Our chief reliance for professional integrity must no longer be placed on the unified fee system which is rapidly becoming obsolescent, but rather on a substantial examination fee, standing separate and aloof from all other charges. A substantial examination fee can be commanded only in unimpeachable professional environments, so that the store-type of practice will have to be relegated to an honorable place in our history.

Although some 40 states have laws against corporate practice, New York State seems to have had more difficulty in this regard. Anti-corporate practice bills have been passed by the State Legislature twice, and twice they have suffered gubernatorial vetoes. On his own initiative, an attorney general recently began a suit against corporate practice of optometry, and a State Supreme Court justice declared corporate practice illegal. Yet, New York optometry still pursues this elusive phantom with a determination that has virtually become a crusade. The fact still evades many that the corporate practice of optometry exists only because the dispensing of ophthalmic materials is seen so closely into the fabric of the profession itself.

Even today, no one in New York can obtain a certificate of incorporation to practice optometry, any more than one can get such a certificate to practice law or medicine. A corporation cannot be licensed to practice a profession. For this reason, suggestions that present corporations be so exempt, to prevent future corporations from hiring optometrists, has always been bad advice. It needs to be clearly understood that the corporate employment of optometrists could not exist if optometry were, in fact, divorced from the dispensing of eyeglasses. Profit from eyeglasses is all that interests such corporations.

The Hart Bill, if expanded to include optometrists, might offer us a rare opportunity to cut loose from our commercial ties. From this point of view, it should be thoughtfully considered. In the final analysis, the bill simply confronts us with a challenge to "take the profit out of eyeglasses." If the bill is passed and is applicable only to ophthalmology, we can expect the charges of commercialism in optometry to be renewed with redoubled violence—and, perhaps, not without justification. We are at another dangerous crossroads.

Discussion—A Division of Labor to Resolve Our Conflict with Opticianry

(By S. Drucker, O.D.)

The relationship of optometry with opticianry, while never wholly satisfactory, fell to new lows in recent years chiefly due to two factors; first, the development of contact lenses; second, the squeeze by refracting physicians who are now dispensing eyeglasses with the approval of the American Medical Association. Many ophthalmologists have expressed annoyance at the attitude of some opticians in referring to contact lens wearers as "my patients." Some opticians have been wondering whether their former relationship with ophthalmologists as an ancillary medical group should not be altered in favor of a more independent stand that would involve a more friendly relationship with optometry.

The recent suggestions by Senator Hart of Michigan that dispensing of eyeglasses be separated from diagnosis so that a physician would not profit from the sale of ophthalmic materials, seemed to be based as much upon ethical considerations as upon the monopolistic practices which his subcommittee was considering.

Opticians can be expected to support the Hart proposals with enthusiasm, just as they were encouraged two years ago by the action of the California legislature prohibiting physicians from operating drug stores unless licensed separately by the Board of Pharmacists. There seems no valid reason why states that license opticians cannot legally take similar action in dispensing.

What is more difficult to understand is how any reasoning that may be applicable to physicians would not apply with equal force to optometrists.

The fee system is ostensibly the accepted system of our own profession. If the system is observed in fact, as well as in print, severance of the dispensing of eyeglasses from their prescription should bring no serious hardship to professional optometrists. With safety glasses, and pre-paid plans that call for provision of glasses to union members and others at cost, an increasingly larger percentage of our income is being derived solely from examination and other

service fees. Against this the large number of cosmetic frames being marketed for profit has created a situation where the principle of the fee system is being threatened. There is little point to making a large investment in a jeweled or experimental frame and then giving it away at cost. Clearly, some new thinking is needed on this subject.

In our relationship with opticianry, optometry seems to be making the same mulish errors that ophthalmology has made with us. This suggests that the same ignoble motives may be applicable in both cases. Like ophthalmologists, we refuse to recognize any degree of independent responsibility, in any phase of opticians' work, or to acknowledge their right to eventual professional status. The result has been increasing legislative pressure by opticians that can only aid those who thrive on controversy, disagreement and court actions.

Clearly, some agreement based upon a division of labor ought to be considered before optometry is given the kind of treatment to which dispensing opthalmologists were subjected in legislative committees. For example, most optometrists realize that in accepting broken lenses and frames for repair, a loss of professional prestige takes place. The transaction immediately degrades the optometrists to the level of a vendor or technician in the view of the client. Like most optometrists, I find the habit difficult to break. When I expressed this point of view to another practitioner recently, he gave this surprising reply:

"Why do you accept it? I tell them I am not in the business of repairing frames except as a service to my own patients. I advise them to mail their glasses to the place of origin, and I even offer to supply a mailing box. I stress that the repair of eyeglasses is either a job for a dispensing optician, or the responsibility of the original prescribing doctor."

MORE THAN A GESTURE

How many other such services could be delegated to opticians in the spirit of "quid pro quo?" The delegation of minor and often annoying services to opticianry would constitute more than a gesture of amity. It would be an affirmative act clearly signifying our intention to pursue more rigid professional directions. It would also be an acknowledgement that while our profession is proudly rooted in opticianry, the time must eventually arrive to sever the umbilical ties of the past.

Other such services might be the dispensing of certified quality sunglasses, and adjustments and replacement of temples, screws, soldering, etc., for transients—all services performed chiefly in the degrading hope of attracting a future patient. All these traditional services are not performed (for transients) by ophthalmologists and, therefore, present a challenge to our sense of professionalism.

Perhaps the greatest challenge to our professional integrity is being made by the revolution in styling which has placed literally thousands of different frame models on the market. Cosmetic frames are sold entirely for profit. This introduces a time-and-risk factor in demonstration and adjustments, and requires compensation in the form of a commercial profit, which is incompatible with the requirements of the fee system.

Furthermore, a sense of artistry is called for that many doctors with their unimaginative technical mentalities do not possess. From the types of frames misfitted to an increasing number of such patients, it is becoming obvious that some doctors were not cut out to be stylists.

There is a need to seriously consider the idea of limiting sample frames in our offices to perhaps a dozen basic designs of a conservative style, and to refer to dispensing opticians those patients whose needs, desires and tastes are unusual or offbeat.

If we thus establish some beginning of a division of labor, a budding friendly relationship may replace the present acrimonious one. There is a need to acknowledge that the division of labor which we so selfrighteously demand of ophthalmologists can, and ought to, be matched by an equally generous offer to opticianry.

Failure to consider a fresh point of view can only tend to perpetuate a senseless and increasingly expensve conflict. More government participation in health care is indicated for the future, and private health care by employers and unions is also increasing. The probability is that most optometrists will have more examinations than now seems apparent. We may need more, not fewer, dispensing opticians if present health plans materialize. There seems no insuperable reason why opticianry cannot become ancillary to optometry, as well as to ophthalmology.

POSTSCRIPT

What effects will medicaid have upon opticianry? In states like New York, where a large percentage of the population will be covered, the effects might be serious. Yet, a forward-looking view would indicate that since union plans for eyeglasses, visual eyecare plans, as well as medicare and medicaid, cover most of the population, there is going to be little more in dispensing than a small dispensing fee.

The survival of opticianry may thus come to depend upon its success in obtaining full control over the market for cosmetic frames. Professional-minded optometrists, who willingly surrendered the market for cameras, magnifiers, and sunglasses many years ago, will receive such a suggestion with sympathy.

The time for both professions to resolve their differences is not next year when the full force of comprehensive health plans begins to make its impact, but now. Optometry must begin to look ahead to the future when a shortage of professional health care personnel will make it virtually impossible for the public to receive adequate ophthalmic care without the aid of opticianry. The unified-service theory of optometry is going to have to be reviewed.

[From the Optical Journal and Review of Optometry]

Editorial

AT THE HEART OF THE CONGRESS—ATTRACTIONS OR DISTRACTIONS?

The many attractions of the coming Boston congress show the detailed planning by the AOA for its annual meetings. Education courses, exhibits, recreation, social features and allied events are geared to draw the greatest number of people possible. Yet the crowded program often weakens the heart of the congress—the House of Delegates. Time that could be spent in deliberation of policy is often lost.

Although the AOA administrative staff has helped in streamlining reports and other orders of business, the agenda of the House of Delegates are always full. The sessions next month will be no exception.

Two proposed amendments to the constitution of the AOA may bring prolonged debate. The first would make compliance with the AOA Rules of Practice a requirement for membership in the affiliated and constituent associations by 1970.

Enforcement of the Rules of Practice has been an issue since their adoption by the AOA in 1950. Some states have argued for strict enforcement and expulsion of members who do not conform. Others have urged caution to preserve the numerical strength of the associations and the AOA.

The AOA trustees have generally pointed out that the matter of enforcement is in the hands of the state associations. The AOA member, they point out, derives his membership indirectly—through membership in one of the state associations that make up the AOA. This same point was made when the rules were adopted 16 years ago. The dilemma remains.

Also certain to draw debate is a second proposed amendment. This would raise the dues of active members from $55 to $100.

The Board of Trustees has commented that the additional $45 is necessary because of the increased activities of the AOA, the results that have been obtained, and demands being made.

The argument of the trustees is a strong one—especially in view of the higher dues paid in many other organizations. Some associations know, however, that an increase may mean curtailment of state or local programs, and possible loss of membership. Another dilemma for the House of Delegates.

Many policy matters await possible consideration by the delegates. To name a few: national and state health care legislation, discrimination by state agencies, the feasibility study, relations with medicine, commercialism, delegation of authority to lay persons.

* * * * * * *

In the hectic days of an AOA congress, many seek to divide their time between the sessions of the House of Delegates and the concurrent education courses or other attractions. Those who faithfully attend all the sessions of the House forego the education courses.

Yet, even for those attending, there is not much time for real discussion in the House. Policy matters usually come up only if they are the subject of a resolution. Debate, "new business" and "good and welfare" are usually lost in the lack of time and the rush toward adjournment.

In such an atmosphere, there is a tendency to leave things undone and decisions unmade. There is a feeling that things will take care of themselves for another year.

High attendance and crowded programs are a way of life at conventions in many fields. However, for delegates the many features should be attractions, but not distractions.

Eyeglasses, Profit and the Public Welfare

Bronx, N.Y., April 18, 1966.

Editor, The Optical Journal-Review:

In the April 15th issue, Dr. Samuel Drucker's article "The Challenge of the Hart Bill" presented an interesting evaluation of optometry's position in our changing society. His suggestion that the profit be taken out of professionally dispensed eyeglasses is an excellent one, since Senator Hart's subcommittee will likely soon come to the same conclusion.

The specter of governmental intrusion into the practice of health care is very distasteful to most optometrists. Nevertheless, we had better resign ourselves to the fact that the federal government is in the business of consumer protection to stay. The automotive industry recently discovered that it is no longer master of its fate when the safety and welfare of the public are concerned. It is highly probable that the health-care professions will soon come to the same realization. It would, therefore, behoove the health professions to put their houses in order before the legislators do it for them.

