy to hear from you.
(The full statement referred to follows:)

STATEMENT OF RICHARD A. WEINMANN

My name is Richard A. Weinmann. I am a partner in the law firm of Sipser, Weinstock & Weinmann, 50 Broad Street, New York City, counsel for the past 25 years to the United Optical Workers Union Local 408, International Union of Electrical Workers, AFL-CIO, located at 150 Fifth Avenue, New York City. We are also counsel to many pension and welfare funds. I am here today to testify in opposition to H.R. 1283 on behalf of the Optical Council of the International Union of Electrical Workers, AFL-CIO, the National Optical Workers Conference, and the United Optical Workers Union, Local 408.

With me today, among others, are Henry McKinnell, Administrative Assistant of the International Union of Electrical Workers and John Golia, Business Representative for Local 408 and a member of the Advisory Board for Vocational and Extension Education of the New York City Board of Education and of the Advisory Committee on Ophthalmic Dispensing of the New York City Community College.

Our analysis of H.R. 1283 is that it is a bill inspired by the American Optometric Association, heavily weighted in favor of individual salon entrepreneur optometrists and against all others, including the public, ophthalmologists, opticians, employed optometrists, corporations and other employers of optometrists and opticians, and the unions which represent such employees, including Local 408.

The main thrust of the bill is to outlaw the employment of licensed optometrists by firms and corporations, and thereby to corner the eyeglass market for the optometrist.

An optometrist is a hybrid which grew up in our national life, combining professional and merchandising characteristics, with the accent heavily on the merchandising side. In other words, an optometrist is a semi-professional who makes his living selling eyeglasses. If one were to suggest to salon optometrists that they could be accorded real professional status provided they abandon the sale of eyeglasses, they would immediately withdraw their sponsorship and support of H.R. 1283 and run for cover. Their *raison d'être* is precisely the sale of eyeglasses, euphemistically referred to as "dispensing" in the optical field. In fact, optometrists studiously avoided involvement in the Hart Bill hearings before the United States Senate (S. 260). The Hart Bill, as you may know, would prohibit practitioners as defined therein from the sale of drugs or eyeglasses.

With the above in mind, we can proceed to analyze H.R. 1283 to see if it accords with the public interest. The guts of the bill are found on page 9, lines 7 through 12 (Section 7(a) subdivisions 17 and 18); on page 10, lines 14 through 18 (Section 8(a) (2)); and page 12, lines 12 through 16 (Section 8(a) (8)). These provisions would prohibit the practice of optometry anywhere except in a salon or office, would prohibit an optometrist from acting as such as an employee, and would prohibit the practice of optometry by a company, association or corporation or by anyone else except, interestingly, by another optometrist.

What would be the result of the passage of this bill? It would result in the elimination of low-cost optical care to many thousands of people of modest income in the District of Columbia, precisely those who need it most, and it would greatly reduce the number of trained individuals in the optical field who could provide eye care. Further, it would result in layoffs and the creation of a block of unemployed optometrists, opticians and other employees of corporations and other employers, and would force trained employed licensed optometrists to leave the field and to give up valuable rights as employees. Moreover, it would drive the cost of eyeglasses and eye care up to new heights without any corresponding benefit to the public.

It should be noted that it has never been demonstrated anywhere that the public has suffered as a result of eye care administered by employed optometrists. This question, in fact, was litigated in the State of New York and the Court of Appeals there found:

"* * * although the corporate employment of optometrists has existed for over half a century in this state, no instance has been cited where such employment caused injury to the public." (*People v. Sterling Optical Co. Inc.*, 11 NY 2d 970).

Our union is particularly concerned because the passage of the instant bill in the District of Columbia is intended as a forerunner for all 50 states. It corresponds with simultaneous efforts in other states to enact similar legislation. Such legislation, for example, was passed in the final moments of the New York State Legislature this year (Senate Intro 3335-A, Gordon) and was vetoed by Governor Rockefeller. His veto message is attached hereto.

Moreover, we are concerned with the due process aspects of such a bill. We

believe constitutional rights are being taken away both from employed licensed optometrists and from their corporate or other employers as well. The former have a right to continue their working careers and to protect their vested interests in their jobs. The latter have a right to continue in business, since no rationale exists to deprive them of it.

The bill works to the disadvantage of ophthalmologists and the public health. Page 2, lines 15 through 17 (Section 3(2)(a)) defines the practice of optometry as including the employment of any objective or subjective means for the examination of the eye. This would include the glaucoma test and we say that this test should, in the public interest, be given only by an ophthalmologist.

The bill works to the disadvantage of opticians in that if a corporation which employs optometrists and opticians must cease employing optometrists, it will probably go out of business, and this would result in the loss of jobs to opticians. The bill also defines the practice of optometry on page 2, line 23 (Section 3(2)(f)) as the adaptation, utilization or furnishing of lenses, prisms or frames for the aid of the human eye. This is not the practice of optometry and never has been, but is rather the function of a dispensing optician. It is true that on pages 13-14 (Section 9(c)) an individual who practices optometry solely as defined in Section 3(2)(f) is exempted from the Act. If so, then why define this practice as the practice of optometry? Furthermore, the provisions of Section 8 would continue to apply to a dispensing optician, so that an optician could not, pursuant to page 12, lines 17 to 20 (Section 8(a)(9)) exceed the stringent regulations regarding advertising of eyeglasses which would be applicable to optometrists and could not, as set forth on page 11, lines 17 to 24 (Section 8(a)(5)) advertise the price of his eyeglasses to the public. In this instance, the salon optometrist seeks to undermine competition from opticians and exposes the dichotomy of his position, i.e., to at one and the same time establish himself as a member of a learned profession, and as a businessman cornering the market.

For the above reasons, we must dissent from any description of the practice of optometry in the bill as a profession, likened to a learned profession such as medicine. Such references appear at page 1, line 9 (Section 2), page 2, line 5 (Section 2), pages 8-9, lines 20 to 24 and 1 to 3 (Section 7(a)(14) and (15)), where the reference to professional is subtly taken for granted.

Another objection to the bill is that it gives to the Board of Commissioners of the District of Columbia or its designated agents too much power—in fact, a life-and-death hold over the right to practice optometry. For example, a license could be revoked because of the violation of any regulation promulgated by the Commissioners, no matter how minor. (Section 7(a)(3)); for gross incompetence, not otherwise defined (Section 7(a)(4)); for practicing under any name other than that under which he has been licensed, which could be construed to preclude the practice of optometry as an employee of a firm or corporation (Section 7(a)(9)); or any other so-called unprofessional conduct as defined by the Commissioners (Section 7(a)(19)).

Based on the above, one must conclude that the bill is bad for the following reasons: (1) It will eliminate low-cost eye care for the general public and especially for those who need it most, without any corresponding benefit. (2) It will reduce the number of competent persons available to provide eye care. (3) It is unfair to ophthalmologists and to the public because it will permit optometrists to encroach into the medical field. (4) It is bad for opticians because it would by definition give optometrists control of work which is properly the work of dispensing opticians. (5) It is bad for business because it will drive out all optometric firms and corporations, together with all their employees of all descriptions, thereby creating unemployment and undermining the economic health of the District of Columbia. (6) The bill is bad for the employees because it will deprive them of economic security, the right to union benefits and pensions and in general the right to work, and will force them to leave the industry despite their training and license. (7) The bill is bad for the country as a whole because the Congressional imprimatur will have been placed upon a bill which is intended to serve as a model in all 50 states by the real sponsor and sole beneficiary, the American Optometric Association.

We call upon the Subcommittee not to lend itself to this scheme to enrich optometrists who sell eyeglasses, at the expense of the rest of the population of the District of Columbia, by elevating this inherently quasi-professional group to artificial "professional" status. We urge the rejection of H.R. 1283 as a bad bill for the low income consumer, government employees and the public in general.

Finally, we note that the House has now voted to reorganize the District of Columbia Government to make it more representative. The Chairman and others

on this Subcommittee voted in favor of that bill which is designed to afford more equitable representation to the large Negro population of the District. That in turn we presume will tend to alleviate some of the complaints of this segment of the population. H.R. 1283 is inconsistent with that bill to the extent that it will drive up the cost of optical care for this very population and will tend to heighten their economic disadvantage, instead of relieving it.

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This bill would prohibit a corporation or other retail firm or store from employing a licensed optometrist to provide optometric services to persons other than fellow employees. The bill would also prohibit an optometrist from establishing a practice in association with other licensed medical practitioners. It appears to require a prescription for optical instruments that have no necessary relationship to the correction of any visual defect or deformity, such as binoculars, microscopes and telescopes. It appears to make it illegal for an optometrist to open an office in any commercial office building or shopping center, since under the provisions of the bill such a building is a "place" where occupations unrelated to the practice of optometry are carried on. "It attempts to permit those now employed by a corporation or other firm to continue this employment, but in another subdivision of the bill, it makes it a misdemeanor to provide such employment."

Moreover, the Insurance Department urging disapproval of this bill, has written to me as follows:

"* * * the Department is concerned with the bill since it could prevent union welfare funds and health centers regulated by III-a of the Insurance Law from employing the services of optometrists, and hinder the right to choose optometric vendors, thereby increasing the cost of optometric services, with no foreseeable benefits to members. In addition, insurers who cover the cost of optometric materials would be faced with increased costs which would have to be ultimately reflected in the rates with no increase in the quality of services for the foreseeable future.

* * * * *

"The Department favors the highest quality optometric care, but this legislation will not accomplish such result. The bill is penal in nature and violation of its vague provisions is a misdemeanor. Because of its defects and ineffectiveness, we urge that it be vetoed."

Also recommending disapproval of this bill are the Department of Commerce, the New York State AFL-CIO, Association of the Bar of the City of New York, and the National Association of Optometrists and Opticians, among numerous others.

The bill is disapproved.

By NELSON A. ROCKEFELLER.

Mr. WEINMANN. First, may I express my appreciation for the fact that you have rearranged this schedule for our convenience.

My name is Richard A. Weinmann. I am a partner in the law firm of Sipser, Weinstock & Weinmann, 50 Broad Street, New York City, counsel for the past 25 years to the United Optical Workers Union Local 408, International Union of Electrical Workers, AFL-CIO, located at 150 Fifth Avenue, New York City. We are also counsel to many pension and welfare funds. I am here today to testify in opposition to H.R. 1283 on behalf of the Optical Council of the International Union of Electrical Workers, AFL-CIO, the National Optical Workers Conference, and the United Optical Workers Union Local 408, Retail, Wholesale and Department Store Union, Flat Glass Workers International Union, United Automobile Workers Union, Building Service Employees International Union, Laborers International Union, all affiliated with the AFL-CIO.

With me, among others is Henry McKinnell, who is sitting on your right, and whose name is incorrectly spelled in our formal statement. It should be M-c K-i-n-n-e-l-l.

He is administrative assistant of the International Union of Electrical Workers.

Sitting to my right and your left is John Golia, Business Representative for Local 408, and also a member of the Advisory Board for Vocational and Extension Education of the New York City Board of Education and of the Advisory Committee on Ophthalmic Dispensing of the New York City Community College.

Now, our analysis of H.R. 1283, confirmed by what we heard here yesterday, is that it is a bill inspired by the American Optometric Association heavily weighted in favor of what we call salon entrepreneur optometrists and against all others, including the public, ophthalmologists, opticians, employed optometrists, corporations and other employers of optometrists and opticians, and the unions which represent such employees, their pension and welfare funds and employers who contribute to such funds.

The main thrust of the bill is to outlaw the employment of licensed optometrist by firms and corporations and thereby to corner the eyeglass market for the optometrist.

In other words, this bill could be well called the "Great Eyeglass Swindle of 1967" on the part of the AOA, of course, and despite all the comments yesterday about behavior of employed licensed optometrists and the length of time it takes them to perform an examination, we know that the salon optometrists will be giving even quicker examinations if they pick up all the volume dropped by the corporate employers.

We believe that the AOA, which should be concerned with clear vision, is taking a very myopic view of the needs of the public for low cost eye care.

An optometrist is a hybrid which grew up in our national life, combining professional and merchandising characteristics with the accent heavily on the merchandising side. He makes his living selling eyeglasses. If we were to suggest to salon optometrists they could be accorded real professional status provided they abandoned the sale of eyeglasses, they would immediately withdraw their sponsorship and support of H.R. 1283 and run for cover. Their *raison d'être* is precisely the sale of eyeglasses, euphemistically referred to as "dispensing" in the optical field. All the high sounding phrases in Dr. Chapman's statement yesterday to the contrary notwithstanding, 75 per cent of all the monies earned by optometrists in this country is earned from the sale of eyeglasses.

Optometrists studiously avoided involvement in the Hart Bill hearings before the United States Senate—S. 260. In fact, the American Optometric Journal itself warned its members of what it termed "inherent dangers" in this bill. The Hart Bill, as you may know, would prohibit practitioners as defined therein from the sale of drugs or eyeglasses. H.R. 1283 and all its sister bills are the reverse of the Hart Bill. H.R. 1283 would professionalize the optometrist while then at the same time authorizing him to sell eyeglasses. We agree with the ethical premise of the Hart Bill.

If there is a problem with regard to the quality of an eye examination, it should not be difficult to fairly set minimum criteria for such examination, whether given by a salon optometrist or an employed optometrist. In fact, I think this is a point that was made by the Washington Publishers Association at the hearings last year and to that we say "Amen."

This could end the claim once and for all that examinations by licensed employed optometrists are inadequate in any way.

With the above in mind, we can proceed to analyze H.R. 1283 to see if it accords with the public interest. The guts of the bill are found on page 9, lines 7 through 12 (Section 7(a) subdivisions 17 and 18); on page 10, lines 14 through 18 (Section 8(a) (2)); and page 12, lines 12 through 16 (Section 8(a) (8)). These provisions would prohibit the practice of optometry anywhere except in a salon or office, would prohibit an optometrist from acting as such as an employee, and would prohibit the practice of optometry by a company, association or corporation or by anyone else, even by an ophthalmologist, except, interestingly enough, by another individual optometrist.

What would be the result of the passage of this bill? It would result in the elimination of low-cost optical care to many thousands of people of modest income in the District of Columbia, precisely those who need it most, because salon optometrists charge fancy prices. It would also greatly reduce the number of trained individuals in the optical field who could provide eye care.

Further, it would result in layoffs and the creation of a block of unemployed optometrists, opticians and other employees of corporations and other employers and would force trained employed licensed optometrists to leave the field and to give up valuable rights as employees.

Moreover, it would drive the cost of eyeglasses and eye care up to new heights without any corresponding benefit to the public.

It should be noted that it has never been demonstrated anywhere that the public has suffered as a result of eye care administered by employed optometrists, despite Dr. Chapman's malarkey to the contrary. This question, in fact, was litigated in the State of New York and the Court of Appeals there found:

"* * * although the corporate employment of optometrists has existed for over half a century in this state, no instance has been cited where such employment caused injury to the public." (People v. Sterling Optical Co. Inc., 11 NY 2d 970).

Our union is particularly concerned because the passage of the instant bill in the District of Columbia is intended as a forerunner for all fifty states. It corresponds with simultaneous efforts in other states to enact similar legislation. This would be one of the first and not one of the last, as has been implied. Such legislation, for example, was passed in the final moments of the New York State Legislature this year. That was Senate Bill 3335-A by Senator Gordon, and was vetoed by Governor Rockefeller. A similar bill was vetoed previously by the then Governor Harriman. So it doesn't matter whether we have a Republican or Democratic Governor, on final consideration the bill was vetoed in both cases.

We note the provisions of Section 8, H.R. 1283, would continue to apply to dispensing opticians so they could not, pursuant to page 12, 8(a) (9), exceed the stringent regulations regarding advertising of eyeglasses and could not, as set forth on page 11, lines 17 to 24, Section 8 (a) (5), advertise the price to the public.

In this case he seeks to undermine the opticians and discloses the dichotomy of his position. That is, to at the same time establish himself as a member of a so-called learned profession and as a businessman cornering the market. There is no more reason to preclude an optician

from advertising than to preclude a druggist from advertising. They both fill prescriptions. For the above reasons we must dissent from any description of the practice of optometry in the bill as a profession, if it is intended to be likened to a learned profession such as medicine. Such references appear at page 1, line 9, Section 2; page 2, line 5, Section 2; pages 8-9, lines 20 to 24 and to 3, Section 7(a) (14) and (15) where the reference to professional is subtly taken for granted.

Dr. Chapman testified that all the states consider optometry a profession. That may be true in a sense, but the term is used very loosely in this connection. In many instances it was so described years ago at a time when the courts were upholding the state's rights to license optometrists possibly over the objection of some of the optometrists at the time.

But at the same time, corporations are permitted to practice optometry in the very states which describe optometry as a profession, such as in New York, for example. New York describes optometry as a profession, but it also permits corporations to practice optometry, showing the importance they attach to the term "profession."

Baseball playing is a profession; prize-fighting is a profession. By the same loose definition they are all licensed professionals and are doing very well. What is the test of a true profession?

Under the common law there were only three learned professions: divinity, the law and medicine, and testing whether there is a product for sale, whether there is a higher ethic in the marketplace, we say that so long as opticians sell eyeglasses optometry cannot be a true profession.

We note in this respect that two predecessors of H.R. 1283 which I think were introduced at the same time earlier this year, namely, H.R. 595 and H.R. 732, declared optometry a profession by fiat. They just said "We declare optometry to be a profession."

H.R. 1283 avoids getting into an argument about this by simply assuming optometry is a profession, but a rose by any other name is still a rose and so long as optometrists sell eyeglasses and earn 75 per cent of their income from such sales, optometry cannot be considered a profession.

Based on the above, one must conclude that this myopic bill should not be passed for the following reasons:

It will eliminate low-cost eye care for the general public and especially for those who need it most, the Negro or the working population of the District of Columbia, without any corresponding benefit.

It will reduce the number of competent persons available to provide eye care. It will drive all the optometric firms and corporations together with all their employees of all descriptions thereby creating unemployment and undermining the economic health of the District of Columbia.

Next, it will deprive employees of economic security, the right to union benefits and pensions, some of which are vested rights and in general the right to work, and will force them to leave the industry despite their training and license, all without due process, without a grandfather clause.

And next, the Congressional approval will be placed on a bad bill intended to serve as a model in all fifty states by the real sponsor and sole beneficiary, the American Optometric Association.

We know from our experience in New York with a similar measure that H.R. 1283 is what we call a corporate practice bill primarily

designed to eliminate corporate employers of optometrists as examiners. This is the heart of the matter. Leave that provision in and all the other provisions objected to by ophthalmologists, osteopaths, opticians and others would gladly be deleted or amended by AOA. I think Dr. Chapman indicated that in his testimony yesterday. A lot of things amended were satisfactory to him.

On the other hand, make illegal the right of optometrists to sell eyeglasses and H.R. 1283 will be quickly abandoned by AOA. We call upon the subcommittee not to lend itself to this scheme to enrich optometrists who sell eyeglasses at the expense of the rest of the population of the District of Columbia by elevating this inherently quasi-professional group to artificial professional status while it continues to sell eyeglasses in the marketplace which it claims to abhor. We urge the restriction of H.R. 1283 as a myopic bill for the low-income consumer, government employees and the public in general, so long as it contains its main provision of outlawing the employment of licensed optometrists by corporations and firms. We support efforts to modernize the optometry law in the District of Columbia. However, this bill and all of its sister bills create far greater problems than they solve and I thank you for your attention.

Mr. SISK. Thank you, sir, for your statement.

The gentleman from North Carolina?

The gentleman from New York?

Mr. HORTON. Mr. Weinmann, I note that you do have enclosed a copy of the memorandum veto of Governor Rockefeller of the bill that was apparently passed by the Senate and Assembly in the State of New York. Do you have a copy of that bill?

Mr. WEINMANN. I will be happy to make it available to the subcommittee for study.

Mr. HORTON. I would like to determine if the language in that bill is similar to the provisions in H.R. 12276. I note in the Governor's Message he made some reference to the provision of that bill which would make it illegal to open an office in a commercial office building or shopping center. If there is similar language in this—the gentleman from North Carolina yesterday was asking about that, on page 9, lines 4 and 5, which are prohibitions. Also line 7. The authority of the commission is to refuse and suspend a license where the practice of optometry is in any retail or commercial store.

Mr. WEINMANN. Congressman Horton, you are absolutely correct and S. 3335—a did contain precisely the same language or similar language in connection with a prohibition in retail stores.

I might add that the guts of both bills is still the prohibition of employment of optometrists by corporations and firms. This is the guts of both bills and I think that is readily perceptible and I would be very happy to make a copy of S. 3335—A available to this subcommittee.

Mr. HORTON. We do have a copy of that, Mr. Chairman, and I wonder if we could make this copy part of the record.

Mr. SISK. I would like to have a copy of it for the record.

Mr. HORTON. We do have one here.

Mr. SISK. Without objection, a copy of the New York Bill, S. 3335—A, and veto memorandum thereon, will be made a part of the record.

(The documents referred to follow:)

FOR IMMEDIATE RELEASE, WEDNESDAY, MAY 3, 1967

LESLIE SLOTE, PRESS SECRETARY TO THE GOVERNOR

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

May 2, 1967

MEMORANDUM filed with Senate Bill Number 3335-A, entitled:

#274

"AN ACT to amend the education law, in relation to the practice of the profession of optometry"

NOT APPROVED

This bill would prohibit a corporation or other retail firm or store from employing a licensed optometrist to provide optometric services to persons other than fellow employees. The bill would also prohibit an optometrist from establishing a practice in association with any person not licensed as an optometrist.

This bill appears to embody conflicting and ambiguous provisions. The bill in its present form would make it illegal, for example, for an optometrist to practice his profession in association with other licensed medical practitioners. It appears to require a prescription for optical instruments that have no necessary relationship to the correction of any visual defect or deformity such as binoculars, microscopes and telescopes. It appears to make it illegal for an optometrist to open an office in any commercial office building or shopping center since under the provisions of the bill such a building is a "place" where occupations unrelated to the practice of optometry are carried on. It attempts to permit those now employed by a corporation or other firm to continue this employment, but in another subdivision of the bill it makes it a misdemeanor to provide such employment.

Moreover, the Insurance Department, in urging disapproval of this bill has written to me as follows:

"... The Department is concerned with the bill since it could prevent union welfare funds and health centers regulated by Article III-a of the Insurance Law from employing the services of optometrists, and hinder the right to choose optometric vendors thereby increasing the cost of optometric services with no foreseeable benefit to members. In addition, insurers who cover the cost of optometric materials would be faced with increased costs which would have to be ultimately reflected in the rates with no increase in the quality of services for the foreseeable future.

*** Permanent

"The Department favors the highest quality optometric care, but this legislation will not accomplish such result. The bill is penal in nature and violation of its vague provisions is a misdemeanor. Because of its defects and ineffectiveness, we urge that it be vetoed."

Also recommending disapproval of this bill are the Department of Commerce, the New York State AFL-CIO, the Association of the Bar of the City of New York, and the National Association of Optometrists and Opticians, among numerous others.

The bill is disapproved.

(Signed) NELSON A. ROCKEFELLER

STATE OF NEW YORK



3335A

IN SENATE

February 16, 1967.

Introduced by Mr. GORDON—read twice and ordered printed;
and when printed to be committed to the Committee on Higher
Education

AN ACT

To amend the education law, in relation to the practice of the
profession of optometry

*The People of the State of New York, represented in Senate and
Assembly, do enact as follows:*

- 1 Section 1. Declaration and purposes: The legislature hereby
- 2 finds and declares that:
- 3 The practice of the profession of optometry affects the public
- 4 health, safety and welfare and because it protects, corrects and
- 5 conserves the vision of the public of the state, has for many years
- 6 been subjected to licensure, regulation and control in the public
- 7 interest. It is a matter of public interest and concern that the
- 8 profession of optometry continue to merit and receive the con-
- 9 fidence of the public; that the relationship between the optometrist
- 10 and the members of the public be on the highest level of trust,
- 11 confidence and doctor-patient basis; that the optometrist owes his

EXPLANATION — Matter in *italics* is new; matter in brackets [] is old law to be omitted.

1969

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1 sole duty and responsibility to his immediate patient; that the
2 optometrist in ministering to the visual needs of his patient be
3 unfettered by any obligations to a lay person or corporation who
4 or which is not or cannot be educated, trained, examined, licensed,
5 regulated as an optometrist and that the practice of optometry by
6 unlicensed persons or corporations employing optometrists, creates
7 a dual responsibility for the optometrist with respect to his immedi-
8 ate patient and to his lay employer which is inimical to the public
9 health and welfare.

10 § 2. Section seventy-one hundred nine of the education law, is
11 hereby amended to read as follows:

12 § 7109. ~~¶~~ Sales of eyeglasses, spectacles and lenses at retail
13 *Regulation of practice of optometry. 1.* It shall be unlawful ~~¶~~ for
14 any person, firm or corporation to sell, at retail, as merchandise,
15 in any store or established place of business in the state, any
16 spectacles, eyeglasses, or lenses for the correction of vision, unless
17 a duly licensed physician or duly qualified optometrist, licensed
18 under part one of this article, be in charge of and in personal
19 attendance at the booth, counter or place, where such articles are
20 sold in such store or established place of business ~~¶~~ to sell, dispense,
21 furnish or supply any spectacles, eyeglasses or lenses to the public,
22 for the aid or correction of vision, except upon the written prescrip-
23 tions of a duly licensed physician or a duly licensed optometrist.
24 This shall not prohibit, however, a duly certified ophthalmic dis-
25 penser from selling, providing, furnishing or adapting spectacles,
26 eyeglasses or lenses only on prescription of ~~¶~~ physicians ~~¶~~ a duly

in Roman type

duly
3

1 licensed physician or a ~~dentist~~ [qualified optometrist] licensed
2 optometrist or from duplicating lenses.

3 2. It shall be unlawful for any optometrist to make an eye
4 examination, visual analysis, refraction, or conduct any part of
5 the practice of optometry, either directly or indirectly, as an
6 employee or associate of any person not licensed as an optometrist,
7 or of any firm, corporation, lay body, organization, or group; pro-
8 vided, however, that this prohibition shall not be construed to
9 prevent the continuance by an optometrist of any such contract
10 of employment or of any such association or other arrangement
11 existing at the time this section as hereby amended takes effect or
12 to prevent such an optometrist from making such a contract of
13 employment or a new such association or arrangement with or
14 for a new employer.

15 3. It shall be unlawful for any corporation, lay body, organiza-
16 tion, group or lay person in any manner to make an examination,
17 visual analysis, refraction, or to conduct any part of the practice
18 of optometry through the means of engaging the services on a
19 salary, commission or any other compensatory basis, directly or
20 indirectly, or an optometrist licensed under the provisions of this
21 article, provided that this prohibition shall not apply to any
22 university or school of medicine or of optometry, hospital, health
23 center, clinic or similar non-profit institution or to any public
24 or governmental agency; nor shall it prevent a duly licensed
25 optometrist from being employed and compensated by a firm,
26 corporation, lay body, organization, or group for the purpose of

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1 rendering optometric care to the employees of the firm, corporation,
2 lay body, organization, or group by which he is employed.

3 ~~4.~~ It shall be unlawful for an optometrist to practice optometry
4 or any part thereof in any retail or commercial location, or in any
5 premises not exclusively devoted to the practice of optometry or
6 other health care professions, or in any place where any trade,
7 occupation or business, unrelated to the practice of optometry or
8 other health care profession is conducted; provided, however, that
9 this prohibition shall not be construed to prevent the continuance
10 by an optometrist of the practice of optometry in any such location
11 or premises on the date when this section as hereby amended
12 takes effect or to prevent such an optometrist from continuing the
13 practice of optometry in any new such location or premises for and
14 during the period of ten years from the effective date of this section
15 as hereby amended.

16 ~~5.~~ **¶ [The peddling of]** It shall be unlawful to peddle spectacles,
17 eyeglasses or lenses or **¶ [the practicing of to practice]** optometry
18 or ophthalmic dispensing from house to house or on the streets or
19 highways, **¶ [by any person also shall be unlawful,]** notwithstanding
20 any law providing for licensing peddlers. This shall not prohibit,
21 however, an optometrist or physician from attending, prescribing
22 for and furnishing spectacles, eyeglasses or lenses, or a certified
23 ophthalmic dispenser from furnishing or adapting spectacles, eye-
24 glasses⁵ or lenses, to a person who by reason of illness, physical or
25 mental infirmity is confined to his abode.

26 § 3. This act shall take effect January first, nineteen hundred
27 sixty-eight.

Mr. WEINMANN. In the Governor's Message, he also pointed out that low cost eye care was adversely affected by that bill.

Mr. HARSHA. I thought I understood you to say, Mr. Weinmann, that 75 per cent of all the income of optometrists is acquired by selling eyeglasses?

Mr. WEINMANN. That is correct.

Mr. HARSHA. How do you arrive at that?

Mr. WEINMANN. I have seen that statistic and will be happy to furnish the evidence of it to this subcommittee.

Mr. HARSHA. Can you recall where you got this information?

Mr. WEINMANN. In a memorandum which I believe was submitted in a case which may now be pending in the *State of New York called People vs. Sterling*, I believe, and I would be happy to submit that memorandum to this subcommittee.

I think the basis for that figure is included in that memorandum.

Mr. HARSHA. Is this a case involving optometrists?

Mr. WEINMANN. No, it is a case involving corporations which practice optometry. In fact, the main corporation involved in this case, Sterling, also is located in the District of Columbia.

Mr. HARSHA. Does this involve the income of corporations involved in the practice of optometry or does it involve an individual involved in the practice of optometry?

Mr. WEINMANN. The case primarily concerns itself with advertising and the right of corporations to advertise. That is what the case is about. The corporation employs optometrists. In fact, those optometrists are represented by this union. Our union, Local 408, represents hundreds of optometrists.

Mr. HARSHA. I don't see how you can quote a figure of 75 per cent of all optometrists' income is gained by the sale of eyeglasses.

Mr. WEINMANN. That is a correct figure. You can get that also from Medicare and Medicaid, both.

Mr. HARSHA. If that figure is very far off, it isn't a very substantial statement.

That is all I have.

Mr. WEINMANN. As a matter of fact, I think some of the other witnesses who intend to testify against this bill will have much more data on it. Perhaps witnesses who are present in this room today. I see Sterling listed on the schedule of speakers, and I would assume that the speaker for Sterling will have some information on that.

Mr. SISK. The gentleman from Maryland.

Mr. GUDE. Thank you, Mr. Chairman.

Mr. Weinmann, yesterday Dr. Chapman, speaking on behalf of the American Optometric Association, stated that in regard to House 1283, the purpose of the bill is simple; to elevate the practice of optometry in the District of Columbia to the level of professions recognized in the other states. Could you comment on that statement?

Mr. WEINMANN. Yes. The State of New York, for example, does describe optometry as a profession. There is no dispute about that fact. At the same time, in that statute there is reference to the corporate practice of optometry, almost in the same paragraph. So that it is clear that by using the term "profession" in the statute, it is not meant to classify it as a learned profession such as the law, for example. Ob-

viously the term "profession" has a different meaning in that context. So I don't attach any great significance to the fact that states describe optometry as a profession. To me it is no different than calling prize-fighting a profession.

It is a basis for licensing. That is the reason for use of the term "profession" is as a basis for licensing and that is why you have so many courts in the old days—and I saw from last year's record—there are many cases, but many of them were old cases. They were cases which probably involved the licensing problem and in order to justify licensing they called optometry a profession and to that extent it is. I think optometry should be licensed. I have no quarrel with that at all.

Mr. GUDE. Do optometrists in the State of New York advertise?

Mr. WEINMANN. No. Optometrists do not advertise in the State of New York. Opticians do.

Mr. SISK. We have sitting with us the gentleman from Florida, Mr. Fuqua, a member of the full committee, who is very much interested in this.

Mr. FUQUA. Do you consider the 1924 law we are operating under in the District of Columbia to be a model law?

Mr. WEINMANN. No, I do not. I think there is need for revision. I think there that the law should be updated. I commend the subcommittee for looking into this question. There is no reason why it shouldn't be updated. I would say many laws that are 40 or 50 years old require revision from time to time to keep up with the times.

What I am objecting to is that the guts of this particular bill is not the professionalism. That is a cloak brought in here by the AOA. The real guts of the bill is to outlaw the practice of optometry by corporations.

We in New York State have found—and this was litigated in the courts of New York—that in 50 years history there is no harm done to anybody; there has never been demonstrated any harm to anybody so long as licensed optometrists are employed by corporations. We think that that is the crux of the matter. We are not quarreling with updating the law. We are only quarreling with inserting language which would enrich the salon optometrist at the expense of the general public, which would then be forced to pay the higher prices which the salon optometrist demands. That is all it is as far as we are concerned. It is a matter of competition.

Salon optometrists are out to drive out the low-cost corporations which deal on an efficient and volume basis.

Incidentally, I would like to stand corrected on an observation I made a little earlier. I said that optometrists do not advertise in the State of New York. They don't in general, but they do on a limited basis. That is what the subject of the litigation is. They advertise, for example, in a store window. It is a mild form of advertising. A very mild form, but even that has been subjected to attack by the Board of Regents in New York and ultimately it will be determined.

Mr. SISK. Approximately how many optometrists does your union represent?

Mr. WEINMANN. Hundreds. Our Local 408 alone represents hundreds of optometrists in the State of New York.

Mr. SISK. "Hundreds" is pretty indefinite. Is it several thousand?

Mr. WEINMANN. Well, there aren't that many. I don't think there are 2,000 optometrists in the State of New York. I understand there are 1300. There are 1300 licensed optometrists in the State of New York. When I say we represent hundreds, it becomes a significant number.

Mr. SISK. Do you have a record there of the employers with whom you have contracts?

Mr. WEINMANN. I would be happy to furnish that, but we have contracts with hundreds of employers. We represent optical workers in every field of endeavor, not only the optometrists. We represent dispensing opticians and shop men.

Mr. SISK. Furnish for the record a list of the employers with whom your union has contracts.

Mr. WEINMANN. Yes.

(Subsequently the following information was submitted:)

SIPSER, WEINSTOCK & WEINMANN,
New York, N.Y., August 23, 1967.

Re H.R. 1283 et al.

Hon. H. F. SISK,
Chairman, Subcommittee No. 5,
District of Columbia Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN SISK: Thank you for the opportunity to appear before Subcommittee No. 5 in connection with the above bill. As requested, I am enclosing the following documents:

1. Senate 3335-A, the corporate practice bill recently vetoed by Governor Rockefeller.

2. A list of optical retailers under contract to Local 408. (Naturally, there are many many other optical firms under contract not only to Local 408 but to the various locals of other international unions forming the National Optical Workers Conference, and there are other local optical unions in the International Union of Electrical Workers, AFL-CIO having similar contracts with employers).

I have now had an opportunity to read the letter to which you referred in connection with labor opposition to H.R. 1283. The fact is that the letter referred to from Thomas E. Andert "To Whom It May Concern", deals with an unethical practice in terms of purchasing cheap lenses wholesale from Texas and has absolutely nothing to do with ethics in dealing with the public or in examining eyes, nor is there necessarily any fault in the cheaper lenses or any special reason why a salon optometrist could not also obtain these cheaper lenses. In fact, many of them do.

The reference which I made to the sale of eyeglasses as constituting 75% of the income of optometrists was predicated upon testimony in the transcript in a case entitled *Sterling Optical Co. Inc. et al v. The University of the State of New York et al* pending before Honorable Waldron R. Herzberg, Supreme Court, Albany County, Index No. 5807/1963.

I assume that my testimony will be forwarded to me for correction before printing in the Record.

Very truly yours,

RICHARD A. WEINMANN.

American Eyesight Service, Inc., 5 Hill St., Newark, N.J.
Philip Appfel & Co., Inc., 201 Fulton St., New York, N.Y.
Associated Eyesight Specialists, Inc., 255 W. 34th St., New York, N.Y.
Associated Group Optical Plan, Inc., 125 Fulton St., New York, N.Y.
Associated Opticians, 3002 Steinway St., Long Island City, N.Y.
Bookhart & Smith, 290 Bloomfield Ave., Montclair, N.J.
Dr. Stanley Bregman, 7 Hill St. Newark, N.J.
BMT Opticians, 1688 E. 16th St., Brooklyn, N.Y.