The chief flaw in the optometric structure is the practice of profiting from the sale of self-prescribed materials. It should be obvious to the Senate subcommittee that this system encourages abuses by unethical practitioners. It will be surprising if steps are not taken to further protect the public.

code of the market place

The interprofessional squabbles that have plagued the field of eye care will undoubtedly be brought out in the hearings. As a result, the ophthalmic professions will be made to appear as self-interest groups rather than as professional people concerned with the visual welfare of the public. We must realize that the privileges awarded to professional men by society may be retracted if they conduct themselves according to the code of the market place.

If the ophthalmic professions would retain the confidence of the public, they must cease their bickering and eliminate practices inimical to the public welfare.

Optometry must eliminate commercialism and restrict its activities to those professional services for which it is best trained. This does not include the grinding or dispensing of eyeglasses.

Opticianry must abandon all claims to contact lens fitting and concentrate on lens grinding and dispensing of eyeglasses.

A rigid system of quality control on all ophthalmic materials should also be imposed.

Ophthalmology must discontinue its efforts to monopolize the field of eye care and must conduct its practices in a manner befitting eye surgeons.

A "summit conference" of leaders of the three disciplines would now be in order to clean up the back yard before Senator Hart does it for us.

Vincent P. Lupica, O.D.

The following is taken from the Principles of Professional Conduct of the Medical Society of the State of New York:

Patents, Commissions, Rebates, and Secret Remedies

Section 6. An ethical doctor of medicine will not receive remuneration from patents on or the sale of surgical instruments, appliances, and medicine, nor profit from a copyright on methods of procedures. The receipt of remuneration from patents or copyrights tempts the owners thereof to retard or inhibit re-

search or to restrict the benefits derivable therefrom to patients, the public, or the medical profession. The acceptance of rebates on prescriptions or appliances or of commissions from attendants who aid in the care of patients is unethical. An ethical doctor of medicine does not engage in barter or trade in the appliances, devices, or remedies prescribed for patients but limits the sources of his professional income to professional services rendered the patient. He should receive his remuneration for professional services rendered only in the amount of his fee specifically announced to his patient at the time the service is rendered or in the form of a subsequent statement, and he should not accept additional compensation, secretly or openly, directly or indirectly, from any other source, except as provided in Article VI, Section 3, of Chapter III.

The prescription or dispensing by a doctor of medicine of secret medicines or other secret remedial agents, of which he does not know the composition, or the manufacture or promotion of their use is unethical.

The following is taken from the Code of Ethics of the Podiatry Society of the State of New York:

SEC. VI—SPLIT FEES, COMMISSIONS, COMMERCIAL ESTABLISHMENTS

A. Split Fees & Commissions:

1. It is unethical for podiatrists to pay or accept commissions in any form or manner on fees or professional services, references, consultations, pathological reports, radiograms, prescriptions, or on other services or articles supplied to patients. The Society deplores the selling to patients of ready-made shoes, foot powders, lotions, medications, or other similar materials or articles.

2. Division of professional fees, or acceptance of rebates from fees paid by patients to x-ray, clinical or other laboratories, shoe stores, or other commercial establishments is unethical.

3. It is unethical for a podiatrist, directly or indirectly, to pay or to give consideration or a gratuity for the recommendation of a patient.

The following appears in a report of the United States Department of Justice—Antitrust Department of the United States District Court, Northern District of Illinois, Eastern Division:

V. Doctor Dispensing and Its Effect on Prices

One of the forces at work preventing the reduction in the price of glasses to patients of doctors is the spread of the practice wherein oculists do their own dispensing of glasses to their patients. They thereby use the same procedure utilized by optometrists, except that the doctor, in addition to making the refraction and selling the glasses at a profit to himself, also charges the patient a professional fee for making the refraction.

If a doctor wishes to sell glasses in his own office to his patients and make whatever profit he can on such sales in addition to engaging in his professional practice, he is not barred by the judgments so long as he is not acting collusively with others. A resume of the doctor's rights in this respect was set forth in the letter which accompanied the final judgments which were mailed to the class defendant doctors (Exhibit 4).

During what may be termed the rebate era, there were of course many oculists who opposed the rebate practice as being unethical and contrary to proper professional standards. Likewise, today there are many doctors who contend that according to proper ethical standards the oculists should limit themselves to the performance of purely professional services and should have nothing to do with the actual selling of glasses, except in those areas where no optical dispensing houses are available. This point of view was expressed by a North Carolina doctor in answering the questionnaire:

> . . . I have always thought he [the doctor] should have no pecuniary interest in the glasses he prescribes any more than any physician should own an interest in a drugstore or any other medical or surgical appliance business through which he would benefit financially. . . .

A Florida dispensing optician, who has seen much of his business vanish because most of the doctors in his area are now doing their own dispensing and refuse to give prescriptions to the patient to be filled outside, comments bitterly:

> . . . they are trying to sit on two stools at the same time by practicing medicine and selling merchandise at the same time.

A South Carolina dispensing optician, who states he has been unable to reduce prices because practically all of the doctors in his area are now doing their own dispensing at full prices, in addition to charging refraction fees, levels the following attack on these doctors:

> . . . the public now suffers from faulty fitting and adjustment, as well as a lot of time wasted, since the doctors handle their own Rx's, either doing the measuring and fitting themselves when they are not skilled and trained in so doing, or in some cases by hiring inexperienced, unqualified people to do this vital job.
>
> . . . the doctor should write his Rx, and be denied the privilege of selling the glasses in his own office, as in a majority of cases, the patient is the one who suffers.

It is not, of course, the function of the Department of Justice to express any opinion on the question of whether or not doctors should do their own dispensing when independent and qualified dispensing houses are available. It is, however, the duty of the Department to report to this Court available facts relative to the effect which this trend toward doctor dispensing has been having on the price of the spectacles which the patients of doctors must buy.

Approximately one-third of the doctors answering the questionnaires are now doing their own dispensing of glasses to their patients. Most of them have started this practice since these cases were instituted.

The practice is especially prevalent in the smaller towns, in several of the Southern States, particularly Texas, Florida, and South Carolina, and in a number of both large and small cities in Wisconsin, Michigan, and Ohio. The practice appears to be "spotty" in so far as areas are concerned.

One doctor in Arkansas stated that because the local dispensing houses had not reduced prices the doctors "started doing their own dispensing at a normal profit." On the other hand, another doctor in the same town stated that most of the local doctors were doing their own dispensing at no decrease in the price of glasses to the patients and, perhaps, an increase, although a local dispensing house had, in fact, reduced prices on prescription sales to patients.

Most of the doctors who have turned to doing their own dispensing report they are charging "prevailing retail" prices in addition to refraction fees. A Washington doctor frankly stated that he was doing his own dispensing because he considered it a legitimate business "and a profitable one as well" and that he charged the "prevailing retail price." There appears, however, to be some variation in the prices the doctors charge. In some cases the doctors report they charge the wholesale price, plus a handling charge, and others a wholesale price, plus a flat mark-up, but, in the main, the answers show that the price charged is substanially the same as the ones the patients paid when the rebate system was prevalent. This is probably to be expected, because it is doubtful whether the doctor would go to the trouble of doing his own dispensing in his own office for his own patients unless he could make a profit on the sale of the glasses in addition to charging a refraction fee.

The questionnaires and other data received indicate that in many areas of the country doctors who have switched, or are contemplating switching to doing their own dispensing have shown signs of hostility to local dispensing houses which either reduced prices on prescription sales to patients or proposed reducing them. In many cases, the volume of prescription filling business available to such dispensing houses has been so materially reduced, because the doctors refused to release prescriptions to their patients, that the dispensing houses have encounted difficulty in maintaining the lower prices on a reduced volume, and in some cases have been forced out of business entirely, or are reduced to doing repair work almost exclusively.

The impact of doctor dispensing on dispensing houses which reduced prices on prescription sales to patients is illustrated by the experience of a Texas dispensing house which reports that in 1949 it advised the local doctors that it would thereafter make no rebate payments but would make prescription sales to their patients at wholesale cost, plus fitting fee. (This is what the dispensing houses retained out of the consumer price when rebates were paid.) The doctors then stopped referring patients to this dispensing house and began doing their

own dispensing instead. The dispensing house makes the following observations on its experience:

> Glasses now cost the patient more than previously in most cases. Our business has definitely been hurt and we have lost patients who have traded with us for years because the majority of doctors refused to give the patients their prescriptions. . . . If the doctors charge a professional fee for refracting and turn the prescriptions loose we could still lower our prices 15 to 20% and operate on a volume, . . .
>
> You might be interested to know that most of the dispensers for the doctors are paid a salary and a per cent. The dispenser makes the prices and, naturally, the more he charges the patient the more he makes. We feel this is unfair to the public.

The same dispensing house further stated in another communication:

> . . . the oculists are now controlling their prescriptions far more than they ever did before, as most of them absolutely refuse to give their patients their prescription . . . They are determined to still make a profit on the glasses they prescribe.

A dispensing house in another Texas city reported that in 1948, when it was doing a $6,000 a month business on prescription sales to patients of doctors on a rebate basis, it announced to the doctors it would thereafter discontinue the payment of rebates and would sell on prescription to patients at prices substantially under the consumer prices then charged. Its volume of business then dropped to $150 a week, as the doctors switched to doing their own dispensing. A similar experience is reported by another dispensing house in the same city which announced to the doctors that if the rebate system was outlawed by the local medical society the dispensing house would reduce prices on prescription sales to patients to the wholesale price, plus dispensing fee, and thereby give the average patient a saving of $10 a pair on glasses. He reported shortly after the final judgments went into effect as follows:

> I have repeatedly offered to heavily reduce prices of glasses to the public if they [the doctors] would turn prescriptions loose; and was told that if I reduced prices, that every prescription I filled would be pronounced as inaccurate and that I would be forced out.

In the same State another dispensing house reports a similar experience and states that 53 out of 65 local oculists are now doing their own dispensing.

In still another Texas city, two dispensing houses each report that their business in prescription sales to patients of doctors has been almost wiped out because of doctors doing their own dispensing and that with this reduced volume of business and the refusal of doctors to release prescriptions to their patients, they are unable to reduce prices, even though the doctors charge the patients the pre-rebate price or more.

In Michigan, one dispensing house with a number of branches stopped rebate payments in 1950, before the judgments were entered, and put into effect a substantial price reduction on all prescription sales to patients. One Michigan doctor referred as follows to the institution of this policy:

> This attempt to eliminate the practice is a grand step toward honesty and fair business.

Unfortunately, the price reduction policy instituted by this dispensing house was not popular with numerous other doctors who then switched to doing their own dispensing and refused to release prescriptions to their patients. This so cut down the volume of prescription business available to the dispensing house that it was forced to close some of its branches which were located in the cities where the bulk of the doctors had switched to doing their own dispensing.

Another Michigan dispensing house reported that although it reduced its prices one-third on prescription sales to patients, its volume of business in this field was reduced 80 per cent because practically all of the oculists in the area had switched to doing their own dispensing.