- Bristol Opticians, Inc., 1643 Pitkin Ave., Brooklyn, N.Y.
 Bridge Opticians, George Washington Bridge Bus Terminal, New York, N.Y.
 John B. Boyd, Optician, 308 Bridge St., Springfield, Mass.
 John B. Boyd, Optician, 333 Bridge St., Springfield, Mass.
 John B. Boyd, Optician, 7 Westfield St., West Springfield, Mass.
 Center Optical Co., Inc., 250 W. 57 St., New York, N.Y.
 Center Optical Co., Inc., 72 Willoughby St., Brooklyn, N.Y.
 Cohen Optical Co., Inc., 117 Orchard St., New York, N.Y.
 Community Opticians, 47 W. 34 St., New York, N.Y.
 Community Opticians, 789 Broad St., Newark, N.J.
 Community Opticians, 509 Willis Ave., Bronx, N.Y.
 Community Opticians, 1140 E. Jersey St., Elizabeth, N.J.
 Consumers Eyesight Service, 86 W. Chippewa St., Buffalo, N.Y.
 Council Opticians, Inc., 34 Church St., Buffalo, N.Y.
 Council Opticians, Inc., 12 East Avenue, Lockport, N.Y.
 Council Opticians, Inc., 144 N. Union St., Olean, N.Y.
 Council Opticians, Inc., Elmira, N.Y.
 Council Opticians, Inc., Batavia, N.Y.
 County Optical Co., Inc., 9 Crary Ave., Mt. Vernon, N.Y.
 County Optical Co., Inc., 72 E. Post Rd., White Plains, N.Y.
 Crystal Opticians, Inc., 100 Nassau St., New York, N.Y.
 County Optiks, Inc., Walt Whitman Shopping Center, Huntington, L.I.
 DeLorme-Lehman-State Optical Co., 42 E. 23 St., New York, N.Y.
 Design for Vision, Inc., Morrisville, Pa.
 Dean Opticians, 168 Flatbush Ave., Brooklyn, N.Y.
 Economy Optical Co., 133 W. 14 St., New York, N.Y.
 Edwards Optical Co., Inc., 161 Franklin St., Buffalo, New York
 J. Ehrlich & Sons, 339 Madison Ave., New York, N.Y.
 Eye-Care Optical Co., Inc., 90 Canal St., New York, N.Y.
 Eye Center, Inc., 853 Broadway, New York, N.Y.
 Eye Service, Inc., 149 E. 60 St., New York, N.Y.
 Eye-Site Opticians, Inc., 49 Tarrytown Rd., White Plains, N.Y.
 Eye-Site Opticians, Inc., 116-57 Queens Blvd., Forest Hills, L.I.
 Eye-Site Opticians, Inc., 2374 Grand Concourse, Bronx, New York
 Family Optical Plan of Huntington, Inc., 374 New York Ave., Huntington, L.I., N.Y.
 F & G Opticians, Inc., 175-5th Ave., New York, N.Y.
 Flatbush Optical Plan, Inc., 1000 Church Ave., Brooklyn, N.Y.
 Globe-Baras Optical Co., 207 Canal St., New York, N.Y.
 Golden Bros., 201 Canal St., New York, N.Y.
 Grand Opticians, Inc., 154 Montague St., Brooklyn, N.Y.
 Green Shield Opticians, Inc., 46 Station Place, Hempstead, L.I., N.Y.
 Green Shield Opticians Mid-Island, Inc., 362A Mid-Island Shopping Center, Hicksonville, L.I., N.Y.
 Group Optical Plan, 200 Jackson St., Hempstead, L.I., N.Y.
 Group Optical Plan, 58 So. Ocean Ave., Patchogue, L.I., N.Y.
 Group Optical Plan, 200 Carver St., Huntington, L.I., N.Y.
 Grand Street Consumers Corp., 500 Grand St., New York, N.Y.
 Green Acres Opticians, Inc., Green Acres Shopping Center, Valley Stream, L.I., N.Y.
 Dr. William D. Gellerman, Optometrist (formerly Main Optical), 102 Main St., White Plains, N.Y.
 Group Opticians of Queens, Inc., 86-15 Queens Blvd., Elmhurst, N.Y.
 Rudolph Katz Optical Company, Inc., 3819 Third Ave., Bronx, N.Y.
 Sidney B. Katz, O.D., 4405-13th Ave., Brooklyn, N.Y.
 King Optical Co., Inc., 93 Nassau St., New York, N.Y.
 Kingsboro Optical Services, Inc., 6411-18th Ave., Brooklyn, N.Y.
 King & Sobel, 40-23 Queens Blvd., Sunnyside, L.I., N.Y.
 King & Sobel, 82-12 Northern Blvd., Jackson Heights, L.I.
 Sidney Q. Kuznetz, 855-6th Ave., New York, N.Y.
 S. H. Laufer, Inc., 88 Rivington St., New York, N.Y.
 S. H. Laufer Bronx, Inc., 122 East Fordham Rd., Bronx, N.Y.
 S. H. Laufer of Hempstead, Inc., 101 Main St., Hempstead, L.I., N.Y.
 S. H. Laufer of Queens, Inc., 168-05 Jamaica Ave., Jamaica, L.I., N.Y.
 M & L Optical Co., Inc., 169-30 Jamaica Ave., Jamaica, L.I.

- Manhattan Optical Co., Inc., 191 Canal St., New York, N.Y.
 Martin Bros. Opticians Brooklyn, Inc., 446 Fulton St., Brooklyn, N.Y.
 Martin Bros. Opticians Long Island, Inc., 161-19 Jamaica Ave., Jamaica, L.I.
 Dr. Maxwell Millman, 637 Grand St., Brooklyn, N.Y.
 Margo Optical Co., 20-28 Francis Lewis Blvd., Whitestone, N.Y.
 E. B. Meyrowitz, Inc., 150 Broadway, New York, N.Y.
 E. B. Meyrowitz, Inc., 1168 Madison Ave., New York, N.Y.
 E. B. Meyrowitz, Inc., 520-5th Ave., New York, N.Y.
 Monroe-Union Optical Service, 585 Monroe Ave., Rochester, New York
 Moscot Opticians, 118 Orchard St., New York, N.Y.
 Ira S. Morgenthal Opticians, 41 E. 62 St., New York, N.Y.
 Montgomery-Frost-Lloyd's Co., Inc., 300 Washington St., Boston, Massachusetts
 Montgomery-Frost-Lloyd's Co., Inc., 414 Boylston St., Boston, Massachusetts
 Montgomery-Frost-Lloyd's Co., Inc., 662 Beacon St., Boston, Massachusetts
 Montgomery-Frost-Lloyd's Co., Inc., 5 Brattle St., Cambridge, Massachusetts
 Nassau-Fulton Group Optical Plan, 87 Nassau St., New York, N.Y.
 National Optical Plan, Inc., 51 E. 42 St., New York, N.Y.
 New Rochelle Optical Plan, 480 Main St., New Rochelle, New York
 Optical City, Inc., 26 W. 14 St., New York, N.Y.
 Optical Service, Inc., 11 W. 42 St., New York, N.Y.
 Parkchester Optical Co., Inc., 1615 Unionport Rd., Bronx, N.Y.
 Peerless Optical Co., Inc., 150 Fulton St., New York, N.Y.
 Penn Optical Co., Inc., 215 W. 34 St., New York, N.Y.
 J. H. Penny, Inc., 144 Joralemon St., Brooklyn, N.Y.
 J. H. Penny, Inc., 708 Lexington Ave., New York, N.Y.
 Pildes Opticians, Inc., 80 Nassau St., New York, N.Y.
 Park Sher Optical Co., 1173 Sheridan Drive, Tonawanda, N.Y.
 Queens Bifocal Co., 144-42 Jamaica Ave., Jamaica, L.I., N.Y.
 Queens Bifocal Co., 93-01 Jamaica Ave., Woodhaven, L.I., N.Y.
 Rochdale Consumers Cooperative Society, Inc., 165-70 Baisley Bld., Jamaica, L.I., N.Y.
 Dr. Richard Rosenberg, 200 Market St., Newark, N.J.
 Rueff Bros., Inc., 30 W. 24 St., New York, N.Y.
 John Scheidig & Co., Inc., 60 Nassau St., New York, N.Y.
 Silbe Optical Co., 153 E. 42 St., New York, N.Y.
 South Shore Opticians, Inc., 30 Midway Green Acres, Valley Stream, L.I.
 South Shore Opticians, Inc., 575 Eighth Ave., New York, N.Y.
 South Shore Opticians 34th St., Inc., 225 W. 34 St., New York, N.Y.
 Square Optical Plan, 1 Union Sq. West, New York, N.Y.
 Carl Steiner Opticians, 35-23 30th Ave., Astoria, L.I., N.Y.
 Sterling Optical Company, Inc., 138 Fulton St., New York, N.Y.
 Sterling Optical Company, Inc., 1290 Broadway, New York, N.Y.
 Sterling Optical Company, Inc., 160 Jay Street, Brooklyn, N.Y.
 Sterling Optical Company, Inc. 206 Hempstead Turnpike, W. Hempstead, L.I.
 Sterling Optical Company, Inc., 125 Mamaroneck Ave., White Plains, N.Y.
 Sterling Optical Company, Inc., Cross County Shopping Center, Yonkers, N.Y.
 Sterling Optical Company, Inc., 259 Walt Whitman Rd., Huntington, L.I.
 Sterling Optical Company, Inc., Bay Shore Shopping Center, Bay Shore, L.I.
 Milton Stern, 312 W. 34 St., New York, N.Y.
 Seymour Strickberger, O.D., 4032 Seneca St., Seneca, N.Y.
 Stolper & Lemisch, Inc., 94 Canal St., New York, N.Y.
 Sie-Good Opticians, Inc., 6819 18th Ave., Brooklyn, N.Y.
 Suffolk Optical Plan, Inc., 10 S. Ocean Ave., Patchogue, L.I.
 Dr. Eli Shuman, 477 Lenox Ave., New York, N.Y.
 Dr. Alvin Strully, 164-05 89th Ave., Jamaica, L.I., N.Y.
 Terminal Opticians, Inc., Suburban Concourse, Port of Authority Bldg., 41st St. & 8th Ave., New York, N.Y.
 Tupper Opticians, 41 W. Tupper St., Buffalo, N.Y.
 Tura, Inc. (House of Levoy), 130 Cutter Mill Rd., Great Neck, N.Y.
 Union Optical Plan, Inc., 143 Fourth Ave., New York, N.Y.
 Union Optical Plan, Inc., 39 W. 32 St., New York, N.Y.
 Union Optical Plan, Inc., 157 Remsen St., Brooklyn, N.Y.
 United Optical Group, 145 Nassau St., New York, N.Y.
 Union Vision Service, 3193 Cahuenga Blvd., W. Hollywood, Calif.
 Union Vision Service, 7150 Van Nuys Blvd., Van Nuys, Calif.

Union Vision Service, 5049 Telegraph Rd., Los Angeles, Calif.

Vision Center, Inc., 101 W. 48 St., New York, N.Y.

White Cross Opticians, 1301 Oneida St., Utica, N. Y.

Dr. William Weissman, 1347 Broadway, New York, N.Y.

Warbasse Consumers Cooperative Society, Inc., 499 Neptune Ave., Brooklyn, N.Y.

Zimmet's Opticians, 805 8th Ave., New York, N.Y.

Dr. Louis Zucker & Sons, 373 Jay St., Brooklyn, N.Y.

M. Ginsberg Opticians, 41 Commerce S., Newark, N.J.

Mr. SISK. Does your union operate only in New York or do you operate nation-wide?

Mr. WEINMANN. It is primarily in metropolitan New York but we go well beyond it. We have shops in Rochester and we have shops in the District of Columbia. I think the American Optical has a contract with Local 408 right here in the District of Columbia.

Mr. SISK. Do you have a contract with Sterling?

Mr. WEINMANN. We have a contract with Sterling in New York. Sterling has a number of shops in New York, all of which are under contract with us and employ optometrists.

Mr. SISK. Is your union an international?

Mr. WEINMANN. It is part of the International Union of Electrical Workers, AFL-CIO.

The gentleman I introduced earlier, Mr. McKinnell, is the Administrative Assistant to the International Union of Electrical Workers.

Mr. SISK. Do you happen to have a contract with King Optical Company?

Mr. WEINMANN. No, we do not, Mr. Chairman.

Mr. SISK. You definitely do not have a contract with King Optical?

Mr. WEINMANN. Not as far as we know.

Mr. SISK. Have you ever had a contract with King?

Mr. WEINMANN. I understand it is quite possible some years ago we did have a contract with King.

Mr. SISK. Are you familiar with any of the operations of King Optical?

Mr. WEINMANN. I personally am not.

Mr. SISK. You have no knowledge of some of their experiences in Michigan and some of the other states?

Mr. WEINMANN. No, I personally do not. Our business manager, Mr. Ribaldo, who could not possibly be here today, is the representative who goes across country and is familiar with operations throughout the country. He is not available, however.

Mr. SISK. Are you familiar with the United Optical Workers Union 878 in St. Louis, Mr. Weinmann?

Mr. WEINMANN. It is a sister local in the same International Union, the IUE.

Mr. SISK. Is it your understanding that all the United Optical Workers unions are unanimously opposed to this bill?

Mr. WEINMANN. Mr. Congressman, there are six or more local unions, optical unions in the IUE, all of which today are strongly opposed. In addition to that, as I stated earlier, I am here on behalf of the National Optical Workers Conference and that National Optical Workers Conference consists of six International Unions. That is international unions in addition to the IUE. The Retail, Wholesale and Department Store union, the Flat Glass Workers union,

the UAW—that is the United Automobile Workers—the Building Service Employees International Union, the Laborers International Union. All of these international unions have, as American labor history has developed, have local unions in the optical field and all of these are in opposition to a bill which would—to this bill, because of the fact that it primarily has concerned itself with the elimination of the corporate practice of optometry. They are all in opposition.

Mr. SISK. Are you saying that all these internationals have taken a definite position by resolution against this bill?

Mr. WEINMANN. Well, this National Optical Workers Conference, as far as I know, has. I have been so advised.

Mr. SISK. Let me briefly read some excerpts from a statement of the United Optical Workers Union No. 878, in St. Louis, Missouri, affiliated IUE, AFL-CIO. I will just read some brief excerpts because I don't want to take a lot of time:

For a period of more than ten years King, Lee and Douglas Optical Companies along with a few more "Cut-Rate" price advertising Retail Optical Houses have been a plague to the Optical industry generally.

These companies are particularly harmful to the ethical Doctors of Optometry and the ethical Dispensing Opticians who are trying to provide good eye care and fair prices or fees for the public.

The King, Lee and Douglas Cut-Rate price advertisers are also harmful to the Independent Optical Wholesaler because of the laboratory work of these companies is sent out of town to be fabricated.

I understand they would be concerned about that.

The struggle against the "Cut-Rate" retail advertisers is not just the problem of Optical workers unions, but should be the concern of everyone in the optical industry. If the ethical Doctors and Dispensing Opticians do not believe this is true time will teach them it is true.

Unless there is an objection, I am going to ask that the full statement signed by Mr. Thomas E. Andert, President and Director of Local 878, be made a part of the record.

(The document referred to follows:)

AOA—H.R. 1283, ATTACHMENT #6

UNITED OPTICAL WORKERS UNION No. 878,

St. Louis 1, Missouri, June 30, 1964.

To Whom It May Concern:

For a period of more than ten years King, Lee and Douglas Optical Companies along with a few more "Cut-Rate" price advertising Retail Optical Houses have been a plague to the Optical industry generally.

These companies are particularly harmful to the ethical Doctors of Optometry and the ethical Dispensing Opticians who are trying to provide good eye care and fair prices or fees for the public.

The King, Lee and Douglas Cut-Rate price advertisers are also harmful to the Independent Optical Wholesaler because of the laboratory work of these companies is sent out of town to be fabricated.

The shop people who work in the Optical Laboratories are being harmed because these outfits take work out of the shops of the companies that employ them. This applies to non-union and union workers alike.

The Doctors of Optometry and Ethical Dispensing Opticians will get little help from the big national optical wholesalers. They do a big business with Daltex and others who supply these "Cut-Rate Retailers" with merchandise at lower prices than you pay. This helps to make it possible for these "Cut-Rate" outfits to beat the ethical Optometrists and Opticians into the ground.

This affects the Independent Wholesaler and his laboratory workers, they too are handicapped because they probably pay much higher prices than Daltex and others that supply these chiselers.

The struggle against the "Cut-Rate" retail advertisers is not just the problem of optical workers unions, but should be the concern of everyone in the optical industry. If the ethical Doctors and Dispensing Opticians do not believe this is true time will teach them it is true.

This union has started a picketing campaign against King, Lee and Douglas Optical Companies and others in Kansas City and St. Louis.

Lee Optical expects to open four or five more stores in the St. Louis Area. One will be in the vicinity of 6th or 7th and Olive Streets. At least that is the information that is being spread at the moment. No doubt Douglas will do the same in Kansas City and other Cities.

Each of these Lee and Douglas Stores are geared to do about \$100,000 worth of business a year. Divide the prices they get into their take. The total number of prescriptions involved is staggering. We need all the help we can get in our efforts. You can help by sending your work to Optical Wholesalers in your area. If these "Cut-Rate Stores" are not in your area. It is only a matter of time when they will be.

Unfortunately we start out under a handicap because we must divert some of our pickets to *Some so called* legitimate Doctors and Opticians who are now sending their work out of town to "Cut-Rate Optical Wholesalers." We have a list of some of these people. Most of them bust their vocal chords screaming about Lee, Douglas and King. We see no difference between the two groups.

When our pickets are placed in front of any Doctor or Store they will remain there indefinitely. There will be nothing we can do about it. One thing you can be sure of we are going to use every means at our disposal in our efforts to carry out our campaign against these chiselers.

We are sending letters to over 1800 local unions in Missouri calling their attention to the activities of these "Cut-Rate Non-Union Retailers."

Your written comments would be appreciated. Not anonymous please.

Yours truly,

THOMAS E. ANDERT,
President and Director.

P.S. Members of this union are presently on strike at Bausch and Lomb Incorporated in Kansas City, Missouri.

AOA—H.R. 1233, ATTACHMENT No. 6

UNITED OPTICAL WORKERS UNION No. 878,

St. Louis 1, Missouri, August 1960.

DEAR DOCTOR: The letter you just read is being sent to some 5,000 local unions in Missouri and Illinois.

Our organization has consistently fought cut rate retail optical price advertising in the interest mainly of the Optometrists and Opticians.

Cut rate non-union wholesale houses such as Commercial and Daltex and others are just as much a blight on the industry and just as much unfair competition on the wholesale basis as the cut rate retail advertisers are to the decent Optometrists and Opticians.

We are starting a program to promote the purchase of union made eyeglasses. The same unions will be contacted. There are about 300,000 union people in the State of Missouri and we suppose twice that many in Illinois.

Just as the Optometrists and Opticians are trying to do something for themselves we too are interested in the well being of our union members.

It would be nice if the Optometrists and Opticians whom we are trying to help would send their work to one of the union wholesale optical companies in St. Louis and Kansas City. In that way they would be helping us to help them with legislation and in other ways too. Some of these union wholesale houses have prices comparable with the non-union wholesale houses.

We are enclosing a list of union wholesale houses in St. Louis and Kansas City for your information. Remember Lee and Douglas optical companies are subsidiaries of Daltex in Texas.

Soon now our union label advertisers will appear before all King, Lee, Douglas and other non-union retailers throughout the States of Missouri and Illinois, also Nebraska.

With sincere best wishes. We are,

THOMAS E. ANDERT,
President and Business Representative.

AOA—H.R. 1283, ATTACHMENT No. 6

UNITED OPTICAL WORKERS UNION No. 878,
St. Louis 1, Missouri, July 24, 1958.

TO ALL LABOR UNIONS:

You recently received a package letter from the King Optical Company. This letter offered very cheap eyeglasses to all union members and their families. Mr. Ritholz owner of King Optical Company, is a noted union hater. He is well known to the Chicago Federation of Labor. He is a braggart and brags openly that he destroyed the Dental Workers union affiliated with the A. F. of L., in Chicago away back in 1930. Oh, yes. He used to sell mail order dentures too. In fact an organizer for the Chicago Federation of Labor was shot to death in that fight. Mr. Ritholz also brags he destroyed the Optometrists Union A. F. of L., also back in the early thirties. There is no question about that he really did do it.

In 1936 or 1937 while this writer was helping the Chicago Optical Workers Local Mr. Ritholz locked out 130 A. F. of L., Optical Workers and the lockout lasted over four years. The case went through the Labor Board. The decision of the board was against Mr. Ritholz and the Ritholz Optical Company. That was not enough for Mr. Ritholz he dragged the matter through every court in the land.

Finally the court ordered him to deal with the Chicago Local. That is how he finally gained a union shop. More recently in the City of Detroit King Optical Company again owned by Mr. Ritholz destroyed the union in his Detroit King shop.

Mr. Ritholz loves to disrupt and destroy. He is also an apostle of the belief that everyone regardless of their station in life has a price. In fact he was convicted in Michigan for trying to bribe a member of the State Board of Optometry. That incident happened just a few years ago. Mr. Ritholz started his Kings store by hiring broken down Medical Doctors to examine peoples eyes. In some instances these were ex Venereal Doctors. Apparently the Medical Association put a stop to that. Now he hires registered Optometrists. These Optometrists usually have an office on the same floor as the King Optical Company. They are not supposed to be connected to King Optical Company. However they do not fit glasses as all other Optometrists do but they send patients to King Optical Company. There is a law against price advertising of optical goods in the State of Missouri. So King gets around the law by these methods.

No language we can use is strong enough to condemn the practices of King Optical Company. King Optical Company in the State of Missouri is 100% Non-Union.

For best eye care for you and your families go to any Occultist (Medical Doctor) Registered Optometrist or Optician.

They are all listed in the phone book. There you can be sure of proper care and attention.

Later on we will send you a list of the Union Optical Houses in the St. Louis Area.

Fraternally yours,

THOMAS E. ANDERT,
President, United Optical Workers Local 878, IUE-AFL-CIO.

[AFL-CIO News, July 12, 1958. Page 3]

FIRM ASKS LABOR HELP AFTER BUSTING UNION

DETROIT—The King Optical Company an interstate chain with a record of union-busting and Labor fighting, is now trying to soft-talk local unions into helping it sell eyeglasses to their members, according to Cass Suski, president and business representative of Optical Workers Local 932.

The Local formerly held bargaining rights at the branch here. But it had to strike for four months and go to court because the company refused to live up to its contract, Suski said. The agreement expired while the litigation was still going on he added, and the company coerced enough employees into quitting the union to cost it, its bargaining rights.

(The following letter was subsequently received for the record:)

UNITED OPTICAL WORKERS UNION I.U.E. LOCAL No. 878,
St. Louis, Mo., August 24, 1967.

Re H.R. 1283.

JAMES T. CLARK,
Clerk, Committee on the District of Columbia,
House of Representatives,
Washington, D.C.

DEAR MR. CLARK: It has come to my attention that a "To Whom It May Concern" letter dated June 30, 1964 under my signature has been incorporated into the Record of the hearings of Subcommittee No. 5. The purpose of including this letter in the Record, I am informed, was to indicate that corporations that practice optometry in the St. Louis area are guilty of improprieties, which would not be the case if the corporate practice of optometry was outlawed and only individual optometrists were permitted to practice optometry.

The above is a complete distortion of my letter. The practice to which I objected was that 3 optical companies in St. Louis, namely King, Lee and Douglas were sending their work out of town, to Texas, in order to have it done more cheaply instead of having such work done locally. This has an adverse effect upon optical companies which do patronize local laboratories and opticians.

The fact is that many individual licensed optometrists also engage in this practice of obtaining cut-rate lenses and optical services from Texas. Individual optometrists are worse offenders than some corporations. The form of practice has nothing to do with the utilization of cut-rate out-of-town work. We pointed out in the second page of our letter that even some ophthalmologists and opticians were sending their work out of town to the cut-rate wholesalers.

There are many corporations practicing optometry in this country through the employment of licensed optometrists in a reputable fashion and under union contract. We have no quarrel with them. We support the position of the Optical Council of the International Union of Electrical Workers, AFL-CIO, and also of the National Optical Workers Conference, in opposition to H.R. 1283.

In view of the gross misinterpretation of my letter in the Record, I request that this letter also be made a part of the Record.

Very truly yours,

THOMAS E. ANDERT,
President.

Mr. WEINMANN. As I understand, that statement was made some seven years ago. I don't think it should be read generally but it should be applied to the specific corporations he was directing his attention to.

We could very well make the same statement about two or three shops in the New York area which we consider to be unethical and we could make the same statement about salon optometrists who are unethical.

Mr. SISK. This statement is later than seven years ago, Mr. Weinmann.

Mr. WEINMANN. The fact is that the taxicab driver who took us here today was complaining about unethical dealings that he had with an ophthalmologist in the District of Columbia who had a kickback arrangement with some optician. So that the fact that these particular places were cited, it might very well be these particular places were dealing unethically, but that has nothing to do with the general proposition. We have corporations in New York under contract for many, many years which we consider to be perfectly ethical.

Mr. SISK. You mentioned you have a contract with Sterling Optical Company?

Mr. WEINMANN. Yes.

Mr. SISK. You also mentioned in your statement that there was no case on record where corporate practice of this type had been injurious and apparently the record was very clean.

Mr. WEINMANN. I say the Court of Appeals in the State of New York so found after litigation, that there were no cases cited of injury to the public as a result of the corporate practice of optometry.

Mr. SISK. I want to read this comment here—and again I will ask unanimous consent this be made a part of the record, and without objection it will be.

(The documents referred to follow:)

STERLING OPTICAL CORP.,
Washington, 5, D.C., February 1964.

DEAR STUDENT: Because you attend a Washington area school, you are eligible for Sterling Optical's new student plan for the fitting of Contact Lenses.

The plan is simple. It is based on the fact that students in your age group are:

1. Most receptive to the idea of changing from spectacles to modern Contact Lenses and

2. Most valuable to Sterling Optical in a public relations manner.

Because of these two factors, we have found it to be less time consuming to fit students with Contact Lenses. There is more psychological acceptance to Contact Lenses in people of your age group. This eliminates a time consuming factor which may be found in fitting other individuals.

Sterling's student plan offers a ten per cent reduction to all students who come to Sterling Optical's Contact Lens information center in groups of three or more. To qualify, you need only make an appointment to visit Sterling's Contact Lens Department with two or more of your friends. You and your group will each be given a complete contact lens examination and all of your questions will be thoroughly answered. This is available with no cost or obligation. Should two or more members in your group decide to order Contact Lenses, the student reduction will be in effect.

To make arrangements for your Contact Lens examination, simply telephone and convenient appointments will be made for you.

Yours very truly,

Dr. ALLEN KANSTOROOM,
Contact Lens Specialist.

MARCH 20, 1964.

TO WHOM IT MAY CONCERN:

Several months ago I purchased contact lenses from the Sterling Optical Company in Washington, D.C. I was given instructions, which I followed very closely, as to how to wear the lenses and was told to report back to Sterling in approximately 30 days for a check-up. In the meantime I was experiencing considerable pain when wearing the lenses. I telephoned Sterling several times and told them of the trouble I was having. Their reply was that my complaints were normal and that I should wait the 30 days for the check-up.

After wearing the lenses for approximately 2 weeks I experienced sharp, piercing pains in my left eye. I immediately went to the Emergency Room of the Prince Georges Hospital where I was treated, by Dr. George S. Malouf, for extreme abrasions of both corneas. Dr. Malouf continued treatment at his office for approximately 1 month, during which time both corneas showed improvement and eventually healed.

Dr. Malouf examined both the contact lenses and my eyes. The examinations revealed that there was no visible workmanship defects in the contact lenses and that my vision was not poor enough to warrant the use of contact lenses. Dr. Malouf stated that Sterling should have made me aware of the fact that some people are not suited to wear contact lenses, and that in such cases the patients' money should be refunded. He also said Sterling should have given me immediate treatment when I notified them of the trouble I was having. Serious damage could have been done to my eyes because of Sterling's negligence and lack of professionalism.

I feel the Sterling Optical Company was negligent in their practices and have asked them to refund the money I paid for the lenses and also to pay the doctor bills. Dr. Kanstoroom, the man who prescribed my contact lenses, refused any such refund of payments. Dr. Kanstoroom gave me the impression that the Sterling Optical Company is concerned only with making money and

not in the health of their patients. I believe it is only fair that Sterling should reimburse me for the following expenses:

(a) Contact lenses -----	\$95. 00
(b) Accessories -----	5. 00
(c) Insurance -----	20. 00
(d) Doctor bills -----	85. 00
(e) Time lost at work -----	42. 00

Total ----- 247. 00

Attached is a letter and receipt from Dr. Malouf. Please contact me and/or Dr. Malouf for further information. Your help will be greatly appreciated.
Sincerely,

WILLIAM D. WORRALL,
9904 51st Terrace, College Park, Md.

This statement is signed by Mr. William B. Worrall, who purchased contact lenses at Sterling Optical Company and was given the necessary instructions. As he experienced considerable pain when wearing the lenses he telephoned Sterling a number of times and explained his trouble. Individuals with Optical insisted that he wait for some thirty days. After wearing the lenses for approximately two weeks, he states, "I experienced sharp, piercing pains in my left eye. I immediately went to the Emergency Room of the Prince Georges Hospital where I was treated by Dr. George S. Malouf for extreme abrasions of both corneas. Dr. Malouf continued treatment at his office for approximately one month, during which time both corneas showed improvement and eventually healed."

In an attempt to get some correction from Sterling Optical—his cost in this was \$247—he was finally referred to their headquarters in New York. Apparently this system is used by some of the local operators here when a person comes back with a complaint.

I only cite this as an example, Mr. Weinmann, and I might say we have a voluminous record on this type of complaint. Sterling is not the only offender. As a matter of fact, some of the worst cases we have are from some other firms.

These cases, of course, are the reason why I became interested in this legislation in the beginning. I am not interested in advancing the case for the doctors of optometry, or the American Optometric Association. Nor am I interested in ophthalmologists precisely, because I think they can take care of themselves. Also, I am not interested particularly in your union or the opticians, because you have a job to do. This subcommittee, however, is interested in the care of the eyes of the American people, and that is our only concern.

As I say, I want to cite these things to indicate some of the reasons why this subcommittee is concerned. I do believe some of our experiences with corporate practices in this field—that maybe the dollar sign became more important than the quality of the treatment. Would you agree with that?

Mr. WEINMANN. Not with regard to corporations alone, but if you want to include the salon optometrists, I will go along with you. I think the dollar sign is with the salon operator and the AOA.

Mr. SISK. You don't think it affects the corporation at all?

Mr. WEINMANN. In precisely the same way. In fact, perhaps even more so with the salon optometrist because there the salon optometrist

is himself making the profit from the glasses. In the case of a licensed optometrist working for a corporation, he does not get any profit out of the sale of the eyeglasses. Therefore, an employed optometrist is even more likely to tell a person who comes in that he has no need for eyeglasses if he has no need for eyeglasses because so far as dollar signs are concerned, I think it is even greater in the salon optometrist area.

Incidentally, Congressman, in connection with the contact lenses to which you referred, this is one reason why we have always insisted that ophthalmologists, or optometrists should be present, physically present, when contact lenses are inserted and that it is wrong for ophthalmologists to be permitted to write a prescription and have an optician fill it.

From time to time you will be faced with pressures from ophthalmologists who want to have a contact lens bill passed which will permit them to merely write a prescription and have an optician fill it. We are opposed to that. We think there should be physical presence. We are interested primarily in the public health and welfare as well, and we have always been, and anything that is good for the public and for good eye care, our union will support. Anything opposed to it, we will be opposed to.

Mr. SISK. Do I understand you to say you feel the fitting of contact lenses should not be done except by a licensed optometrist or an ophthalmologist?

Mr. WEINMANN. That is correct. It should not be done on the basis of prescription by an optician getting a prescription from either an ophthalmologist or an optometrist. We think the ophthalmologist should be physically present. In most of the states, as I understand, they now require the ophthalmologist to be present. From time to time in New York we have been faced with that kind of legislation also. New legislation whereby they could skip that step and just write a prescription and have the optician work on the contact lenses. We don't support that. We are opposed to that legislation as being contrary to the public interest.

Mr. WHITENER. Mr. Weinmann, if you will look at the language on page 2 of the bill, H.R. 12276, at lines 21, 22 and 23:

"The 'practice of optometry' means * * * (e) the adaptation, utilization or furnishing of lenses, prisms or frames for the aid of the human eye."

What do you interpret that language to mean?

Mr. WEINMANN. That an optometrist has a right of examining an eye, and after examining an eye, to prescribe a proper or appropriate glasses and frames to correct any vision that is correctable by a lens.

Mr. WHITENER. Doesn't that try to define optometry and limit it to things in subsection (e) for optometrists licensed in the District of Columbia?

Mr. WEINMANN. When you get into the question of (f), the adaptation, utilization—

Mr. WHITENER. You must be looking at the wrong bill.

Mr. WEINMANN. I am looking at H.R. 1283.

Mr. HORTON. H.R. 12276 is the one you should have.

Mr. WEINMANN. Yes. (e). That, as far as I am concerned, is really the optician's function. Certainly adaptation, the word "adaptation"

means filling a prescription. Adapting. Adapting is an optical term for filling a prescription. That is just what an optician does. I don't believe this should be a definition as a practice of optometry because in effect when you do that you are saying that the optician is practicing optometry and he is not. He is practicing opticianry just by doing that.

Mr. WHITENER. How do you interpret the word "utilization" as used there?

Mr. WEINMANN. It is a very broad word. I really don't know what was intended by it except that I would say this entire bill is drafted in such a way that it is to the advantage of the AOA membership and to the disadvantage of every other conceivable group of the population.

In other words, there are areas here where there is an infringement of the optician's function. There is an area here which we believe is an infringement of the ophthalmologist's functions. I haven't mentioned that in my statement here, although I think I did in my more formal statement, which was submitted to you. But, because I believe that the ophthalmologists and the AMA can take very good care of themselves, and I am sure they will pick up all of the items that I am talking about—but, as I say, this whole bill is drafted in such a way as to redound to the advantage of the individual optometrist at the expense of everyone else.

For example, in (a) the employment of any objective or subjective means for the examination of the human eye, including its appendages, I think that is going too far. That is encroaching on the field of medicine. I say that because, for example, that would include the glaucoma test. The glaucoma test is administered with anesthesia usually. I think they have some new electronic means, but generally it is done with anesthesia.

I don't believe an optometrist should be permitted to perform a glaucoma test but under (a) he would be permitted to do it. This is just another instance of the broad provisions here, all running to the advantage of the optometrist. Maybe I shouldn't blame them for making a pitch, but as far as the public welfare of the District of Columbia and its citizens are concerned, that is not this bill.

Mr. HORTON. It also provides in (d) that the practice of optometry is the furnishing of lenses, prisms or frames. Would it be your interpretation that the manufacturer of lenses or the manufacturer of eyeglass frames would be included in the definition for the practice of optometry?

Mr. WEINMANN. It certainly might be so interpreted. I wouldn't necessarily interpret it that way, but I think when you use broad words such as "utilization" and "furnishing" you run into the problem of interpretation and there is no telling how broadly it can be interpreted.

I could see that interpretation being given to it and, of course, that is one of the reasons why I don't believe that language should be in there, because it is too broad. Because it encompasses areas or could encompass areas which are the domain of others. Yet that is described as the practice of optometry.

Mr. HORTON. In this connection are you concerned with regard to subsection (4) on page 11, line 8 of H.R. 12276, which has to do with

the advertising. It would seem to me this is a rather broad prohibition so that a manufacturer, or company which had eyeglass frames, would be restricted under that subsection from advertising.

Mr. WEINMANN. It seems to me that subdivision would restrict opticians from advertising also.

Mr. HORTON. That is what I am getting at.

Mr. WEINMANN. And I think that is all wrong.

We know that druggists advertise. The newspapers are full of ads by druggists for aspirin or anything else. I see no harm in that. I think that is the American system of competition. It is a business.

Mr. FUQUA. Do you have advertising for prescription drugs?

Mr. WEINMANN. I think the druggists themselves advertise their products, whatever they may be. Items which are obtainable by prescription may be advertised.

Mr. FUQUA. Does he say you can get phenobarbital a little cheaper at his drug store?