In a large Wisconsin city, the doctors stated that a considerable number of dispensing houses had reduced prices substantially on prescription sales to patients. The reports from these companies confirmed this, but they complain bitterly of the fact that such a large number of oculists had switched to doing their own dispensing that on the reduced volume of business the optical houses are finding it difficult to keep the lower prices in effect.

Numerous complaints have been received from Florida regarding doctors having switched to doing their own dispensing and of maintaining high prices for glasses. One optical house makes the following observation, which is typical:

> . . . it was generally agreed in most sections of Florida [when the judgments went into effect] . . . that the prices of glasses would be reduced by the optician, and the Doctor would increase his refraction fee, thus enabling him to be compensated for the lack of rebate.
>
> These two practices were put into effect. However, the low price of glasses was short-lived. Today the user of glasses is generally paying more over-all for a pair of glasses than prior to the discontinuance of rebate. Secondly, with the Doctors rapidly setting up the practice of selling and dispensing glasses in his own office, a monopoly is created as far as the patient is concerned.

In areas where a large percentage of the doctors have turned to the system of doing their own dispensing, their patients appear to have considerably less hope of obtaining the price reduction on glasses made possible through the elimination of the rebate system than is the case of patients in areas where doctors do not generally do their own dispensing. Most doctors who have turned to doing their own dispensing probably have no great incentive to reduce prices, because of the pecuniary interest which they have in the sale of glasses. Furthermore, the dispensing houses in such areas may have difficulty in either reducing prices or in keeping price reductions in effect if the flow of prescription patients to these houses is blocked at the source—the doctor's office.

It must not be assumed, however, that price competition is entirely lacking among the oculists in those areas where they do their own dispensing. These oculists purchase their completed spectacles from wholesalers who make up the glasses to prescription and sell them to the doctor at the Rx or wholesale price. The doctor is then faced with the problem of determining what the mark-up on these glasses is to be in reselling them to the patients. In a majority of instances, the doctors report that they charge the prevailing retail price, but some report that they use mark-ups which result in a price which is less than that which prevailed under the rebate system. Furthermore, the doctor who does his own dispensing tends to place himself in more direct competition with the optometrist who invariably dispenses to his patient but does not usually make a separate charge for the refraction service.

In some cases, doctors have turned to doing their own dispensing because they resented the fact that local dispensing houses did *not* reduce consumer prices when the rebates were eliminated. This is of course a danger which dispensing houses necessarily run if they do not reduce consumer prices to reflect the saving which is theirs through not having to pay debates on their prescription sales.

What can be accomplished when doctors restrict themselves to professional practice and dispensing houses pass to consumers the benefits derived from the elimination of the rebate is illustrated by the reports received from such places as a large city in Minnesota and a large one in Missouri. In these cities, the reports show that most, if not all, of the dispensing houses put substantial price reductions into effect almost simultaneously with the entry of the judgments. They have been able to continue making prescription sales to patients at the lower price level because almost none of the local doctors have turned to doing their own dispensing. With the volume of prescription business going to the dispensing houses remaining unimpaired, the elimination of the rebate has enabled them to continue to sell at lower prices notwithstanding the increases which have occurred in material prices, labor, and other costs of operation during the past few years.

In Chicago, reports have been received concerning a considerable number of responsible dispensing houses which put substantial price reductions into effect on their prescription sales to patients when the judgments went into effect. Relatively few doctors here have switched to doing their own dispensing during this period, complaints of violation of the judgments have been negligible, and there is little or no evidence of use of either the "charge and send" plan or of the group doctor ownership of dispensing houses. Patients of oculists in the Chicago

area, therefore, have ample opportunity to have their prescriptions filled at prices which reflect the elimination of the rebate system. Such patients may, of course, go to dispensing houses which have not reduced prices or may use expensive specialty frames which make for a high price for the completed spectacles, but the patient does have the opportunity of making a choice on a competitive basis.

DISCUSSION—RECOGNIZE THE REAL ENEMY IN A WAR FOR SURVIVAL!

(By Arnold R. Wolfson, O.D.)

Dr. Sakler's address to the American Association of Ophthalmology (Jan. 15, 1967 issue) was more than a mere reiteration of ophthalmology's attitude toward optometry over the past many years. This attitude has undergone periods of ebb and flow, deviating betwen bare tolerance and absolute subjugation of optometry.

Dr. Sakler's speech indicates the present attitude is that optometry, as we know it, is to be eliminated.

Dr. Sakler states that optometry is not an allied medical specialty, the ophthalmologist must be "Captain of the Team," and ophthalmologists must train additional "ophthalmic technicians" to assist them. These statements, when taken together, lead to the inescapable conclusion that ophthalmology wants complete charge of all eye care utilizing the services of technicians. Optometry, since it is not allied with medicine as an "allied medical worker", would then be completely ignored.

Formerly, this would have posed no particular threat; this attitude is not exactly foreign to us and all but the most idealistic and naive optometrists have been aware of it. But now, the entire concept of eye care, and medical care for that matter, is undergoing a drastic change. More and more, we are encountering government participation, insurance plans, union plans, and prepaid plans. These rely on legislation and/or contracts between various groups and members of the eye care field to provide service. If medicine can influence these groups, dominate the field, and restrict such services to care by physicians, optometry will be on the road to virtual elimination. That is the intent of medicine today. The threat becomes very real when we consider the estimate that within five years almost 70 per cent of all glasses dispensed in California will be dispensed through such plans.

So far, what has organized optometry attempted to do? Up to now, our attitude has been: enter into some agreement with ophthalmology, don't offend them, and certainly do not dare direct confrontation with the American Medical Association. This attitude is no longer possible if optometry is to survive.

For years, ophthalmology has aggressively tried to discredit us. Physicians have told patients directly that we are incompetent. Dispensing opticians, formerly the advertising mouthpiece of ophthalmology, have emblazoned their advertising with "For better vision, see your eye physician"—or with similar statements implying the superiority of medical eye care. And all we have done about this is complain to each other and wring our hands in grief.

We have continually emphasized that we are divided between the so-called "professional" and "commercial" factions. We have put most of our efforts into an unsuccessful and unnecessary attempt to eliminate the one faction that has been attempting to bring optometry into the public light. We have degraded the members of our profession who have been presenting optometry to the public. I am referring to the "commercial" optometrists, who by their mode of advertising, whether in newspapers, radio, TV, or location in high traffic areas (such as discount houses, department stores), have been exposing themselves to the public as optometrists and have been exposing the public to their (and our) services.

We have attempted to emulate the physician, to copy his mode of practice. We have indoctrinated our students with this idea; we have told them that they should practice in medical-type surroundings and hide themselves behind their title "Doctor of Optometry". We have even said that if they must accept employment, they should work for an ophthalmologist or one of the medically-oriented and medically-operated health plans—rather than for a commercial optometrist and certainly rather than for an optometrically-operated vision plan or discount

house. We have advocated a policy of non-exposure for optometry; we have harassed our colleagues (if we deign to call them colleagues) who attempt to present themselves to the public as optometrists.

RAISING THE COST OF EYE CARE

We have been talking of higher fees, of raising the cost of eye care to the public. This is the same thing medicine has been doing over the past years—to the point where the public has begun to rebel. Witness the advent of Medicare and other government and private plans to defray the direct cost to the public. We have been doing this and condemning optometrists who attempt to bring the cost of eye care down. And all this time medicine is attempting to destroy us.

Do not misunderstand me. I am not saying that all optometrists who advertise, who practice commercially, or who organize union vision plans, are doing so primarily for the best interests of the profession. Of course, their prime motives are financial remuneration. But, in their own way, they have made known to the public that a profession of optometry exists, that it is not necessary to see a physician for an eye examination, that optometrists are qualified to furnish visual care.

Optometrists in discount houses, in union plans, and in store-type offices can, and in 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.

Ophthalmology and optometry have been at war for a long time, but we still keep arguing among ouselves. It is time we recognized our real enemy; make no mistake, medicine is our enemy and a state of war exists.

In this war, any time an optometrist gains a patient who was formerly an ophthalmologist's patient, that is a small victory—*regardless of the method used to bring the patient into his office.*

Any time an organization contracts with an optometrist to provide visual care for its members, that is a victory.

We must make very effort to increase the percentage of patients who receive optometric care vs. those who receive medical refractions (including those furnished by optometrists in an ophthalmologist's office).

We must obtain *effective* optometric representation in any and all eye care programs, whether they are promulgated by the government or by private plans.

We must institute an aggressive public relations program exploiting the superiority of optometric care over medical refractions.

We must press for a complete divorce in the public's mind between visual care and medical and surgical eye care. In doing so, we must maintain the concept of complete visual care—including the proper selection and fitting of eyewear, contact lenses, orthoptics and other facets of our profession which we have been tending to delegate to groups not under our control.

TIME FOR THE INITIATIVE

It is time that optometry decided to raise its head high in its relations with the public and with medicine. For years, we have taken strictly a defensive position. Now is the time to take the initiative. Medicine has found that its public image has become tarnished and the physician is trying to restore that image to its former brightness. But now is the time for optometry to make its move. Actually, it is now or never.

6222 Anthony Avenue

VOYEUR

He was so shy, he looked askance
If anyone dared say "romance,"
When at a pretty girl by chance
He'd happen just to cast a glance.
Yet faithfully his eyes did serve,
And look he would, at every curve.
Despite his shyness and reserve,
He had a lot of optic nerve!

GERTRUDE LEIGH

PRIVATELY PRACTICING OPTOMETRISTS IN THE DISTRICT OF COLUMBIA

(Those marked with an asterisk practice in a non-commercial or non-store front location).

Aarons
Berlin
Binder
Campbell
Couperthwaite
Dantzic
*Dosik
Duff
Ephraim
*Etz
*Failor
*Farkas
Felstein
Finn
Fishkin
Fox
*Franke
Friedman
Gilpeer
Ginzberg
Goldblatt
Greenberg
Greenwood
Griffith
*Higley
Hillyard, B.
Hillyard, F.
*Hoff
Kale
*Kaplan
*Katz, H.
Katz, M.
Katz, P.
Kaye
*Kraskin
King
Kossoff
Kraskin
Kristal
Lee
*Leese
Liebrand
MacDonald
Marshall
*McVearny
*Merielle
*Nelson
*Oberman
*Osterman
Parmet
Pearlman
Pels
*Perau
Pollack
*Rein
*Robbins
Rogers
Rose, D.
*Rose
Rubin
Samit
Scot (Scot Optical)
Siegel
Silver
Tabershaw
Teunis (see second photo)
*Thompson
Toman
Tyner
*Uhler (2)
*Wagenheim
*Weinstein
Witten

EXHIBIT "10"

In the Matter of the Application of ELIZABETH DICKSON and Others, Respondents, for a Peremptory Order of Mandamus against EDWARD J. FLYNN, as Secretary of State of the State of New York, Appellant, and OPTOMETRICAL SOCIETY OF THE CITY OF NEW YORK and Others, Interveners, Appellants.

THIRD DEPARTMENT, MARCH 5, 1936

Physicians and surgeons—optometrists—corporation may lawfully be organized to engage in sale of eyeglasses, spectacles and lenses at retail where certificate of incorporation specifically provides that duly qualified optometrists will be in charge of sales (Education Law, § 1432-a)—petitioners are entitled to peremptory order of mandamus directing Secretary of State to file and record such certificate on payment of proper tax and fees.

A corporation may lawfully be organized for the purpose of engaging in the sale of eyeglasses, spectacles and lenses at retail, under section 1432-a of the Education Law, where the certificate under which the corporation seeks to operate specifically provides that duly qualified optometrists will be in charge and in personal attendance at the booth, counters and places in the established stores of the corporation where such articles are sold. The business in which the corporation is to engage is the sale of eyeglasses, spectacles and lenses at retail and it does not become the practice of medicine or optometry by reason of the presence of a physician or optometrist.

Under the circumstances, the petitioners are entitled to a peremptory order of mandamus directing the Secretary of State to file and record petitioners' certificate of incorporation conditioned on the payment by them of the tax and fees therefor prescribed by law.

CRAPSER, J., dissents.

Separate appeals by the defendant and by the Optometrical Society of The City of New York and others, and by the New York State Optometric Association, Inc., from a peremptory mandamus order of the Supreme Court, entered in the office of the clerk of the county of Albany on the 21st day of September, 1935.

The direction, conditional upon payment by the petitioners of the tax and fees therefor prescribed by law, was the file and record the original certificate of incorporation of the "Four-Boro Optical Corp.," pursuant to article 2 of the Stock Corporation Law.

Herbert D. Hamm, for the respondents.

John J. Bennett, Jr., Attorney-General [*Dorothy U. Smith, Assistant Attorney-General*, of counsel; *Henry Epstein, Solicitor General*, with her on the brief], for the Secretary of State, appellant.

Talley & Lamb [*Alfred J. Talley* of counsel; *Edmund J. Delany, Maxwell Ross* and *James Flynn* with him on the brief], for the interveners-appellants Optometrical Society of The City of New York, Bronx County Optometric Society and North Queens Optometric Society.

Harold Kohn, for the intervener-appellant New York State Optometric Association, Inc.

Robert Rosenberg [*N. Bernard Silberg* with him on the brief], for the Retail Opticians of America, *amicus curiae*.

Hill, P. J. Appeal from a peremptory order of mandamus which directs the Secretary of State to file and record petitioners' certificate of incorporation of "Four-Boro Optical Corp." That official bases his refusal upon the ground that the purpose clause in the certificate would permit the corporation to practice optometry, and that a corporation may not be organized for such purpose. He found authority for his refusal in *Matter of Stern* v. *Flynn* (154 Misc. 609) and in opinions by two Attorneys-General (Opinions of Attorney-General, 1913, 401; *Matter of Right to Form a Corporation*, 21 State Dept. Rep. 75). The wording in the certificate which offended follows: "To carry on a general optical business; to sell at retail spectacles, eyeglasses and lenses for the correction of vision, provided that duly qualified optometrists be in charge of and in personal attendance at the booths, counters or places where such articles are sold in the respective stores or established places of business of this corporation; to employ duly qualified optometrists for the purpose of being in charge of and in personal attendance at the booths, counters or places where this corporation sells at retail spectacles, eyeglasses and lenses for the correction of vision in the respective stores or established places of business of this corporation and for the purpose of examining the eyes of customers of this corporation where such duly licensed optometrists, while in charge of and in personal attendance at such booths, counters or places, deem the same to be necessary in connection with the sale at retail by this corporation of spectacles, eyeglasses and lenses for the correction of vision."

The draftsman of this certificate followed meticulously section 1432-a of the Education Law (added by Laws of 1928, chap. 379) as construed by *Roschen* v. *Ward* (279 U.S. 337). The statute makes it unlawful to sell at retail spectacles, eyeglasses or lenses for the correction of vision unless a duly licensed physician or duly qualified optometrist is in charge of and in personal attendance at the booth, counter or place where such articles are sold. The *Roschen* case was brought for an injunction to restrain the enforcement of the statute upon the ground of unconstitutionality. It was determined that the act had definite relation to the public health and, therefore, was constitutional. In construing the statute, the opinion by the late Mr. Justice HOLMES states: "But the argument most pressed is that the statute does not provide for an examination by the optometrist in charge of the counter. This as it is presented seems to us a perversion of the act. 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" (p. 339). Counsel for an intervener here advances the same argument answered in the quoted portion of the *Roschen* opinion, urging that the statement there made is obiter. With this I do not agree, as the meaning and effect of a statute must be considered in determining its constitutionality.

Until 1908 any person could sell spectacles or eyeglasses without let or hindrance. In that year the Legislature enacted the initial statutes concerning the licensing of optometrists. By an amendment to the article (Laws of 1928, chap. 379) section 1432-a was added. (Later amendments do not affect our question.) "It shall be unlawful for any * * * 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, certified unter this article, be in charge of and* personal attendance at the booth, counter or place, where such articles are sold in such store or established place of business."

Thus the right to do a lawful act was curtailed. However, the right, so curtailed, still remains. The legislative intent is too clear to support extended argu-

ment. 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 benefitted 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 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.

The right to organize a corporation for the purpose of practicing a profession is considered in *People* v. *Woodbury Dermatological Institute* (192 N.Y. 454). I quote from the opinion: "The prohibition * * * against the practice of medicine without lawful registration in this State or in violation of any of the provisions of the statute or against advertising by any person not a registered physician were not intended to apply and plainly could not reasonably be held to apply to corporate bodies which by the express provisions of other statutes are authorized to carry on the practice of medicine upon compliance with their provisions and without registration" (p. 457). "Thus, a hospital duly incorporated under the Membership Corporations Law unquestionably holds itself out as being able to diagnose, treat, operate and prescribe for human disease, pain, injury, deformity or physical condition * * *. An institution of this character, possessing legislative authority to practice medicine by means of its staff of registered physicians and surgeons, comes under the direct sanction of the law in so doing" (p. 458).

The *Woodbury* case is cited and commended upon in *Messer Co.* v. *Rothstein* (129 App. Div. 215; affd, 198 N.Y. 532). I quote from the opinion in the Appellate Division: "The same court also held in the *Woodbury Dermatological Institute Case* (*supra*) that as the Legislature authorized the formation of corporations for hospital purposes, such corporations would not be guilty of a crime if they should advertise to treat diseases, although not registered under the Medical Act, provided such treatment was administered by duly registered physicians" (p. 225).

A Pennsylvania statute was determined to be unconstitutional by *Liggett Co.* v. *Baldridge* (278 U.S. 105). It provided: "Every pharmacy or drug store shall be owned by a licensed pharmacist, and no corporation, association, or copartnership shall own a pharmacy or drug store, unless all the partners or members thereof are licensed pharmacists." A license as a pharmacist could be obtained only after a course of study quite as exacting as the New York statute prescribes for optometrists. The ground for the decision was that the *ownership* of a drugstore had no relation to the public health as other and constitutional laws required that none but a registered pharmacist should be in charge or be permitted to compound prescriptions. The court, in its opinion, states, concerning that statute, "It deals in terms only with *ownership*. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. * * * In the light of the various requirements of the Pennsylvania statutes, it is made clear, if it were otherwise doubtful that mere stock ownership in a corporation owning and operating a drug store, can have no real or substantial relation to the public health" (p. 113). "If detriment to the public health thereby has resulted or is threatened, some evidence of it ought to be forthcoming. * * * The claim that mere ownership of a drug store by one not a pharmacist bears a reasonable relation to the public health, finally rests upon conjecture, unsupported by anything of substance" (p. 114). With the public health protected through the requirement that a physician or optometrist be in

charge where eyeglasses are sold, by an analogy of reasoning if the right to own eyeglasses as merchandise and to sell them at retail was curtailed by statute, there would be a denial of that which the Constitution guarantees. The New York Legislature has attempted no such curtailment but, as earlier indicated, has reaffirmed the constitutional right to sell eyeglases at retail.

The Secretary of State cited *Matter of Co-operatives Law Co.* (198 N.Y. 479) to sustain his position. Some of the statements in that opinion, taken from their setting and background, might seem to sustain his claim. The question under consideration there was whether "a corporation could be lawfully organized to practice law" under the authority "found in that part of the Business Corporations Law which provides that 'three or more persons may become a stock corporation for any lawful business'" (p. 483). Then the opinion defines the meaning of the clause "lawful business" as follows: "This means a business lawful to all who wish to engage in it. The practice of law is not a business open to all." It was there decided that under the general authority of the Business Corporations Law a corporation might not be organized for the purpose of practicing law. Here we are dealing with a diffierent question. The Legislature has granted the right to sell eyeglasses at retail if a physician or optometrist be present at the sale. The writer of the *Co-operative* opinion cited with approval the *Woodbury Dermatological Case* (*supra*), which decided that with statutory authority a corporation could lawfully be organized to practice medicine.

Disregarding the fact that there is a statute which permits a corporation to practice optometry and none which permits the practice of law, still the general distinction between the professions of optometry and law makes the *Co-operative* case inapplicable.

"Formerly, theology, law and medicine were specifically known as *the professions*; but as the applications of science and learning are extended to other departments of affairs, other vocations also receive the name. The word implies professed attainments in special knowledge as distinguished from mere skill." (*United States* v. *Laws*, 163 U.S. 258, 266.) An optometrist is defined in the Education Law (§ 1425) as a person "who by any means or methods, other than by the use of drugs, diagnoses any optical deficiency or deformity, visual or muscular anomaly of the human eye, or prescribes lenses, prisms or ocular exercises for the correction or relief of the same." The New Jersey Supreme Court has defined optometrist (*New Jersey State Board of Optometrists* v. *Kresge Co.*, 113 N.J. L. 287; 174 Atl. 353).

"Oculists * * * pursue a calling quite distinct from that of optometrists. The first has relation to the practice of medicine and surgery in the treatment of diseases of the eye, and the second to the measurement of the powers of vision, and the adaptation of lenses for the aid thereof. [*Saunders* v. *Swann*, 155 Tenn. 310; 292 S. W. 458; *Martin* v. *Badly*, 249 Penn. St. 253; 94 A. 1001; *McNaughton* v. *Johnson*, 242 U.S. 344; Herzog's Medical Jurisprudence, § 120.] It is the primary function of the optometrist to employ means to determine the need of lenses for the correction of defects of eyesight, and the increase of the power and range of vision. He forms a judgment as to the need, and then provides the corrective lens."

In the *Co-operative Case* (*supra*) some of the obligations, requirements and duties incidental to the practice of law are mentioned.

"The right to practice law is in the nature of a franchise from the State conferred only for merit. * * * It is attested by a certificate of the Supreme Court and is protected by registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. * * * The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe even the duty of counsel to the actual litigant" (pp. 483, 484).

The relation between the vendor and vendee of eyeglasses differs so markedly from that between lawyer and client that even the language of the *Co-operative* case is without force in this matter.

The order should be affirmed, with fifty dollars costs.