Mr. WEINMANN. I haven't seen advertisements like that myself, but that may be because it is rather difficult to advertise an item which is set forth in a prescription where generic names may or may not be used.

The fact is that the druggist per se is not forbidden from advertising, and what is the product in a case of an optician? It is a pair of eyeglasses. It is not any special compound. It is a pair of eyeglasses and there is no reason why an optician shouldn't be able to advertise as far as I am concerned. I see no harm to the public.

Mr. WHITENER. Mr. Weinmann, there on page 11, Subsection (4), line 11, you will note the use of the word "ophthalmic material." What does that term embrace?

Mr. WEINMANN. That is about as broad as you can get when you talk about material.

I think, Congressman, that your reference to Windex was about as apt a description of ophthalmic material as you could get. I think it could encompass that too. It could encompass almost anything. It is, again, another illustration of how broad this bill is drawn in favor of the optometrists and against anybody else.

Mr. WHITENER. Do you think this language in Subsection (4) would be broad enough to prohibit a manufacturer of lenses, or of frames, from advertising in trade journals which might be given to the public or put on display in the Library of Congress?

Mr. WEINMANN. It may be so construed. I certainly wouldn't want to go out on a limb and say it is impossible to construe that language that way at all. Ophthalmic material could be anything remotely connected with the eye; any material whatsoever. You couldn't find a word broader than "material."

Mr. WHITENER. Do you think that makes advertising in a local newspaper a crime, if permitted by the advertising manager of a newspaper, if he causes to be advertised ophthalmic materials?

Mr. WEINMANN. I think that is a terrible possibility.

Mr. WHITENER. Or such advertising by a radio station manager?

Mr. WEINMANN. That is what this bill says. We would certainly be opposed to anything like that. Yet I think you are quite right. Yet a newspaper would be subjecting itself to criticism if it advertised ophthalmic material.

Mr. WHITENER. They would be subject to a fine of \$500 or \$1,000 and imprisonment, under this bill (sec. 8).

Mr. HARSHA. In that regard, would a Kleenex to clean off the lens be covered?

Mr. WEINMANN. Sure it would, as ophthalmic material. I do not see how you could get around it. You would have to find a narrower range.

Mr. WHITENER. I believe this would depend on whether the Kleenex people advertised it was good for cleaning glasses. You might find another paper product.

Mr. WEINMANN. May I add, apparently this bill anticipated that very thing because they did not just say "ophthalmic material", they said "ophthalmic material of any character". So I think you would have to be pretty careful when you switch from one kind of paper to another.

Mr. SISK. Mr. Weinmann, we have been speaking of the use of the word "ophthalmic", and I know the New York law mentions it. The law says "prescribes, provides, furnishes, or establishes prisms", et cetera. Ophthalmic is a rather common term used in all state laws.

We appreciate your testimony here this morning and thank you very kindly.

Mr. WEINMANN. Thank you for your courtesy.

Mr. SISK. The next witnesses this morning will be representatives of the District of Columbia Optometric Society. Dr. Marvin Berlin, President of the Optometric Society, and Dr. Evart F. Warren.

If you will take your places at the witness table, we will be happy to hear from you. Who is going to speak for the group?

STATEMENT OF DR. MARVIN BERLIN, PRESIDENT, OPTOMETRIC SOCIETY OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY DR. EVART F. WARREN, ARLINGTON, VIRGINIA; WILLIAM P. MACCRACKEN, JR., ATTORNEY FOR DISTRICT OF COLUMBIA OPTOMETRIC ASSOCIATION; AND DR. ROBERT G. CORNS, LOWELL, INDIANA, MEMBER, LEGAL AFFAIRS COMMITTEE, AMERICAN OPTOMETRIC ASSOCIATION, INC.

Dr. BERLIN. I am, Mr. Chairman.

Mr. SISK. Before you begin, would you tell us how many members are in your organization, whom you represent here and, if available, the number of practicing optometrists you represent.

Your full statement will be made a part of the record and then we would appreciate it if you would restrain yourself within the ten-minute period set aside for witnesses.

You may proceed.

(The complete prepared statement follows:)

STATEMENT OF MARVIN BERLIN, O.D., ON BEHALF OF THE OPTOMETRIC SOCIETY OF THE DISTRICT OF COLUMBIA

Mr. Chairman and members of the subcommittee, I am Dr. Marvin Berlin, an optometrist practicing in the District representing the Optometric Society of the District of Columbia of which I am President. I appreciate the opportunity to testify in support of revisions in the District of Columbia optometry licensing law. Accompanying me is Dr. Evart Warren, also a practicing optometrist here in Washington. As Immediate Past Secretary, District of Columbia Board of

Examiners in Optometry, Dr. Warren agreed to join me should the Committee have questions dealing with optometry licensing and any difficulties experienced by the Board in enforcing the practice of optometry in the District.

The Optometric Society of the District of Columbia estimates that today there are 67 full time practicing optometrists here in Washington for a population, according to the 1960 Census, of 763,956. In 1924 when the Optometry Licensing Act became law, 92 optometrists registered under the law—92 optometrists for approximately 437,571 people, the 1920 census figure. During a 40 year period, there are 27% fewer optometrists and 57% more people.

The primary reason why the nation's capital fails to attract recent optometry school graduates is the poor environment for professional practice. The newly graduated optometrist holds high ideals and goals on which he wants to build his practice. Prospects for building such a practice here in Washington amid crass commercialism are dismal. Rather than lower his standards, the young optometrist establishes his practice outside the District of Columbia.

It seems to me a sad situation when only two optometrists under the age of 35, the draft age for optometrists, practice optometry in the District today. The out-dated optometry law affords little inducement to practice here. We of the District Optometric Society come to you gentlemen in Congress to up-date that law.

The present law allows the Board of Examiners in Optometry to examine applicants prior to licensing, but affords little opportunity for enforcement. The Board can revoke or suspend a license for such extreme things as drunkenness, drug addiction or insanity, but it is almost impossible to revoke or suspend a license for conducting a shoddy, unprofessional practice. I know of only two convictions for violation of the optometry licensing law, and neither of the defendants was a licensed optometrist.

One of the convictions occurred this past July 25 when the District of Columbia Court of Appeals upheld a conviction of practicing optometry without a license in a case relating to adaptation and fitting of contact lenses. Attachment number 1 filed with this statement gives you some background on this case, in the form of a letter to the editor of the Washington Daily News.

Need for change in the District's optometry law has been recognized on many fronts. In 1964 the Senate's Special Committee on Aging—after investigating frauds and deceptions affecting the elderly—recommended that the Senate District of Columbia Committee examine the adequacy of present District laws on—“(a) widespread fixed-price advertising for regular glasses and contact lenses; (b) sale of over-the-counter, non-prescription glasses; (c) possible need for greater authority to the District Commissioners for regulation of the corporate practice of optometry.” In relation to these recommendations by the Senate Special Committee on Aging, I refer you to a clipping from the Washington Evening Star of February, 1965, which quotes the Executive Director of the District Optometric Society concerning magnifying eyeglasses and the harm they can cause, as brought out in the work of that committee. This is attachment 1-A.

Last year, the House District Committee requested the District Board of Examiners in Optometry to furnish more information relating to selling of eyeglasses by a local jewelry store. On September 29, 1966, the Federal Trade Commission issued a complaint against the New York Jewelry Company charging use of false, misleading, unfair and deceptive acts in violation of Section 5 of the Federal Trade Commission Act. Among the items listed for sale were eyeglasses. In dismissing the complaint, the hearing examiner noted “If Section 5 was intended to cover matters of this type, it seems unlikely the Congress would be seeking special legislation to cover some of the practices alleged in the complaints.” The hearing examiner also stated, “ * * * the Federal Trade Commission under Section 5 of the FTC Act does not have jurisdiction to regulate price controls or credit practices in the market place. * * * ” To give the committee further insight into this particular problem, we are submitting our attachment number 2 which shows, through statement of the charges, the extent to which some commercial firms will go to seek the patronage of the public.

Mr. Chairman, optometric vision care should not be auctioned in the market place to the lowest bidder. No health care service should be, whether it be medical, dental, or optometric. Price advertising has no place in the provision of health care. A health care practitioner should derive his income from services rendered for the benefit of the patient * * * not from mark-up on materials

furnished. All of us would look with disgust on the advertiser were we to see a half-page newspaper ad offering "One Time Special on Electrocardiograms, just \$5.98, this offer good through Friday only."

For several years many of us optometrists here in the District saved local newspaper ads offering specials, discount prices and other "bargains" on eyeglasses and examinations in the hope that the Board of Optometry could do something to prohibit them. We finally stopped collecting those ads after being told repeatedly that the present law in no way regulates such practices. At this point I refer you to our attached document number 3, which illustrates the type of advertising to which I refer.

The advertisements in the classified telephone directory "Yellow Pages" are equally unbefitting health care services, and I ask that you note the content of ads shown in our attachment number 4. Such statements as "Moderate Prices—We keep our costs low by volume—Eyes Examined—Prescriptions Filled—Lenses Duplicated—Contact Lenses—Children's Eyes Examined—2-Hour Service," or "Eyes Examined—Glasses Fitted—Budget Terms Available—Discounts to Government Employees, Union Members, Diplomatic and Military Personnel and Families," confuse and frequently mislead the public.

The companies which place such quarter-page directory ads, the largest size sold, sell eyeglasses. Their term "Eyes Examined" pertains only vaguely to the term "Vision Care". The so-called examinations they make are called "quickies" and rarely take more than 15 minutes, sometimes as few as five minutes; a complete professional vision examination requires at least 45 minutes.

Mr. Chairman, this business of the quickie eye examination from the unethical optometrist in the employ of a corporation doing extensive price advertising deserves special attention.

Let us assume that you, or any member of the Subcommittee or members of their families might go to one of these establishments. What would you encounter? What meaningful lessons might you draw from such an experience?

First, you would be dealt with not as a patient but as a customer, usually a poor-cousin customer. None of the amenities we routinely expect from the physician, dentist, or ethical optometrist will you receive.

Second, there is little or no attempt, really no time in this horribly hurried environment, to take a case history—a history that may be vitally significant to the prescription written or referral of the patient who might have eye disease or other problems.

Third, there is no effort, again for lack of time, to examine the exterior of the eye for evidence of such common, often serious diseases as conjunctivitis (a common form is the contagious pink eye) or for the pterygium, a growth on the outer surface of the eye that can, in extreme case, actually obscure vision.

Fourth, and this is the most monstrous omission of all in the "quickie" eye exam—it is unlikely on ophthalmoscopy will be performed. This is the instrument most frequently used by optometrists and allied health professionals to examine the interior of the eye for evidence of eye or systemic disease. This one omission is enough to make a mockery of modern eye care.

Fifth, the use of the retinoscope, an instrument for the objective measurement of refractive error, is usually slighted if not scorned completely. Again, the procedure takes time. Time is one thing the employed "quickie" optometrist cannot give to the person asking for his services. Such an optometrist is forced, by his employed status, to ignore the classic instruments of the eye examination. Nor can he utilize such primitive though still often valuable procedures involving trial lenses and the trial frame. All these, for precision, confirmation of initial judgments, efficiency and validity of the ordered prescription, are not available to the optometrist who must be in a hurry, in order to make a profit by selling more eyeglasses.

Sixth, a survey in April 1967 by the office of the Northern Virginia and District of Columbia Optometric Societies disclosed that only 12 optometrists of 140 in Metropolitan Washington . . . or less than 10% . . . are in the category of the unethical. Of these 12 unethical practitioners, whom your bill would touch and change in their mode of practice, none were using up-to-date, sophisticated and reliable instrumentation for the measurement of intraocular pressure within the eye, associated with dread eye disease glaucoma. Still again, Mr. Chairman, by virtue of how they practice optometry, where they practice optometry and for whom they practice optometry—not for the patient, but for the employer—they simply do not have time to apply these procedures which are essential for continued good vision and healthy eyes of their patients.

Last, the optometrist I am describing most often cannot, due to his corporate relationship, refer his patients for other needed professional help. To my thinking . . . and I hope you will agree . . . he has no motivation, professional or otherwise, to send the child with a reading disability to someone—optometrist or another—who can help the child. And what greater problem, social or economic, do we have today than a child with a reading disability?

Mr. Chairman, an optometrist whose sole motivation is to make his salary by selling a pair of glasses makes no contribution to the visual welfare of the community.

As to the glasses these "discount" operations sell, there is a strong chance that something will be wrong with them. While that "something" could be minor enough to make little difference to the wearer, it could be enough so that glasses would aggravate rather than correct a vision problem, or even create totally new problems which in extreme cases could result in serious permanent damage to vision.

The prescription may not be filled accurately. For example, in a pair of \$7.25 glasses, while one lens may meet prescription specifications, the other lens may be so inaccurate that it fails to give the needed correction. Additionally, the lenses themselves frequently are other than first quality. Cut-rate operations often rely on inferior foreign-made lenses or on rejects and second or third-quality American-made lenses which can have various defects which may seriously affect light transmission.

Anyone operating as an eyeglass merchant simply cannot devote more than minimal time to fitting the eyeglasses. As stated in one of the "Yellow Pages" ads, "We keep our costs low by volume." And volume depends on heavy traffic and fast turnover. A proper fitting cannot be accomplished in the minute or two allotted by the "volume" operator. The optical center or main point of focus on the lens, must be positioned properly in the frame for subsequent positioning to the eye. If either fitting is careless, the eyeglasses could fail to provide full benefit even though the lenses might meet the prescription.

I should also note that cheap, inferior frames lose shape rapidly. In their effort to keep costs down, eyeglass discounters cut costs wherever possible, including the use of cheap and inferior frames. If glasses slide down your nose, you no longer see through the correct, intended optical center without strain. Should frames need adjusting or servicing, the discounter frequently cannot take the time to provide such service. In fact, it is not unusual for the patient to find that the optometrist employed by a firm of this type has moved on * * * either to another discounter or into his own practice somewhere * * * and that patient's records have either been removed from the location where the original examination was done, or that the records have been "lost" or "misplaced" so that another examination is necessary.

I'd like to call your attention at this time to attachment number 5, which will give you some idea of the quality of materials frequently purchased by eyeglass merchandisers. You will note that some of these materials are available to the eyeglass peddler at 30¢ a pair, when purchased in lots of 100 pairs. The suppliers of these ophthalmic materials are so sure these factory seconds are defective, they say "Guaranteed usable or replaced"—which obviously means that if the particular pair fitted to a patient's face is so unsatisfactory that patient complains, the lenses can be returned and some with less noticeable defects will be supplied to replace them.

The cut-rate operator's objective is to sell glasses, not to provide service. Service is minimal at best. Optometric care includes more than refractive services. It includes examination of the eye for detection of pathological conditions. It includes visual training. The commercialist cannot afford to offer visual training services because they require time which he can ill afford to spend if he is to maintain his high-volume business.

In recent years research has shown that visual training can lessen some vision problems or eliminate them entirely. Not infrequently school children experience reading disabilities many of which can be overcome through visual training. Considerable attention is currently being given by various health care practitioners and educators to dyslexia, a condition which causes letters or words to appear backwards to the reader. I know of no way the discount operator could offer visual training services even if he were qualified to offer them. The mercantile setting does not lend itself to professional services. Flashing signs indicate selling; not servicing in a professional manner.

Before her marriage, Luci Johnson Nugent worked with a local optometrist from whom she had received visual training. I can't imagine that her father would have approved of her working for an optometrist located in a retail store ablaze with neon lights offering "discount price" glasses.

The "spec peddler" with his horse and buggy who travelled from town to town, a common sight in America in the late 1800's, belongs to history. The public has a right to expect contemporary vision care procedures just as it expects modern techniques and practices in other areas of health care.

Unfortunately the specs peddler did not go out with the 19th Century, he joined the 20th Century migration to the large cities. To the public's detriment, he merely changed his operation from a buggy to an attic or other low rent location and continued his eyeglass selling practices. The permanent spec peddler in many cases prospered because the unsuspecting public possessed little knowledge of what constituted proper vision care.

The object of the specs peddler, in whichever century he might operate, remains the same—sell glasses. The growing promotion of health benefits to unions provided the spec peddler additional sales outlets. Unions, attempting to provide additional services to their members, made arrangements with former spec peddlers (now termed optical companies or commercial optometrists) to "purchase complete single vision glasses at one low price of \$8.00 and complete bifocal glasses for \$13.00 . . . you will have your choice of more than 100 styles, shapes and colors to choose from. This should appeal to the ladies * * * glasses * * * are comparable and in many cases superior to those selling elsewhere for \$25.00 to \$45.00." The preceding is taken from a letter written on the stationery of a Chicago, Illinois, affiliate of the United Auto Workers Union. See attachment #6.

The District Optometric Society frequently receives complaints about optometrists working in the types of corporate enterprises I have described. To give you some idea of the complaints we receive, I am submitting attachment number 7. Other similar complaints from victims of these entrepreneurs were delivered for the records of this Committee following last year's hearings on H.R. 12937.

There are those in opposition to this bill who wish to claim that it will inhibit "third party" practice of optometry and thereby be injurious to those relying upon third parties for their vision care.

Mr. Chairman, the only prohibitions directed against "third parties" by this bill are directed against corporations or firms which would abuse the practice of optometry by making an ill-gained profit from the sale of merchandise in the guise of caring for the visual needs of the population.

Third parties such as hospitals, clinics, group health practices, non-profit health services, health expense indemnity corporations, agencies of government or employers providing optometric services solely to their employees are exempt from this proposed Act.

The bills which you are considering do not prevent the employment of optometrists. They would only prevent such employment where the primary motive is profit from the sale of eyeglasses. They do not prevent union welfare funds and centers from employing the services of optometrists providing the motive for employment is that of providing vision care services rather than a profit from the sale of products.

There are also arguments that a prescription would be required for the purchase of optical instruments such as binoculars, microscopes and telescopes. This Act does not regulate the sale of these devices. It regulates ophthalmic materials, not optical instruments.

There are a number of union optical plans operating across the country which are thought to be operating on a not-for-profit basis and which, we understand, are in fact franchises from an office in New York State. In these plans, optometrists serve in somewhat the same "captive" relationship as do those optometrists who are employed by, or are under contract to, commercially-motivated retailers which we have described as operating here in the District of Columbia. The working men and women of the District are, we believe, fortunate in the fact that none of the so-called "union optical plans" are active here, to the best of our knowledge. We have every reason to be fearful that union members in our city might be lured into seeking such franchised operations in the future, believing innocently that lower cost vision care is available through such a means. Lower cost in this instance means lowest-quality service and materials, and we believe this to be absolutely unconscionable in the health care field.

The general aim of any legislation proposed for the improvement of the practice of optometry in the District of Columbia should be to further protect the public against ignorance, incapacity, deception and fraud in connection with the care and preservation of our most priceless possession * * * the God-given gift of vision. While the 43-year-old District of Columbia Optometric Act has remained unchanged since its original date of enactment in 1924, other states have regularly enacted improving amendments. Such a state is New Jersey. Dr. E. C. Nurok, a veteran member of the New Jersey Board of Optometric Examiners and Chairman of the Advisory Law Committee of the International Association of Boards of Examiners in Optometry has supplied me with the following historical information concerning the legal development of optometry in his state, and I will quote from it:

"The first law licensing optometrists was enacted in Minnesota in 1902. Our law has been amended many times and the standards of practice now required by act of our legislature are higher than those of any other profession in the state, and, as far as I have been able to ascertain, higher than those of any profession in all fifty states.

"In a matter heard in the Appellate Division of the Superior Court of New Jersey, the *New Jersey State Board of Optometry vs. Hilda Koenigsberg*, Judge Francis, in referring to the progress of optometry in New Jersey, stated, 'The history of this legislation portrays a progressively broader concept of optometrical activities.' When the act was adopted in 1914, the practice was defined to be 'the employment of any means, other than the use of drugs, for the measurement of vision and the adaptation of lenses for the aid thereof.' L. 1914, c. 222 § 1. In 1919, the definition was amended to be 'the employment of objective and subjective means 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 for the aid thereof.' L. 1919, c. 59, § 1.

"The restriction 'other than the use of drugs' was removed more than 40 years ago.

"Judge Francis added 'then in 1932 the present comprehensive statement as to what shall be deemed the practice of optometry was included.' L. 1932 c. 75 § 1. The right to use of drugs was permitted for examination and diagnosis.

"In subsequent years, the Optometry Law was amended to prohibit all commercialism, such as neon signs, large signs, the display of glasses, advertising, corporate practice, practice in a mercantile establishment etc."

This description of developments in New Jersey has not been paralleled in the District and many of the problems resolved by amending the optometry law in New Jersey continue in the District. We have made some gains, however, by voluntary action.

Mr. Chairman, I am proud to report that another committee of our optometrists is responsible for the formation of a "third party" organization to provide optometric services. This is known as the Optometric Center of Metropolitan Washington. It is a not-for-profit corporation through which members of the Optometric Society provide their services to the indigent and poor of the nation's capital. The Center's Board of Trustees is comprised of leading members of the community, including leaders from organized labor who contribute not only their valuable time in guidance and supervision, but in many cases provide funds for purchase of ophthalmic materials required to care for patients of the Center. I'm particularly glad to report that some of the larger donations have been made by the local Teamster's Union, a group which has a prepaid vision program sponsored by our Society through the not-for-profit corporation known as Vision Care Services. Another large contributor is the District of Columbia Public Health Department which contracts with the Center to provide services to a number of its beneficiaries. A news story about the opening of the Optometric Center of Metropolitan Washington is shown on attachment 9.

When I. Philip Sipser, counsel for United Optical Workers Union Local 408 of the International Union of Electrical Workers, AFL-CIO, testified on behalf of that group in favor of S. 260, the "Medical Restraint of Trade" bill, his testimony closed with this statement: "* * * we see the Hart Bill as a necessary measure limiting doctors, including ophthalmologists, to the practice of medicine, and as a measure dampening their ardor for lucrative earnings in commerce by medical shortcuts, use of untrained personnel, business sales and otherwise. We urge that the bill be reported out favorably and enacted without delay." While Mr. Sipser did not mention the practice of optometry, we feel the same restraints

should apply to its practice in the District of Columbia and we hope the United Optical Workers Union will join us in support of the bills you are considering to accomplish these purposes.

Members of the Optometric Society ask that you bring our licensing law up to date. We ask you to recognize the developments and advances made in vision care since enactment of the existing 1924 licensing law. Some members of our Society will have to modify their mode of practice when this bill is enacted. We have formed a committee to help the handful of optometrists who are currently employed in commercial establishments to set up practice elsewhere in the District where their professional services are badly needed.

We in optometry have policed our own insofar as the present law permits. Governmental intercession is now needed for the regulation of the practice of optometry if the residents of the District are to receive the necessary protection from the unscrupulous to which they are entitled. The Optometric Society of the District of Columbia urges you to pass this legislation.

[From the Washington Daily News, Aug. 10, 1967]

A CASE OF EYE TROUBLE

I am deeply grateful to The Washington Daily News, Clare Crawford, the police and the Board of Optometry for your efforts in getting a court ruling making it illegal for opticians to fit contact lenses. Even if the ruling is set aside, this publicity may alert the public to the danger.

I would like to set forth my experience. Because of a poorly fitted lens, I am without appreciable sight in my right eye and am in almost constant pain from ensuing surgery and effects of the injury.

I did not shop for an optician. I was sent by a prominent ophthalmologist to a firm that employed the doctor's wife's niece as a technician. This woman made the Keratometer reading. Documented facts show that her training consisted of wearing lenses and working under or with a man who was in charge of the office. This man was himself untrained.

Unfortunately, one cannot always be sure that one is safe when under the aegis of the medical profession. I won my court case against the fitters of the contact lenses and can understand the jury bringing in a "Not Guilty" verdict against the doctor. They, understandably, were overwhelmed by his contemporaries filing in en masse to put the stamp of approval on his conduct, admitting that until a short time before testifying they had not seen or heard of me. There are other unsavory factors in this case which are shocking.

I sent all pertinent information concerning the case to the AMA and asked that they check a complaint which I then filed separately with their office. I also sent personal correspondence to and from doctors showing disclosure of privileged information. I found that patients have lost, if they ever had it, the right to dissent.

VICTIM.

[From the Washington Daily News, July 26, 1967]

Reporter's test case

OPTICIANS CAN'T FIT CONTACTS, COURT RULES

The D.C. Court of Appeals yesterday effectively barred opticians in the District from fitting contact lenses, a practice some local opticians even advertise.

Ruling in a case brought to court by Washington Daily News reporter Clare Crawford, the appeals court said opticians may grind or fabricate a contact lense, but must leave the sensitive fitting operation up to licensed optometrists or ophthalmologists.

In January of 1966, Mrs. Crawford was fitted for a pair of contact lenses by Norman Fields, 42, of Embassy Opticians, 1361 Connecticut-av nw. He was later arrested by police and charged with violating the District's optometry code.

Mr. Fields was convicted by Judge Harold Greene in May, 1966, but he appealed. Yesterday the three-judge appeals court upheld his conviction.

The Appeals Court found that when Mr. Fields fitted Mrs. Crawford he performed operations far exceeding the mechanical filling of a prescription from a licensed eye doctor.

The court said that "placing a foreign object on the cornea "could have consequences far more serious than simply prescribing or adaptive eye glasses worn

quite far from the eyeball. Therefore, the court said, contact lenses should only be fitted by those trained and licensed to do it properly.

Mrs. Crawford was working with the police and the Board of Optometry when she made her first approach to Mr. Field's store. As a result of his conviction and yesterday's Appeals Court ruling, police will have a clear-cut basis to arrest opticians who agree to fit contact lenses.

[From the Evening Star, Feb. 1, 1965]

TIGHTER OPTOMETRY LAW URGED IN SENATE REPORT

(By William Grigg)

Eyeglasses are for sale by dime stores here and laymen own and operate optometry firms, a Senate subcommittee on fraud said in a report today.

It suggested that the District look into tightening its laws concerning these two practices and also look into a bar on the advertising of eyeglasses and contact lenses by price.

Horace White, executive director of the District Optometric Society, agreed today that the laws here are lax. He said the same criticism can be made of Maryland, but that Virginia's laws are tighter.

White said the society's grievance committee receives most of its complaints from patients who have gone to firms here that advertise and are owned by laymen.

EXEMPTION ASSAILED

Magnifying eyeglasses—what the trade calls “glazed goods”—are sold both here and in nearby Maryland, White said. Their exemption from optometric regulations, he said, is a hangover from “horse-and-buggy” days.

The Subcommittee on Frauds and Misrepresentations Affecting the Elderly brought the situations into focus in its report today. It suggested that the Senate District study the problem.

White said a new law was submitted to the District Commissioners about three years ago. He said the Corporation Counsel asked that the changes be made as amendments, rather than as a whole new law.

The District Board of Examiners in Optometry is now working on these amendments, White said.

CITES OBJECTION

The primary objection to laymen owning optometry firms is that they are guided by profit motives, Dr. Maurice G. Poster, chairman of the contact lens committee of the American Optometric Association, said.

“A person who depends for his livelihood on the sale of merchandise is unlikely to give the patient the attention which is required to instruct and supervise the patient,” Dr. Poster said.

He said that in the District and all 50 States, only optometrists and physicians are licensed to prescribe contact lenses.

“In actual practice, however,” he said, “unlicensed and untrained and unsupervised laymen are fitting a staggering number of patients. We think this constitutes a health hazard to the public.”

Other optometry officials called the District's law “antiquated” and “lax.”

United States of America Before Federal Trade Commission
[Docket No. 8715]

IN THE MATTER OF VENT-AIR CONTACT LENS LABORATORIES, INC., A CORPORATION,
AND LAWRENCE LEWISON, MARVIN SHORE AND SHIRLEY LEWISON, INDIVIDUALLY
AND AS OFFICERS OF SAID CORPORATION.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Vent-Air Contact Lens Laboratories, Inc., a corporation, and Lawrence Lewison, Marvin Shore and Shirley Lewison, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding

by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph one: Respondent Vent-Air Contact Lens Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 76 Madison Avenue, in the City of New York, State of New York.

Lawrence Lewison is President, Marvin Shore is Controller and Shirley Lewison is Treasurer of the corporation respondent. These individuals direct, formulate and control the acts, practices and policies of the corporate respondent, including those hereinafter referred to. Their business address is the same as that of the corporate respondent.

Paragraph two: Respondents are now, and for some time last past have been, engaged in the manufacture, sale and distribution of contact lenses under the name Vent-Air Contact Lenses. Respondents distribute said contact lenses through wholly owned outlets and through franchised outlets. Contact lenses are designed to correct errors and deficiencies in the vision of the wearer, and are, devices, as the term "device" is defined in the Federal Trade Commission Act.

Paragraph three: Respondents have caused and now cause the said devices, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in said device in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

Paragraph four: In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices; and have disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including but not limited to the aforesaid media for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Paragraph five: Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

"a new contact lens!"

"VENT AIR IS EVERYWHERE!"

"... For today you'll find Vent-Airs available—in authorized offices only—in more than 85 cities in the United States, Canada, Mexico and other foreign countries!"

"Every pair of Vent-Airs is registered at the laboratory for your lifetime protection. In case of loss, duplication or adjustment, this permanent prescription record permits the Vent-Air Laboratory to be of immediate service . . . dependable service that's available in offices the world over!"

"So whether you winter in Florida, summer in Canada or move to Honolulu, your Vent-Air Guarantee Card is your key to this exclusive lifetime, worldwide service . . . at no extra cost!"

"Now Vent-Air's No-Risk plan lets you wear your own prescription lenses before you're obligated to take them."

PROFESSIONAL SERVICES AGREEMENT

"Vent-Air Grooved Contact Lenses are guaranteed to be optically perfect and precision ground. The fitting office below agrees to provide all services necessary to the accurate fitting of said lenses and their comfortable, satisfactory wear; and the fee fixed above [the cost of the lenses] will cover all additional fitting, adjustment, etc. which may become necessary to insure satisfaction to the patient mentioned herein. Prescription changes will be made to the original lenses at no charge."

You've asked: "How often should my lenses be checked?"

A very good question indeed, for often no matter how comfortable they may be or how well you may be seeing with your lenses, changes of which you are not aware may have taken place.

What kind of changes?

Changes in your eye's curvature, for one thing, which appear not to affect your immediate comfort (because you're so adjusted to your lenses) yet which require that your lenses be reshaped. And what a difference when they're refitted properly, how much better they feel!

Normal wear and tear on your lenses—due to handling, dropping, rubbing, residue accumulation and normal eye secretions. Lenses become scratched, marred, and their clarity is dimmed—you're so accustomed to it you completely overlook it, except perhaps for a vague feeling of eyestrain. But once they're repolished and cleared up, what a relief! . . . everything's so much brighter it's as though a curtain had lifted!

And of course changes in your optical prescription:

An increased difficulty in reading, because your lens prescription may be a bit strong for you now (your eyes sometimes improve with wearing lenses)—a simple reduction in strength will add a great deal to reading ease.

A normal onset of astigmatism which can be remedied by a change in your lens prescription.

A seeming increase of late in sensitivity to light, of extra discomfort in a confined, smoke-filled room. Tinting your lenses may be the answer.

A heightened sense of strain and tiredness, or annoying sleepiness when doing concentrated or close viewing, sewing, knitting or even watching television—due to needing more lens help or better muscular coordination.

Recurrent headaches, eye aches or dizziness, otherwise unexplainable, and an inability to keep things in focus, definitely pointing to the need to verify your prescription.

Unwarranted smarting or tearing which may be your eyes' reaction to excessive strain, or indicate hidden eye changes important to uncover.

Some blurring or haziness in your distance viewing which can be cleared up by simply regrounding your lenses to a stronger prescription.

And other eye changes, some normal and some abnormal, which may be related to your general health and require a change in lens correction.

All these are changes your lenses may need which can add greatly to your enjoyment of them and which are important for your better eye health.

That's why the answer to your question is:

"At least once a year and preferably every six months."

Most of these changes are covered by your Vent-Air Laboratory Guaranty, providing for no laboratory charge for prescription changes to your lens. But an important condition of this guaranty is that, for your own protection, you must have your eyes examined and your lenses checked at your Vent-Air office at least once a year. Otherwise the guaranty is cancelled.

So, for the sake of your eyes' better health and your greater lens comfort, if it is almost a year since your last eye and lens check-up, make your appointment now. Don't lose your Vent-Air Guaranty by putting it off!

VENT-AIR GUARANTY CARD

"This card when presented at any office where Vent-Air lenses are dispensed entitles you to lifetime service on your Vent-Air lenses."

Paragraph six: Through the use of said statements and representations, and others similar thereto not specifically set out herein, respondents have represented and are now representing directly and by implication:

1. That Vent-Air contact lenses are a new or recent discovery or development in contact lenses.

2. That Vent-Air contact lenses and services are available to the consuming public in Vent-Air offices located in 85 cities throughout the United States and in offices in many foreign countries throughout the world.

3. That, without incurring any additional charges or fees, a purchaser of Vent-Air contact lenses is entitled to repair of, or services on, said lenses due to changes in eye curvature, normal wear and tear due to handling, dropping, rubbing, residue accumulation, marring, scratching, and changes in optical prescription.

4. That respondents' guarantee or Professional Service Agreement given to purchasers of their contact lenses and (a) issued prior to 1964 (hereinafter referred to as the "old" guarantee or agreement) is not subject to any conditions or limitations, or (b) issued from 1964 to the present (hereinafter referred to as the "new" guarantee) is subject only to the limitations or condition that purchasers of Vent-Air contact lenses have their eyes examined and their lenses checked once a year; further, that all offices where respondents' contact lenses are available honor either guarantee without any charges to purchasers of said lenses.

5. That prospective purchasers of contact lenses can wear or use Vent-Air contact lenses made to their own optical prescription for an unlimited period of time to determine their suitability and can do so without incurring any charge or obligation to take or pay for the lenses under respondents' "no-risk plan".

6. That their "no-risk plan" and other offered services provided by them are exclusive with respondents in that no other seller of contact lenses has such a plan or provides the same services.

Paragraph Seven: In truth and in fact:

1. Vent-Air contact lenses are not a new or recent discovery or development in contact lenses; they have been on the market for more than 10 years.

2. Vent-Air contact lens offices owned by respondents are located in less than 40 cities in the United States; franchised offices are located in less than 25 cities in the United States.

3. The owned and franchised offices do not all offer or adhere to the statement and representations made in respondents' advertisements concerning lens service and repairs; many offices impose varying fees and charges on the purchasers of Vent-Air contact lenses who return to have lenses serviced or repaired.

4. All of the offices where respondents' contact lenses are available do not honor either the "old" guarantee or agreement or the "new" guarantee. Many offices impose charges for any services or repairs rendered under the guarantee, as well as charging previously undisclosed fees for eye examinations necessary to avoid cancellation of the guarantee; further, any and all guarantees given to purchasers of Vent-Air contact lenses fail to clearly and conspicuously disclose (a) the full nature and extent of the guarantee, (b) all material conditions or limitations which respondents impose, and (c) the manner in which respondents will perform thereunder.

5. There is a fee for examining the eyes of a prospective purchaser of Vent-Air contact lenses and grinding lenses to the proper optical prescription; trial or use of the contact lenses is restricted to brief periods of time and only in respondents' offices during times when such offices are open.

6. The services performed by respondents for purchasers of Vent-Air contact lenses are not exclusive with respondents; they are services usually and customarily offered by other sellers to purchasers of contact lenses.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act; respondents failure to abide by the terms of certain of their guarantees constitutes unfair and deceptive acts and practices within the meaning of Section 5 of the Federal Trade Commission Act.

Paragraph eight: The dissemination by the respondents of the false advertisements and their failure to abide by the terms of certain of their guarantees, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Section 12 and 5 of the Federal Trade Commission Act.

Wherefore, the premises considered, the Federal Trade Commission, on this 3rd day of October, A.D., 1966, issues its complaint against said respondents.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the 14th day of November A.D. 1966, at 10 o'clock is hereby fixed as the time and Federal Trade Commission offices, 1101 Building, 11th & Pennsylvania Avenue, N.W., Washington, D.C., as the place when and where a hearing will

be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaints and shall authorize the hearing examiner, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint:

It is ordered that respondents Vent-Air Contact Lens Laboratories, Inc., a corporation, and its officers, and Lawrence Lewison, Marvin Shore, and Shirley Lewison individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication that:

(1) Their Vent-Air contact lenses are a new or recent discovery or development.

(2) An examination, preparation and fitting of contact lenses to the optical prescription of a prospective purchaser of contact lenses is made without any cost or obligation on the part of said prospective purchasers; or that prospective purchasers may adequately try or use the contact lenses on a trial basis before purchasing the lenses.

(3) Services and repairs on the contact lenses are available without cost at all of respondents' owned and/or franchised offices to purchasers of respondents' contact lenses.

(4) Any of their contact lenses are guaranteed or that purchasers of contact lenses are guaranteed any services or repairs on their contact lenses without clear and conspicuous disclosure of:

(a) the full nature and the extent of the guarantee, *and*

(b) all material conditions or limitations in the guarantee which are imposed by the guarantor, *and*

(c) the manner in which the guarantor will perform thereunder.

(5) The services performed by respondents for purchasers of their contact lenses are exclusive with, or available only from respondents.

II. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents the number of offices owned or operated, the number of offices where service can be

obtained by purchasers of respondents' contact lenses, or the nature and extent of the services offered by any office owned or operated or franchised.

III. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited in Paragraphs I and II hereof.

It is further ordered that respondents Vent-Air Contact Lens Laboratories, Inc., a corporation, and its officers, and Lawrence Lewison, Marvin Shore, and Shirley Lewison individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, to forthwith cease and desist from failing to perform any and all services, repairs or prescription changes which purchasers of respondents' contact lenses are entitled to by virtue of representations made by a Professional Service Agreement or any guarantee given heretofore or hereafter to said purchasers at or contemporaneous with the time of their purchasing respondents' contact lenses.

It is further ordered that respondents named herein shall mail copies of this order to all franchisees, licensees or distributors of respondents' products and/or services and that all of respondents' present and future franchisees, licensees or distributors shall be required to agree in writing that they will abide with the terms of this order as a condition to becoming or continuing with respondents as franchisees, licensees or distributors.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C., this 3rd day of October, 1966.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

United States of America Before Federal Trade Commission
[Docket No. 8715]

In the Matter of VENT-AIR LENS LABORATORIES, INC., ET AL.

ORDER AMENDING COMPLAINT

Pursuant to the motion filed by counsel supporting the complaint to amend the complaint herein so as to correctly name the corporate respondent, and,

It appearing that the correct name of the corporate respondent is Vent-Air Lens Laboratories, Inc., instead of Vent-Air Contact Lens Laboratories, Inc., as erroneously stated in the complaint issued on October 3, 1966,

Accordingly,

It is ordered that said complaint be amended so as to designate the corporate respondent by its correct name, Vent-Air Lens Laboratories, Inc.

JOHN B. POINDEXTER,
Hearing Examiner.

In the United States District Court for the District of Columbia

BENJAMIN D. RITHOLZ, SAMUEL J. RITHOLZ, MORRIS I. RITHOLZ, FANNY RITHOLZ, SYLVIA RITHOLZ, SOPHIE RITHOLZ, ANNA BEDNO AND JACOB BEDNO, A PARTNERSHIP T/A DR. RITHOLZ & SONS Co., 1148-1160 W. CHICAGO AVE., CHICAGO 22, ILLINOIS, PLAINTIFFS.

v.

LEWIS H. KRASKIN, 900 F STREET, N.W., WASHINGTON, D.C., REX B. SHELEY, 1342 F STREET, N.W., WASHINGTON, D.C., DISTRICT OF COLUMBIA BOARD OF OPTOMETRY, AN AGENCY OF THE MUNICIPAL GOVERNMENT OF THE DISTRICT OF COLUMBIA, AND DISTRICT OF COLUMBIA OPTOMETRIC ASSOCIATION, A CORPORATION, 900 F STREET, N.W., WASHINGTON, D.C., DEFENDANTS.

[Civil Action No. 3179-51]

COMPLAINT

1. The plaintiffs, Benjamin D. Ritholz, Samuel J. Ritholz, Morris I. Ritholz, Fanny Ritholz, Sylvia Ritholz, Sophie Ritholz, Anna Bedno and Jacob Bedno, a partnership t/a Dr. Ritholz & Sons Co., are citizens of the United States and residents of Chicago, Illinois, and bring this action against the defendants, Lewis M. Kraskin, Rex B. Sheley, District of Columbia Board of Optometry, an agency of the Municipal Government of the District of Columbia, and District of Columbia Optometric Association, a corporation. The individual defendants are citizens of the United States and residents of the District of Columbia. The District of Columbia Optometric Association is a corporation organized under the laws of the District of Columbia. This action arises under the provisions of Sections 15 and 26 of Title 15, USCA, and is for injunctive relief and for damages to compensate for injuries sustained by the plaintiffs in their business and property by reason of the commission by the defendants of acts forbidden by Section 3 of the Sherman Antitrust Act (Title 15, Section 3, USCA, as amended), and the Clayton Act as hereinafter more fully set forth. The plaintiffs' cause of action is also based upon upon the defendants' liability for malicious and wrongful injury to the plaintiffs' means of livelihood.

2. The plaintiffs are and have been engaged for many years in the business of manufacturing and selling eye glasses and contact lenses at prices and for fees considerably less than their competitors and they operate retail offices in several cities in the United States and Canada. Since about November 1950, they have operated a retail office in the Westory Building at 605-14th Street NW., in the District of Columbia, under the trade names of King Optical Company and D.C. Invisible Contact Lens Service.

3. The defendants Rex B. Sheley and Lewis H. Kraskin are President and Secretary-Treasurer respectively of the District of Columbia Board of Optometry, and the District of Columbia Board of Optometry is an agency of the Municipal Government of the District of Columbia, created by Title 2, Section 503, of the Code of Laws for the District of Columbia, its officers being appointed by the Board of Commissioners for the District of Columbia and said officers control, direct, and manage the policy and operations of the Board of Optometry of the District of Columbia, including the examination and rating of examination papers of applicants for licenses to practice optometry in the District of Columbia.

4. In the business of obtaining the patronage of purchasers of eye glasses and contact lenses in the City of Washington, District of Columbia, the plaintiffs customarily either employ or associate with themselves physicians or optometrists, licensed and authorized by the District of Columbia to examine and prescribe eye glasses and contact lenses for persons desiring and needing eye correction. The plaintiffs extensively advertise their services and facilities and their reduced prices. The defendants Lewis H. Kraskin and Rex B. Sheley, beginning on or about November 1950 and continuing thenceforth, combined and conspired between themselves and with other members of the District of Columbia Optometric Association in the District of Columbia, the names and identities of the others being at this time unknown to the plaintiffs, and they have continued to combine and conspire to unlawfully restrain trade and commerce within the District of Columbia and to eliminate the competition of the plaintiffs in the manufacture and sale of eye glasses and contact lenses and their purpose in so combining and conspiring has been to stifle the competition of the plaintiffs and to fix, maintain, and keep at a higher price level eye glasses and contact lenses sold within the District of Columbia and in furtherance of such unlawful combination and conspiracy the defendants actively instructed licensed optometrists to refrain from obtaining employment or association in any way with the plaintiffs at their office within the District of Columbia and that at meetings of the District of Columbia Optometric Association the usual order of business during the past ten months has provided for discussions in which the individual defendants sought suggestions and arranged to formulate means to injure the plaintiffs' business in the District of Columbia and their means of earning a livelihood therein.

5. The defendants Lewis H. Kraskin and Rex B. Sheley, District of Columbia Optometric Association, and the District of Columbia Board of Optometry acting through its Secretary-Treasurer, Lewis H. Kraskin, and its president, Rex B. Sheley, and in furtherance of their unlawful conspiracy and combination and in

order to stifle competition conferred with and discussed with optometrists, who had been contacted by the plaintiffs for the purpose of associating such persons or undertaking to enter into an employment arrangement with them, and informed such persons that their licenses to practice optometry in the District of Columbia would be jeopardized and revoked, if they accepted association or employment with the plaintiffs. The defendants also informed certain persons who had successfully passed and were otherwise entitled to licenses to practice optometry in the District of Columbia that re-examination of such persons' papers would be made which might result in a change of grading of their papers so that they would not have passed said examination if such persons associated themselves with or accepted employment from the plaintiffs. The defendants also promised other persons, with whom the plaintiffs were seeking to arrange for their employment or association with them, to procure good jobs for such persons if they refrained from working for the plaintiffs. In furtherance of the course of conduct pursued by the defendants, on several occasions they caused an employee of the plaintiffs to be forcefully, wrongfully, and unjustly arrested and prosecuted in the Criminal Division of the Municipal Court, notwithstanding that the defendants well knew the employee so arrested had committed no offense and the purpose for the arrest, caused and directed by the defendants, was to embarrass the plaintiffs and cause the plaintiffs unfavorable publicity and to harass the plaintiffs and to frighten and intimidate optometrists from accepting employment or association with the plaintiffs in the conduct of the plaintiffs' business in the District of Columbia.

By reason of the wrongful conduct of the defendants and of the matters complained of herein the plaintiffs' business has been seriously impaired by reason of their inability to adequately and fully staff their said office in the District of Columbia. The plaintiffs have sustained and continue to sustain a considerable loss of business because of the conduct of the defendants and the persistence of the defendants in pursuing and continuing to pursue their course of harassing the plaintiffs, of stifling competition, and of preventing persons from accepting employment or association with the plaintiffs. The conduct of the defendants have caused and will cause immediate and irreparable damage not adequately compensable by the payment of damages.

WHEREFORE the plaintiffs demand judgment as follows:

1. That a temporary and permanent injunction issue restraining and enjoining the defendants and each of them from interfering and unlawfully and wrongfully injuring the plaintiffs in their ability to earn their livelihood and from interfering with persons seeking to associate with or accepting employment from the plaintiffs.
2. That damages, both compensatory and punitive, be awarded the plaintiffs against the defendants and each of them.
3. That the plaintiffs recover treble damages for the injuries and damages which they have sustained to their business and property under the Sherman Antitrust Act and the Clayton Act.
4. That judgment be entered against the defendants in the sum of Seventy-Five Thousand Dollars (\$75,000.00) damages together with reasonable attorneys fees and costs and disbursements of this action.
5. And for such other and further relief as may appear appropriate and just.

SCHWARTZ & FRIEDMAN.

STERLING OPTICAL CORP.,
Washington, D.C., February 1964.

DEAR STUDENT: Because you attend a Washington area school, you are eligible for Sterling Optical's new student plan for the fitting of Contact Lenses.

The plan is simple: It is based on the fact that students in your age group are:

1. Most receptive to the idea of changing from spectacles to modern Contact Lenses, and
2. Most valuable to Sterling Optical in public relations manner.

Because of these two factors, we have found it to be less time consuming to fit students with Contact Lenses. There is more psychological acceptance to Contact Lenses in people of your age group. This eliminates a time consuming factor which may be found in fitting other individuals.

Sterling's student plan offers a ten percent reduction to all students who come to Sterling Optical's Contact Lens information center in groups of three or more.

To qualify you need only make an appointment to visit Sterling's Contact Lens Department with two or more of your friends. You and your group will each be given a complete contact lens examination and all of your questions will be thoroughly answered. This is available with no cost or obligation. Should two or more members in your group decide to order Contact Lenses, the student reduction will be in effect.

To make arrangements for your Contact Lens examination, simply telephone and convenient appointments will be made for you.

Yours truly,

DENNISON MANUFACTURING CO.,

Washington, D.C., May 9, 1967.

Mr. HORACE WHITE,

Executive Director,

Optometric Association of Virginia and District of Columbia,
Washington, D.C.

DEAR MR. WHITE: In October, 1966, my 11-year old daughter was examined by Dr. Michael L. Cohen of 3509 South Jefferson Street, Leesburg Pike Plaza, Bailey's Crossroads, Virginia, and found to be suffering from astigmatism. Dr. Cohen prescribed and made corrective glasses for her. These glasses were very satisfactory and resulted in correction to normal vision.

In January, 1967, she broke the frames to these glasses. With the false belief that I could save money by having the lenses reset in frames by a discount optical company, I took her to Sterling Optical Company, Inc., 520 Tenth Street, N.W., Washington, D.C., where they fitted her with new frames in which they placed her old lenses. Shortly thereafter she complained that her glasses were no longer improving her vision. Thinking that perhaps she was suffering from a deterioration of her optical condition, I returned to Dr. Cohen and found that Sterling Optical had merely reset the lenses without regard to the prescription.

I am enclosing a copy of Dr. Cohen's letter describing his findings.

I feel fortunate that this occurred with my oldest daughter rather than with my youngest who would not have been able to communicate on recognizing the optical discomfort. You can be assured of my support in your attempts to obtain greater regulations on optical companies of this type.

Sincerely yours,

MYLES S. FISCHER.

BAILEY'S CROSSROADS, VA., April 28, 1967.

Mr. MILES FISCHER,

611 North Pogram Street,
Alexandria, Va.

DEAR MR. FISCHER: The discomfort and strain that Jenny has been suffering as of late, can be directly blamed on the improper optics of her correction, resulting from a frame replacement.

The discrepancies were due to astigmatic power being placed 19° off in the right eye and 15° off in the left. Jennies original ophthalmic measurement was 42/20, the replacement measured 42/19 decreasing the bridge size and displacing the optical center as prescribed.

It is my feeling that the lenses were placed in the first available frame without thought as to size or original prescription.

Sadly enough there are many people who can commiserate with you, due to this type of optical establishment.

Sincerely,

MICHAEL L. COHEN, O.D.

FAIRFAX, VA., June 1, 1967.

AMERICAN OPTOMETRIC ASSOCIATION,
Washington, D.C.

GENTLEMEN: I need help! Two years ago, I received a pair of lenses from *Vent-Air Contact Lenses Specialists*. Unfortunately, I was unable to wear the lenses without a lot of discomfort and was never able to obtain wearing time of any length of time. I just recently discovered the reason.

I visited an optometrist who was astonished to discover the irregularity and defectiveness of the lenses which were prepared for me by Vent-Air. He sent them to another laboratory for their opinion, which is enclosed.

I am very disturbed to realize that Vent-Air would allow me to walk out of their office with such irregular lenses, which could have adversely affected my eyes.

I wrote to Vent-Air on 9 April and again on 5 May and requested a refund so that I could purchase a pair of lenses by a competent doctor. But, Vent-Air has avoided me and has refused to answer my letters.

I am not only concerned about my immediate problem of getting a new pair of properly fitted lenses, but also the fact that other people are being fitted by this doctor and they may not be as fortunate as I have been—they may lose their sight. What can be done?

Sincerely,

JOAN MADISON.

CAPITOL CONTACT LENSES, INC.,
Washington, D.C.

DEAR DR. NELSON: The lenses you sent in to be adjusted for Mrs. Madison are in such poor shape mechanically that no further modification could remedy their poor fit.

There are extensive lathe marks through the entire inside surface of both lenses and these cannot be eliminated.

The peripheral levels on the OD lenses are deeply gouged and are completely irregular.

We are sorry that we cannot repair them, and for the benefit of the patient are recommending a complete refit.

Thank you for your patronage.

GEORGE K. MESZAROS.

CONGRESS OF THE UNITED STATES,
House of Representatives,
Washington, D.C., June 26, 1967.

Mr. H. W. WHITE, JR.,
Executive Director,
Optometric Society of the District of Columbia,
Washington, D.C.

DEAR MR. WHITE: As per our telephone conversation of this afternoon, I am forwarding a copy of my letter to Vent Air Contact Lens Specialists. I regret that our most pleasant conversation was in regard to such an unpleasant subject.

For your information, I have made an appointment for July 12 with Dr. Marvin Berlin as you suggested.

Thank you and please feel free to contact me at any time for further information.

Very sincerely,

Mrs. ROBERT BORKENHAGEN.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 26, 1967.

VENT AIR CONTACT LENS SPECIALISTS,
Colorado Building,
Washington, D.C.
(Attention, Mr. Pierce.)

GENTLEMEN: The gross inefficiency and rudeness of everyone I encountered associated with Vent Air shall not go unremembered or unreported. Not only did I find your advertisements misrepresentational, but I feel that your actions have reflected an immensely unprofessional attitude toward prospective patients and toward your work.

The following are a few examples upon which I shall be glad to elaborate at length:

(1) Telephone information I received was incorrect in that I was specifically informed that I would have new lenses by the end of June. I gave the telephone

receptionist pertinent background information and assumed, because she was employed, that her information would be correct.

(2) I was repeatedly addressed as "Connie," a familiar term reserved only for my friends, rather than my correct business and legal name, "Mrs. Borkenhagen."

(3) For undisclosed reasons I was not accepted as a patient at Vent Air despite my patience with the rudeness encountered and despite my attempts to be cooperative.

(4) I found the strong preoccupation with immediate payment distasteful despite faultless credit references. I wondered at the time if that was not the major objective of the business, rather than adequate fitting of lenses.

(5) The telephone receptionist stated that I could not have received incorrect information because my husband made the appointment. I can understand her unwillingness to accept responsibility for a mistake, but that she must. I personally made the appointment; I am fully responsible for all my activities; and my husband's attendance at school precludes his making any appointments.

I am grossly insulted. I have never been treated discourteously to such a degree for most individuals respond to courtesy when it is extended.

Your firm shall be slandered at every opportunity.

Mrs. ROBERT BORKENHAGEN.

[From the Herald-Journal, Apr. 10, 1967]

(An editorial, permission of the New York Post, Copyright 1967, New York Post Corporation)

"A MATTER OF VISION"

"In the blind rush to pass legislation on a wholesale basis, the New York State Assembly and Senate slipped through a bill on optical services that would hit more than half a million New Yorkers right between the eyes.

This bill would inhibit "third party" practice in furnishing eyeglasses to those who presently can get this service on a high-quality low-cost basis. The bill is pure special interest legislation, an exact replica of the onetime efforts of the AMA to block "third party" medicine in America. It would not improve the quality of optical service, since at the present time all such care is handled in "third party" practice by licensed optometrists. It would merely favor the private practitioner who can monopolize the practice at exorbitant rates and without quality supervision.

What is most scandalous is that this important measure was allowed to slide through without hearing, without debate, without any chance to be exposed to public view or review. In all good conscience, Gov. Rockefeller must veto this bill not only for its danger to the consumer but also because of the sly, secret way it was whisked past the eyes of the public."

We urge you to protect your own interests. Please write to Gov. Rockefeller and urge him not to approve the legislation which would amend the law in the practice of Optometry

DEXTER OPTICAL.

[From the Washington Post, Oct. 24, 1964]

EYE CLINIC FOR D.C. POOR OPENED BY OPTOMETRISTS

The previously unpublicized operation of an eye clinic for the poor here was announced yesterday by District and nearby Maryland and Virginia optometrists.

Called the Optometric Center of the National Capital, Inc., the clinic at 421 4th st. nw., began accepting patients on Aug. 1, after months of planning, fund raising and gathering of equipment.

Jack H. Mericle, president of the nonprofit center, said the clinic offers eye examinations, needed prescription eyeglasses or contact lenses and other alleviation of vision problems and conducts basic research in non-medical eye problems.

The center is the eighth such facility in the Nation. Other are in New York City, Denver, Atlanta, Lansing, Newark, Richmond and Harrisburg.

Staffing the local center are 101 volunteer optometrists in private practice in the Greater Washington area. Another 25 military optometry officers also are serving.

Most persons examined at the center so far have been beneficiaries under the Manpower Development and Training Act. This is one of the key programs of the War on Poverty which takes unemployed heads of households and retrains them for profitable employment.

Mericle said all area health practitioners and recognized agencies may refer patients to the center.

He said most of its patients come under the category of medical indigents and receive all services without charge. They may or may not pay small admission and prescription fees.

The clinic will not accept unreferral patients, but counsel on obtaining necessary referral can be obtained by calling offices of the Health and Welfare Council of the National Capital Area, at DEcatur 2-7330, or the center itself at 628-8053.

Dr. BERLIN. Mr. Chairman and members of the subcommittee, I am Dr. Marvin Berlin, an optometrist practicing in the District, representing the Optometric Society of the District of Columbia of which I am President. I appreciate the opportunity to testify in support of revisions in the District of Columbia Optometry licensing law.

Accompanying me is Dr. Evart Warren, also a practicing optometrist here in Washington.

On my left I have Dr. Robert Corns from Indiana, Legal Administrative Assistant to the AOA Committee, and next to him is Mr. William MacCracken, who is counsel for the District of Columbia Optometric Association.

This is a summary of my full testimony, and with the permission of the Chairman, I would like to present my full statement for the record.

As Immediate Past Secretary, District of Columbia Board of Examiners in Optometry, Dr. Warren agreed to join me should the committee have questions dealing with optometry licensing and any difficulties experienced by the Board in enforcing the practice of optometry in the District.

The Optometric Society of the District of Columbia estimates that today there are 67 full-time practicing optometrists here in Washington for a population, according to the 1960 Census, of 763,956. In 1924 when the Optometry Licensing Act became law, 92 optometrists registered under the law—92 optometrists for approximately 437,571 people, the 1920 Census figure. During a 40-year period, there are 27 percent fewer optometrists and 57 percent more people.

The primary reason why the nation's capital fails to attract recent optometry school graduates is the poor environment for professional practice. Rather than lower his standards, the young optometrist establishes his practice outside the District of Columbia.

It seems to me a sad situation when only two optometrists under the age of 35, the draft age for optometrists, practice optometry in the District today. The outdated optometry law affords little inducement to practice here.

This past July, the District of Columbia Court of Appeals upheld a conviction of practicing optometry without a license in a case relating to adaptation and fitting of contact lenses. Attachment No. 1 filed with this statement gives you some indication of popular feeling about this case, in the form of a letter to the editor of the Washington Daily News.

In 1964 the Senate's Special Committee on Aging—after investigating frauds and deceptions affecting the elderly—recommended that

the Senate District of Columbia Committee examine the adequacy of present District laws on . . . "(a) widespread fixed-price advertising for regular glasses and contact lenses; (b) sale of over-the-counter, nonprescription glasses; (c) possible need for greater authority to the District Commissioners for regulation of 'the corporate practice of optometry'." In relation to these recommendations by the Senate Special Committee on Aging, I refer you to a clipping from the Washington Evening Star of February 1965. This is attachment 1-A.

For several years many of us optometrists here in the District saved local newspaper ads offering specials, discount prices and other "bargains" on eyeglasses and examinations in the hope that the Board of Optometry could do something to prohibit them. We finally stopped collecting those ads after being told repeatedly that the present law in no way regulates such practices. At this point I refer you to our attached document No. 3, which illustrates the type of advertising to which I refer.

The advertisements in the classified telephone directory "Yellow Pages" are equally unbecoming health care services, and I ask that you note the content of ads shown in our attachment No. 4. Such statements as "Moderate Prices—We keep our costs low by volume—Eyes Examined—Prescriptions Filled—Lenses Duplicated—Contact Lenses—Children's Eyes Examined—two-hour Service", or "Eyes Examined—Glasses Fitted—Budget Terms Available—Discounts to Government Employees, Union Members, Diplomatic and Military Personnel and Families", confuse and frequently mislead the public.

The companies which place such quarter-page directory ads, the largest size sold, sell eyeglasses. Their term "Eyes Examined" pertains only vaguely to the term "Vision Care". The so-called examinations they make are called "quickies" and rarely take more than 15 minutes, sometimes as few as five minutes; a complete professional vision examination requires at least 45 minutes.

As to the glasses these "discount" operations sell, there is a strong chance that something will be wrong with them. The prescription may not be filled accurately. For example, in a pair of \$7.25 glasses, while one lens may meet prescription specifications, the other lens may be so inaccurate that it fails to give the needed correction. Additionally, the lenses themselves frequently are other than first quality. Cut-rate operations often rely on inferior foreign-made lenses or on rejects and second or third quality American-made lenses which can have various defects which may seriously affect light transmission.

Anyone operating as an eyeglass merchant simply cannot devote more than minimal time to fitting the eyeglasses. As stated in one of the "Yellow Pages" ads, "We keep our costs low by volume." And volume depends on heavy traffic and fast turnover.

I would like to call your attention at this time to attachment No. 5, which will give you some idea of the quality of materials frequently purchased by eyeglass merchandisers. You will note that some of these materials are available to the eyeglass peddler at 30 cents a pair, when purchased in lots of 100 pairs. The suppliers of these ophthalmic materials are so sure these factory seconds are defective, they say "Guaranteed usable or replaced"—which obviously means that if the particular pair fitted to a patient's face is so unsatisfactory that the

patient complains, the lenses can be returned and some with less noticeable defects will be supplied to replace them.

The commercialist cannot afford to offer visual training services because they require time which he can ill afford to spend if he is to maintain his high-volume business. In recent years research has shown that visual training can lessen some vision problems or eliminate them entirely. I know of no way the discount operator can offer visual training services even if he is qualified to offer them. The mercantile setting does not lend itself to professional services. Flashing signs indicate selling, not servicing in a professional manner.

The object of the specs peddler, in whichever century he might operate, remains the same—sell glasses. The growing promotion of health benefits to unions provides the spec peddler with additional sales outlets. Unions, attempting to provide additional services to their members, making arrangements with spec peddlers (now termed optical companies or commercial optometrists) to “purchase glasses at low cost.” See attachment No. 6.

The District of Columbia Optometric Society frequently receives complaints about optometrists working in the types of corporate enterprises I have described. To give you some idea of the complaints we receive, I am submitting attachment No. 7. Other similar complaints from victims of these entrepreneurs were delivered for the records of this committee following last year's hearings on H.R. 12937.

There are those in opposition to this bill who claim that it will inhibit “third party” practice of optometry and thereby be injurious to those relying upon third parties for their vision care.

Mr. Chairman, the only prohibitions directed against “third parties” by this bill are directed against corporations or firms which would abuse the practice of optometry by making an ill-gained profit from the sale of merchandise in the guise of caring for the visual needs of the population.

Third parties such as hospitals, clinics, group health practices, non-profit health services, health expense indemnity corporations, agencies of government or employers providing optometric services solely to their employees are exempt from this proposed Act.

There are a number of union optical plans operating across the country which are thought to be operating on a not-for-profit basis and which, we understand, are in fact franchises from an office in New York State. In these plans, optometrists serve in somewhat the same “captive” relationship as do those optometrists who are employed by, or are under contract to, commercially-motivated retailers which we have described as operating here in the District of Columbia.

The working men and women of the District are, we believe, fortunate in the fact that none of the so-called “union optical plans” are active here, to the best of our knowledge. We have every reason to be fearful that union members in our city might be lured into seeking such franchised operations in the future, believing innocently that lower-cost vision care is available through such a means. Lower cost in this instance means lowest quality service and materials and we believe this to be absolutely unconscionable in the health care field.

I am proud to report that a committee of our optometrists is responsible for the formation of a “third party” organization to provide op-

tometric services, known as the Optometric Center of the National Capital, Inc. It is a not-for-profit corporation, providing vision services to the poor of the nation's capital. The Center's trustees, comprised of leading members of the community, include leaders from organized labor who contribute their valuable time in guidance and supervision and provide funds for purchase of ophthalmic materials required to care for patients of the Center.

Some of the larger donations have been made by the local Teamsters Union, a group which also has a prepaid vision program sponsored by our Society through another not-for-profit corporation known as Vision Care Services, Inc. Another large contributor is the District of Columbia Public Health Department, which contracts with the Center for vision services for its beneficiaries. A news story about the opening of the Optometric Center of Metropolitan Washington is shown on attachment 9.

When I. Philip Sipser, counsel for the United Optical Workers Union Local 408 of the International Union of Electrical Workers, AFL-CIO, testified on behalf of that group in favor of S. 260, the "Medical Restraint of Trade" bill, his testimony closed with this statement:

"* * * we see the Hart bill as a necessary measure limiting doctors, including ophthalmologists, to the practice of medicine, and as a measure dampening their ardor for lucrative earnings in commerce by medical shortcuts, use of untrained personnel, business sales and otherwise."

While Mr. Sipser did not mention the practice of optometry, we feel the same restraints should apply to its practice in the District of Columbia, and we hope the United Optical Workers Union will join us in support of the bills you are considering to accomplish these purposes.

We in optometry have policed our own insofar as the present law permits. Governmental intercession is now needed for the regulation of the practice of optometry if the residents of the District of Columbia are to receive the protection to which they are entitled. The Optometric Society of the District of Columbia urges you to pass this legislation.

Mr. SISK. Thank you, Dr. Berlin.

I might ask you, and I think I did to start with, your membership here in the District. How many members do you have in your Society?

Dr. BERLIN. The District Society has 48 members and associate members.

Mr. SISK. The gentleman from New York, Mr. Horton.

Mr. HORTON. No questions.

Mr. SISK. The gentleman from North Carolina, Mr. Whitener.

Mr. WHITENER. How many licensed optometrists are there in the District?

Dr. BERLIN. I would say there are 57 or 60 that are practicing here in the District. Maybe Dr. Warren can help me out.

Mr. WHITENER. How many are alive and licensed and actual residents here in the District?

Dr. WARREN. I think he meant 67 practicing. We have about 180 who are licensed, but a great many of these have licenses in other States

and are practicing in North Carolina, Virginia, Pennsylvania, and places like that.

Mr. WHITENER. And you have how many members in your Society?

Dr. BERLIN. Forty-eight members and nine associate members.

Mr. WHITENER. What are associate members?

Dr. BERLIN. Associate members are those optometrists who belong to the American Optometric Association in the neighboring states of Northern Virginia and Central Maryland.

Mr. WHITENER. Thank you.

Mr. SISK. The gentleman from Ohio, Mr. Harsha.

Mr. HARSHA. Dr. Berlin, you say there have been no changes in the law in regard to optometry since 1924?

Dr. BERLIN. Yes.

Mr. HARSHA. As I understand it, there is a Board of Optometry appointed here by the Board of Commissioners, is there not?

Dr. BERLIN. That is true; there is a Board of Optometry.

Mr. HARSHA. Some five optometrists?

Dr. BERLIN. There are five members on the Board.

Mr. HARSHA. And they are charged with the responsibility of licensing those who practice optometry?

Dr. BERLIN. Yes.

Mr. HARSHA. They also have the responsibility of drafting the educational standards or improving them over and above what is written into the law, do they not?

Dr. BERLIN. Yes, sir.

Mr. HARSHA. They may make them more stringent at any time. The only thing they cannot do is lower them below the standards that are in the law. Why, if they are so interested in upgrading the practice of optometry, has not this Board made significant changes in the educational standards required for the practice of optometry in the District?

Dr. BERLIN. I think Dr. Warren could answer that for us, and I think they have made changes through the years.

Dr. WARREN. The one change—and any change has to be approved by the Commissioners of course. The one change has been I think in 1950 or 1951 when examinations were given in contact lenses. But the examinations are quite stringent, have always been, and we feel the examination we give is on a par with those throughout the nation.

Mr. HARSHA. Is there any change in this latest bill, H.R. 12276, in the requirements that you presently operate under?

Dr. WARREN. The purpose of this bill does not really change the requirements for taking an examination. We feel the optometrists coming out of the schools today are quite adequately trained. The problem here is that once they are licensed in the District of Columbia, we have absolutely no control over doing anything with them regardless of what they might do.

I have just finished serving a term on the Board and I am now no longer eligible to serve on the Board, which Mr. Whitener will be interested in, because last year at the hearing he said to be a member of the Board you have to be practicing for a certain number of years. The District Commissioners have now added another regulation of their own, that you must be a resident of the District of Columbia before you can serve on the Board.

But anyway, the Board receives numerous complaints. The Department of Occupations and Professions now has a form letter in which they say, "We are very sorry to inform you but the Board is not empowered to take any action."

Mr. HARSHA. You feel that the regulations now or the educational requirements written into the law are totally adequate and in conformity with the majority of the states in the Union?

Dr. WARREN. I would say that is quite right.

Mr. HARSHA. Then do we need the additional requirements that you have in these bills? Why are they in here then?

Dr. WARREN. I think you will find our present law, the one which we are now operating under, and the proposed new requirements are fundamentally the same.

Mr. HARSHA. Why are they in the bill if you are not going to make changes?

Dr. WARREN. Because it has to be a whole new bill.

I might say this came up in the previous testimony. This bill was originally written by the Department of Occupations and Professions because under the new enabling Act of the District of Columbia all of the powers of the Board are really given to the Commissioners and then the Commissioners in turn give them to the Board. So the department had to write the bill so that it would be in the proper form. So they decided that a whole new bill would be written.

Now of course I will admit that our group has made numerous changes in it.

Mr. HARSHA. You say under existing law you have no remedy such as revoking a license or suspending a practitioner for certain violations?

Dr. WARREN. For all practical purposes, none.

Last week we had a man go into Sterling—the name has been mentioned so I will mention it—to have his eyes examined. From the time he walked into the door until he walked out of the examination room with a piece of paper in his hand with a prescription on it was three minutes and 20 seconds. This was a complete eye examination.

He then went somewhere else and picked out a frame. The total bill was \$38. Now this has been going on for years and I hear all of this, and I have been coming up here, sir, for 20-some years testifying on these things, and I see the discussion being sidetracked all the time.

I am not an attorney and I do not know all of the little facets of the turning of a word here or there as to what it does. But what we want to do is to be able to protect the people of the District of Columbia who we think are being robbed. I think that some of the men of this city are using their license to steal. We only have about seven or eight bad apples but that is all it takes.

Mr. HARSHA. You have no method under the existing law—

Dr. WARREN. Under the existing law we can take a license away from a man if he has been convicted of a crime involving moral turpitude or is a habitual drunkard—period. We do not even have the right to insist that they inform us where they are practicing.

I remember 15 years ago when my dad was secretary of the Board, suddenly we saw an advertisement in the paper of one of the fur-

niture stores they are now examining eyes. We did not even know who was there. I went down to sort of snoop around to find out who was there. We do not even have the power to insist that they tell us where they are practicing. We have no power.

Mr. HARSHA. Do you have in this bill a section that will give you the authority to crack down on a shyster like you outlined?

I would like to know if we are going to meet the problem you describe in this bill.

Dr. WARREN. There are certain things in there like the department put in there that for grounds for revocation, if a man is found guilty, his license is revoked for a year. I think that is excessive. That means you are going to have a very difficult time to get a conviction.

As any attorney will say, if you are going to put a man out of practice for a year, that will be almost impossible to get. So that should be possibly reduced we will say to 30 days or 20 days, I do not know. This is for the committee to decide. But the main thing that the Board wants is the power to stop these people from being enticed, and if you will read the record from last year you will see where we have testified to the effect that people are enticed in for a free eye examination, and one poor gal was sold two pairs of glasses for \$144—enticed into a place by bait advertising and then sold a bill of goods basically with cheap materials, cheap frames, cheap lenses, and an examination that is not worth the name.

What happens? They cannot see with them, but they have only paid \$5. But let them miss one payment and bingo, they haul them into court and their wages are—

Mr. HARSHA. The crux of what you are saying is to clamp down on the advertising. What about the fellow who conducts an eye examination? And not being a specialist in that field or having any training, it is hard for me to see how could you get an adequate examination of the eye in three minutes or five minutes.

Dr. WARREN. You cannot.

Mr. HARSHA. Is there anything in this bill to deal with unethical practices?

Dr. WARREN. No, sir.

Mr. HARSHA. Or malpractices?

Dr. WARREN. Not in our present law.

Mr. HARSHA. I mean in the new bill.

Dr. WARREN. Yes, sir.

Mr. HARSHA. Can you point that out to me?

Dr. WARREN. In the first place there will be—there is an awful lot of talk about this word "profession", and you have heard the word *Silver v. Lansburgh* mentioned yesterday. Back some years ago the Board, in an attempt to stop some of the evils that were going on, initiated a suit against Lansburgh's Department Store and their optical department. Not that they were particularly bad, but that they were a corporation, because we feel that the corporate practice of optometry is not good because a man should practice in his own name. He has the license, he should be responsible to his own license and not be responsible through somebody else who he is working for, his employer.

This was overturned and one of the key words in this thing is the word "profession", and you are going to hear the medical people say

we cannot have this word in there at all, that optometry cannot be defined as a profession, it cannot be mentioned in the law. But we must have that one word "profession" because it is the one word—if "profession" is not in there, then we are a trade, and if you are a trade just like a plumber I can advertise, to have a sink put in your house for such and such sum of money.

So it all hinges on this one word.

In my book, if you would give us a law, just a few words that say "Optometry is hereby declared to be a profession", and the Board should be empowered to enforce it, in three lines, I think we could just about do it.