RHODES, BLISS and HEFFERMAN, JJ., concur, CRAPSER, J., dissents on the ground that a corporation may not be formed for the practice of optometry either through agents or licensed optometrists or otherwise.

Order affirmed, with fifty dollars costs and disbursements.

In the Matter of ELIZABETH DICKSON et al., Respondents, against EDWARD J. FLYNN, as Secretary of State, Appellant.

OPTOMETRICAL SOCIETY OF THE CITY OF NEW YORK ET AL. INTERVENERS, APPELLANTS

Corporations—optometry—certificate of incorporation to carry on optical business and employ qualified optometrists to examine eyes of customers may not be properly construed as authorizing practice of optometry by corporation.

A certificate of incorporation to carry on a general optical business, employ qualified optometrists to attend to sales of spectacles, eyeglasses and lenses and examine the eyes of customers in connection with such sales, conforms with the provision of section 1432-a of the Education Law (Cons. Laws, ch. 16) and may not be properly construed as authorizing the practice of optometry by the corporation.

Matter of Dickson v. *Flynn*, 246 App. Div. 341, affirmed.

Argued January 4, 1937; decided January 12, 1937.

APPEALS from an order of the Appellate Division of the Supreme Court in the third judicial department, entered March 28, 1936, which affirmed an order of Special Term granting a motion by petitioners for a peremptory order of mandamus to compel the Secretary of State to file and record a certificate of incorporation of the Four-Boro Optical Corporation. The certificate provided that the purposes for which the corporation was to be formed were, in part, as follows: "to carry on a general optical business; to sell at retail spectacles, eyeglasses and lenses for the correction of vision, provided that duly qualified optometrists be in charge of and in personal attendance at the booths, counters or places where such articles are sold in the respective stores or established places of business of this corporation; to employ duly qualified optometrists for the purpose of being in charge of and in personal attendance at the booths, counters or places where this corporation sells at retail spectacles, eyeglasses and lenses for the correction of vision in the respective stores or established places of business of this corporation and for the purpose of examining the eyes of customers of this corporation where such duly licensed optometrists, while in charge of and in personal attendance at such booths, counters or places, deem the same to be necessary in connection with the sale at retail by this corporation of spectacles, eyeglasses and lenses for the correction of vision * * *." Upon the submission of such certificate of incorporation for filing the Secretary of State objected to the provisions thereof relating to the employment or placing in charge of sales of duly qualified optometrists. The objection, as it appeared in the affidavit of the acting chief of the division of corporations, was that such provisions purported to confer upon a corporation authority to "employ duly qualified optometrists * * * for the purpose of examining the eyes of customers of this corporation where such duly licensed optometrists, while in charge of and in personal attendance at such booths, counters or places, deem the same to be necessary in connection with the sale at retail by this corporation of spectacles, eyeglasses and lenses for the correction of vision." Section 1432-a of the Education Law (Cons. Laws, ch. 16) provides, in part, that it shall be unlawful for any 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, certified under 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."

John J. Bennett, Jr., Attorney-General (*Dorothy U. Smith* and *Henry Epstein* of counsel), for Secretary of State, appellant. The authority under the certificate to sell at retail spectacles, eyeglasses and lenses for the correction of vision not being expressly limited to the sale of such articles as merchandise, the certificate is not in conformity with section 1432-a of the Education Law (Cons. Laws, ch. 16.) (*Roschen* v. *Ward; Kresge Co.* v. *Ward*, 279 U.S. 337; *Matter of Co-Operative Law Co.*, 198 N.Y. 479; *People* v. *Woodbury Dermatological Inst.*, 192 N.Y.

454; *State* v. *Kindy Optical Co.*, 248 N. W. Rep. 332; *State ex rel. Harris* v. *Myers*, 191, N. E. Rep. 99.)

Jay Leo Rothschild, Walter S. Beck, Maxwell Ross and *James Flynn* for Optometrical Society of the City of New York, intervener, appellant. Section 1432-a of the Education Law is a penal statute, which prohibits and makes criminal that which was lawful before. It does not enlarge the class of persons who may practice the profession of optometry. It merely eliminates the unsupervised sale of glasses for the correction of vision, and thus prohibits their sale as merchandise *simpliciter*. (*People* v. *Woodbury Dermatological Inst.*, 192 N. Y. 454; *Matter of Co-Operative Law Co.*, 198 N. Y. 479; *Teseschi, Mullins & Bellair* v. *Mathis*, 116 N. J. L. 187; *State of Kansas ex rel. Beck* v. *Goldman Jewelry Co.*, 142 Kan. 881; *State* v. *Kindy Optical Co.*, 216 Iowa, 1157; *Eisensmith* v. *Buhl Optical Co.*, 178 S. E. Rep. 695; *Funk* v. *State*, 50 Pac. Rep. [2d] 945; *Matter of Stern* v. *Flynn*, 154 Misc. Rep. 609; *American Historical Society* v. *Glenn*, 248 N. Y. 445; *People* v. *Sturgis*, 121 App. Div. 407; *People* v. *N. Y. C. R. R. Co.*, 25 Barb. 199; *People* v. *Barton*, 6 Cow. 290; *Cotheal* v. *Brouwer*, 5 N. Y. 562; *People* v. *Abraham*, 16 App. Div. 58; *U.S. Tel. Co.* v. *Western Union Tel. Co.*, 56 Barb. 46; *Sickles* v. *Sharp*, 13 Johns. 497; *Matter of W. S. A. & P. R. R. Co.*, 115 N.Y. 442; *Hayden* v. *Pierce*, 144 N.Y. 512; *People* v. *Purdy*, 154 N. Y. 439). The certificate authorizes the petitioner's corporation to practice optometry and is, therefore, outlawed by the statute. (*Matter of Stern* v. *Flynn*, 154 Misc. Rep. 609.)

Harold R. Medina, William F. McNutly and *Harold Kohn* for New York State Optometric Association, Inc., intervener, appellant. Section 1432-a of the Education Law, which merely restricts the sale of glasses as merchandise, does not permit a corporation to practice optometry. (*Allen* v. *Stevens*, 161 N.Y. 122; *Liggett Co.* v. *Baldridge*, 278 U.S. 105.)

Herbert D. Hamm for respondents. The purpose clauses of the certificate of incorporation found objectionable by the Secretary of State are specifically provided for under section 1432-a of the Education Law. (*Roschen* v. *Ward*, 279 U.S. 337; *Martin* v. *Home Bank*, 160 N.Y. 190; *Persky* v. *Bank of America Nat. Assn.*, 261 N.Y. 212; *Matter of Lewis* v. *Harlem Dental Co.*, 189 App. Div. 359; *People* v. *Woodbury Dermatological Inst.*, 192 N.Y. 454; *Jaeckle* v. *Bamberger*, 119 N. J. Eq. 126; 120 N.J. Eq. 201; *Howe* v. *Regensburg*, 75 Misc. Rep. 132.)

Robert Rosenberg and *N. Bernard Silberg* for Retail Opticians of America, *amicus curiae*. The optometry statute cannot be construed so as to prohibit the employment of registered optometrists by corporations. If this is the construction then the statute is unconstitutional. (*Liggett Co.* v. *Baldridge*, 278 U.S. 105; *Vorheis* v. *Kindy Optical Co.*, 251 N. W. Rep. 343; *Schnaier* v. *Navarre Hotel & Importation Co.*, 182 N.Y. 83; *People* v. *Ringe*, 197 N.Y. 143; *Seadron's Sons, Inc.*, v. *Susskind*, 132 Misc. Rep. 406; *People* v. *Rogers*, 227 Ill. 151; *Binford* v. *Boyd*, 174 Pac. Rep. 56; *Jaeckle* v. *Bamberger & Co.*, 181 Atl. Rep. 181; *Dvorine* v. *Castleberg Jewelry Corp.*, 185 Atl. Rep. 562; *Missouri* v. *Gate City Optical Co.*, 97 S. W. Rep. 89.)

Per Curiam. The purposes for which the Four-Boro-Optical Corporation is to be organized, as set forth in its certificate of incorporation, conform with the provisions of section 1432-a of the Education Law (Cons. Laws, ch. 16) (*Roschen* v. *Ward*, 279 U.S. 337), and the objection by appellant appearing in the affidavit of the acting chief of the Division of Corporations is not sufficient to warrant refusal to file and record this certificate. We do not construe the wording of the proposed certificate of incorporation as authorizing the practice of optometry.

At this time we decide no other issue. If, in the future, questions relating to any violation of law by the corporation or by any optometrist employed by it shall arise, the courts can then deal with them.

The order should be affirmed, without costs.

CRANE, Ch. J. O'BRIEN, LOUGHRAN and RIPPEY, JJ., concur; HUBBS, J., dissents: LEHMAN and FINCH, JJ., taking no part.

Order affirmed.

Mr. STEIN. As counsel for Sterling, I think I am in an advantageous position to comment upon the claims and contentions of organized optometry for this one principal reason: I have recently concluded a seven-week trial in the Supreme Court, New York, in which the

New York State Optometric Association was our principal antagonist. I believe that during the course of that trial a considerable amount of factual information, evidence, both oral and written, was introduced which I think would be of much interest to this committee and of great significance to this committee. That perhaps explains why my memorandum is perhaps larger than some, because I have attempted to include in that statement much of the material fact developed during this seven-week trial and otherwise.

Now, first with regard to optometry and the private practice of optometry. Optometrists, we heard this morning, are not medically trained, as such. Nevertheless, in this action in Albany, which I will refer to as *Sterling* vs. *Regents*, the New York State Optometric Association submitted to the court a brief in which they argued that optometrists were capable of discerning and diagnosing the presence of incipient diabetes, brain tumor and glaucoma. As a matter of fact, certain of the witnesses produced by the New York State Optometric Association urged to the court that optometrists were better able, perhaps, to discern the presence of such pathology than trained ophthalmologists.

Other evidence adduced in the court in that proceeding established that in optometry—most optometrists use the title "Doctor." Evidence was adduced that members of the public are not really aware of the extended limitations of training of optometrists and that the use of the title "Doctor" tends to increase such confusion.

We discovered also that many optometrists employ the title "Doctor" as a result of a quickie doctorate degree. As a matter of fact, earlier this year the New York State Optometric Association urged to its members who did not have a doctorate degree and therefore did not lawfully have the right to use the title "Doctor" that they attend a 13-week course for two days a week, pay $500, write a thesis and get their doctorate degree.

We also know, and it was proven in this case—and I am now talking about *Sterling* v. *Regents*, that some optometrists, including leading members of the New York State Optometric Association, use the title "Doctor" in dealing with their patients even though they do not have have the semblance of right to do so. Even though they do not have a "quickie" degree. This problem was put to the Administrative Director of the New York State Optometric Association, one Dr. Ashley King, and it was pointed out to him that under the laws of the State of New York this practice was illegal, expressly made criminal, and we asked him whether he regarded the use of the title "Doctor" in these circumstances as professional, even though illegal, and strangely enough this spokesman for the New York State Optometric Association stated that in his opinion it was professional, even though illegal.