MR. HARSHA. Then should you establish a Code of Ethics and revoke or remand or suspend licenses based on this Code of Ethics?

DR. WARREN. I certainly could.

MR. HARSHA. You could deal with malfeasance and misfeasance and nonfeasance?

DR. WARREN. If we are declared to be a profession, I think we could, yes, sir.

MR. HARSHA. What you are telling the committee is, in substance, if we would just pass a simple bill that said for various reasons the practice of optometry is hereby declared a profession and the Board of Commissioners is authorized to adopt rules and regulations to govern that profession, that would take care of your problem?

DR. WARREN. That would be the biggest hornet's nest we ever stirred up, sir. Basically, that is the crux, that is the nut of the whole bill, to have optometry declared to be a profession. That is the kernel there.

MR. HARSHA. That is all I have.

MR. SISK. Mr. Whitener.

MR. WHITENER. Let me ask you this, Dr. Berlin. On page 6, section 7 of H.R. 12276, the Commissioners are given the authority "to refuse to renew, or reinstate any license authorized by this Act," and "to suspend or revoke" one if an individual uses "any title or any other word or abbreviation indicating that the licensee is engaged in the practice of medicine or surgery."

I have a friend at home who practiced optometry for several years and then decided he wanted to be a lawyer, and went to law school. So he is now a licensed attorney, and he is also a licensed optometrist. Suppose that an optometrist decided he would like to become a general practitioner of medicine and went to medical school, was duly licensed in the District of Columbia but he felt that it would be advantageous to him to practice both general medical practice and optometry.

I know this is not the sort of thing that happens often or would be likely to happen many times. But if it happened one time, this poor fellow could not even practice optometry, could he, even though he was a duly qualified licensed optometrist and physician, because of subsection (1) of section 7(a)?

DR. BERLIN. In the District we have two optometrists who are now M.D.s and they are practicing their profession as M.D.s.

MR. WHITENER. You mean you do have in the District two optometrists who are duly licensed physicians as well?

DR. BERLIN. Yes, sir.

MR. WHITENER. And they are practicing both medicine and optometry?

Dr. BERLIN. Yes, sir.

Dr. WARREN. No. They are practicing medicine, practicing as ophthalmologists, and hide the fact, of course, they are optometrists.

Mr. WHITENER. Suppose they wanted to practice as a general practitioner of medicine and at the same time wanted to have an optometric practice. If we let this language stay in the bill they could not do that, could they?

Dr. WARREN. I think we are getting into a legal terminology.

Mr. WHITENER. Of course this is a legal operation.

Dr. WARREN. But if you have an M.D.'s license, you are automatically entitled to practice optometry, as we have had on two different cases in the District of Columbia.

Mr. WHITENER. But this says "the use of any title or any other word or abbreviation indicating that the licensee is engaged in the practice of medicine or surgery"?

That is in direct conflict with the exemption of medical doctors. When the courts come to look at it, they might say yes, there is nothing in this law to prevent him practicing optometry, but the minute he puts on his letterhead that he is a licensed optometrist and a licensed physician the Commissioners have authority to revoke or suspend his license in optometry.

In the one place you have the exemption of physicians, but then here you have a specific prohibition against the use of any word or abbreviation indicating that he is licensed to practice medicine.

Dr. WARREN. Of course, neither one of these M.D.'s are licensed to practice optometry in the District of Columbia.

Mr. WHITENER. But suppose they wanted to be and are qualified?

Dr. WARREN. I think I would have to refer that to an attorney to find out.

Mr. FUQUA. Will the gentleman yield?

Mr. WHITENER. Yes.

Mr. FUQUA. I think this was put in to make sure there could not be any encroachment on this field by an optometrist.

Mr. WHITENER. Then it is very easily handled by putting the words in there "unless in fact licensed to practice medicine or surgery".

Mr. FUQUA. This may clarify it. I think it was intended so no one could operate under the guise of being an M.D.

Dr. WARREN. I have been passed a note that says the language is the same in the identical law we have today.

Mr. WHITENER. That makes no difference. We have more bad law here than you can imagine.

Dr. BERLIN. This would be acceptable to the D.C. Optometrical Association.

Mr. WHITENER. I think in drawing legislation, we ought to be careful about what we say. You are dealing here with a very substantive right of human beings. I would think some of these things that appear to those of us not expert in the field would certainly appear to those who are more expert.

Mr. MACCRACKEN. We will be very happy to accept the wording suggested by Mr. Whitener as far as the District Society is concerned.

Mr. SISK. Mr. Harsha.

Mr. HARSHA. On page 2 of this latest bill, H.R. 12276, you provide that the practice of optometry, subsection 2, means "(a) the employ-

ment of any objective or subjective means for the examination of the human eye, including its appendages."

In my limited knowledge in this field, an objective examination of the human eye is done in some cases by the use of drugs, is it not?

Dr. BERLIN. There are many objective examinations. Usually the physician will use a drug for an objective examination, but he also uses visual acuity, part of the visual acuity examination. It is the way the individual turns his head, whether he squints, whether he tilts his head down, whether he turns his head, this can be an objective manner in which he recognizes some defect which would play a significant part in the examination.

Mr. HORTON. I do not think you answered the question. The question as I understood it was whether you could use drugs in the examination.

Mr. HARSHA. What I am trying to get at is this: Does this authorize you in effect to use the method of ophthalmology because, suppose you put this medicine in to dilate the pupil, that is a drug, is it not?

Dr. BERLIN. Yes, sir.

Mr. HARSHA. Are you not then engaging in ophthalmology?

Dr. BERLIN. This is for the determination purposes only and not for the treatment. This aids in determining the total scope of a visual problem of the patient.

Mr. HARSHA. But whether it is for determination or examination, you still employ the use of drugs and are you authorized to do that under the law?

Dr. BERLIN. Maybe Dr. Warren could answer that for you.

Dr. WARREN. This has been—of course I heard the testimony yesterday—quite a bone of contention—objective or subjective means, and this has to be resolved, I would say, before we go much further.

Optometrists do not use drops in examination of the eye. We have developed historical methods of making eye examinations and the results have been proven quite good over the years without the use of drops.

Now I would be first to admit we are not in complete accord on this thing. I would say that the argument that has been given to me is that, well, 25 years ago we did not have satellites, atom bombs have changed things, progress, and that it is difficult to come back to Congress to get a change, and that if at some future time something were developed in the way of a drop that would be advantageous, it would be nice to have them used. And it is possible that this could be turned around so that it could be "employment of any objective or subjective means for the examination of the human eye." And it might well be that the committee should insert something else in there such as "not to include the use of drugs, medicine, or surgery".

Mr. HARSHA. One other question. I refer you to page 7, line 13, of H.R. 12276, subsection (7); this is in the subsection I was inquiring about.

Section 7 states: "The Commissioners are authorized (A) to refuse to renew, or reinstate any license authorized by this Act, and (B) to suspend or revoke * * * for the following causes—".

And this is subsection (7):

"conduct which disqualifies the licensee from practicing optometry with safety to the public".

That covers a multitude of sins, does it not?

Dr. WARREN. Sure, LSD and everything else, I guess.

Mr. HARSHA. What do you specifically mean by that phrase?

Dr. WARREN. I think what I just mentioned there, that here again you do not know what is going to happen. LSD we never heard of ten years ago. We certainly do not want to have people going into an office where they are going to be endangered.

Mr. HARSHA. I do not think you do and we do not either, of course.

Dr. WARREN. We have enough other things up here. We have chronic or persistent inebriety and narcotics. I think that could be stricken without a great deal of loss to the bill, without any loss really.

Mr. HARSHA. Let's assume for argument's sake we strike that out. Is there enough remaining when we get to the example you cite where they gave an eye examination in two or three minutes, whatever it may be?

Dr. WARREN. I think gross incompetence, covered by subsection (4), would be the thing we could hang him on.

Mr. HARSHA. It would certainly be incompetence, but would it be gross incompetence?

Dr. WARREN. I am not an attorney, sir.

Mr. HARSHA. Then on page 11, line 8, subsection (4) provides it shall be unlawful for any person:

"with the exception of nonprescription sunglasses or nonprescription protective eyewear, to advertise or cause to be advertised to the public any optometric or ophthalmic material of any character which includes or contains any price cost or any reference thereto, whether related to any eye examination or to the cost or price of lenses, glasses, mountings, or ophthalmic articles or devices;"

Does this mean if I take a prescription into an optician's office and he has a number of displays in his office, magnifying glasses, prisms of different kinds, different frames and with the prices listed, and the public can walk into that office, in effect to a degree he is advertising to the public or causing to be advertised to the public these prices?

Is this example I cite prohibited by this language?

Dr. WARREN. The use of the double word "optometric or Ophthalmic" material could possibly be construed if the word "ophthalmic" were not used, if we said that a lens, this is an optometric material, then all the prescription opticians would be barred from using it and that of course would not be good.

So I think that the word "ophthalmic and optometric" tie in together here without conflict. If you would use the word "ophthalmic" in the meaning that it is used when it is used basically—and somebody passed this up—"any material used to improve and/or restore human vision prescribed by medical, osteopathic, or optometrical practitioner."

In other words, if you have something that is written to a prescription, this becomes an ophthalmic material.

As I said yesterday, the little cleaners, you do not write a prescription to go in for cleaners or for Windex. It would be something that is written to a prescription. This becomes the ophthalmic material.

Mr. HARSHA. Then suppose the optician has listed on his wall the prices of different types of lenses or glasses. I think I have "executive". I do not know why.

Dr. WARREN. You have executive, sir; yes, sir.

Mr. HARSHA. That is one product price listed, bifocals are another, or trifocals, or straight lenses. Would this preclude him from putting up that advertisement in his office?

Dr. WARREN. We are here getting to talk about things again. I think you can put a price on something, but I think it must be in a manner that would be like if you go into a department store and you pick up a pair of stockings and you have the price on there, \$1.95 or something like that.

I would say that they would have to have the ability in their own office to have their prices on their frames. They have all of these great variety of frames. So that they could not tell the prices on the things. But I believe that it is intended that they would not be in the manner so it would tend to advertise them such as we generally use the word "advertise", something you could see 50 or 100 feet away.

Maybe I better turn that over to an attorney also.

Mr. HARSHA. Then it is your opinion that the optician would not be prohibited from thus advertising his products, whether they be strictly empty glass frames or whether they be the lenses?

Dr. WARREN. No, sir; I did not say that.

Mr. HARSHA. I mean in his office.

Dr. WARREN. I say he might put a price on his frame, but it would only be like on inside of a temple, maybe a half-inch high. That would be only if the patients want to pick up and look at it, that is the price. But to have a price sticking out maybe an inch or two or three inches high, then we feel this is going to allow a loophole given to people who will try to get around the law to try to entice people in by advertising the frames.

Mr. HARSHA. I do not mean to appear argumentative, but I have just the opposite view. If he did not have it on the wall, he might charge me \$25 for these or might charge the next guy \$15, depending on what he thought the traffic might bear. But if I see the price there, of course he can always say to somebody else, I am going to give you a discount. I think if it were there where we could see it, the chance of getting a variation in the price might be less than if it were not.

Dr. WARREN. From your point of view, I think that is a good argument.

Mr. FUQUA. I think you were talking about putting a price on them so if you came in and picked up such and such frames, there would be the price, whatever it was, on there.

Mr. HARSHA. If he put it on the lens, but if he did not—I do not know whether he can put it on the lens with this. I am not sure. I am just trying to find out what some of the answers are.

I have no further questions.

Mr. SISK. Gentlemen, we appreciate very much your appearance before the committee.

Unless there are further questions, the witnesses are dismissed.

Permit the Chair to say that we are hopeful of being able to meet at least for an hour and a half or two hours this afternoon. So, assuming permission is granted, the committee will reconvene at 1:30 and at that time I would like to request that the Medical Society of the District of Columbia, Dr. Alpert and Dr. Cowan be available. We will

hear the Medical Society people, then, at 1:30 unless you are otherwise notified.

I would suggest that about one o'clock the witnesses call the office here and speak to Mr. Clark or Mr. Garver as they will then have the final information.

The committee stands adjourned.

AFTER RECESS

Hearing resumed at 1:30 p.m. in Room 1310 Longworth House Office Building Hon. B. F. Sisk (Chairman of the Subcommittee) presiding.

Mr. SISK. The committee will come to order.

Subcommittee 5 will be in session for a continuation of the hearings following the recess for lunch.

At this time the committee will be glad to hear from the Medical Society of the District, Dr. Dan Albert and such other members of your group that you wish to have.

STATEMENT OF MELVIN G. ALPER, PRESIDENT, SECTION ON OPHTHALMOLOGY OF THE DISTRICT OF COLUMBIA MEDICAL SOCIETY; DR. L. EDWARD PERRAUT, IMMEDIATE PAST PRESIDENT, SECTION OF OPHTHALMOLOGY OF THE DISTRICT OF COLUMBIA MEDICAL SOCIETY; DR. DAN ALBERT, PAST PRESIDENT OF THE DISTRICT OF COLUMBIA MEDICAL SOCIETY; DR. ROBERT KLING, PROGRAM DIRECTOR OF THE OPHTHALMOLOGY SERVICE OF GEORGETOWN UNIVERSITY HOSPITAL MEDICAL SCHOOL; AND WARREN MAGEE, COUNSEL, DISTRICT OF COLUMBIA MEDICAL SOCIETY

Dr. ALPER. I am Dr. Melvin G. Alper and I am the President of the Section on Ophthalmology of the District of Columbia Medical Society.

To my extreme left is Dr. L. Edward Perraut who is an immediate past president of our Section on Ophthalmology; Dr. Daniel Albert, who is a past president also, of the District of Columbia Medical Society.

To my extreme right, Dr. Robert Kling, Program Director of the Ophthalmology Service of Georgetown University Hospital and Medical School.

Our counsel, Mr. Warren E. Magee.

Mr. SISK. Gentlemen, you may proceed. I would appreciate it if you would more or less outline who you are representing here today and also within the bounds of what you can, try to keep to about ten minutes on your testimony.

I might say that your full statements, will be made a part of the record and you may proceed as you wish Dr. Alper.

(The statement referred to follows:)

STATEMENT OF THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA ON H.R. 1283
AND RELATED BILLS

The Medical Society of the District of Columbia is the only medical society ever chartered by Act of Congress and it is the oldest scientific organization chartered by Congress having been founded in 1817.

The Medical Society consisting of 2,433 members, is very much alarmed about numerous features of H.R. 1283, H.R. 732 and H.R. 595 similar bills dealing with the practice of optometry in the District of Columbia. If any of these bills are enacted it will in effect amend the Healing Arts Practice Act which we feel would not be in the public interest and which we believe would not be the intent of Congress.

This state of alarm in the medical society is not solely limited to those members who are ophthalmologists (eye physicians and surgeons) but is shared by all members regardless of their specialty status or field of interest because these bills, as proposed, will prevent any physician or surgeon from using his nurse or any of his technicians in recording a patient's visual acuity, checking a patient's visual field, or performing any other technical task under his direction which the Healing Arts Practice Act now provides.

These bills, will also grossly interfere with or eliminate some of the vital activities of our local hospitals' eye clinics, the Department of Public Health, school screening programs, and the eye departments of Georgetown University Medical Center, George Washington University School of Medicine, and Howard University School of Medicine.

The professors of the above mentioned schools are concerned about these bills. Their concern is that proposed legislation will grossly interfere with the teaching program of their medical students, nurses, and the efficient operation of their eye clinics which serve thousands of District residents; the vast majority being indigent patients. The same restrictions proposed in these bills would also apply to all non-profit, government, or private hospitals and clinics in the District of Columbia.

These bills will eliminate the nurses, teachers, PTA's, and other volunteer groups from the school eye screening programs and force these simple screening procedures to be conducted only under the direction of an optometrist or physician. Is this the intent of the authors of these numerous bills Screening programs should be excluded from the provisions of the bill.

We wish to point out that even the District of Columbia Society for the Prevention of Blindness of the Metropolitan Area, a volunteer agency which has been in existence since 1936 and which makes a remarkable contribution in the prevention of blindness in this area by virtue of its screening programs, would be guilty of practicing optometry under the provisions of these bills.

Under these bills the long established policy of vision screening applicants for motor vehicle operator's permits as adopted by the Director of Motor Vehicles of the District of Columbia would have to be modified to require an optometrist or a physician to perform this simple technical procedure presently being performed in a very efficient manner by a trained employee of the District of Columbia.

On the principle of "Equal Justice Under Law" it is inconceivable how either the courts or members of the bar could tolerate a situation whereby an expert witness could qualify by an Act of Congress by virtue of a simple license procedure. Many members of Congress are also members of the legal profession and know that all expert witnesses, including medical, must qualify on the basis of their individual merits, and not on the basis of a licensing procedure. Furthermore, such expert witnesses must be acceptable to the court and subject to cross-examination by both prosecuting and defense attorneys.

We object to that provision of the bill (H.R. 732) which would require an individual to secure a written prescription from a physician or optometrist licensed in the District of Columbia to replace a broken frame or duplicate a broken lens because it serve no public good. Of the millions of visitors to the Nation's Capital every year there are thousands who carry on their person a prescription for their eyeglasses from "back home" for that very purpose. Unnecessary inconvenience and expense would be imposed upon persons in an emergency situation under the restriction of this bill. Any individual or official from another city while in Washington on pleasure or business would be forced to pay for a written prescription in order to replace a broken temple on his

eyeglasses. Such a provision serves no useful purpose and would work hardships on visitors and commuters to the District.

The so called non-discrimination portion of these bills as stated in Section 14 which makes it unlawful for any employee of the District of Columbia to advise an individual as to the proper place to obtain eye care is certainly not in the best interest of the citizens of this city. To illustrate, suppose the school physician or school nurse is confronted with a child who sustained an injury to his eye or who had a severe infection of his eyes which is obviously a medical problem and beyond the purview of optometry. This bill would prevent the nurse, school physician, or even the child's teacher from sending the child directly to a physician, regardless of his speciality of medicine, for immediate and definitive treatment. By allowing this child to go to an optometrist under the parent's impression that the optometrist is an "Eye Specialist" and is capable of rendering such treatment will at best act as an unfortunate delay and unnecessary expense in obtaining proper medical care and, at worst, could result in the child going blind.

The Medical Society of the District of Columbia is not prepared to accept the claim of the American Optometric Association that optometrists are capable of identifying and diagnosing diseases and of referring for proper medical care? Practicing physicians in all humility state that the most difficult diagnosis for a physician to make is that no disease is present.

Our present law enacted by Congress clearly and properly defines optometry and has served the public interest of this community well over the past forty-three years. Under the Reorganization Act authority is properly given to the Board of Commissioners to regulate optometry in the best interest of the public. In fact the Commissioners have regulated optometry as late as 1951. Individual optometrists, the local optometric society, and the D.C. Board of Optometry have all the procedure tools necessary to recommend any justified changes in the practice of optometry under existing law. Any deficiencies under the present law can be corrected through the Board of Commissioners.

The Medical Society of the District of Columbia recognizes the fact that optometry plays a role in the vision care needs of this community. It takes no issue with optometry's effort to improve their educational standards or to discipline its members. In fact, the Medical Society stands ready to support these laudable pursuits. However, one must not lose sight of the fact that optometry's role is, of necessity, a limited one and any proposed legislation dealing with this subject must be kept in proper perspective if the public interest is to be served.

The Healing Arts Practice Act for the District of Columbia requires a much higher level of training of the physician than it does of the optometrist. In keeping with this the law grants a much broader authority to the physician, than to the optometrist. It is in the public interest that this distinction be well known. The public has an inherent right to know that there is a difference if they are to procure the services they need. This distinction of licensing qualifications is true of all physicians. In addition, the ophthalmologist (eye physician) is required by the self-imposed standards of the medical profession and the standards maintained by the medical staffs and lay governing boards of local hospitals to have in addition several years training in the eye and related structures of the brain.

PROPOSED AMENDMENTS

The Medical Society of the District of Columbia does not believe that new legislation is necessary to regulate optometry in the District of Columbia. However, after due consideration of the foregoing facts, if Congress in its wisdom still feels that legislation in this field is necessary the Medical Society submits for the committee's consideration recommended changes in the bill. These changes were made after many hours of deliberation and study by the District Medical Society, medical educators representing the three local medical schools, staff members of local hospitals, and by allied organizations concerned with the public health. The Medical Society changes are shown on a copy of H.R. 1283 which is attached to this statement and are summarized briefly as follows:

Section 2 on pages 1 and 2 of the bill should be amended as indicated to define optometry correctly. Optometry is a skilled mechanical art involving human vision. It is not a learned profession. The last sentence in Section 1 should be amended by deleting therefrom the words "admitted to the practice of optometry in the District of Columbia under the provisions of this act." This should

be done because as the act is now drawn the practices covered by this bill can *only be done by optometrists* licensed under the provisions of this act. If not changed, this will eliminate the nurses and technicians working under a physician's supervision and other areas of concern.

Section 3 should be amended and optometry should be defined as it is now defined in the District of Columbia Code. As presently defined by law, "the practice of optometry is defined to be the application of optical principles through technical methods and devices in the examinations of the human eye for the purposes of determining visual defects and the adaptation of lenses or prisms for the aid and relief thereof." The definition suggested also deals with the prescribing of contact lenses or eyeglasses as presently worded.

These bills would authorize optometrists to engage in "the identification of any departure from the normal condition or function of the human eye including its associated structures". Such broad terminology will carry the optometrists into the field of practicing medicine. "Associated structures" in medical terms includes the brain, the lacrimal apparatus, the eye lids, the paranasal sinuses, the endocrine glands, and many other things which the optometrist *should not* be involved with at all.

It has been brought out in past hearings on similar bills that an optometrist under the existing law cannot use drops, dyes, drugs or any other chemical which comes in contact with the human eye; therefore, Congress should make this clear by adding on page 6 of the bill a new subsection titles (1a) "The use of drops, dyes, drugs, medicine, or any other chemical which comes in contact with the eye."

We suggest that the word "profession" should be deleted from Section 7(a) (15) on page 9 of the bill and the word "optometric" be substituted. We also suggest that a new Section (20) should be inserted on page 9 of the bill and that this be paragraph (7) from page 12 of the bill. H.R. 1283 should be clarified in order to provide that the adapting and fitting of lenses, prisms, and contact lenses be the only phase of the bill which requires a written prescription from a physician or an optometrist licensed to practice medicine or optometry. Accordingly, Section 8(4) on page 11 of the bill should be so written as indicated.

The requirement that the physician or optometrist be licensed to practice in the District of Columbia only, should be eliminated from the bill in order to afford the millions of visitors who come to the District of Columbia the right to have lenses, prisms or contact lenses made when they have a written prescription from a physician or optometrist licensed to practice outside the District of Columbia.

Section 8(7) which appears on page 12 of the bill should be taken out of this section of the bill and be added as paragraph (20) to Sec. 7 of the bill as indicated earlier in this statement.

Page 13 of the bill should be amended to read as follows:

Sec. 9(a) (2)—"To any member in the armed services in the District of Columbia acting in the performance of his military duties;"

Sec. 9(b) should be amended to read as follows:

"This Act shall not apply to a physician and/or surgeon practicing medicine or surgery under the laws of the District of Columbia, nor to nurses and technicians acting under their direction."

Sec. 9(c) pages 13-14 of the bill should be clarified and it should read as follows:

"This Act shall not apply to any person who fills the written prescription of a physician, surgeon or an optometrist."

Page 15. Sec. 9(e) should be amended to read: "Nothing in this act shall be deemed to authorize an optometrist to use the title 'doctor' or any abbreviation thereof except that if he uses such title or such an abbreviation it must be followed by the title optometrist.

Page 15 Sec. 10(a) the word "ophthalmic" should be deleted and "optometric" inserted in lieu thereof, and after the word "materials" insert "by optometrists." Line 22 "ophthalmic" should be deleted and "optometric" be substituted.

The word "ophthalmic" also appears on lines 8 and 12 page 16 of the same section this word should be deleted and in its place the word "optometric" inserted in lieu thereof.

On line 8 of the same page, the words "by optometrists" should be inserted after the word "materials."

Section 13(c), page 18, should be deleted in its entirety. This Section of the bill attempts by legislation to make the optometrist an expert to testify by merely possessing a license and also attempts to have his certificates accepted as qualified evidence once he obtains a license under the act to practice optometry.

Section 14 appearing on page 19 should be deleted in its entirety. Our one real objection to this so-called anti-discrimination provision is that it will prevent a public health physician, who determines that a medical problem is involved, from sending a pupil in a public school to his family physician or medical specialist for examination and treatment. It's just that simple.

Delay in referring and treating a diseased or injured eye could result in future eye damage and possible blindness. Therefore, Section 14 should read as follows "Every optometrist shall within ten days after the completion of an optometric refraction, refer to a physician or surgeon for a medical eye examination every person whose visual acuity the optometrist does not improve to at least twenty over thirty Snellen in each eye. The optometrist shall not thereafter prescribe, provide furnish or adapt lenses, prisms or ocular exercises for such person unless and until the optometrist receives written approval from a physician or surgeon. Failure to comply with this section shall constitute misconduct and shall also be a misdemeanor and may be enjoined under Section 12 or prosecuted under Section 13, with the same punishment provided for in Section 8 of this Act." Such a provision will improve eye care for patients in the District of Columbia.

Should the Committee not adopt the suggested amendment in lieu of Sec. 14, Congress should consider adopting a provision similar to the State of Colorado Statute relative to the optometric bill passed in 1961 which reads as follows:

"102-1-16. Cause for revocation of license, procedure.

(c) Failing to refer or direct a patient to a physician whenever it comes to the attention of the licensee that such a patient exhibits signs or symptoms of a disease requiring treatment by an ophthalmologist or other physician."

On June 25, 1954 in Seattle, Washington the American Optometric Association passed resolution #4 which declared that "the field of visual care is the field of optometry and should be exclusively the field of optometry." This resolution further recommended to state optometric associations that they "make serious study of the optometry laws prevailing in their states to the end that exemption be restricted, limited, and ultimately eliminated, and that encroachments by untrained, unqualified and unlicensed persons into the exclusive field of optometry be prevented through the established enforcement agencies in the respective states."

An optometrist has nothing to do with the care of the human eye. The function of an optometrist is to attempt after an examination of the eyes to alleviate certain visual problems in the eye at the time of his examination. The optometrist is neither qualified nor competent to examine the eye for any pathology, to make a diagnosis of any conditions in the eye or to recommend any treatment or care of the eye. The sole function of an optometrist is to furnish lenses and glasses to aid in the vision area. He is not trained to treat the eye in any way. The proposed legislation in attempting to improve the care of the human eye in the field of optometry will not have any effect on the type of care nor will it improve the care of the eye.

Eye care is primarily a function of the physician. Vision is a function of the optometrist. The eye is part of the body which is in the province of medicine. The optometrist should merely be concerned with visual anomalies in the normal eye.

The District of Columbia has a very progressive ophthalmological community. It has three universities which are training residents in Ophthalmology. It has several hospitals with active programs. At least forty residents in ophthalmology are currently being trained by these jurisdictions. These are the men who will be dealing with eye care. Washington has the facilities of the National Institutes of Health, the excellent facilities of the Army, Navy and Veterans hospitals, and local hospitals which train men in eye care. This eye care is all inclusive.

The Medical Society of the District of Columbia believes that no new legislation is necessary to regulate optometry in the District of Columbia. If the Congress sees fit to change existing legislation that due consideration be given to the suggested changes which are substantially similar to those suggested by the Board of Commissioners of the District of Columbia by letter to the Chairman of the Committee of the District of Columbia, dated May 18, 1967, the Guild of Prescription Opticians, the Bar Association of D.C., concerning H.R. 1283, H.R. 595, and H.R. 732, so that the fields of eye care and visual needs in the District of Columbia can proceed in the public interest.

The Medical Society expresses its thanks to this Committee for affording it the opportunity to present its views concerning this proposed legislation.

Dr. ALPER. I am the President of the Section on Ophthalmology of the Medical Society of the District of Columbia. The Medical Society of the District of Columbia is the only Medical Society ever chartered by Act of Congress and it is the oldest scientific organization chartered by Congress, having been founded in 1617.

It consists of 2,533 members and most of the membership is very much alarmed about the numerous features of H.R. 1283 and related bills.

Mr. SISK. Dr. Alper, if I could just stop you for a moment. Have you by any chance had an opportunity to peruse H.R. 12276?

Dr. ALPER. Yes, sir.

Mr. SISK. My reason for asking is that there have been some changes in H.R. 1283, and in almost every instance they were made at the instigation of ophthalmologists and others of the medical profession. This was an effort to clarify the language as it concerned medical people.

I wanted to call that to the attention of the committee and to you. We were hopeful that to some extent these changes would solve some of your problems.

Dr. ALPER. The Medical Society of the District of Columbia recognizes the fact that optometry plays a role in the vision care of this community. We take no issue with the optometrists' efforts to improve their educational standards or to discipline their own members. In fact, we stand ready to support these laudable pursuits. However, one must not lose sight of the fact that optometry's role, by education and training, is of necessity a limited one and any proposed legislation dealing with this subject must be kept in proper perspective if the public interest is to be served.

We feel that if any of these bills are enacted, it will in effect amend the Healing Arts Practice Act which would definitely not be in the public interest and which we believe would not be the intent of this committee.

Our state of alarm is not solely limited to those of us who are ophthalmologists, but is shared by all members of our District of Columbia Medical Society, regardless of their specialty, status or field of interest, because certain points of the amended bill, over the former 1283 bill, point out that any of our nurses or technicians, in recording a patient's visual acuity, visual field or other technical tasks for which they are trained and which the Healing Arts Practice Act now provides, would be limited in doing these by use of the term "direct supervision." These bills would also grossly interfere with or eliminate some of the vital activities of our local hospitals' eye clinics.

The Department of Public Health, the school-screening programs and the eye departments of Georgetown University Medical Center, George Washington University School of Medicine and Howard University School of Medicine. The professors and deans of the above-mentioned institutions were so concerned about this that we formed a subcommittee of university professors and Dr. Claude Cowan, who is professor and chairman of the Department of Ophthalmology at Howard University, was appointed as the chairman of this subcommittee.

He was here but unfortunately has been called away because of an emergency operation and I have his joint statement which I will submit, if this is all right with you, sir.

Mr. SISK. Without objection, his statement will be made a part of the record immediately following your statement.

Dr. ALPER. Thank you.

The Medical Society of the District of Columbia feels that no new legislation is necessary to regulate optometry in the District of Columbia. If the Congress, however, sees fit to change existing legislation, we respectfully request that due consideration be given to suggested changes substantially similar to those suggested by the Board of Commissioners of the District of Columbia by letter to the Chairman of the Committee on the District of Columbia dated May 18, 1967, the Guild of Prescription Opticians, the Bar Association of the District of Columbia, concerning H.R. 1283, 595 and 732—I realize, Mr. Chairman, some of these have been changed already but we are going to submit, if this is all right with you, our proposed or suggested amendments to H.R. 1283.

Mr. SISK. If I may interrupt you, Doctor, would you state for the committee whether or not those proposed changes are identical or are they substantially different from what you presented to the committee last year?

Dr. ALPER. It is substantially different from that of last year and differs from the changes incorporated in H.R. 12276.

Mr. SISK. The committee will want that to be made part of the committee files, since your proposed amendments are included in your prepared statement already included in the record.

Dr. ALPER. It is our intent that these changes will be in the public interest in the field of eye care so that the visual needs in the District of Columbia can proceed in this public interest.

Mr. Chairman, the Medical Society expresses its thanks to this committee for according it the opportunity to present its views concerning this proposed legislation and I would like to introduce Dr. Robert Kling, the Program Director of the Georgetown University, for his statement, sir.

Dr. KLING. Mr. Chairman and members of the committee, I have the honor to represent and to present a statement which is the combined statement of Dr. Albert Hardin, Dean of the College of Medicine at Howard University; Dr. John Rose, Dean of the School of Medicine at Georgetown University; Dr. John Parks, Dean of the School of Medicine at George Washington University; Dr. Claude Cowan, Chief of the Department of Ophthalmology at Howard University; Dr. James O'Rourke, Chief of the Department of Ophthalmology, Georgetown University, and Dr. John McTigue, Chief of the Department of Ophthalmology at George Washington University.

Mr. SISK. The complete statement will be included in the record at this point.

(The proposed statement follows:)

AUGUST 15, 1967.

Re H.R. 1283 and H.R. 12276.

SUBCOMMITTEE No. 5,
HOUSE COMMITTEE ON THE
DISTRICT OF COLUMBIA,
Washington, D.C.

JOINT STATEMENT

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE: This bill has many fine features, and the zeal of the optometrists to police their act is to be commended. However, this endeavor has led to the seeking through legislation a status which is only possible through education. Being engaged in the training of ophthalmologists we are concerned when it is proposed to grant the same rights and privileges to **any** group with less training. We feel the health and welfare of the public is at stake. To become an ophthalmologist requires a college degree, four years in medical

school, M.D. degree, one year internship and a three-year residency in ophthalmology. The doctor must then spend at least another year in some phase of ophthalmology before he is eligible to take an examination in order to be certified by the American Board of Ophthalmology. For the foregoing reason we specifically object to the first sentence of Sec. 2 which declares optometry to be a profession and not a mechanical art. Traditionally, historically and by law there are only three learned professions, law, medicine and theology, none of which gained their position by legislation. We also specifically object to Sec. 3, (2), (a) which would permit the employment of any objective and subjective examination of the human eye. The term objective and subjective examination is so broad it encompasses practically every type of eye examination. It would permit an optometrist to extend himself beyond his training. In H.R. 12276, Sec. 9(d)(4), Page 14, line 23, we specifically object to the use of the term, "direct personal supervision", which we imply to mean the actual physical presence of an optometrist, doctor of medicine or osteopathy, when an assistant performs such acts for which they are well trained. We would substitute the term under the "direction of".

We also specifically object to Sec. 3, (2), (a) which would permit the employment of any objective and subjective examination of the human eye. The term objective and subjective examination is so broad it encompasses practically every type of eye examination. It would on the one hand permit an optometrist to extend himself beyond his training and on the other hand prevent such a simple procedure as a nurse taking vision or an ophthalmic technician (assistant) taking fields or measurements of the eye pressure under the direction of an ophthalmologist. This means that nurses would be prevented from performing such a simple task as visual screening in our schools, clinics and offices. As a result of these visual screening test thousands of children enjoy better vision.

Many of us employ ophthalmic technicians (assistants) who do visual acuity, visual field and tonometric tests. Since 1957 Howard University College of Medicine has employed a glaucoma technician. Every patient over thirty-five entering the hospital is screened for glaucoma. If the measurement is suspicious, he is referred to the glaucoma clinic. A glaucoma technician is also employed to perform similar duties in a research study to determine if there is a correlation between glaucoma and diabetes. To conduct such a study in which it is necessary to examine a large number of patients an ophthalmic technician is vital. The technicians are under our direction and we are responsible for their actions.

For the past four years Georgetown University, in addition to its four-year training program of 16 eye resident physicians, has been engaged in a pioneer program of training future ophthalmic assistants. The duration of each course is two years. This is not only the first Federally supported training program of its kind in our nation but it has also already served as a model for similar programs in other countries. It was developed in recognition and acceptance of the responsibility of academic medicine to lead new ways toward still better and more comprehensive eye care of our population.

It must be realized that the community-conscious efforts of Washington's three medical schools are reflected not only in their eight affiliated major hospitals and eye clinics but also in the eye care of thousands of institutionalized senior citizens at D.C. Village and of minors at the District Training School. Finally, the entire Public School vision screening program, encompassing every year about 110,000 school children, is channelled into special eye clinics where all those children are seen who did not pass the screening. These eye clinics are professionally staffed by university resident physicians and qualified ophthalmologists who are aided, by ophthalmic assistant trainees (previously called technicians). While the Optometric Center laudably participates in providing refractions and glasses for these needy children the heaviest load is carried by the universities. Furthermore, definitive treatment of the many cross-eyed children, involving elimination of poor vision, orthoptics and surgery, is provided at university affiliated hospitals. These programs would be nearly or completely (e.g. orthoptics) impossible without the help of trained technicians.

In the case of Certified Orthoptists the situation created by the proposed bill H.R. 1283 is almost unbelievably anachronistic. For over 30 years the American Orthoptic Council with its stringent criteria for training and certification of orthoptists has voluntarily rendered an invaluable service to the American public. Sec. 3, (2), (g) would make it illegal for any orthoptist to help a cross-eyed patient by using her special skills under the direction of an ophthalmologist in the District of Columbia.