I might say that I have difficulty reconciling that standard of professional conduct with the high principles espoused by the New York State Optometric Association and the American Optometric Association before these hearings.

I have also appended to my submission as Exhibit 3 a suggested list of professional terminology originating with the American Optometric Association which I submit indicates that this confusion which I

speak of is being incurred and engendered by the American Optometric Association. I also have included in our Exhibit an article appearing by an optometrist by the name of Jack R. Hale, who is a member of the American Optometric Association. This article appeared in the April 15, 1965 edition of the Optometric Journal and Review. I believe that this article also expresses the view of the rank and file membership of the American Optometric Association.

Let me show you what Dr. Hale says, which I believe further indicates the attempts made by organized professional optometrists, members of the Optometric Association, to further confuse and conceal the facts from the public.

This article suggests lines of conversations with patients. It begins, "Mis-use of words are apparent in the contrast of positive and negative approaches. The negative approach would be 'I want to think about referring you to a doctor.' "

In other words, optometrist Hale says, "Don't say that to your patients. Instead say the 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' with 'physician' when indicated. When asked if you use drops, negative."

In other words, you are not to say "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." And again I am quoting and that was a quote.

"It is a weapon of our adversaries. Are they non-optometrists?"

He again continues: "When asked how much are your frames and lenses, negative. 'Our prices are as cheap as any place in town.' " In other words, don't say that.

"Positive. It really is impossible to answer this. Lenses in particular vary for the needs of each case. Alternative answer to shift emphasis: 'What is your visual condition?' "

I submit that this demonstrates why optometry, organized optometry, is here so concerned about advertising, including truthful informational advertising. I believe, as the facts will later show, that they are concerned about the public knowing the limitations of their training and knowing the extent to which they profiteer in the sale of eyeglasses.

Now, incidentally, when we talk about the use of the world "Doctor," I refer to a specific provision of the bill, 1283, which has not heretofore been referred to, and particularly page 15, line 6–11, which confers upon optometrists, whether or not they have a doctorate degree, the right to use the title "Doctor," provided only they follow it with the letters "O.D." I can't imagine in dealing with patients they are going to introduce themselves as "Dr. Warren, O.D."

I submit this confers upon the optometrists the ability—optometrists

who do not have a doctorate degree—the ability to use the title legally without authority.

Now, let's look at what this practice does. A privately practicing optometrist sells eyeglasses according to prescription which he himself issues. This is one of his functions. We have proven in the *Sterling* v. *Regents* case that it is extremely rare for an optometrist to voluntarily issue to a patient a prescription to permit that patient to seek his eyeglass needs from an optician or from a more economical source.

In addition, many optometrists, including optometrists here in the District of Columbia, will fill prescriptions emanating from ophthalmologists or other optometrists. In other words, in that respect an optometrist is nothing more than, or less than, an optician. He is a merchant in a sense, the same as a pharmacist, selling a product, because in that latter instance he does not examine the eye; he merely duplicates lenses and fills prescriptions.

As I say, most optometrists in the District of Columbia will fill not only their own prescription, but the prescriptions of others. In that regard, as I say, optometrists are really comparable to pharmacists.

As a matter of fact, some less skill is involved for this reason: Optometrists usually, when they sell or dispense eyeglasses, do not fabricate the eyeglass. They don't grind lenses. They buy a finished product. Most eyeglasses—I am now talking about perhaps 75 or 80 percent of the eyeglasses supplied to the public by privately practicing or employed optometrists, are glasses made from stock lenses so that the fabricator doesn't even have to surface-grind the lenses.

In any event, optometrists rarely, in the District of Columbia, grind or assemble eyeglasses. They buy a finished product and deliver it to the customers.

We have said that 75 percent of the income of optometrists is derived from the sale of glasses. Mr. Harsha, this morning, asked what proof we had of that and the proof is this: We have had a survey made here in the District of Columbia. We took a comparison shopper, gave her a pair of glasses which sell for $12.75 at Sterling and asked her to have them duplicated by the privately practicing optometrists in the District of Columbia.

We have that survey. The survey indicated that the average price charged by the privately practicing optometrist for the same pair of glasses that Sterling charged $12.75 for would cost at the privately practicing optometrist approximately $25.

Now, this morning Dr. Warren used the term "license to steal." I ask you who is exercising that license when I point out this following fact: That pair of glasses that the privately practicing optometrist charged $23 or $24 or $25 for cost that optometrist perhaps $7. No more.

Let me say that the persons who made those charges are not the exceptions. As a matter of fact, among those persons who made those charges are the spokesmen for the District Optometric Society, including Dr. Berlin, who charged $23 for a $12.45 pair of glasses.

Dr. Warren, who charged $23, also, for that same pair of glasses. And I have here, and would offer into evidence, Dr. Warren's bill.

Mr. SISK. Without objection it will be included in the record.

(The bill referred to follows:)

DR. EVART F. WARREN,
Washington, D.C.

MRS. DONNA WALTON,
Thomas Drive,
Shady Side, Maryland

For professional services rendered:

Monday, July 3, 1967:

Frame and Lenses	$23.00
Paid	3.00
Balance	20.00

Mr. STEIN. Then we have it for a $7 pair of glasses, Dr. Warren, Dr. Berlin and their colleagues charged $23, which makes a profit of approximately $16. They might charge $5 for an examination. $16 then is their profit from the sale of merchandise and $5 profit for the service rendered. I believe that comes pretty close to 75 per cent.

In addition the spread, or the profit derived from the sale of glasses increased as more expensive glasses are sold, and optometrists will generally sell a fair volume of their glasses for more than $23.

In addition, as I pointed out before, these optometrists will sell eyeglasses at the profit mentioned even without rendering refractive service. In other words, if a person comes in and doesn't ask for an examination, merely asks to have glasses purchased, the optometrist will sell the glasses and make the $16 profit. That then indicates the proportion, or increases the proportion of the optometrist's income derived from the sale of merchandise.

I submit that these figures substantiate the claim made by one of the speakers this morning that more than 75 per cent of the optometrist's income is derived from the sale of merchandise.

I believe, therefore, that in this instance, or because of this fact, an optometrist is more analogous to a pharmacist than a physician in that a physician does not normally sell a product.

This morning the speakers for the Medical Society indicated that perhaps one or two out of more than 100 or 120 ophthalmologists only sell eyeglasses. Therefore, ophthalmologists do not, as a general rule in the District of Columbia, sell a product. For that reason, optometrists in the District of Columbia may not compare themselves, in their merchandising practices, with ophthalmologists. Rather, optometrists must be likened to pharmacists and therefore they must be ready to permit truthful informational and price advertising so that the public will have the opportunity to buy glasses at the most economic source.

I pointed out also in my submission to this committee the fact that in the Optical rebate cases, the Justice Department submitted to the Federal District Court in Illinois a report which indicated that where refractors—in that case, ophthalmologists, also dispensed glasses, there was a tendency to monopolize the sale of eyeglasses with a concomitant increase in cost.

I submit that that is precisely the situation here in the case of the privately practicing optometrist and that that situation will be perpetuated and increased by this legislation.

I submit that if optometrists did not sell eyeglasses, this would be a different ballgame and they might be entitled to the protection they claim under this statute.

Now, I also point out that leaders of the profession of optometry, a Dr. Gordon Heath, who is a professor at the Indiana State University, the same as Dr. Hofstetter, and a Dr. Wylie from Ohio State University, both of whom were witnesses for the New York State Optometric Society in Sterling v. Regents, testified that as long as optometrists sold eyeglasses they could not be regarded as professionals.

Now, let me turn to Sterling. Sterling has been engaged in the business of selling eyeglasses for fifty years. They employ licensed optometrists. They employ perhaps 35 licensed optometrists. They have eleven establishments in New York City and two here in the District of Columbia.

In the case of *People* v. *Sterling*, Judge Tilzer of the Supreme Court of the State of New York and the Appellate Division of the Court of Appeals affirming his decision, stated that in the fifty years of commercial optometry in the State of New York there was no proof of any injury to the public.

In the most recent case, *Sterling* v. *Regents*, the New York State Optometric Society said at the outset they would prove injury to the public. Quite the contrary. There was proof in that case that they employed three Burns detectives. They told them to falsely state that they had symptoms of pathology when they visited the establishments of Sterling and others similarly situated on some 21 cases. One detective visited seven establishments and in six he was told he did not need eyeglasses and wasn't sold eyeglasses. In the case of others, they were given eyeglasses.

The New York State Optometric Society has those eyeglasses; they had the opportunity to neutralize the lenses to determine whether or not those prescriptions were fair, accurate and suitable to the patient. There was not one shred of evidence that any single one of those prescriptions were inaccurate or inappropriate. As a matter of fact, one of the detectives, after he discontinued his services for the Optometric Society, on his own purchased a pair of glasses from Sterling and was perfectly satisfied with the quality of the prescription and the lense. So that in that case the most recent instance where the situation has been submitted to the crucible of truth, namely a trial, again the New York State Optometric Society was unable to provide proof of a single instance of improper prescription, even though they used paid investigators to seek out the evidence.

Now, with regard to the curruptibility—I will finish up as quickly as I can.

Mr. SISK. I am simply going to have to cut you off. You have gone 25 minutes and that is about twice as much as anyone else has had.

Mr. STEIN. I just have one or two more points I want to make. This question of the corruptibility of employed optometrists. A survey was made by the New York State Optometric Society which shows that a considerable number of privately practicing optometrists had once worked for commercial establishments. I believe they did not publish those figures, but I believe it ran perhaps as high as 40 or 50 per cent. There was no evidence that those persons had been corrupted.

With regard to an optometrist being corrupted if he works in a store, or retail establishment, I have here a photograph of the front of Marvin Berlin's place of business. It shows very obviously he works in

a store and he shows—he has signs outside his establishment which plainly constitute advertising.

I don't believe the optometric society would claim that Dr. Berlin has been corrupted.

I should also refer to Governor Rockefeller's veto message of similar legislation in New York. Governor Rockefeller vetoed that legislation at the recommendation of the Department of Commerce of the State of New York, the Department of Insurance of the State of New York, the Mayor's Council of the City of New York, the AFL–CIO Central Trades Council and many others. In that message Governor Rockefeller said that legislation such as this would merely increase costs with no commensurate benefit to the public.

In conclusion, I should merely like to say that if the optometrists are sincere in their desire to uplift the profession, Dr. Warren provided the answer. Don't prohibit corporate employment, don't prohibit advertising, don't prohibit practice in a commercial location. Deal with the core of the problem. License optometrists and give the commission or the council or the board of optometry the right to revoke for certain stated meaningful reasons, such as unprofessional conduct—that is, gross incompetence.

Thank you.

Mr. SISK. Thank you, Mr. Stein, for your statement.

I must say I am sorry we don't have more members of the committee here, Mr. Stein, because actually your statement, as I interpret it, is the best argument we have had for the bill. I appreciate your remarks, and and I hope my colleagues will read the record. It seems to me the whole purpose of your statement is really indicative of the fact that we need desperately to upgrade optometry from the standpoint of the visual care of the people of our country. It does give me some real concern if the quality of a lot of our optometrists is as low and as poor as your statement would indicate.

Do I understand that you actually oppose the use of the word "Doctor" even with the O.D. after his name?

Mr. STEIN. May I respond to that and also to your first observation, Mr. Chairman?

First, with respect to your question, I object to an optometrist using the title "Doctor" unless he has a proper degree from a recognized institution qualifying him to use the title "Doctor."

Mr. SISK. If I can just stop you right there, this is exactly what we hope to begin. I might say in my own state of California, optometrists wear with a great deal of pride the title "Doctor" and we are proud to refer to them as such because of the requirements. The qualifications in the States of New Jersey, Florida, Kentucky and a number of our States are high requirements and the optometrists have professional status. Unfortunately this apparently isn't true here in the District. I will not make any comments with reference to New York where apparently the situation could stand a little correction.

Mr. STEIN. May I respond to this? In New York an optometrist may lawfully use the title "Doctor" if he has a degree, if he has a doctorate degree. And I submit that an optometrist in the District of Columbia should also be privileged to use the title "Doctor' if he has the degree. Page 15 of the bill 1283, however, would permit an optometrist to use the title "Doctor" even though he does not have a doctorate degree.

Mr. SISK. Are you speaking of the licensing procedure under the grandfather clause?

Mr. STEIN. I hadn't gotten to that, but I submit, Congressman Sisk, that if we are going to have legislation here which threatens to put businesses out of business, notwithstanding their substantial investment, there certainly ought to be a grandfather clause and there ought to be a grandfather clause for employed optometrists who have vested employee rights which they will lose if they are denied the opportunity to continue in their present employment.

Mr. SISK. I believe we do have that. The bill clearly has from the standpoint of present practicing optometrists. I think that was pretty well covered under the grandfather clause.

Mr. STEIN. They are not permitted to continue in this employment. The employers are not permitted to continue employing them.

Mr. SISK. The witness may disagree with me but the intent of the bill is to eliminate corporate practice. I am sure the gentleman understands. I say without reservation because of the experiences we have had here in the District and in other areas where corporate practice has been permitted.

Do I understand, Mr. Stein, that you are discussing primarily optometry as you have experienced it in the corporate field?

Mr. STEIN. And by virtue of the expansion of privately practicing optometry in the seven-week trial in Albany and other investigations I have made. For that reason, when you speak of correcting evils, I point out that this bill does nothing to prevent a Dr. Berlin or others like him from charging $23 for a $7 pair of glasses.

Mr. SISK. If I walked into Sterling Optical today and indicated that I was having a problem with my vision and asked for an examination, do you mean to say that they are prepared to give me a proper examination and fit me with glasses for $7?

Mr. STEIN. They will charge you $3 for an examination.

Mr. SISK. How much time are they going to spend on an examination? I just recenty had an examination out in California. I recall pretty vividly that examination.

Mr. STEIN. As much or as little time as that optometrist feels necessary in his professional judgment. Under no circumstances at no time have any of the Sterling-employed optometrists been told how much or how little time they must give to an examination. I refer to the profession, to the canons of ethics of the American Optometric Association which specifically states that no one can tell an optometrist what procedures he must use during an examination.

Mr. SISK. Mr. Stein, I don't want to argue with you. I can see you and I are probably far apart in our views.

Mr. STEIN. I regret that.

Mr. SISK. I am concerned about the public. I am not concerned about the optometrists. They can take care of themselves. I am concerned about the care my grandchildren are going to get when they have some eye problem in school. I am concerned about the kind of care they will receive. I am sure that the mothers and fathers of the District of Columbia are, too.

Does the gentleman believe a professional man qualified to render a service to the patient for the care of his eyes could adequately check

a child or adult and properly know the condition of that person's eyes and fit glasses at a cost of $7 or even $12.45? I am not opposed to low prices to the extent we can get them there.

Mr. Stein, we are concerned with patient care and the doctors' responsibility to the patient for the purpose of care of his eyes.

I am not concerned about dollars and cents. This is really the guts, pardon my use of the word, the difference between your position and mine.

Mr. STEIN. May I respond to that?

Mr. SISK. Yes, sir.

Mr. STEIN. Let me tell you this. I had a conversation with one of the employed optometrists for Sterling in the upper New York State area. This man had been engaged in the private practice of optometry working for himself and a privately practicing optometrist. He had graduated with honors from his school of optometry. He was the leading student in the class. I asked him why he entered that profession. He said, "I worked for private practicing optometrists and this man's income depended upon pushing the sales of eyeglasses. He got big prices for them." He said, "Now I work for Sterling and it does not make a bit of difference to me whether I sell a pair of glasses or I don't." He said, "I had the opportunity recently of being able to provide a woman and her five children and she was a poor woman and with not very much funds or assets, but I was able to provide her and her children with eye examinations and eyeglasses, all six of them, for the cost that woman paid the year before for herself."

He was proud of the fact that he was rendering this kind of service to the public. I might also point out that the principal executive officer of Sterling Optical Company is a licensed optometrist in the State of New York who graduated from the Columbia School of Optometry. He, too, is very zealous about his desire to serve the public. He feels most desirous, as the entire Sterling organization does, to provide the public the best eye care possible at the most economical prices.

If we learned, if we were informed or if we were advised that any of our employed optometrists were not rendering service to the very best of their ability, we would join with any enforcement agency to see that that optometrist was appropriately disciplined.

I can assure you that it is our desire and our pride to render the best service to the public and to be able to do it at a price that they can afford.

Mr. SISK. I am sure, Mr. Stein, that dedicated men, because of finances, would find themselves working for some corporation. I am sure that in the medical profession and the profession of optometry or anywhere else you get a bad apple. They know these things are all true. I still come back to the fact that if your youngster in school was having eye problems, whether or not you would be satisfied to send that child to an establishment where glasses were being merchandised for $7 a pair after supposedly an examination. Maybe you would not.

Mr. STEIN. Let me say this. I have turned the corner of forty recently when most people develop transmyopia. I got those eyeglasses at Sterling. I bought them upon examination by a Sterling-employed optometrist. I feel that I have been perfectly well cared for.

I think the proof in the *Sterling Regents* case indicates that under the most adverse circumstances, paid detectives giving false symptoms were properly prescribed eyeglasses by Sterling, indicates that it is not the length of the examination that controls. It is the ability of the examiner and his desire to give proper and appropriate service. There was not a single one of those 21 examinations which were proven in any way to have been inaccurate, inappropriate, or harmful to the public or any of the patients who came in to be examined. What better proof could there be that we are rendering good, accurate, careful service to the public than that?

Mr. SISK. You heard me cite an excerpt from a case where an individual was recently fitted. I am not picking on Sterling. I might say that, frankly, I have had it said to me that among the corporate setups locally, there are some that, let us say, do not measure up to even Sterling's standards. Certainly we know of some, and because of experiences with the law and otherwise.

Were you in the room when I cited the case with reference to Sterling? The patients when dissatisfied were told they have to go to New York. This is a normal procedure for Sterling. If I go back and complain I can not get a recourse here in Washington. It has to go through the channels in New York?

Mr. STEIN. Congressman Sisk, let me say that as a lawyer I find it rather difficult to respond to a claim without having all the facts. I can tell you, however, that if any patient has any problem in any one of the 13 stores, the professionals in charge of that store have complete and absolute authority to deal fairly with that patient and are instructed to do so.

There is absolutely no practice requiring that person to go to New York. I might say that in this instance I should point out that the optometrist who did or does the contact lens work case in Sterling in the District of Columbia is probably the most competent contact lens specialist of any optometrist in the District of Columbia. He does that. He does that only. He does that every day.

I might also say that this person is entering private practice now. His standards, I assure you, will not be any different in private practice than they were in the course of his employment. He is highly qualified, highly competent, and no one else tells him how many contact lens cases he must do a day. He does as many as he can completely do in the light of the requirements of the patient and his concern about giving that patient the best care possible.

Mr. SISK. Would you agree with me probably he will be in a much better position to serve the public in private practice than he would in, say, the employ of a corporation where profit is the only motive?

Mr. STEIN. Quite the contrary. In Sterling he has the aid and assistance of competent opticians, dispensers, laboratory personnel. He does not have to concern himself about paying next month's rent.

Mr. SISK. Those are available to all of them?

Mr. STEIN. If they can afford it. If they can afford it. That may be the reason why some privately practicing optometrists tend to overprescribe so they can meet obligations of rent, meet their obligations to satisfy the payroll that they have, or need to provide adequate service.

Mr. SISK. Those are the types that we are trying to weed out.

Mr. STEIN. The bill does not do that, Congressman Sisk.

Mr. SISK. We think it is a big step in that direction because if we can weed out the profit motive I think we will have made some gain in this area.

Mr. STEIN. We have not weeded it out under this bill.

Mr. SISK. Counsel, do you have any questions?

Mr. GARBER. Mr. Stein, one or two questions here along the line that we have been discussing.

Any corporate group that is engaged in the practice of optometry, they are in business to make a profit primarily, isn't that right?

Mr. STEIN. As the private practice optometrist, yes, sir.

Mr. GARBER. In other words, if the corporation did not make a profit it would go out of business and there would be no reason for existence?

Mr. STEIN. That is true.

Mr. GARBER. Do you make a profit off of your examinations as a corporation profit?

Mr. STEIN. I do not know.

Mr. GARBER. Has it ever occurred to you that is a pretty important thing for a corporation to know, whether it is making a profit or not?

Mr. STEIN. I think it is certainly important to know that the bottom line is in the black, yes.

Mr. GARBER. Would you say that the principal profit made by the corporation is derived from the sale of glasses, frames, and lenses?

Mr. STEIN. I don't know that but I would suspect that is true in the private practicing optometrist.

Mr. GARBER. If the corporation could exist and do very well on the profits it makes from the sale of——

Mr. STEIN. No, let me answer that. Fifty percent of our business, or perhaps 35 percent of our business is derived from prescriptions emanating from persons other than optometrists which we employ. Almost all of that comes from ophthalmologists, prescriptions.

Ophthalmologists don't issue prescriptions. If we did not have ophthalmologists performing examinations, the only business we would get would be the 35 percent which we now derive from prescriptions emanating from ophthalmologists. That is the reason why I say that the crux of this matter is whether or not privately practicing opticians should sell eyeglasses.

If they were not permitted to sell eyeglasses, we would be able to fill their prescriptions and remain in business.

Mr. GARBER. Mr. Stein, you say that you fill prescriptions for ophthalmologists?

Mr. STEIN. Yes.

Mr. GARBER. You fill prescriptions for optometrists, too, do you not?

Mr. STEIN. If we can get them. The only ones we would get are optometrists that we employ.

Mr. GARBER. Is there in this bill anyplace that precludes you in any respect from selling glasses, lenses, frames, in any respect whatsoever?

Mr. STEIN. Yes, in this sense——

Mr. GARBER. Where is the language?

Mr. STEIN. If we can not employ optometrists.