At the Children's Hospital of the District of Columbia unique research has been carried on for the past few years. In the operating rooms ophthalmologists have been able to fit infants after surgery for congenital cataracts with corneal contact lenses, saving one or both eyes from practical blindness. This research and its results have hitherto been unheard of in the world. Without the help of technicians this work cannot be carried out.

During these very summer months, Georgetown University, in collaboration with the D.C. Health Department and the D.C. School Board and without any cost to the District of Columbia, is conducting a special school and pre-school children accelerated vision screening program which is for research purposes administered exclusively by ophthalmic assistants trained by that medical school. This study proceeds with the knowledge of, and without objections from, the D.C. Optometric Society. At its conclusion in fall the results and experiences will be made available to all interested organizations including the Optometric Society.

Mr. Chairman, the responsibility of the three medical schools of the District of Columbia lies in training the best possible physicians for tomorrow. At the same time we are keenly aware of our moral obligations toward the health of our community. We would be remiss in these obligations if we would sanction tendencies or even legislative attempts to undermine existing and well-regulated ancillary medical occupations, such as orthoptists. But we would also be remiss if we would ignore the constantly changing picture of the medical needs of our population.

The dire need of this country for increasing the available health manpower has been recognized and acknowledged by Congress with the passing of the Allied Health Profession Personnel Training Act of 1966. A good illustration of some of the anachronisms hidden in H.R. 1283 can be obtained by reading the list of occupations eligible for Federal Training Grant support under this new Act which includes Ophthalmic Assistants. It was no surprise to us but it may not be known to all Committee members, that this Act includes also Optometric Technologists. We understand that Federal grant support has indeed already been extended to an Optometric Technologists training program at the Indianapolis University. Finally, at the recent American Optometric Association Congress in Portland, Oregon, the Resolution No. 1 was adopted by their House of Delegates on July 1, 1967, which strongly urges development and further support of training centers for Optometric Technologists and Ophthalmic Assistants.

Today both ophthalmology and optometry recognize that even perfect harmony between the two fields would not be sufficient to meet the eye care needs of the American public. Technicians, assistants, technologists or whatever term is preferred are needed in many aspects of eye care. To deny such need or to render impossible the use of such trained persons would not only be extremely myopic but would also defeat the purpose of the amended Health Manpower Act. Moreover, such a step should also be contrary to optometry's own goals.

The deans of the three medical schools of the District of Columbia join unanimously their Professors of Ophthalmology in opposing H.R. 1283 in its present form and in supporting its revised form as submitted by the Medical Society of the District of Columbia.

Respectfully submitted.

CLAUDE L. COWAN, M.D.,
Chief, Dept. of Ophthalmology,
Howard University.

JAMES O'ROURKE, M.D.,
Chief, Div. of Ophthalmology,
Georgetown University.

JOHN W. MCTIGUE, M.D.,
Chief, Dept. of Ophthalmology,
The George Washington University.

ALBERT K. HARDEN, M.D.,
Dean, College of Medicine,
Howard University.

JOHN C. ROSE, M.D.,
Dean, School of Medicine,
Georgetown University.

JOHN PARKS, M.D.,
Dean, School of Medicine,
The George Washington University.

Dr. KLING. Since this is a joint statement, you will see this was decided upon when H. R. 1283 was being discussed. As a result some features of this letter are already out of date. I will attempt to delete those no longer applicable.

This bill has many good features. The zeal of some optometrists to improve the quality of optometry practiced in the District of Columbia is, in our opinion, commendable.

Can it be, however, that some would seek, through legislation, a status which is possible only through education? We who are engaged in the training of ophthalmologists are concerned when it is proposed to grant the same rights and privileges to any group that has less training. We believe that the health and welfare of the public may be at stake. In order to become an ophthalmologist, one must have a college degree, an M.D. degree after four years training in medical school, one year or more of internship, and three years of residency training in ophthalmology.

We do object, therefore, to legislation which attempts to equate optometric training with ophthalmological training as preparation for service in the field of eye care.

We also specifically object to Section 3, paragraph 2(a) of the previous bill which would permit the employment by optometrists of any objective and subjective examination of the human eye. This expression encompasses every type of eye examination.

It would, on the one hand, permit an optometrist to extend himself beyond his training. On the other hand, it would prohibit nurses and ophthalmic technicians from performing under the direction of an ophthalmologist such simple procedures as checking visual acuity, measuring visual fields and measuring intraocular pressure.

As we understand it, it would prohibit nurses, parents and friends from performing visual screening in our schools.

Many of us employ ophthalmic technicians who measure visual acuity, visual field and intraocular pressure. Since 1957, Howard University College of Medicine has employed a glaucoma technician. A technician is also employed in a research study involving glaucoma and diabetes. Performing such large studies would be impossible without the help of ophthalmic assistants. For the past four years, Georgetown University, in addition to training eye physicians, has trained ophthalmic assistants. This federally-supported, two-year training program is well accepted in this country and is being imitated in other countries. It was developed in recognition of the responsibility of academic medicine to find new ways towards still better and more comprehensive eye care for our citizens.

The efforts of Washington's three community-conscious medical schools are evident not only in the eight affiliated major hospitals and eye clinics, but also in the eye care provided to thousand of institutionalized senior citizens at D. C. Village and of minors in the District Training School.

The public school visual screening program, including about 110,000 school children each year directs children into special eye clinics which are professionally staffed by university resident physicians and by qualified ophthalmologists aided by ophthalmic assistants.

The optometry center, laudably, participates in the cases of these children, but the heaviest load still is carried by the universities.

Definitive treatment of the many cross-eyed children involving the improvement of poor vision, and surgery is provided at university-affiliated hospitals. These programs would be nearly or completely impossible without the help of trained technicians. This treatment would be given by certified orthoptists by the proposed bill, H.R. 1283—and, incidentally, the newer version is unbelievably anachronistic. For over thirty years the American Orthoptic Council, with its stringent criteria for the training and certification of orthoptists has voluntarily rendered a valuable service to the American public.

Section 3, paragraph (2) (g) of the earlier bill, not changed in the later bill, would make it illegal for any orthoptist to help a cross-eyed patient by using her special skills under the direction of an ophthalmologist in the District of Columbia.

Unique research carried on during the past few years at the Children's Hospital of the District of Columbia has brought useful vision to infants who in early times could not have been helped. Incidentally, it also has brought more world renown to our Children's Hospital.

The fitting of corneal contact lenses to these infants in the operating room after surgery for congenital cataract cannot be accomplished without the help of highly skilled technicians.

During this summer Georgetown University, in collaboration with the D.C. Health Department and the D.C. School Board, without any cost to the District of Columbia, is continuing a special accelerated visual screening program for school children and pre-school children. This program is being administered by technicians who were trained at Georgetown University Medical Center.

The three medical schools of the District of Columbia are doing their utmost to produce the best possible physicians for the future. They also are doing a very good job of training ancillary medical personnel.

We would be remiss in our duty if we did not call to congressional and committee attention legislation which would tend to undermine the good work of these well-trained people. The serious need in this country for increasing the availability of health manpower has been acknowledged by Congress with the passage of the Allied Health Professions Personnel Training Act of 1966. A good illustration of some of the anachronisms hidden in H.R. 1283 and not completely corrected by later version, can be obtained by reading the list of occupations eligible for Federal training grant support under this new act. It includes ophthalmic assistants.

It was no surprise to us, but it may not be known to all the committee members that this act also includes optometric technologists.

At a recent American Optometric Association Congress in Portland, Oregon, resolution No. 1 adopted by their House of Delegates on July 1, 1967, strongly urges development and further support of training centers for optometric technologists and ophthalmic assistants. The need and desire for eye care in the United States is more than enough to keep all our ophthalmologists, all our optometrists, technologists, technicians, assistants and volunteers, busy. To render impossible the use of such trained persons would be most uneconomical and would tend to defeat the purpose of the amended Health Manpower Act.

The deans of the three medical schools of the District of Columbia joined their professors of ophthalmology in opposing H.R. 1283 in its earlier form and in supporting the revised form as submitted by the Medical Society of the District of Columbia. In the name of our three deans, our faculties in ophthalmology and our attending staffs at the university hospitals and all our affiliated hospitals, I thank you for your kind attention.

Mr. SISK. Thank you, Dr. King.

Dr. ALPER. Dr. Daniel Albert will read the next statement.

Dr. ALBERT. Mr. Chairman and members of the committee, I am Dr. Dan G. Albert. I have practiced ophthalmology in the greater Washington area for the past 14 years. My educational and clinical experiences have been such that I believe I am qualified to present to the committee many of the numerous features of H.R. 1283—and I am sorry I cannot apply this statement to the new bill, H.R. 12276. I haven't had a chance to peruse it—which have alarmed the medical society of the District of Columbia and practicing ophthalmologists generally in this country. We believe enactment of this bill would not be in the public interest.

In 1934 I entered one of the few schools of optometry that was associated with a recognized university and in 1938 was graduated by the Ohio State University School of Optometry, receiving a BS degree. I practiced optometry in the State of New York for the next four years. During the last year of my practice—which, I might add, was in the optical department of a jewelry store—I was careful in recording the number of patients who I saw who I felt needed medical treatment and who were therefore referred to medical services. It was the thirty percent of these people I saw that year who I felt I was incapable of servicing that added to my desire to obtain a medical degree.

In 1942 I entered the Armed Services and during my four years in the Medical Corps of the Army I became increasingly aware that the limited education I had received in optometry school did not qualify me to render eye care that I felt the public should receive. After being discharged from the service, I entered Syracuse University College of Medicine and received an M.D. degree from the university in 1950. Following a year of general internship in Rochester, New York, I took a three year residency program at the old Episcopal Eye, Ear, Nose and Throat Hospital here in Washington. There, under the excellent guidance and teaching of many of Washington's fine ophthalmologists, I obtained the education that I thought was necessary to render complete eye care to the public.

In comparing the four years spent in optometry school with the eight years that followed preparing me to be an ophthalmologist, a book could be written. Optometric training entitles one to deal with vision alone, while the ophthalmologist training enables one to provide the public with complete eye care.

In 1953 I entered private practice with Dr. Frank D. Costanbader here in Washington and in 1955 and '56 I took special examinations in ophthalmology for certification in the American Academy of Ophthalmology. Only ophthalmologists who have had similar training to mine are entitled to take this examination.

A very comprehensive written examination is taken. If passed, one is then entitled to be examined by a Board of nationally famous ophthalmologists who for three days give a very extensive oral examination covering all phases of ophthalmology.

In 1965 I was elected President of the Section of Ophthalmology of the Medical Society of the District of Columbia. This is an organization of over 120 members, all of who are members of the Medical Society of the District of Columbia, all who are either Board-certified or who will be eligible to take the Board.

We feel very strongly that some of the proposals made in this bill under discussion do the public a disservice. It seems inconceivable to us why the practice of optometry, as defined in H.R. 1283, tries to equate optometry and medicine. As stated, the practice of optometry means the employment of any objective or subjective means for the examination of the human eye. This is completely all-inclusive. It would encompass methods and instrumentation that must be confined to those whose training and experience assure safety to the public.

This same sentence then concludes by adding its appendages to the examination of the human eye.

"An appendage is anything that is attached to any object by any means." This definition could mean that the optometrist could use any objective or subjective method that he would care to use for any part of the body. This would clearly be an infringement of the Medical Practice Act.

Subsection (d) in the definition, the determination of the scope of the human eye in general, is likewise objectionable to us. We are not attorneys, but it seems generalities like this should not be enacted into law.

Further in the definition it states that the practice of optometry means the identification of any departure from the normal condition or function of the human eye, including its appendages.

The bill would therefore not only make the optometrist operate as ophthalmological diagnosticians, but make them internists and put them into all other medical specialties.

The practice of optometry, according to the bill, means any of the acts or practices as they are included in the curriculum of recognized schools and colleges of optometry. Congress then is not defining optometry but is allocating it to the dean of any school who might include any medical course in his curriculum.

We suggest that optometry be defined as what it really is and not what they, the optometrists would like it to be, and suggest that the bill be amended to substitute the present definition in our existing law.

As written, this bill not only infringes on the Medical Practice Act, but also restricts the rights, privileges and necessities of the medical practitioner. If this bill is enacted as written, our nurses could not take a patient's visual acuity. Visual field testing, ocular motility workup and other technical tasks could not be done by technicians working under the physician's direction which the Medical Arts Practice Act now provides.

I hope the statement just made by the Dean's Committee of the Medical Schools is well taken and it is apparent that this portion of the Act would be doing the public a disservice.

We object to the portion of the bill which makes it unlawful for

any person except a physician or an optometrist to sell frames or duplicate lenses without a prescription. We believe that opticians should not be discriminated against and deprived of the services which they have been rendering to the public for years.

Section 14 of this Act makes it unlawful for any employee of the District of Columbia to advise an individual as to the proper place to obtain eye care. The professional judgment of school physicians and nurses would, therefore, be curtailed. They could not directly suggest that a child with an injured or infected eye procure needed medical attention.

We believe that the bill should state in Section 7 that the use of drops, drugs, medicines and other chemicals which come in contact with the eye be grounds for revocation of an optometrist's license.

A patient who visits an optometrist is completely at his mercy to detect any pathological state that may exist within his visual apparatus. Unfortunately, this is all too frequently not done or, if recognized, is not referred for definitive medical care, as many surveys in this area have shown.

Under the existing laws, the optometrist is under no obligation to diagnose or to refer morbid conditions. All ophthalmologists see unfortunate patients who could have preserved priceless vision if the diagnosis and treatment had not been delayed. To protect the public from these calamities, the Medical Society of the District of Columbia strongly urges a 20-30 clause be included as is stated in the substitution submitted for Section 14, and I would like to read this proposed substitution, sir:

"Every optometrist shall within ten days after the completion of an optometric refraction, refer to a physician or surgeon for a medical eye examination every person whose visual acuity the optometrist does not improve to at least twenty over thirty Snellen in each eye. The optometrist shall not thereafter prescribe, provide, furnish or adapt lenses, prisms or ocular exercises for such person unless and until the optometrist receives written approval from a physician or surgeon. Failure to comply with this section shall constitute misconduct and shall also be a misdemeanor and may be enjoined under Sec. 12 or prosecuted under Sec. 13, with the same punishment provided for in Sec. 8 of this Act."

I wish to thank the committee for this opportunity extended to me to present my views and those of the Medical Society of the District of Columbia.

MR. SISK. Thank you, Dr. Albert.

DR. ALFER. Next is Dr. L. Edward Perraut.

DR. PERRAUT. Mr. Chairman and members of the committee, I am Dr. Perraut. I am the immediate past president of the Section of Ophthalmology of the District of Columbia Medical Society. I graduated from the University of Louisville School of Medicine in 1946. I took an 18-month internship and then practiced medicine for six years in a small southeastern Kentucky town. I was called to the Army where I served the next two years.

During this time I became interested in ophthalmology. After completing my tour of duty I began my three-year residency at the Episcopal Eye, Ear, Nose and Throat Hospital here in Washington and completed residency at the Washington Hospital Center.

I then took intensive training in retinal detachments under Dr. Harrell Pierce, the Johns-Hopkins Hospital, for the next six months.

Following this I began practicing ophthalmology in Washington with Dr. E. Victor Simpson. During this same year I took the American Board of Ophthalmology examinations and became certified by the Board.

During the past year as President of the Section of Ophthalmology, I became much more aware that optometry was trying to equate itself with medicine by legislation. This should only be done by education, not by legislation. Ophthalmologists have a total of 12 years training after high school compared to six for optometrists. If Congress enacts an optometry law, the amendments submitted on behalf of the Medical Society of the District of Columbia should be adopted by Congress. We state our reasons therefor briefly:

Optometry is a mechanical art which requires skill and a knowledge of the use of certain mechanical instruments and appliances designed to measure and record the errors and deviation from the normal found in the human eye, but is not a profession and the courts in the District of Columbia have so held.

In the *Silver vs. Lansburgh Brothers* case, the United States District Court for the District of Columbia held "optometry is not a learned profession comparable to law, medicine and theology, notwithstanding standards of education that are prescribed by the statute and rules of the Board. It certainly has nothing in common with law or theology and until recently it never claimed to be a part of medicine."

In affirming so Fourth United States Court of Appeals for the District of Columbia, in *Silver vs. Lansburgh and Brothers*, held that "Optometry is a mechanical art which requires skill and a knowledge of the use of certain appliances designed to record the errors and deviations from the normal in the human eye, but is not a learned profession comparable to law, medicine or theology. Optometry is not a part of medicine."

The provisions in the present bill would forbid doctors of medicine and their nurses and technicians acting under the doctors' direction from performing any of the procedures defined in the bill. Doctors have such rights and our District Court so held in *Silver* above. Physicians and surgeons may practice optometry without being licensed. Neither the medical profession nor the public questions the propriety and need for X-ray and laboratory technicians, dental assistants, nurses, physical therapists and many other vital ancillary medical assistants.

This section of the bill is discriminatory as it forbids the utilization of technical assistants by doctors of medicine in rendering care. It would disrupt vitally needed teaching and screening procedures now being utilized and properly so in this community in schools, universities, hospitals and voluntary health programs.

PROPOSED AMENDMENTS

This provision in the bill conflicts with the government's proposal to train additional paramedical personnel because of the critical shortage of trained medical personnel. We recommend amending Section 2

to read as so follows: "Practice of optometry is defined to be the application of optical principles through technical methods and devices in the examination of the human eye for the purpose of determining visual defects and the adaptation of lenses or prisms for the aid and relief thereof, or the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye.

"Such measurement of the eye and modification of the light entering the eye is optometry and this definition of optometry has been declared sound and correct by the courts in the Silver cases above."

As drawn, optometrists could examine, use X-rays and other means of examination for pathology. This is the practice of medicine and would authorize medical procedures by optometrists which are forbidden by law. In the Silver case above, the Court held "Optometry is said by a well known writer on the subject not to be a part of medicine, either by inheritance, basic principles, development or practice. It is an applied arm of optical science resting upon the work and discoveries of physicists and opticians through the ages down to modern times. It does not treat the eye, whether in health or disease, but adapts the light rays which enter the eye in accordance with optical principles so as to produce focused and single vision with the least abnormal exertion on the part of the eye."

Our amendments are necessary to exclude the dispensing optician from being barred in filling written prescriptions of physicians, surgeons and optometrists which is the optician's existing traditional function in the District of Columbia. Actually these bills should be further amended to exclude from their provision persons who sell spectacles, eyeglasses or lenses as merchandise as now provided in the present optometry law, Section 20(b), and is now provided generally in optometrist laws throughout the U.S.

Amend Section 9 to read "This Act shall not apply to physicians or surgeons practicing medicine or surgery under the laws of the District of Columbia, nor to nurses or technicians acting under their direction."

Amend Section 9 to read as follows: "This Act shall not apply to any person who fills the written prescription of a physician, surgeon or optometrist."

The last portion of Section 9 should be deleted. Section 9(c).

Section 14 should be deleted and the following inserted in lieu thereof:

"Every optometrist shall, within ten days after the completion of an optometrist's refraction, refer to a physician for a medical eye examination any person whose visual acuity the optometrist has not improved 20 over 20 Snellen in each eye. The optometrist shall not thereafter prescribe prisms or ocular exercises for such person unless and until the optometrist receives written approval from a physician."

Optometrists state they are capable of recognizing eye diseases and do refer persons with such diseases to physicians for medical care.

The North Carolina report casts doubt on these claims and statements of optometrists. With the low percentage of referrals as shown by the North Carolina report, is also shown by optometry's own survey of Dale F. Kitner, O.D. survey and in the testimony of Meredith W. Morgan, Jr., O.D., Dean of the School of Optometry, University of California, which show referrals of only 2.9 per cent of the grand total of patients seen by optometrists.

The Canadian Royal Commission on Health Service, in its two volume report published in 1964 stated optometrists in Canada report that on the average 4.4 per cent of their patients are referred to ophthalmologists or other physicians; medical experience is that those patients who come in for refractions only almost half had an associated disease and 13 per cent had a general disease affecting their eyes.

The Canadian survey shows serious conditions of or manifested in the eye recognized by optometrists that could be detected by ophthalmologists. The medical profession's objective is to assure that the public obtain the best possible medical care and to prevent failure of referrals for needed medical treatment.

There are over 1200 eye diseases listed in the nomenclature of eye diseases which affect vision. This amendment compels in the public interest what optometrists state they do in the matter of referrals and would go a long way in the right direction of protecting the public.

We submit this committee does not intend to authorize optometrists who admittedly are not medically trained to practice medicine, concerning the 1200 known diseases of the human eye, which is an integral part of the body as a whole.

I wish to thank the committee for the opportunity to present the views of the medical society of the District of Columbia.

Mr. SISK. Thank you, Doctor, for your statement. Mr. Magee.

Mr. MAGEE. I do not have a written statement. I desire to present certain information which the committee asked for in questions this morning.

I would like to briefly refer to certain testimony produced before your committee and give certain facts and figures which the committee asked for.

Mr. SISK. If you will do that as briefly as possible.

Mr. MAGEE. I will try to be brief, Mr. Chairman.

First, I do want to comment, as an attorney, on what is the practice of optometry.

May it please the committee, as the cases have held and as history shows, optometry measures light waves as they go into the human eye. Now, this is done for the purpose of producing single, normal vision through two optics. This practice comes from the law of optics. If you have a jewel on your hand, a diamond or a ruby, refractions were used in this field long before they were ever brought into the eye field to measure the light waves as they entered into this object and as they come out. This is the function, Mr. Chairman, of optometry. It measures these waves and it adapts lenses in an effort to correct them. When they step outside of this field and get into an effort to either diagnose or treat any abnormal condition involving pathology, these gentlemen are in the field of medicine and the definitions in the present act put them there.

The Medical Society submits that the present definition of optometry is sound; it has been affirmed by the highest courts of Maryland and in the District of Columbia, and a new definition of optometry is not needed. Now, the optometrists have stated that there is an economic problem and that persons do not come to the District of Columbia who are trained in optometry, Mr. Chairman, because of the conditions in the District of Columbia.

Mr. Chairman, if you will return to the statement filed, and also given verbally by Marvin Berlin, ODS, he tells us on the very first page of this statement that there are "67 full-time practicing optometrists here in the District of Columbia and they serve a population, according to the Census, of 763,956 persons."

Mr. Chairman, according to the official survey made by the American Academy of Ophthalmology and appearing in the American Journal of Optometry, prepared by two ophthalmologists—and I will leave this with the committee—the ratio of optometrists to serve the public is adequate if it is one to twelve thousand persons.

Now, when you utilize the figure 67 and compare it with 763,956, you will find that the number of optometrists serving the population of Washington according to Optometry's figures is more than adequate.

I quote from the American Journal on Optometry, June, 1967 Report, Mr. Chairman. It reads as follows:

"The ratio of one to 12,000 is adequate in civilian life at the present time," June 1967.

A statement was made by Dr. Chapman that ophthalmologists generally throughout the United States are tending to become dispensing ophthalmologists and fit contact lenses and eyeglasses. This is not so and testimony was adduced before the Hart Committee to this effect. The facts are that 42 per cent of all physicians in ophthalmology include the service of fitting eyeglasses in their practice, while 58 delegates the fitting to the optician.

This figure, Mr. Chairman, has been constant over ten to twenty years, and there is no trend which medicine knows today of ophthalmologists increasing in the fitting of eyeglasses or contact lenses.

Let us take the District of Columbia. You have 67 full-time optometrists operating in the District of Columbia according to Optometry's figures. We have over 120 ophthalmologists operating in the District of Columbia.

Mr. Chairman, only one or two ophthalmologists that we know in the District of Columbia actually prescribe and fit. In other words, the fitting of all glasses and contact lenses in this area is performed by the opticians and by the optometrists themselves. So we know of no economic impact that is being visited upon these 67 optometrists who are practicing optometry in the District of Columbia.

This bill, 1283 and related bills, obviously was designed and prepared, I think, as the representatives of optometry have stated to this committee, to elevate and to make the practice of optometry a profession. Also, it is in keeping with the declared policy of the American Optometric Association to see what they call eye or visual care is conducted only by optometrists and I think a reading of the bill will show this, just as the representative from Labor testified, Mr. Chairman.

The definitions in the bill do carry optometrists into the field of medicine. The attempt to equate optometry with the profession of ophthalmology raises serious legal problems. I won't go into great detail because I discussed this with your committee at the last hearing, Mr. Sisk, but the Commissioners have informed this committee last year and this year that everything asked for in these types of legislation can be given by the Commissioners under existing legislation

except for three things: The Commissioners have stated they cannot, by regulation, declare optometry to be what they are really asking for, what they really want, a learned profession, not just a mere profession. (2) The Commissioners cannot bar advertising because our Court of Appeals has held that this is a calling, a skilled art, and people have the right to buy and sell services in this area and they may advertise and they may work for corporations. And (3) the Commissioners cannot make, by regulation, an optometrist an expert witness in a court of law or make his certificates evidence of what is contained within them.

These are the three things which the Commissioners have said they cannot do.

It was brought out in testimony this morning that the qualifications of optometrists can be raised. At their request they were raised in 1951 by the Board of Optometry under the jurisdiction of the Commissioners.

Everything in this area and in this bill which tends to lift optometrists up and increase their qualifications by increasing the education they have to acquire, can be done under existing legislation.

Dr. Warren was very frank to admit that all he really needs is a right to police this calling; that if you just say "Call it a profession and give us the right to pass the rules and regulations, we don't need anything else that is in this bill."

This was an honest and fair statement and it is true.

If these gentlemen, the optometrists, are seriously interested in doing what they say they want to do—that is, lift what they call their profession to the status of a profession—they must do it themselves. This gets into the field of ethics. Every profession has a code of ethics. These gentlemen can adopt codes of ethics; they can forbid advertising, and they can discipline their members in this area.

The medical profession, the legal profession has done this over the years. We see no reason why optometry cannot do it also.

Now, with respect to other provisions—for example, advertising, this gets, as I say, into another field. Dr. Warren and Dr. Chapman seem to think, Mr. Chairman, there is no remedy in this field. This is incorrect. If optometrists circulate false advertising, if they make false claims of what they can or cannot do and if they advertise it, or if they send it through the mails, there are numerous statutes under which they can be controlled. The Federal Trade Commission can move in, the Food and Drug Administration can move in, and the Post Office Department can move in if these gentlemen are going to use these practices.

The Medical Society's position on Section 14 is deep-rooted, Mr. Chairman. Section 14 may bring about a delay between the time a patient, a child in school, is seen with a diseased condition in the eye, and the time when they first see a physician.

We know of examples in the medical field. I could cite two. I won't name names. A situation occurred in West Virginia where a child was under the care of an optometrist for two years. The child had hereditary glaucoma. The child was not referred. The child, when seen two years late, was rushed immediately to Johns-Hopkins Hospital, was operated upon and is totally blind today.

The child's sister was two years younger—several years younger. The parents became alarmed and took that child to an ophthalmologist.

The child immediately went to Johns-Hopkins and the sight was preserved.

These are the things that concern medicine and all of us as citizens, Mr. Chairman, that there should never be a delay by the device of discrimination or equation or by any other device, between the time when an eye which has pathology, is placed in a physician's care.

You yourself have said sight is a priceless thing. Neglected sight, failure to send people with disease such as early glaucoma may mean the loss of that sight. I am sure that no member of this committee would want to be a party to that sort of procedure.

This is precisely what Section 14 does. We know it happened under this similar provision under the Social Security Act in the North Carolina survey.

On behalf of Medicine, gentlemen, these bills as written, including the amended one, are not in the public interest and the Medical Society of the District of Columbia opposes them.

If Congress sees fit to enact legislation, they have worked long and late in making suggested changes on H.R. 1283 which they feel they can live with and which are in the public interest and will promote health care in the District of Columbia.

May I thank you, Mr. Chairman, for this opportunity to make this statement to you.

Mr. SISK. Thank you, Mr. Magee.

There are a number of questions which I would like to ask. This committee, you may or may not know, made an investigation into the background of the North Carolina situation. I think what you are basing your statement on was proved to be, we won't say false, but having less than a factual basis. I think your line of suggestion has been well covered.

Mr. MAGEE. May I answer that, sir. We checked with the North Carolina authorities. We submitted certifications from the state that that survey was an official state certification and was correct, factually and otherwise.

Mr. SISK. We have evidence coming from North Carolina to disprove this survey. This was pretty amply taken care of last fall. There is a record on that. I do not particularly care to argue this question further.

Dr. Albert, I would like to go back to your statement that you would like certain language incorporated in this particular section. Unfortunately I do not have a copy of what you were reading from.

It would require, as I understood it, any patient who had seen an optometrist, and this patient had an eye problem which departs from the normal. Then that patient must see an ophthalmologist. Would you please clarify this?

Dr. ALBERT. Yes.

Most or practically all pathological states are reflected in the functioning of the eye, of the visual apparatus, so that if a pathological state exists, it is most likely to produce decreased functioning as would be manifest in reduced visual acuity.

Mr. SISK. Let me ask you, Dr. Albert, is such a statement included in any state law in the land?

Dr. ALBERT. I will have to defer that to our counsel.

Mr. MAGEE. I do not know. This was drawn up by the Medical Society itself, Mr. Sisk, in an effort to bring about proper results. The medical physicians felt that when the tests reached this stage, medical need is needed medically. Therefore, the optometrists should be required to refer and gave him a criteria. Colorado has gone this far. They have not put the criteria in their act. In Colorado the state legislature recently changed their law to provide that if an optometrist failed to refer, whether he saw any medical problem in the eye, that was ground for revocation of their license to practice optometry.

Mr. SISK. That is considerably different from what I understood to be the case. We have available here in the committee every state law in the land. I have no record of such action as you suggest. I am curious to know if this has been proposed in the medical profession for some time.

Mr. MAGEE. No, sir; it was proposed for the first time last year, before your committee. This is new.

Dr. ALBERT. I think Michigan now has——

Mr. SISK. I would like again, Dr. Albert, to ask you some questions with reference to the definition of optometry over in Section 3.

Take for example the State of Florida. Have you had substantial problems in the State of Florida with existing law insofar as the profession of optometry is concerned? Has the medical profession found reason to find fault with that law?

Dr. ALBERT. I am not aware of it one way or the other.

Mr. SISK. I will quote from that law, because I notice a great deal of emphasis being placed on this definition. This definition states that the practice of optometry, a profession, for the purpose of this chapter is defined as follows: "to be the diagnoses of the human eye and its appendages, the employment of any objective or subjective means or methods for the purpose of determining the refractive powers of the human eye, or any visual, muscular, neurological anomalies of the human eye."

Also in New Jersey, again, I am just glancing at some of the state laws, optometry is defined as the employment of objective and subjective means, et cetera.

Gentlemen, going back to one or two comments I made this morning, I said then and I mean it now: We are concerned with the care of the public, the right of the public to have confidence in their doctors or whomever they go to for attention concerning human ills, whether eyes, ears, throat or heart.

What percentage of the American people today are cared for by optometrists as opposed to those first contacting ophthalmologists or medical doctors? Do you have that figure?

Dr. ALBERT. The Department of Commerce issued that figure a few years ago. I think it was something like 65 percent.

Mr. MAGEE. We can get the exact figure for you.

Mr. SISK. We have a figure as high as 75 percent.

Dr. ALBERT. I think that has been changed in recent years.

Mr. SISK. The point I am trying to make, Dr. Albert, is that I might have had difficulty getting an appointment with an ophthalmologist. I happen to see both an ophthalmologist and an optometrist, as I have a glandular problem.

Do you take the position that ophthalmologists could take care of eye care to the exclusion of optometrists

Dr. ALBERT. No, I surely don't think that we could take care of that.

Dr. ALPER. The point is that in your earlier statement you alluded to the diagnosis of disease and anomalies and abnormalities of the eye and its appendages. The eye is actually embryologically an outgrowth of the brain. We feel that by training, by education, the optometrist is not capable of making the diagnoses which are required to properly differentiate abnormalities from the normal. We feel——

Mr. SISK. Doctors, did you expect the optometrist to make the cure? I believe that you are advocating a law.

Dr. ALPER. We do.

Mr. SISK. How can an optometrist make a referral if he is not permitted to make a determination of the departure from the norm? Isn't this one of the questions raised by the medical profession?

Dr. ALPER. This is why Dr. Albert advocated the 20/30 clause. Because as he stated previously, most disease of the eye will reflect itself in the visual acuity. So, if an optometrist who is trained to measure rays of light as they enter and emerge from the eye and change wave lengths by mechanical means, if he is unable by these means to bring the visual acuity to a certain level, then there must be something wrong with the eye, with the ocular structure.

We feel that by his training he is not equipped to make a proper diagnosis. If and when he reaches this level of 20/30, or can not get better than that acuity, the patient should be referred. We have any number of examples that we could cite where this has not been done where eyeglasses have been changed and errors have been made to the detriment of the public welfare.

That is all that Dr. Albert is talking about.

Yesterday Dr. Hofstadder made the statement that medicine has—I am going to paraphrase him now, but as I understand him he said medicine has abrogated the field of diagnoses because of the screening tests, X-rays of the chest, diabetic screening tests, et cetera. This is not true. This is in the field of public health where we know that early detection is the best medicine, the best prevention for disease, early detection. So Dr. Albert's statement falls into early detection of disease.

If an eye cannot be corrected to better than 20/30, then you better look for another cause than eyeglasses, which is what the optometrist does. He measures rays and light as they come in and out of the eye and changes them by means of lenses, optical means. If he cannot get to a certain visual acuity he should seek other reasons for the failure of this vision.

Mr. SISK. You will agree with me, will you not, that an optometrist does that referral?

Dr. ALPER. He does.

Mr. SISK. May I ask you a question? Am I correct in understanding from your statement that you are not critical of this committee's desire to upgrade eye care?

Dr. ALPER. No, sir, we are not. We are very much in favor of what you are attempting to do, and we think it is a wonderful work.

Mr. SISK. Do you have any record of the referrals by local optometrists here in the District to ophthalmologists?

I am referring here to those licensed and practicing optometrists, members of the Optometric Society in Washington, D.C., as against those referrals in so-called corporate practice.

Dr. ALPER. I do not think we have any official registry of such a thing.

Mr. SISK. Don't you feel that this information could be somewhat helpful to the committee?

Dr. ALPER. I think it would be a good idea. I think this would be a very good idea; yes, sir.

Mr. SISK. Do you have a record of any referrals, or do any of you know of any referrals from one of the corporate practice places?

Dr. ALPER. I do not think anyone has every kept such records in the Medical Society, to my knowledge.

Dr. ALBERT. Could I speak personally?

Mr. SISK. Yes.

Dr. ALBERT. I think half of the referrals I get from optometrists, fifty percent of them, are from those who work in the corporate practice and fifty percent in private practice. That is my personal——

Mr. SISK. Could you produce any figures? I said I think this would be rather interesting if we had a factual survey on these referrals. I am sure, Dr. Albert, you agree with me that we have some, if I can use the word, atrocious cases. In fact, as recently as the last few days, and I guess this is news to some of our corporate friends, we checked certain places in Washington which sold glasses to people who, very frankly, are not in need of glasses.

In other cases, there is a question as to whether or not they were properly fitted. Naturally, this creates concern in our minds as to the type and kind of care that people who come in off the street may receive.

It becomes rather important to me to determine the health and assistance of the Medical Society in this area helping us to clean up some of this situation. It is my understanding that you gentlemen recognize the profession of optometry as being a necessary part of this practice here in this country, is that right?

Dr. ALBERT. Yes, sir.

Mr. SISK. I have a number of questions, but first I will recognize my colleagues.

Mr. SISK. The gentleman from Maryland.

Mr. GUDE. Thank you, Mr. Sisk.

You made the suggested amendment which Mr. Sisk referred to that optometrists be required to keep a registry of their examinations and to report those which are not correctable with a certain degree of——

Dr. ALBERT. I think the essence of it was more than a requirement to refer for medical evaluation those patients whose visual acuity could not be improved beyond the 20/30 level.

Mr. GUDE. In other words, you do not suggest that a registry necessarily be kept so that negative tests would also be on such record? I am wondering, is it a proper requirement that a registered optometrist keep a register and perform certain routine tests where individuals go to have their eyes examined and unknowingly they feel that they are getting their eyes checked and that everything is in order if they

leave there and the optometrist says nothing to them about any problems?

Would it be a possible amendment to the present law?

Dr. ALBERT. I think it would be something that would be desired. Our interest is to protect the public so that the optometrist will not miss patients who have pathology. Perhaps some of these patients who have poorer than 20/30 vision, there is no pathology present. This is a very unlikelihood.

Mr. GUDE. It is very unlikely that a person whose vision can be correctable has no pathology?

Dr. ALBERT. It is not impossible, that is right.

Mr. GUDE. In other words, this particular test will screen out the—

Dr. ALBERT. The great majority of pathologic states which we feel are being missed.

Mr. GUDE. Do you have in the organization that you all represent any suggested amendments as far as the advertising area goes?

Dr. ALBERT. We do not feel that that is in our province. The optometrists themselves should be the ones who control this as we do with our code of ethics. It is as the law profession does and as the dental profession does.

Dr. ALPER. We feel so strongly about ethics in the District of Columbia that we passed a motion in our section of ophthalmology and it was issued to all members of the Medical Society that anyone who dispensed lenses, eyeglasses in the District, was considered an unethical act.

As Mr. Warren Magee stated a moment ago, there have been only one or two violations of that act since the motion was passed. We feel that we have a very ethical community and we police ourselves. We feel that the optometrists can do the same. I think it is a laudable thing that they want to do this. I do.

Mr. GUDE. You gave us the specific language. You do have specific language in the amendment that you framed. Is this amendment the law in many States, this requirement of the referral?

Dr. ALBERT. Not to our knowledge.

Mr. GUDE. Thank you, Mr. Chairman.

Mr. SISK. I would like to question you a bit further. May I refer you to page 14, line 22, H.R. 12276.

Dr. Albert, in this language there you understand there are certain exemptions provided in the act which do not apply. Then going back to the bottom of page 12 it states: "Nothing in this Act shall be deemed to prevent—

"(4) a person from acting as an assistant under the direct personal supervision of a person licensed by the District of Columbia to practice optometry, medicine, or osteopathy provided that such assistant does not perform an act which would require professional judgment or discretion;"

We are interested in seeing to it that there is no interference with the doctors' use of assistants, nurses, or screening procedures in schools. The members of the subcommittee would like very much to cooperate with you there in attempting to draft legislation with an interpretation that legally would permit you the right to use assistants.

How do you interpret this language on line 22, page 14?

Do you interpret it as being still too restrictive?

Dr. ALBERT. Yes, sir.

Mr. SISK. What suggested changes would you make?

Dr. ALBERT. We strongly object to the wording "under direct personal supervision." Dr. Chapman—

Mr. SISK. My own personal experience with doctors; ophthalmologists and optometrists is that you do not use nonlicensed personnel or nonscientific personnel without some kind of supervision; do you?

This subcommittee is interested in what kind of supervision you propose to have over these people that will be doing the work for you?

Dr. ALBERT. Under our personal direction we would propose—

Mr. SISK. "A person acting as assistant under the personal direction"?

Dr. ALBERT. Under the direction, excuse me. We are legally responsible for all of the acts and actions of our assistants, the functions that we have allocated to them we are responsible for. We feel that that responsibility in itself places the obligation on us to see that this work is done properly.

Mr. SISK. All right.

Dr. ALBERT. Mr. Sisk, Dr. Kling has been intimately working in a program to train ophthalmic assistants under a Federal grant. Perhaps it would be well if he had something to say about that.

Mr. SISK. I would like for Dr. Kling to comment as we are most interested in vision and improving vision. You will notice in the very next section, No. 4, under subsection (d). Section 5 is visual screening programs. This is to be conducted under direction and supervision. Would you make a comment on this language? I am attempting sincerely to describe my opinion and what I believe to be the subcommittee's opinion on this matter of proper supervision. We want to see it is done right and not obstruct the work that you are doing.

Dr. KLING. May I say that people who take a normal course to be an ophthalmic assistant are not kept in the course if they are not maintaining a standard of quality performance. They are not graduated until in the opinion of the faculty they can be depended upon to render quality care consistently.

I think that it would be impossible to pawn off a nontrained, non-graduated technician to anyone because I don't believe anyone in practice would accept the risk involved in having such a person working in his office.

When a person takes such a one into his office, he does certainly require some certification from the source of the technician's training, people who have a certificate bearing the signatures of the faculty who are stating that this person has indeed performed in a satisfactory manner, that he has given good evidence of good character, and so forth.

If a practitioner were so imprudent as to employ a person who rendered poor quality care, I think it is likely that he himself would render poor quality care also and that he would obtain poor quality equipment, poor quality medicines, poor quality everything. It is practically inconceivable to me that a man who exercises normal prudence and caution, conscientious attention to details in other matters concerning his own education, his own equipment, own supplies, would accept for working under his direction anyone who was not known to render such

quality care, particularly since as was brought out, he knows that he is in fact held legally liable for every act of the person working under him.

This is quite a deterrent to carelessness in this matter.

Mr. SISK. I appreciate what you have said. I am inclined to agree with you. However, as to assistants working under supervision, you can understand where this can be broadly interpreted. We are seeking language that is clear, understandable, and yet will prevent someone who may be licensed to practice from sending assistants into remote areas to do things without any kind of supervision.

I would not call that supervision; I would call it direction on occasion. We seek to avoid that kind of a loophole, and at the same time permit a legitimate type of supervision and direction.

Dr. ALPER. In other fields. Cardiologists, a nurse will take an electrocardiogram and he reads this. A neurologist has a technician who does an electroencephalogram, and an X-ray does the same thing.

In glaucoma work we have technicians who take electric tonography. These are laboratories that are placed in our hospitals or offices. They read the results. Instruments do touch the eye in case of tonography.

In the case of encephalography, instruments touch the scalp, skull. We doctors take responsibility for what our technicians who are trained do. This direct personal supervision means to me personally, I am not a lawyer or a semanticist, but this seems to imply a physical presence in the room when the technician or assistant who is adequately trained to do such acts performs adequately trained duties.

That is why we object to this particular terminology.

Mr. SISK. If I could say this: I am not personally interpreting this to mean that the supervisor, in this case the doctor, has actually to be in the room. I certainly would—

Dr. ALPER. It says direct personal supervision.

Mr. SISK. That is why I believe this is language which the subcommittee will want to consider and change. That is why, as I said, I was seeking from you suggestions that you might have for us. You are in a position where you work with assistants and nurses. You know about the kind of direction and supervision you should maintain. We want to permit this but at the same time not leaving broad loopholes where we might have assistants out over the country without adequate supervision.

Mr. MAGEE. Mr. Sisk, the Medical Society on this very language did suggest changes in the bill. They changed every section and have given your committee their suggestions as to how they feel the section should read under which they can work and properly keep optometry out of the field of medicine. It is attached to the statement, Mr. Sisk.

Mr. SISK. I appreciate that. We had the language last year. Let me say that no one has a higher respect for the medical profession than I do. However, I do not always agree with some of their positions. Actually, today I think it is quite well recognized that optometry is a profession.

I happen to be on the Committee on Rules and recently the chairman of the Armed Services Committee came before us and was discussing professions in the health field. He mentioned the profession of optometry. I think today the optometrists are basically with you

folks. I feel to the extent that you recognize this fact and help to upgrade, let us say, allied or associated agencies of the profession; to that extent the public is certainly going to be served.

I often think how long it was in my own State of California that the medical profession looked down on osteopaths. Yet today they are practicing side by side in the same hospitals. We are not attempting to put optometrists into medicine. We are attempting to the extent optometrists have a responsibility in the visual care of our people, to see to it that they perform those functions and perform them to the best possible extent.

Gentlemen, thank you very much for your appearance here today. We appreciate your testimony and I assure you that the statements put in the record will be considered.

Mr. MAGEE. Mr. Sisk, may I make one statement for the record? In your prior bill, H.R. 12937, which is similar to H.R. 1283 submitted last year to organized medicine for their review, I don't know if you were aware of this. It was submitted to the House of Delegates of the American Medical Association last June. The House of Delegates voted that organized medicine should oppose his bill. It does put optometrists into the practice of medicine.

Mr. SISK. Let me say that having served on the Veterans' Affairs Committee for a good many years and on the Hospital Subcommittee, I recognize and I have great respect for the medical profession, but I feel we have to open our minds and pride up a little bit at a time. You know what I mean.

I appreciate your stand and I have very many fine friends in the medical profession. I recognize there are differences of opinion. We take these steps one at a time and we gain in the long run.

Mr. MAGEE. Mr. Chairman, I might say this matter has been given thorough review by the Department of Health, Education, and Welfare. You have quoted Dr. Lee. I think we should go to the Commissioner of Social Security, Mr. Robert M. Ball, who has carefully put the optometrists into the proper perspective. We say in the health field. I would like to submit their report regarding how optometrists should be used in the health-care field into this record as a next exhibit.

Mr. SISK. Without objection, the report will be made a part of the record.

(The report follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION, OFFICE OF THE COMMISSIONER, BALTIMORE, MARYLAND

REPORT REGARDING THE COVERAGE OF EYE CARE UNDER THE HEALTH INSURANCE PROGRAM

Background

Section 1862(a)(7) of the law excludes from coverage routine physical checkups, eyeglasses, or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses without regard to whether these services are furnished by a physician or by another practitioner. The term "physician" as defined for medicare purposes, includes a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action. An ophthalmologist is a "physician" specializing in the diseases of the eye. Optometrists, however, are not included within the scope of the statutory definition of the term "physician," since they are not legally authorized to practice medicine and surgery.

Present policy

Since an ophthalmologist is a "physician," his medical services are covered in the same manner as the services of any other medical doctor. Likewise, the services he performs which come within the exclusions relating to routine physical examinations and examinations for the purpose of prescribing, fitting, or changing eyeglasses are not covered, just as they would not be covered if any other physician, furnishes eye care services to an eligible beneficiary, the program will cover the physician's services if the examination results in a pathological finding (other than refractive error) and/or treatment of an eye disease or injury. If no eye disease or injury is found, the physician's services rendered to the patient during that visit are excluded from coverage since the services would then come within the exclusions relating to routine physical checkups or examinations for the purpose of prescribing, fitting, or changing eyeglasses.

Discussion

Various alternatives were explored in attempting to arrive at an equitable and administratively feasible policy with regard to the exclusions. After extensive consultation with professional associations representing ophthalmologists and optometrists, specialists in the public Health Service, and many insurance companies which presently administer similar provisions in their own health plans, consideration was narrowed down to essentially two basic approaches:

1. Separate the services furnished by an ophthalmologist during an examination of a patient into two component parts—(a) refractive-type services and (b) all other services relating to the diagnosis or treatment of an eye disease or injury. Exclude from coverage the refractive-type service performed by an ophthalmologist (or any other physician) during any given examination of a patient as services representing an "eye examination for the purpose of prescribing, fitting, or changing eyeglasses";

2. Treat all the services furnished during any given examination by the ophthalmologist (or any other physician) as covered or excluded in their entirety depending upon the findings made and/or treatment provided as a result of the examination. For example, when the physician finds no eye disease or injury, treat the entire examination as an excluded service since it will essentially represent either a "routine physical checkup" or eye examination for the purpose of prescribing, fitting, or changing eyeglasses." On the other hand, where a disease or injury of the eye is diagnosed, treat the entire examination by the physician as a covered service.

After careful and extended deliberation, the second approach was adopted. Among the more compelling considerations for adopting this approach are the following: Ophthalmologists have pointed out that, from a professional and practical point of view, there is no distinction made by the ophthalmologist in the type of services performed, that there are many situations where refractive-type services furnished by an ophthalmologist are an essential part of the diagnostic steps required in order to ascertain or confirm the presence of a pathological condition, that ophthalmologists have never treated any portion of their charges as relating specifically to a refraction, and that with respect to any given visit there is essentially no distinction made in charges regardless of whether or not a refraction is performed.

Another practical consideration for adopting the second approach was the experience of the health insurance industry with this type of exclusion. The great majority of the insurance companies and Blue Shield plans which we have contacted and which administer eye care provisions similar to those contained in the medicare law use essentially the second approach in their own programs. Moreover, since beneficiaries and physicians have had considerably more experience with this method under private insurance plans, it can be expected that by using the same approach under medicare, beneficiary and physician understanding of the policy would be enhanced.

One additional significant consideration for adopting the "all or nothing" approach is that this approach would not create a situation which would be inequitable to optometrists since there would be no incentive for a beneficiary to go to an ophthalmologist for services which are in reality for the purpose of prescribing, fitting, or changing eyeglasses.

An optometrist is not a "physician" under the medicare law nor are optometric services listed among the other health services covered by the medical insurance

program. Therefore, those services performed by independently practicing optometrists which are not included within the coverage provisions of the law or which are contained in the statutory exclusions are not reimbursable as covered expenses under the medical insurance program. Thus, optometrists' services performed in connection with prescribing, fitting, or changing eyeglasses are excluded from coverage. However, optometrists' services performed in connection with furnishing prosthetic lenses prescribed for the beneficiary by a physician are covered as are the prosthetic lenses themselves. (While eyeglasses are specifically excluded from coverage, a separate provision of the law covers prosthetic devices—other than dental—which replace all or part of an internal body organ. Thus, "eyeglasses" which replace an internal body organ (the lens of the eye), as for example after cataract surgery, are covered as prosthetic lenses.)

ROBERT M. BALL,
Commissioner of Social Security.

Mr. SISK. We have to answer an automatic roll call.

Mr. McLeod, I understand that you have a witness who was desirous of leaving town tonight or in the morning.

Mr. McLEOD. He has to be in New York Thursday.

Mr. SISK. Could he be here Friday?

Mr. McLEOD. Yes, sir.

Mr. SISK. We will answer the roll call and come back and continue the hearing. This committee will take a temporary recess.

(Recess taken.)

AFTER RECESS

Mr. SISK. The committee will resume its hearing.

Just prior to our recessing, the Medical Society had completed its testimony. Mr. McLeod indicated that he has a man who needs to return to New York so at this time we will hear the witness of Sterling Optical Company.

STATEMENT OF WILLIAM N. McLEOD, REPRESENTING STERLING OPTICAL COMPANY, KAY JEWELRY STORES IN WASHINGTON, KINSMAN OPTICAL COMPANY AND VENT-AIR CONTACT LENS SPECIALISTS

Mr. McLEOD. I am representing Sterling Optical Company, Kinsman Optical Company and Kay Jewelry Stores here in Washington, and Vent-Air Contact Lens Specialists. I have been working with Alvin M. Stein, General Counsel with Sterling Optical Company of New York. Mr. Stein will make the statement. I will let his statement stand for other people I represent, if that is satisfactory with you.

Mr. SISK. Without objection their statements will be made a part of the record.

(The statements referred to follow:)

STATEMENT OF ALVIN M. STEIN, GENERAL COUNSEL, STERLING OPTICAL COMPANY

Mr. STEIN. My name is Alvin M. Stein, a member of the firm of Parker, Chapman and Flattau on 53rd and Fifth Avenue, New York, New York; New York attorneys, General Counsel to Sterling Optical Company, and I appear in opposition to the bill.

I have submitted to the committee a full statement, together with exhibits annexed, which opposes the bill in toto, and also a statement

which recommends suggested changes in the bill if the committee deems legislation desirable.

Mr. Sisk. Your first statement will be made a part of the record. The balance of this material we may attempt to put in the file. It is rather voluminous. At any rate, it will be made a part of the committee's file and the direct statement will be made a part of the record.

(The documents referred to follow:)

MEMORANDUM

This memorandum, submitted on behalf of the Sterling Optical Companies, is intended to accompany the annexed copy of HR 1283 marked to indicate suggested deletions and changes, if further legislation is deemed necessary or appropriate and to briefly explain the basis for each such change or deletion. It remains the position of the Sterling Optical Companies (hereinafter referred to as "Sterling"), however, that no further legislation is needed. The underlying general policy objections to HR 1283 are more fully set forth in a separate memorandum simultaneously submitted herewith on behalf of Sterling.

Section 2: This section assumes that the practice of optometry is a profession. The United States District Court for the District of Columbia in *Silver v. Lansburgh & Bro. et al*, 27 F. Supp. 682, aff'd, 111 F. 2d 518 has clearly held to the contrary. For other reasons more particularly stated in the Sterling Statement, it is submitted that optometry should not by this or other proposed legislation be dealt with as, or assumed to be, a profession.

Section 3(2): This subsection would include within the definition of the practice of optometry acts or practices "as they are included in the curriculum of recognized schools and colleges of optometry." The statutory meaning of the term "practice of optometry" could therefore be changed without legislative approval merely by virtue of changes in school curricula. It is conceivable that the introduction of courses in the field of medicine could, as a result of this statutory language, be deemed to sanction the practice of medicine by optometrists notwithstanding the provisions of Section 9(f), which is merely a limitation upon the construction of the Act itself. Such a delegation of power is clearly inappropriate. Moreover, the term "recognized schools and colleges of optometry" is not otherwise defined and is not even limited to schools or colleges "approved" by the Commissioners in accordance with the provisions of Section 4(6).

Section 3(2)(a): The vague and indeterminate language here used has no clear, certain or generally accepted meaning and could be deemed to authorize optometrists to engage in acts or practices constituting the practice of medicine, which optometrists are not qualified or trained to perform.

Section 3(a)(d): The words "in general" imply authority to make determinations not limited to the measurement of refractive errors, which by definition of the United States Department of Health, Education and Welfare is plainly the limit of optometric qualification.

Section 3(a)(f): The acts and practices here referred to have been and are now both within the District of Columbia and elsewhere, normally performed by opticians and other optical workers rather than optometrists and ought therefore not be included in the statutory definition of the "practice of optometry". The inclusion of this subsection would, in effect, extend the scope of the bill to activities which do not require the training or skills of an optometrist, and are plainly of a business or commercial nature.

Section 3(2)(g): Although it is the optometrist's function to prescribe and direct or administer visual training or orthoptics, the use of optical devices in connection therewith has not heretofore been and should not now be confined to practitioners of optometry.

Section 3(2)(h): The fitting or adaptation of contact lenses in the District of Columbia and elsewhere is normally done by persons other than ophthalmologists or optometrists, but under their supervision. Accordingly, subject to such continued supervision, the fitting or adaptation of contact lenses ought not be confined to practitioners of optometry.

Section 3(2)(i): This subsection would appear to authorize optometrists to diagnose pathology of the eye and its appendages. Optometrists are clearly unqualified to engage in such activities, which manifestly constitute the practice of medicine.

Section 4(7): The subject matter of the examinations for applicants to practice optometry should be left to determination by the Commissioners. Since the Commissioners are vested with authority to prescribe examinations, they similarly ought to be authorized to determine the subject matter to be covered by such examinations.

Section 7(a)(3): The grounds for refusal to renew or reinstate licenses or for license suspension or revocation should be specifically defined by statute and limited to matters essential for the preservation of the public health and welfare. Section 7(a)(7) provides adequate public protection against licensing of one disqualified to practice with safety to the public. Accordingly, the phrase "of any of the regulations promulgated by the Commissioners under this Act" in Section 7(a)(3) is superfluous and represents an unfortunate and unnecessary delegation of authority.

Section 7(a)(8): As more particularly set forth in the Sterling Statement, truthful cost or informational advertising, whether of optometric services or the sale or furnishing of ophthalmic or optical materials, has not been and cannot be shown to adversely affect the public interest, health or wellbeing. On the contrary, the prohibition of such advertising will merely result in prohibitively increasing costs to the public. Accordingly, advertising ought not be a grounds for license suspension or revocation or refusal to renew or reinstate a license to practice optometry.

Section 7(a)(9): To the extent that this subsection could be construed as prohibiting the practice of optometry as an employee, or a member of an optometric group, it clearly does not serve the public interest (see Sterling Statement). Nor does it otherwise appear that the conduct referred to has any bearing on the competence of the licensee.

Section 7(a)(10): The prohibition against the granting of credit or other inducements here referred to would not serve the public interest but would merely make eye care more costly or difficult to obtain, and work a severe hardship on the more indigent members of the public.

Section 7(a)(11): The display of materials here referred to would serve to make alternative sources of supply of such materials more accessible to the public. The prohibition against display of such material cannot conceivably advance the public interest, but would serve only to create, or tend to create, an optometric monopoly on the part of licensed practitioners of optometry (see Sterling Statement).

Section 7(a)(12): The display of an optometrist's license, diploma or certificate in open view to the public would permit members of the public to select the source of such care on a more informed basis. Clearly, the prohibition against such a display can be of no meaningful benefit to the public.

Section 7(a)(14): The prohibition against advertising here contained, for reasons otherwise stated above and in the Sterling Statement, is not in the public interest.

Section 7(a)(15): The prohibition here contained would prevent members of the public from having access to meaningful information required to make a better informed choice of the source of eye care and ophthalmic or optical materials, and would not serve the public interest.

Section 7(a)(16): This subsection would prevent, among other things, arrangements designed to procure more economic eye care for members of unions or other fraternal organizations. There is no evidence that this prohibition would result in elevating the standards of eye care prevailing in the District of Columbia.

Section 7(a)(17): As more fully stated in the Sterling Statement, there is clearly no rational relationship between the quality of eye care and the ophthalmic or optical materials sold or dispensed and the premises where these services or materials are supplied. Moreover, it has traditionally been the custom, both in the District of Columbia and elsewhere, for optometric services to be performed and ophthalmic or optical material to be sold or dispensed in stores or store-type establishments. The prohibition here contained would therefore merely serve the anti-competitive desires of certain privately practicing practitioners, and adversely affect the public and the vested rights of those presently engaged in providing eye care or selling ophthalmic or optical materials in stores or store-type establishments.

Section 7(a)(18): As more particularly set forth in the Sterling Statement, the prohibition against employment here provided for would be adverse to the

public interest and in no way tend to improve the level of eye care in the District of Columbia. Employed optometrists would be faced with loss of employment and other vested rights and benefits. Employers would be faced with the loss and destruction of valuable business and business interests.* Notwithstanding the exception contained in Section 9, unions and health programs such as HIP, would be denied the opportunity to provide economic eye care to members. Even physicians would be denied the right to employ optometrists. Since Section 3 (2) (f) defines the practice of optometry to include purely mechanical or commercial functions, the prohibition here contained would preclude the employment of optometrists to perform functions which could in no real sense be deemed of a professional nature. Clearly, the prohibitions here contained are not in the public interest.

Section 7(a)(19): The delegation of authority to the Commissioners here provided for is objectionable for the reasons set out with respect to Section 7(a)(3) above.

Section 8(a)(2): For reasons otherwise above expressed, (see comments to Section 7(a)(9)) to the extent that this subsection would prohibit the practice of optometry as an employee, or member of any optometric group, it would not be in the public interest.

Section 8(a)(4): There is no sound reason for prohibiting the duplication or fitting of lenses without a written prescription from a physician or optometrist licensed in the District of Columbia. Particularly in a society as transient as that which exists in the District, the prohibition here contained would merely cause inconvenience and unnecessary expense by requiring the services of a physician or optometrist to obtain the merely mechanical services referred to.

Section 8(a)(5): For reasons more fully set forth in the Sterling Statement and above, prohibition against advertising here provided for is unwarranted, and contrary to the public interest.

Section 8(6): See comments to Section 7(a)(10) above.

Section 8(a)(8): See comments to Section 7(a)(18) above. Moreover, the language here used is objectionable as being too vague, indefinite and uncertain, particularly since it purports to define standards of criminality.

Section 8(a)(9): The prohibition against display of signs offering ophthalmic materials for sale would unduly curtail competition and result in increasing costs of procuring such materials without any commensurate gain or benefit to the public. The term "ophthalmic materials", furthermore, has no clear or definite meaning. This subsection is further objectionable as delegating to the Commissioners authority to provide standards of criminality by promulgating regulations under Section 10 of the Act.

Section 9(c): Since the preamble of the Act indicates the desire to improve the practice of optometry, its scope ought not extend to acts or practices which are not solely within the ambit of the practice of optometry. In other words, the Act should in no way extend to activities clearly recognized as the function of opticians, optical workers or other persons who merely fabricate, sell, fit or dispense ophthalmic or optical materials. Since these activities are clearly of a business or commercial nature, the prohibitions contained in Section 8(a)(2), (5), (6), (9) are not applicable. Accordingly, this subsection should be amended to read as follows:

"Sec. 9(c) This Act shall not apply to any person who fills the written prescription of a physician, surgeon, or an optometrist, or who repairs or restores eyeglasses or spectacles to their previous condition or usefulness, or who adapts, utilizes, fits, sells or furnishes lenses."

Section 9(d)(1): The conduct of a non-profit optometric clinic should not be limited to a school or college of optometry or an association of optometrists and should not require the prior approval of the Commissioners since the rendering of optometric services in any such clinic could by law in any event only be performed by licensed optometrists.

Section 9(d)(2): This subsection should be amended to read as follows:

"Sec. 9(d)(2) an optometrist from being employed as an employee of any person to render optometric service and care;"

so as to clearly sanction the employment of optometrists (See Sterling Statement).

*The bill contains no so-called "grandfather" clause.

Section 9(d)(3): If subsection 9(d)(2) is amended as above suggested, this subsection, 9(d)(3), would be superfluous. Parenthetically, it is interesting to note that where the interests of optometrists are directly concerned, the proponents of the bill find no objection to the employment of optometrists by unlicensed persons.

Section 9(d)(4): This subsection should be amended to delete the phrase "conducted under the direction or supervision of a licensed optometrist or physician." There is no apparent reason why visual screening programs (i.e. eye chart reading) normally carried on in schools, places of employment and elsewhere, should require the added expense which the direction or supervision here provided for would entail.

Section 9(e): As more particularly set forth in the Sterling Statement, the use of the title "Doctor" by optometrists has been seriously abused. This subsection would merely countenance and encourage such continued abuse, and in no way limit the use of the title to those who have lawfully earned the title.

Section 10(a): This subsection should be amended to delete everything following the word "Act" on line 17. While the Commissioners should be vested with authority to adopt necessary rules and regulations to carry out the Act for the reasons set forth in the Sterling Statement and elsewhere above, there is no need for this authority to include the right to prohibit or limit advertising on the part of those who render optometric services and/or sell ophthalmic or optical materials.

Section 13(b): The competency of an optometrist to give testimony should be left, without restriction to the court to which such testimony is proffered. Similarly, certificates here referred to issued by optometrists should not be deemed binding on the government officers or employees referred to except as they deem appropriate in their official judgment and discretion.

Section 14: The judgment and discretion of officers or employees of the District of Columbia should not be circumscribed in the manner here provided for. There is no reason to believe that the exercise of judgment and discretion on the part of these officers and employees will be abused.

Section 15: The first sentence of this section should be deleted. The delegation of authority which this sentence would provide for is clearly improper. The Board of Optometry would consist of optometrists who could, by the exercise of such delegated authority, promulgate regulations which would favor their personal and selfish interests at the expense of the public and retail sellers of eyeglasses with whom they compete and who would not be represented on the Board of Optometry. This sentence would be even more objectionable if the Commissioners remain vested with power to promulgate regulations, the violation of which would constitute crime or result in the refusal to renew or reinstate licenses, or the suspension or revocation thereof.

Re HR 1283; 595; 732.

Hon. B. F. SISK,

Chairman,

Subcommittee No. 5 of the House Committee on the District of Columbia,
Rayburn House Office Building,
Washington, D.C.

This memorandum is submitted on behalf of the Sterling Optical companies which for more than fifty years have been engaged in the retail sale of eyeglasses. In connection with such sale of eyeglasses, the Sterling companies provide eye examinations by employed optometrists who are highly qualified and duly licensed, unless the customer presents a prescription previously obtained from his personal physician or optometrist.

The Sterling companies operate eleven retail stores in New York State and two in the District of Columbia where Sterling has engaged in business continuously since 1955. Sterling also operates a modern, well-equipped laboratory and related service facilities. In these retail centers, laboratory and service facilities, Sterling employs approximately 200 persons, including 35 optometrists, at an annual gross payroll of about \$1,500,000. The value of tangible assets, excluding goodwill and leasehold items, used in the conduct of the business of the Sterling companies exceeds \$1,500,000, of which approximately \$500,000 represents the investment in plant and facilities in the District of Columbia alone. Approximately 300,000 pairs of eyeglasses are sold annually by the Sterling Companies, and in the District of Columbia in excess of 35% of Sterling's eyeglass sales are on prescriptions emanating from customers' personal physicians.

More than 100,000 eye examinations are performed yearly by Sterling's employed optometrists. Sterling is believed to be the largest single source of eyeglasses sold to the public both in New York State and the District of Columbia.

The cost of eyeglasses, excluding eye examinations, to persons whose eyeglass needs are supplied by the Sterling companies, is generally approximately 50% less than the cost of persons whose eyeglass needs are served by privately practicing optometrists.

At no time has an optometrist employed by Sterling been the subject of any regulatory agency proceeding questioning the quality of the optometric services performed by such persons for the Sterling companies. In the leading case of *People of the State of New York, plaintiff, vs. Sterling Optical Co., Inc., defendant*, 26 Misc. 2d 412 (Sup. Ct., N.Y. Co. 1960); aff'd 14 A.D. 2d 838 (1st Dept. 1962), aff'd 11 N.Y. 2d 970 (1962), the trial court, whose opinion upholding Sterling's right to employ optometrists was unanimously affirmed on appeal by both the intermediate and ultimate Appellate Courts of the State of New York, noted, at page 420:

"Although the corporate employment of optometrists has existed for over half a century in this state, no instance has been cited where such employment caused injury to the public." (Exhibit 1)

Accordingly, it is submitted that Sterling for more than fifty years, and other retail sellers of eyeglasses similarly situated who employ optometrists, have rendered and are rendering a service of vital benefit to the public and, in particular, to those persons in the more limited income group, including a very significant number of union employees whose eyeglass needs are supplied through these establishments under union welfare programs. It is manifest that HR 1283 and the companion bills of a similar nature would (a) deprive the public of this source for satisfying eyeglass needs; (b) create an optometric monopoly and increase prohibitively the public's cost of eye care, with no commensurate gain or benefit to the public welfare or well being; (c) cause loss of employment and attendant vested rights and benefits of the employees, including optometrists employed by Sterling and other firms similarly situated, and (d) unreasonably destroy the valuable business goodwill of Sterling and other firms similarly situated, as well as privately practicing optometrists presently engaged in practice in store locations.

HR 1283 would in general terms accomplish the following:

(a) Prevent the employment of optometrists by firms such as Sterling, lay persons, physicians, health and welfare plans such as HIP and unions providing eyeglass needs for members.

(b) Prevent truthful informational or price advertising, including such advertisements with respect to optical and/or ophthalmic materials.

(c) Prevent the practice of optometry as broadly defined to include the sale of optometric and ophthalmic materials "in any retail, mercantile, or commercial store".

(d) Enlarge the definition of the practice of optometry in such a manner as to intrude and infringe upon the practice of medicine by persons unqualified.

(e) Create an optometric monopoly and prohibitively increase the cost of eyeglasses and eye care in the District of Columbia.

(f) Destroy business and employee relationships, with no protection for these presently existing valuable rights and interests.

It is submitted that the sole beneficiaries of the proposed legislation would be less than 100 optometrists engaged in the so-called private practice of optometry in the District of Columbia.

Optometrists are not medically trained. By definition of the United States Department of Health, Education, and Welfare, Health Information Series No. 64:

"An Optometrist, a licensed, non-medical practitioner, measures refractive errors—that is, irregularities in the size or shape of the eyeball or surface of the cornea—and eye muscle disturbances. In his treatment, the Optometrist uses glasses, prisms, and exercises only."

A recent public opinion survey conducted by the Gallup Organization, Inc. for Research to Prevent Blindness, Inc., indicates, however, that the public is in large measure unaware of the limited training and qualification of optometrists and is misled into believing that optometrists who widely, and in some instances illegally, employ the title of "Doctor", are physicians with medical training. The air of professionalism employed by a large segment of the privately prac-

ticing optometrists, which would be perpetuated and enhanced by HR 1283, fosters further harmful confusion. Investigation reveals that the title "Doctor" employed by many optometrists was obtained as "quickie" or, in some instances, "mail-order" degrees. A recent mailing of the New York State Optometric Association, Inc., dated April 21, 1967, discloses that the Massachusetts College of Optometry is offering the degree of "Doctor of Optometry" upon a course of study consisting of two days' attendance a week during the period from July to the second week in September upon presentation of a dissertation and the payment of a \$500 tuition fee.

There is annexed hereto as Exhibit 2 an article which appeared on April 15, 1965 in the "Optical Journal and Review of Optometry", the leading publication of professional optometry, and a statement of "Professional Terminology" which appeared in the "Manual of Professional Practice for the American Optometrist" 1966 revision, published by the American Optometric Association (Exhibit 3) which indicate further continuous attempts on the part of the privately practicing optometrists to confuse the public and falsely pass themselves off as medical practitioners.

It is additionally abundantly clear that it is presently the practice of substantially all privately practicing optometrists in the District of Columbia to engage in the sale of eyeglasses at exorbitant profit (Exhibit 4). It is the general practice of privately practicing optometrists, when supplying eyeglasses to the public, to purchase from suppliers of eyeglasses fully assembled eyeglasses and to resell such eyeglasses to the public at more than two or three times the optometrists' cost in addition to a substantial "examination fee". Since it is rarely the practice of such optometrists to segregate the items of the total billing to the customer, the public is generally unaware of the excessive costs involved in dealing with such privately practicing optometrists. To the extent that HR 1283 would prohibit price advertising, the public could not conveniently make price comparisons necessary to determine the extent to which it is the victim of this practice. To the extent HR 1283 would prevent source advertising, the public would be denied information as to alternative more economical sources of supply.

There is among practitioners of optometry the respectable, although a minority, opinion that such profiteering in the sale of eyeglasses prevents optometry from achieving the dignity of a profession (Exhibit 5). There can be little question that since privately practicing optometrists derive so major a proportion of their income in the form of profits obtaining upon the sale of eyeglasses, these self-employed optometrists are "commercially motivated" and should not be protected against reasonable price competition and competitive advertising. As vendors of merchandise, in the manner described, privately practicing optometrists are clearly distinguished from health care practitioners such as physicians and podiatrists whose canons of professional ethics prohibit profiteering in the sale of merchandise (Exhibit 6 "Principles of Professional Conduct, Medical Society of the State of New York", Chapter 1, Section 6; Exhibit 7 "Code of Ethics of the Podiatry Association of the State of New York", VI(1)).

It is further the custom of privately practicing optometrists to discourage their customers from purchasing eyeglasses from more economical retail sources, and to withhold from the customer whose eyes they examine any written prescription which would enable the customer to purchase eyeglasses from other available retail sources.

Since HR 1283 would permit optometric eye examinations to be made only by self-employed optometrists, the adverse effect upon competition and pricing which would ensue is manifest. (See Exhibit 8—the pertinent provisions of a report of the Anti-Trust Division of the Justice Department submitted to the United States District Court, Northern District of Illinois, Eastern Division, in the so-called "Optical Rebate Cases"*, concerning the effect of the judgment in those cases on the pricing of eyeglasses.)

There is little question but that Sterling and other retail sellers of eyeglasses similarly situated, who provide eye examinations through employed optometrists, constitute the one factor most likely to stimulate wholesome competition with which the Justice Department was concerned in its report to the Court. In this

**U.S. v. Bausch & Lomb Optical Co., et al.*, Civil Action No. 46C1332; *U.S. v. American Optical Co., et al.*, Civil Action No. 46C1333; *U.S. v. House of Vision-Belgard-Spero, Inc., et al.*, Civil Action No. 48C607; *U.S. v. Uhlmann Optical Co. of Illinois, et al.*, Civil Action No. 48C608. While these cases involve primarily anti-competitive practices of oculists, the analogous prevailing practices of privately practicing optometrists make the report of the Justice Department referred to clearly applicable.

respect, Arnold R. Wolfson, O.D., Garden Grove, California, in an article appearing in the March 15, 1967 edition of the "Optometric Journal and Review of Optometry" (Exhibit 9), adversely commenting upon the relentless condemnation of the employed optometrist by the professional optometric associations, noted:

"We have been talking of higher fees, of raising the cost of eye care to the public * * * We have been doing this and condemning optometrists who attempt to bring the cost of eye care down * * *."

"Optometrists in discount houses, in union plans and in store-type offices can, and in the most cases do, give adequate visual care; at the same time, they promote optometry to the public. Physical surroundings do not indicate the quality of care the patient will receive and neither does the method used to get the patient into the office. It is about time we stopped equating only a 'professional' office with ethical and professional treatment."

As Dr. Wolfson observed, the physical surroundings wherein the optometrist carries on his practice does not determine the quality of the services rendered, as evidenced by the fact that the overwhelming majority of practitioners of optometry in the District of Columbia presently practice in store-front establishments (Exhibit 10). There similarly is no evidence and no showing can reasonably be made that the employed optometrists in the District of Columbia are practicing in an unethical or unprofessional manner.

On the other hand, whatever imperfections exist in the practice of optometry, whether by employed or self-employed optometrists in the District of Columbia, may be remedied under existing legislation. The decision in *District of Columbia v. Fields*, Criminal Action No. DC 3628-66 (District of Columbia, Court of General Sessions, Criminal Division, 1966) makes clear that contact lenses may not be provided by unskilled or unqualified persons. It is also manifest that the Commissioners are vested with authority to promulgate other appropriate or needed regulations (District of Columbia Code, Sections 47-2344; 47-2345). "Bait" advertising or advertising false in other material respects may be dealt with effectively under local law (District of Columbia Code, Sections 22-1411; 22-1413), or where appropriate, by the Federal Trade Commission (See FTCA, Sections 5, 12-16; Trade Practice Rules for the Optical Products Industry, promulgated June 30, 1962).

Conversely, it is submitted that the problems which may exist would not be appropriately dealt with by the elimination of advertising or the corporate employment of optometrists as provided for in HR 1283. In 1937, the Appellate Division of the Supreme Court of the State of New York, in *Dickson v. Flynn*, 246 App. Div. 341, aff'd, 273 N.Y. 72 (1937)* (Exhibit 11), when construing Section 7109 of the State Education Law as sanctioning the corporate employment of optometrists, observed:

"The statute was passed because the legislature believed it an aid to public health, and the courts have held it to be constitutional because of its relation to public health. The benefit was intended for the public, not the optometrist. Otherwise, the statute would have been unconstitutional. The legislature did not deem it necessary to create a professional optometrist monopoly. Poverty or the lack of ability to pay has relation to public health, and the legislature may well have believed that competition between optometrist and store would make for more reasonable prices and profits, and that public health would be benefited thereby and could not suffer with an eye specialist present in the store at the place of sale."

During the last days of the recently concluded session of the New York State Legislature, a bill (Exhibit 12) sponsored by the professional optometric associations, similar in material respects to HR 1283, was favorably voted upon without hearing or meaningful discussion. This legislative action was immediately met with an overwhelming public outcry in opposition by the news media (Exhibit 13), labor organizations (Exhibit 14), business and professional groups (Exhibit 15), and governmental agencies including the New York State Insurance Department, the New York State Department of Commerce and the Economic Council of the Mayor of the City of New York, to name only a few.

*Cited with approval in *People of the State of New York, plaintiff v. Sterling Optical Co., Inc., defendant*, 26 Misc. 2d 412 (Sup. Ct. N.Y. Co. 1960), aff'd 14 A.D. 2d 838 (1st Dept. 1962), aff'd, 11 N.Y. 2d 970 (1962).

As a consequence and as a result of a fuller exploration and consideration of the facts, the Governor of the State of New York vetoed the legislation, with a message (Exhibit 16) citing the opinion of the New York State Insurance Department that such legislation would "increase costs * * * with no increase in the quality of services".

For all of the foregoing reasons, it is respectfully urged that the Committee reject in all respects HR 1283.

Respectfully submitted.

STERLING OPTICAL Co., INC.
SIDNEY WEINRIB, *President*.

THE PEOPLE OF THE STATE OF NEW YORK, PLAINTIFF, *v.* STERLING OPTICAL Co.,
INC., DEFENDANT

Supreme Court, Special Term, New York County, December 8, 1960.

Corporations—optometry—corporation may employ licensed optometrists and opticians in connection with its sale of eyeglasses (Education Law, §§ 7100, 7120)—but issues of fact exist as to defendant corporation.

1. Though a corporation is not a person who can be licensed to practice optometry (optometrist) or ophthalmic dispensing (optician), a corporation may employ licensed optometrists for the limited purpose of examining the eyes of its customers in connection with the sale of eyeglasses at retail, and for this purpose the corporation may utilize their skill to determine the need for eyeglasses and the prescription to meet such need; and similarly, as a necessary incident to the sale of eyeglasses, the corporation may employ licensed ophthalmic dispensers (opticians) who read the optometrist's prescription and select the lens to conform with such prescription and who adapt the eyeglasses to the customer's face. (Education Law, §§ 7109, 7120.)

2. Issues of fact exist, however, as to whether defendant corporation represents to the public that it provides complete optical care and as to whether its optometrists and opticians thus perform other functions which would constitute the unlawful practice of optometry and ophthalmic dispensing by a corporation.

Louis J. Lefkowitz, Attorney-General, for plaintiff. *Freedman, Loewenstein & Meyers* for defendant.

GEORGE TILZER, J. Motion by plaintiff for summary judgment. Cross motion for judgment on the pleadings, pursuant to rules 106, 111 and 112 of the Rules of Civil Practice, as to the first and second causes of action, to strike out the reply, and for judgment on the pleadings upon the first and second counterclaims, or, in the alternative, for summary judgment on the action and counterclaims.

The action was commenced to annul the corporate charter of the defendant corporation upon the grounds that it has engaged and still continues to engage in the unlawful practice of optometry and ophthalmic dispensing; to enjoin said defendant from the continuance of such unlawful practice; and for the assessment of a fine pursuant to the provisions of section 1216 of the Civil Practice Act.

The defendant takes issue with many of the allegations stated in the complaint. However, sufficient pertinent facts are conceded upon which the court may determine whether, as a matter of law, the plaintiff is entitled to the relief sought.

The defendant maintains a store where it has a large stock of eyeglass frames and eyeglass lenses. It employs optometrists on a salary basis, whose functions are to examine the eyes of customers in order to determine whether such customers need eyeglasses at all, and, if so, what type of optical lens is required. In making the examination, the optometrist uses whatever optical instruments are necessary in the particular case, which instruments are owned by the defendant. The optometrist sets out the particular optical properties of the lens required on a document commonly called a "prescription". The customer is instructed to take such prescription to another part of the defendant's establishment where he or she chooses a frame, after which a duly licensed ophthalmic dispenser, also employed by defendant on a salary basis, sees that lenses of optical qualities to conform to the optometrist's prescription are inserted, and that the frame with the lenses so inserted is properly adapted to the customer's face. The lenses of the required optical properties are cut to fit the shape of the frame. If the customer desires to purchase the frame or lens separately, he may do so.

It is conceded that the corporation is not a person to whom a license to practice optometry or ophthalmic dispensing can be issued under the laws of the State of New York.

The People claim that such acts of the defendant corporation, as hereinbefore stated, constitute the practice of optometry and ophthalmic dispensing.

The defendant started this particular business in 1914.

Prior to 1908, the business of providing appropriate optical aid to human vision was not regulated in any way. In that year the first statute requiring the licensing of optometrists was enacted (Public Health Law, art. XIII, L. 1908, ch. 460). In essence, it provided that every person desiring to commence or to continue the practice of optometry after January 1, 1909, except as hereinafter provided, shall pass an examination and secure a certificate to practice. Exempted therefrom were persons who neither practiced nor professed to practice optometry, and those who sold spectacles, eyeglasses or lenses either on prescription from physicians or from such duly qualified optometrists; or as merchandise from permanently located and established places of business.

Such act curtailed the seller to a certain extent. Thereafter in 1928, sales were further curtailed under section 1432-a of the Education Law (now § 7109 of said law) as follows:

"§ 7109. Sales of eyeglasses, spectacles and lenses at retail. It shall be unlawful for any person, firm or corporation to sell, at retail, as merchandise, in any store or established place of business in the state, any spectacles, eyeglasses, or lenses for the correction of vision, unless a duly licensed physician or duly qualified optometrist, licensed under part one of this article, be in charge of and in personal attendance at the booth, counter or place, where such articles are sold in such store or established place of business. This shall not prohibit, however, a duly certified ophthalmic dispenser from selling, providing, furnishing or adapting spectacles, eyeglasses or lenses only on prescription of physicians or duly qualified optometrists or from duplicating lenses. The peddling of spectacles, eyeglasses or lenses or the practicing of optometry or ophthalmic dispensing from house to house or on the streets or highways, by any person also shall be unlawful, notwithstanding any law providing for licensing peddlers. This shall not prohibit, however, an optometrist or physician from attending, prescribing for and furnishing spectacles, eyeglasses or lenses, or a certified ophthalmic dispenser from furnishing or adapting spectacles, eyeglasses or lenses, to a person who by reason of illness, physical or mental infirmity is confined to his abode."

The plaintiff stresses the words "as merchandise" in said section and contends that the sales are limited to "ready made" articles for which an optometrist is required to be physically present at the counter or booth during the sale to determine whether such "ready made" articles are sufficient to meet the needs of the customers.

Defendant urges that under said section it has a right to employ optometrists for the limited purpose of examining the eyes of its customers in connection with the sale of eyeglasses at retail, and for this purpose to exercise as much of their skill as is necessary to determine the need for eyeglasses and the prescription therefor.

It claims that it has no so-called ready-made spectacles or eyeglasses on display, but merely frames and lenses. It then endeavors to show that the intent of the statute was to assure that a customer was properly fitted with correct spectacles or eyeglasses and that since an examination would ordinarily be necessary and a prescription result, the law was to apply to made-to-order eyeglasses. Otherwise, it asserts, the purpose of the law would not be accomplished.

In recommending the amendment to the statute, now section 7109, the Education Department stated that the law was aimed at that more or less unscrupulous group of dealers who sold at retail spectacles and eyeglasses which were selected by their customers without adequate advice and which articles it was found often impaired or ruined the vision of the individuals so purchasing them.

In interpreting section 7109, the United States Supreme Court in *Roschen v. Ward* (279 U.S. 337, 339), states: "When the statute requires a physician or optometrist to be in charge of the place of sale and in personal attendance at it, obviously it means in charge of it by reason of and in the exercise of his professional capacity. If we assume that an examination of the eye is not required in every case, it plainly is the duty of the specialist to make up his mind whether one is necessary and, if he thinks it is necessary, to make it."

Section 7109, I conclude, was aimed at bargain counter reading glasses. The words "as merchandise", appearing in the section have special meaning. They were no doubt taken from that section of the Public Health Law of 1908 concerning those exempted from securing a certificate to practice optometry and were intended to distinguish between prescription glasses and glasses at hand. Thus, such new section is but another curtailment on the seller. Under said section a corporation is not only allowed to employ, but is required to use an optometrist. If such optometrist decides an examination is necessary, then it is his duty to make one (*Roschen case, supra*). This without question is the practice of optometry by an employee in behalf of the employer. It is something which was not previously required but is now specifically mandated by law.

Defendant's argument that section 7109 sanctions its employment of optometrists as an incident to the sale of prescription glasses would be tenable if the law was aimed at other than ready-made glasses generally on the counter or sold by peddlers from house to house. As stated before, its intent was to prevent the sale at retail of eyeglasses as but another piece of counter merchandise. Section 7109 of the Education Law, the court finds, does not sanction the defendant's employment of a licensed optometrist to the extent of permitting such optometrist to write prescriptions.

Such conclusion as to the restricted purpose and intent of section 7109 of the Education Law is not dispositive nevertheless of the basic issue presented. Although required to hire an optometrist in the sale of counter eyeglasses, may a corporation employ a licensed optometrist for the additional purpose of examining a customer and supplying a prescription, even though the Education Law prohibits a corporation from practicing optometry? Or, putting it another way, is such hiring an attempt to circumvent the law to enable the corporation to practice optometry indirectly which it cannot do directly? The issue is not the defendant's right to practice optometry as if it were a licensee or its right to sell the totality of an optometrist's services and functions. The question concerns the propriety of defendant's employment of optometrists for the limited purpose of examining the eyes of its customers in connection with the sale of eyeglasses at retail, and for this purpose to utilize their skill to determine the need for glasses and the prescription to meet any such need.

The question of whether defendant's limited activities constitute the practice of a profession restricted to natural persons has not been directly passed upon by our appellate courts. Foreign decisions, moreover, are in conflict. The right to engage in a lawful occupation is a fundamental, natural, essential, and inalienable right, one of the privileges of citizenship. Like other rights equally fundamental, however, the right to engage in any legitimate trade, occupation, business, or profession, is not absolute, but is subject to a reasonable and necessary exercise of the regulatory powers of government in the public interest or welfare. The inalienable right of every citizen to follow the common industrial occupations of life does not extend to the pursuit of those professions which are subjected to supervision in the interest of the public welfare. As to what is a profession, the term connotes something more than mere proficiency in the performance of a task; it implies intellectual skill as contrasted with that used in an occupation for the production or sale of commodities. Originally, and historically, the word "profession" was applied only to law, medicine, and theology or divinity. From early times, moreover, the "learned professions" were given "exclusive rights and subjected to peculiar responsibilities." The practice of law or of medicine was not a business open to all, but a privilege conferred upon the individual engaged therein. A corporation, it was held some 50 years ago, could not practice law or medicine, nor might it hire lawyers or doctors to act for it (*Matter of Co-operative Law Co.*, 198 N. Y. 479, 484). As the applications of science and learning were extended to other fields, other vocations became known as "professions". The liberalization of the term, however, to embrace chemists, editors, electricians, landscape architects, teachers, and short-hand reporters, among others, did not give to such "professions" exclusive rights nor subject them to peculiar responsibilities. If wrongs were practiced by individuals engaged in these callings, a State might not seek to remedy such evils by imposing unreasonable and unnecessary restraints upon them. If it was felt that only natural persons should be authorized to carry on one of these vocations, such a statute would have to bear "a real and substantial relation to the public health, safety, morals, or some other phase of general welfare. * * *

A state cannot, 'under the guise of protecting the public, arbitrarily interfere

with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them." (*Liggett Co. v. Baldridge*, 278 U.S. 105, 112-113.)

A case in point was before our Court of Appeals in *People v. Dr. Scholl's Foot Comfort Shops* (277 N. Y. 151) where the defendant corporation was convicted of unlawfully practicing podiatry. There, FINCH, J., writing for a unanimous court, said (p. 156): "It is contended, however, that the present statute, in providing that 'no person' shall practice chiropody without a license, bars the employment of licensed chiropodists by a corporation; that a corporation is a person; that it cannot be licensed, and that, therefore, it cannot employ licensed practitioners. This construction involves an unjustifiable reading into the statute of terms which it does not contain. The statute does not mention corporations, and on its face has no applicability to corporations. Its obvious purpose is to protect the public health by prohibiting any one from treating or diagnosing foot ailments unless qualified, and by requiring such qualification to be shown by the possession of a license. Neither the context nor the object of the statute accords with the interpretation which would prevent corporations from employing licensed chiropodists." After pointing out that attempts to confine ownership of drugstores to licensed pharmacists or to corporations whose stock was owned solely by licensed pharmacists were declared unconstitutional on the ground that such a requirement concerning ownership bore no real relationship to public health, and, therefore, was unreasonable (*Liggett Co. v. Baldridge*, *supra*), the reasoning of Judge FINCH in the succeeding paragraph is particularly pertinent to the issue at hand (p. 157): "The analogy between the profession of podiatry or chiropody and those of optometry and pharmacy, is a close one, and in the absence of a clear expression of intention we should not hold that licensed practitioners of one may not be employed by a corporation when the Legislature permits such employment of the others."

After the decision in the *Dr. Scholl's* case (*supra*), the Legislature in 1942 amended the law pertaining to podiatry and specifically prohibited the practice thereof by corporations with the provision that "it shall be lawful for corporations organized and existing under the laws of the State of New York and which on or before the first day of March, nineteen hundred forty-two, were legally incorporated to practice podiatry to continue such practice *through licensed and registered podiatrists*" (Education Law § 1415-a, as added by L. 1942, ch. 785 [now Education Law, § 7009]; italics supplied). The Legislature, it must be observed, did not change or further limit the law with respect to employment by a corporation of optometrists or pharmacists. In fact, although some seven bills were introduced in the last three sessions of the Legislature to amend section 7109 of the Education Law to provide in essence that a corporation shall not practice optometry directly or through a licensed optometrist employed by it, all failed of passage.

A further illuminating decision as to the defendant's right to sell eyeglasses and to employ optometrists for the purpose of examining the eyes of customers in conjunction with such sales, is that of *Matter of Dickson v. Flynn* (246 App. Div. 341, *affd.* 273 N. Y. 72). In that case a certificate of incorporation which specifically provided for the right to employ optometrists to examine the eyes of customers in connection with the sale of eyeglasses at retail was submitted to the Secretary of State, who refused to accept it. An order of mandamus requiring the Secretary to file such certificate was affirmed by the Appellate Division in an opinion by HILL, P. J., which reads as follows (p. 344): "The business in which the corporation is to engage is the sale of eyeglasses, spectacles, and lenses at retail. It does not become the practice of medicine or optometry because of the presence of a physician or optometrist. However, for the sake of the argument, if it be determined that the employment of a physician or optometrist amounts to a limited practice of medicine or optometry, petitioners are still entitled to the relief they seek. All persons had the right to sell eyeglasses before the enactment of article 54 of the Education Law. The Legislature by section 1432-a of that article has explicitly recognized and reaffirmed that right and, in addition, has required that the selling be surrounded by safeguards."

In answer to the argument of the Attorney-General that the statute (Education Law, § 1432-a, now § 7109, quoted above) does not confer upon a corporation the authority to employ optometrists for the purpose of examining the eyes of customers in connection with the sale at retail of eyeglasses by the corporation, Judge HILL said (pp. 343-344): "The statute was passed because the Legislature be-

Heved it an aid to public health and the courts have held it to be constitutional because of its relation to public health. The benefit was intended for the public not the optometrist. Otherwise the statute would have been unconstitutional. The Legislature did not deem it necessary to create a professional optometrist monopoly. Poverty or the lack of ability to pay has relation to public health and the Legislature may well have believed that competition between optometrist and store would make for more reasonable prices and profits, and that public health would be benefited thereby and could not suffer with an eye specialist present in the store at the place of sale. Unless some constitutional right is invaded, the clear intent of the Legislature should be given effect."

The Court of Appeals, as noted, affirmed the mandamus order (273 N.Y. 72).

The plaintiff relies principally upon the decision of this court in *Dickstein v. Optical Serv.* (19 Misc. 2d 495). In the *Dickstein* case the court was not asked to summarily enjoin and annul the charter of a corporation. There was involved but a motion to dismiss a complaint under rule 106 of the Rules of Civil Practice, which motion was decided upon the ground that the complaint stated a cause of action for a declaratory judgment. Moreover, the complaint there alleged that the defendant, through its employees, provided the totality of the optometrist's services and functions, including "ocular exercises" for the eyes of the customer. Thus the complaint averred that the optometrists employed by the corporation rendered services that had nothing whatever to do with the sale of eyeglasses. On the motion, of course, the court assumed the truth of the allegations of fact stated in the complaint. The court is advised that the *Dickstein* action was discontinued by stipulation between the parties.

Here we are not concerned with the sale of an optometrist's functions, but with the sale of eyeglasses. The court, it must be emphasized, does not question that optometry is a personal profession and that a corporation cannot practice it. It must hold, nevertheless, that while section 7109 orders that a corporation must employ an optometrist in connection with the sale of self-prescription glasses, the law of this State does not confine an optometrist in the employ of a corporation to the simple determination as to whether the customer should select ready-made glasses. Such a limitation bears no relation to the protection of the health, welfare or safety of the public. The public requires the same protection whether the eyeglasses are ready-made or assembled to order, and the optometrist must exercise his art in both instances to the same extent and for the same purpose, that is, to examine eyes to determine the proper prescription required to correct the vision. The public is not better protected if the sale of eyeglasses is confined to optometrists and denied to corporations which employ optometrists to perform exactly the same function in connection with the retail sale of eyeglasses that an optometrist would perform as a storekeeper (*Matter of Dickson v. Flynn, supra*, p. 344). The plaintiff may not, in the guise of subjecting a profession to its responsibilities, arbitrarily interfere with private business. As one may select the savings of having a prescription filled in a drug chain store, another may insist on the individual attention of a neighborhood pharmacist; so, too, if a member of the public desires the attention of an individual optometrist, that is still his privilege. The circumstance that the defendant has been successful in its business may be said to indicate that in fact the public is being better served. Indeed, although the corporate employment of optometrists has existed for over half a century in this State, no instance has been cited where such employment caused injury to the public. The court finds that the defendant is not prohibited from employing licensed optometrists for the limited purpose of examining the eyes of its customers in connection with the sale of eyeglasses at retail and for this purpose to utilize their skill to determine the need for glasses and the prescription to meet any such need.

What has been said with regard to the defendant's employment of optometrists applies as well to the defendant's hiring of ophthalmic dispensers. It was not until 1946 (L. 1946, ch. 697) that the Legislature enacted a statute requiring the certification of ophthalmic dispensers (now Education Law, § 7120 *et seq.*). In the defendant's case, the optometrist employed by it writes a prescription, which is then given by the customer to the ophthalmic dispenser, or optician, as he is popularly called, who reads it, selects the lens to conform with it, and adapts the eyeglasses to the customer's face. Neither section 7109 of the Education Law nor any other statute of this State prohibits corporations from employing optometrists and opticians and utilizing their services in the manner of defendant. The primary purpose of the statutes passed with respect to optometrists and opticians was to insure that their skills would be rendered by competent

and licensed persons and thereby to protect the public health. That purpose may be fully accomplished though the persons rendering the services are employed by a corporation.

In summary, defendant's activities as enumerated above do not constitute the unlawful practice of optometry or ophthalmic dispensing. Accordingly, the plaintiff's motion for summary judgment is denied. Such determination is limited, as we have said, to the propriety of defendant's employment of optometrists and opticians as a necessary incident to the sale of eyeglasses at retail. The plaintiff further alleges, however, that the defendant represents to the public that it provides complete optical care. In this respect, issues of fact are raised as to whether the optometrists and opticians in the employ of defendant perform other functions which would constitute the practice of optometry and ophthalmic dispensing by the defendant. The presence of such issues precludes summary judgment in favor of the defendant and requires that the complaint and the reply be sustained. The defendant is entitled nevertheless to partial summary judgment, as indicated, to the extent of declaring that the employment of optometrists and opticians as a necessary incident to the sale of eyeglasses is not unlawful. Settle order.

PRACTICE MANAGEMENT—SEMANTICS IN OPTOMETRY

(By Jack R. Hale, O.D., D.O.S.)

Since optometry is a discipline of growing importance in the field of health, I wish to share my thoughts regarding the application of semantics. I do not anticipate complete agreement with my thesis; my only desire is to stimulate ideas that may result in a more positive approach to some of optometry's problems.

A well known story relates how George Westinghouse designed and patented a compressed air brake for railroad cars. One railroad tycoon remarked, "Do you mean to tell me with a straight face that a moving train can be stopped with wind?"

Words are more than descriptions, they are evaluations. The behaviorist school of psychology even believes that all thought is subvocal speech.

Grammar, in a sense, deals with word-to-word relations. Logic goes further, since sentences are assertions to logicians. Semanticists state that words and assertions have meaning only if they are related in operation to referents.

In general, semantics is of fundamental importance in the science of man. Gestalt psychology, psychiatry, cultural anthropology and various factors of human behavior are now assuming a growing importance. Both organizing and selecting factors have a positive relating importance to linguistic habits and the structure of language. Our culture demonstrates that both causes and effects are within man's evaluative mechanisms.

WORDS IN ACTION

Experience has demonstrated that there are segments or groups within organized movements (or professions) who cannot be comfortable until they find a panacea. These people find fulfillment in supporting cults.

Supporters of professional optometry should not associate with unscientific groups because skilled propagandists can use them. Beware of those who offer vague or undefined words which support a superstructure of semantic gobbledygook! The scientific method, in approach, attitude and dissemination, is a hallmark of professionalism.

CONTRASTING APPROACHES

Misuse of words is apparent in the contrast of positive and negative approaches—

Negative: "I want to think about referring you to a doctor."

Positive: "Our case findings indicate your best interests would be served by referral to a physician for additional professional attention."

Use "physician," rather than "doctor." By choice of words, indicate that your skill and training is on a comparable professional level. Substitute the term "ophthalmologist" for "physician" when indicated.

When asked if you use drops—

Negative: "As a non-medical man, I can't use them."

Positive: "Your refractive needs can be evaluated more efficiently without drops, and drops have bad carry-over effects at times."

Avoid the term "non-medical" like the plague. It is a weapon of our adversaries. Are they not "non-optometric?"

When asked if you guarantee your work—

Negative: "I don't know. Something might be arranged."

Positive: "No real professional man ever gives a guarantee; besides, my professional ethics and also my insurance forbid such statements. We will do our best for you, which is the important thing, isn't it?"

The positive approach affirms your professional status, and you gain rather than lose prestige.

When asked, "How much are your frames and lenses?"—

Negative: "Our prices are as cheap as any place in town."

Positive: "It really is impossible to answer this. Lenses, in particular, vary for the needs of each patient."

Alternate answer to shift emphasis: "What is your visual condition?"

Since the patient's question inquires basically about your office, you have every right to use the alternate answer. Frames and lenses are devoid of value without your professional care.

INFLUENCE ON PATIENTS

Phase One in influence is predicated on people (patients). The modern professional optometrist recognizes more than the patient's need for a pair of glasses. Generally speaking, if primary needs were the basic criteria of importance, China and India would be the greatest nations in the world because of the great and perpetual needs of their masses.

A successful professional equation requires more than just a patient needing something.

Phase Two in influence is the optometrist himself. We must constantly watch our in-office language, since we may not be aware of its tremendous inherent power. Our professional language impresses and is automatically projected to patients, their friends, and acquaintances.

An optometrist's greatest practical asset is his in-office semantics. His words and assertions have meaning and impact when properly used. The patient has sought him for advice and is willing to listen to his opinion. How he influences the patient by what he says and does directly equates his success in practice.

"OPTOMETRY"—GOOD, BAD, OR NEUTRAL?

Near the turn of the century certain opticians decided in assembly to use the words "optometry" and "optometrist." Naturally, not all those within the profession thought that this terminology was the best possible.

Is the term "optometrist" good or bad? Actually, it is neutral in certain aspects, a word through whose use and identification members of the profession theoretically create an image. Does "optometry" have a national image? Other professions, some through use of TV, have clearly delineated professional personalities. Is it possible to have professional prestige without a national image?

In the last analysis, the profession is a composite of individuals. If the public is confused by the various modes of optometric practice, the best presentation for personal prestige is to project the highest personal standards. *Effective public relations radiates from a quality professional image.*

Think over this fundamental question: How many of your patients know the educational qualifications of an optometrist? Can a professional image be built on sand? A careless projection or publication of qualifications may clash with state statutes and damage carefully nurtured prestige. At times the indirect presentation of educational credentials is the most effective way.

SUMMARY

General semantics is concerned with language habits, such as how we talk and what attitudes we have toward our own remarks. How we act is determined by how we think, but sometimes we may act without thinking. Even when we supposedly act without thinking, our acts follow guides of thought patterns, which co-relate to the language we use. Language most often reflects intrinsic behavior or innate cultural patterns of an individual.

One should study, think, act and talk professionally at all possible times. Management of the patient's visual needs in the most professional manner will reflect the highest interest of the practitioner and of the profession.

A vision specialist attempting to practice in a commercial atmosphere is not true to himself, let alone to his patients. These surroundings indicate a schizophrenic-like deterioration of patient interest.

Intelligent practitioners now engaged in commercial practice should phase-out the trimmings and decorum of unprofessional practice and turn to the quality approach of professionalism. Up-to-date practice management techniques build a practice consistent with ethical standards and can be dynamic. The old-fashioned heavy advertiser is facing less and less return and needs emancipation from the snake pit of self-interest.

The words and language of communication channels shape the content of the human psyche and the influence of that process on human behavior. Optometrists, in particular, should be vitally aware of the insights of today's public. Our surging, changing modern society finds up-to-date professional optometry in tune with its needs and desires. A larger and growing number of optometrists are building ethical large-volume practices. Last year, personal income in the United States rose to a record \$478.8 billion. Blind adherence to commercialized practice management techniques of years past may condition or prejudice some optometrists against 1965 professionalism.

Objectivity is and always has been a rare talent. The umbilical cord of wishful thinking, vanity, and self-interest requires a decisive slash.

Professional progress is a re-evaluating and upgrading of the tools and talents of one's occupation. However, postgraduate training and constant upgrading of professional materials are in vain without upgrading of professional semantics. Knowing more and acquiring better facilities are also in vain without meaningful communication to patients.

Above all, we must be true to ourselves, our God, and our professional destiny in the service of mankind.

[From the Manual of Professional Practice for the American Optometrist]

EXHIBIT "3"

PROFESSIONAL TERMINOLOGY

The public and particularly your patients will understand and appreciate your professional services only if what you say and do reflects professional thinking. The American Optometric Association recommends that all optometrists use the following terminology:

A.O.A. recommended terminology

Please use:

Practice.....	instead of Business
Patient.....	instead of Customer
Fees.....	instead of Price or Cost
Optical laboratory.....	instead of Optical Shop
Optical technician.....	instead of Shop Man
Supply house.....	instead of Wholesaler
Providing services.....	instead of Selling Glasses
Ophthalmic materials.....	instead of Optical Merchandise
Prescribing.....	instead of Selling
Supplier.....	instead of Jobber
Visual examination or visual analysis.....	instead of Eye Examination or Eye Test
Vision care.....	instead of Eye Care
Visual training.....	instead of Orthoptics
Secretary or assistant.....	instead of Office Girl
Public relations.....	instead of Publicity
Local society.....	instead of Local Association
State association.....	instead of State Society
AOA.....	instead of National Society
Educational meeting.....	instead of Meeting
Physician.....	instead of Doctor
Motorists' vision.....	instead of Drivers' Vision
Optometric.....	instead of Optical
National congress.....	instead of Convention

Prices Charged by Washington American Optometric Association Members * as of June 1967 for Glasses to be Duplicated (Cost of same glasses at Sterling Optical—\$12.45).

<i>Name</i>	<i>Total price (lenses and frame)</i>
Berlin, M.....	\$23.00
Campbell, F.....	27.50
Couperthwaite, C.....	24.50
Cowan, A.....	22.00
Dantzie, D.....	26.00
Dosik, R.....	16.50
Duff, W.....	20.00
Ephriam, Z.....	20.00
Goldblatt, D.....	22.00
Greenwood, J.....	24.00
Kale, D.....	18.60
Katz, H.....	26.00
Katz, P.....	16.50
Keely, W.....	22.50
Kershner, L.....	22.00
Lee, S.....	17.00
Lyner, J.....	20.00
Parinet, H.....	25.00
Pollack, H.....	22.00
Robbins, E.....	22.50
Sheley, R.....	22.50
Shelton, J.....	22.50
Toman, J.....	21.25
Teunis, Ralph.....	25.00
Teunis, Robert.....	25.00
Uhler, C.....	26.00
Warren, E.....	23.00

DISCUSSION—THE CHALLENGE OF THE HART BILL: TAKE THE PROFIT OUT OF EYEGLASSES

(By Samuel Drucker, O.D.)

Regardless of its eventual fate, the Hart Bill * has raised a moral issue: Should a doctor be permitted to profit from a patient's illness or needs?

In past decades, medicine often confronted optometry with the same issue. Medicine argued that optometrists profited from the sale of eyeglasses and could not, therefore, give an honest opinion on their need. In later years, ophthalmologists began to dispense. The argument by medicine was quietly interred.

If their original argument was valid, why did ophthalmologists turn to methods they had called "unethical" for optometrists? One reason was competitive. It was an attempt to answer the nagging question of why most people went to an optometrist. The answer lay in the unified service of the optometrist. By combining dispensing with refraction, he was offering what the patient wanted, in less time, with less effort, and generally at a lower cost.

If the ophthalmologists had been content to dispense at laboratory costs, the changeover would have been ethical, and the end results might have been devastating to some optometrists. However, the commercial rewards of dispensing proved more attractive than the objective of stripping from optometrists the most accepted feature of their services. Like optometry, ophthalmology fell into the trap of commercialism and will pay the bill in eroded professional prestige.

*Omitted from this listing are those optometrists listed as A.O.A. members in the Washington Classified Directory who are deceased, are retired from practice, have temporarily closed their offices, and who do not duplicate glasses.

*Error's Note: S. B. 2563, introduced in the U.S. Congress on Sept. 28, 1965, by Senator Philip A. Hart of Michigan, is now awaiting hearings. The stated purpose of the bill is: "to strengthen the antitrust laws by prohibiting the payment to or receipt by persons licensed to engage in the practice of medicine, of profit, rebates, refunds, commissions, discounts, rentals or other valuable considerations in connection with the supplying to patients drugs, devices, or other products prescribed by such licensees." Hearing in 1965 prior to introduction of the bill centered on the dispensing of eyeglasses by ophthalmologists.

Prior to World War II, the income of optometrists depended entirely on profits from the sale of eyeglasses. Prescriptions were sometimes changed for trivial reasons. However, the profit was no more than the professional fee should have been, and the patient came out ahead with new lenses.

On the other hand, the ophthalmologist has always charged a substantial examination fee, and could always afford an honest opinion on the need for glasses. Any profit now derived from dispensing must, therefore, be based on commercial considerations.

Also, it is widely acknowledged that ophthalmologists are determined to knock out their optometric competitors—just as they are gradually knocking dispensing opticians out of business. Monopolistic intent is clearly a factor to which Senator Hart's subcommittee could give due attention.

The academic standards of optometry have escalated impressively in recent years. As a result, many optometrists now charge as much for an examination as do ophthalmologists. The rationalization is that the quality of our services is equal to, and sometimes superior to, the quality of the services of medical refractionists. Therefore, optometrists can, and do, render an honest opinion on the need for glasses. However, there is still the serious obstacle of the commercial profit from cosmetic frames. So, arguments in support of the Hart Bill and against profit on materials by ophthalmologists may apply equally to optometrists who do not observe a rigid fee system.

When hearings on the Hart Bill begin, it is almost certain that opponents of optometry will seek an amendment to include *all* refractionists as "licensed personnel". Failure to do this might give the impression of professional discrimination against ophthalmologists. Such an amendment might present a very difficult problem for optometry since the unified service is historically interwoven into our professional fabric.

LIBERAL CONCEPT OF COSTS

The crux of the matter is that the Hart Bill would *not* prohibit dispensing, but would, in effect, limit the charges made for eyeglasses to laboratory costs. Since the approved AOA system ostensibly limits the dispensing fees to costs plus laboratory charges, there is no apparent conflict on the surface. However, some optometrists have a very liberal concept of "costs", and include time spent in frame selection, ordering, verification and adjustment. This is a concept with which Senator Hart is not likely to agree.

The fallacy in our reasoning is that we must charge professional fees for time spent in a service that could easily be performed by a clerk or salesman. There are obviously two fees in the "fee system", and the fee for supplementary services will have to be made demonstrably smaller than the fee for purely professional services. Otherwise, it would seem that what we formerly recognized as a commercial profit has merely been relabeled as a dispensing charge.

COMPETITION OF DISCOUNT HOUSES

In large cities the examination fees of many optometrists and of some oculists (non-certified medical refractionists) are often very low because the entire price structure is depressed by the competitive methods of discount houses. This factor would make it correspondingly more difficult for refractionists to survive on the basis of the usual examination fee charged in such areas. Thus, there is often a greater degree of dependency on profits from the sale of eyeglasses than is compatible with the requirements of professionalism. Yet, even here, a broadened Hart Bill may offer more of a promise than a threat, for the alternatives posed by cut-throat competition may yet become devastating.

Urban and suburban refractionists need to see that the economic foundations of the unified service have been hopelessly breached by discount houses. Nothing we can do will restore the status quo ante. Even if refraction services were separated from such houses by law and more stringent rules on "gross negligence" were promulgated, the discount house could still sell good quality lenses in a durable and attractive frame, and make a profit at a price that would be completely impossible for the private practitioner to meet. Our patients would simply pay us for their prescriptions, and have them filled by a discount house. They could have the prescriptions filled personally in the same manner as they now do with industrial safety glasses, or even by mail.