Mr. GARBER. I am asking you whether or not there is anything in here that precludes you from selling frames and glasses.

Mr. STEIN. Just the pragmatic workings of the bill. If we do not employ optometrists, if optometrists privately practicing can not sell eyeglasses that they prescribe, our business will be cut back 65 percent. We will be limited to the sale of glasses upon prescriptions from ophthalmologists.

Mr. GARBER. In other words, your bread and butter depends on the employment of an optometrist in order to enable you to make a profit on the care of eyes of the community?

Mr. STEIN. As the matter now stands in the District of Columbia, in order for us to continue in business it is necessary for us to employ optometrists, yes. I might also say in regard to a matter that was brought up this morning, this question of patient referral. I believe that the evidence given by Dr. Albert indicates the rate of referral for commercial establishments, commercially or employed optometrists, or ophthalmologists, is considerably higher than that of the privately practicing optometrist.

Mr. SISK. If the gentleman will pardon me, I questioned Dr. Albert at some length and he did not say that. He said that it might be about fifty-fifty. He did not state it would be higher. And upon further questioning he said he didn't know.

I asked the medical people if they could get some figures. They would be interesting.

Mr. STEIN. If we take his figures at 50 percent, then the referral rate from the employed optometrists has to be greater. There are, we are told, approximately 70 privately practicing optometrists in the District of Columbia. I would say there are perhaps only 20 percent of that employed or 20 percent or 14 or 15 percent employed optometrists in the District of Columbia. If those 14 are making 50 percent of the referrals and the seventy are making 50 percent of referrals, I think it stands to reason that the rate of referrals by the employed optometrists is considerably higher than the privately practicing optometrists.

Mr. SISK. Mr. Stein, I do not wish to pursue this further but that brings up another question. Do I understand from you that there are only some 15 employed optometrists by corporate interests here in the District?

Mr. STEIN. I would suspect there are perhaps that number. Less than twenty in the District of Columbia. Yes.

Mr. SISK. How many corporate optical places are there in the District? Do you know any by chance?

Mr. STEIN. I do not know. The reason I have a problem ascertaining that is that many of the so-called privately practicing optometrists also apparently own opticianary establishments. If I looked at the phone book I would see an opticianary establishment or an optometrist's phone number at the same address or the same phone number and the same address. I would not know whether that was a truly employed optometrist or whether that was a so-called privately practicing optometrist who is his own opticianary corporate establishment there.

There is a considerable amount of that in the State of New York and I suspect it is true down here. I might say when it serves the purposes of the privately practicing optometrist, they seem to countenance corporate employment.

Mr. SISK. Where the law is as lax as it is here, I can understand that.

Mr. STEIN. It is not that lax in New York and it still continues. As a matter of fact, we proved in that case that the New York State Optometric Society itself organized a corporation known as Vision Services, Inc. That corporation employed lay persons to solicit business for the corporation so that members of the Optometric Association could perform optometric services for a fee. That is as close to corporate employment as I can imagine.

I also discovered that the New York State Optometric Society had a contract with the Teamsters Union to provide optometric services. That is pretty close to employment. I also discovered that the Optometric Center in the City of New York, which is sponsored by the New York State Optometric Society and manned by prominent members of the New York State Optometric Society, performs optometric services and sells eyeglasses to the public. The optometrists who perform those services get paid a fee. That is pretty close to corporate employment. Yet the optometric societies countenance that kind of practice.

As I say, it depends on whose ox is gored.

Mr. SISK. Mr. Gude from Maryland just came in.

This is Mr. Stein representing Sterling Optical. Do you have any questions?

Mr. GUDE. Not at this time.

Mr. SISK. All right, Mr. Stein, thank you for your statement. The committee appreciates your testimony.

I believe we have gentlemen from the Board of Trade whom we have promised to hear this afternoon, Mr. Becker and Mr. Weir. If they will come forward to the witness stand, we will hear them now.

I might say to other witnesses, upon the conclusion of this testimony the committee will have to adjourn for tonight and unless otherwise notified the committee will reconvene at ten o'clock next Friday morning.

STATEMENT OF OSBY L. WEIR, GENERAL MANAGER, WASHINGTON AREA, SEARS, ROEBUCK AND COMPANY, AND SECRETARY OF THE METROPOLITAN WASHINGTON BOARD OF TRADE

Mr. WEIR. Mr. Chairman and members, I am Osby L. Weir, General Manager, Washington Area, Sears, Roebuck and Company. I appear here today as the Secretary of the Metropolitan Washington Board of Trade, to voice that organization's opposition to H.R. 595, H.R. 732, H.R. 1283 and H.R. 10075, also H.R. 12276 and H.R. 12297—all bills to amend the Optometry Law of the District of Columbia.

In the interests of time, if you prefer, I will summarize it very quickly. If you have any questions I will be glad to answer them.

Mr. SISK. Your entire statement will be made a part of the record. If you can, please summarize it.

(The statement follows:)

STATEMENT OF OSBY L. WEIR FOR THE METROPOLITAN WASHINGTON BOARD OF TRADE BEFORE SUBCOMMITTEE NO. 5, HOUSE DISTRICT COMMITTEE, AUGUST 14, 1967

Mr. Chairman and Gentlemen, I am Osby L. Weir, General Manager, Washington Area, Sears, Roebuck and Company. I appear here today as the Secretary of the Metropolitan Washington Board of Trade, to voice that organization's opposition to H.R. 595, H.R. 732, H.R. 1283 and H.R. 10075 also H.R. 12276 and H.R. 12297—all bills to amend the Optometry Law of the District of Columbia.

These bills, except for slight variations in phraseology and punctuation, are similar in effect. The stated purpose of these bills is to re-write and up-date the Optometry Law of the District of Columbia. This would be accomplished by the repeal of the existing provisions of the Optometry Law and the enactment of an entirely new law within the District.

At previous hearings the Medical profession, the Guild of Prescription Opticians of America, the Guild of Prescription Opticians of Washington, D.C., the National Association of Optometrists and Opticians, as well as the Metropolitan Washington Board of Trade have opposed the proposed re-writing of the Optometric Law—on the grounds that it deprives the public of freedom of choice in the selection of optical aids, at considerable expense and no corresponding benefit.

The Metropolitan Washington Board of Trade directs its opposition to one particular effect of these proposals, if enacted.

The existing Optometric Law of the District of Columbia provides in Section 20—

"That the provisions of this Act shall not apply—

* * * * * * *

(b) To persons selling spectacles and (or) eyeglasses and who do not attempt either directly or indirectly to adapt them to the eye, and who do not practice or profess to practice optometry."

Bills H.R. 595, H.R. 1283, and H.R. 10075, on the contrary, not only eliminate this provision, but provide, in Section 8(a), subdivision (4).—

"It shall be unlawful for any person * * * with the exception of nonprescription sunglasses or nonprescription protective eyewear, to sell or offer to sell to the public eyeglasses, spectacles, or lenses to fit or duplicate lenses, without a written prescription from a licensed physician or optometrist."

(H.R. 732 has a similar provision, Section 8(a)(4), but requires that the prescription come from a physician or optometrist licensed to practice in the District of Columbia.)

POINT ONE. THE PROPOSAL TO ELIMINATE THE SALE OF READY-TO-WEAR READING GLASSES IS DESIGNED BY ORGANIZED OPTOMETRY TO ELIMINATE COMPETITION

It seems quite illogical that men who seek to insure for themselves a "professional" status should consider magnifying spectacles a source of competition. The usual cry of "pro bono publico" has been raised by the American Optometric Association, sponsors of these bills. In order to maintain this position, they would have to show (1) that the sale of these glasses is injurious, or (2) the public was deceived, or (3) that the public could obtain better or equal service from them at lesser cost.

In none of these instances can they maintain their position. In fact, the contrary is true. The public's purchase of ready-to-wear reading glasses serves a great human cause. First, these simple ready-to-wear magnifiers in convenient frames are aids to old-aged vision. Second, the cost is nominal, from $1.50 to $3.95 per pair as against purchasing the same from an optometrist for five to ten times more. Third, there is authoritative medical testimony that they "cannot effect any change in your eyes, let alone 'ruin them.' "

POINT TWO. READY-TO-WEAR MAGNIFYING SPECTACLES PLAY AN IMPORTANT ROLE IN THE COMFORT OF MANKIND

Middle-aged farsightedness is as natural as gray hair. With the advancing years, the eye gradually loses its powers of accommodation for near vision because the eye lens becomes progressively harder. From the age of forty on, most people just cannot seem to hold things far enough away to see them clearly.

Years of research have produced the simple answer for farsightedness. It is a pair of magnifying glasses for reading and close work. These magnifying

lenses, in convenient frames, bring close objects into focus and enable you to see them clearly and easily. The cost is from one/tenth to one/fifth of what you would pay for a custom-made pair of prescription reading glasses.

POINT THREE. THESE GLASSES ARE SAFE TO WEAR

Many millions of pairs of these glasses have been produced, distributed and purchased in the United States without causing harm or injury to the eyes. If magnifying spectacles help a person to see better they have accomplished the necessary goal of all spectacles. Attached hereto and made a part hereof are resolutions by the Medical Society of New Jersey and the New Jersey Academy of Ophthalmology and Otolaryngology, wherein they have disapproved of the enactment of legislation which would have outlawed the sale of these ready-to-wear glasses even as the bills in the instant case propose to do. These are respectively marked, Exhibits A and B. Also attached hereto are exhibits C and D.

POINT FOUR. THE MERCHANDISING AND WEARING OF THESE GLASSES IS APPROVED BY GOVERNMENT AUTHORITY

In no State of the United States is the sale of these magnifying spectacles prohibited. Massachusetts, Minnesota, New York and Rhode Island, provide that the glasses may be sold if an optometrist is merely present at the place of sale. He is not required to participate in the sale, but to be available if guidance is needed.

Attached hereto is a statement prepared by the Counsel of the Metropolitan Washington Board of Trade showing the State statutory authorizations to sell ready-to-wear reading spectacles. (Exhibit D)

These glasses are and for many years have been freely sold in Maryland, the District of Columbia and Virginia. It is and has been the policy of the Board of Trade to seek and support uniform regulations in the Metropolitan ARea. The enactment of this proposed legislation eliminating the sale of ready-to-wear reading glasses would merely force residents of the District of Columbia to go into the two adjoining states to purchase their ready-to-wear reading glasses.

Thank you very much for this opportunity to present our views.

STATE STATUTORY AUTHORIZATIONS TO SELL READY-TO-WEAR READING SPECTACLES

ALABAMA: § 209. "Nothing in this chapter shall be construed to applying to resident merchants who sell eye glasses or spectacles as merchandise in permanently established places of business * * *"

ALASKA: § 4. * * * "Nothing in this act shall be construed to apply to the sale of * * * completely ready-made spectacles and eye glasses sold as merchandise only * * *"

ARIZONA: § 32.1721. "This chapter shall not * * * prohibit the sale of spectacles and eye glasses as merchandise from a permanently established place of business."

ARKANSAS: § 16. "Nothing in this Act * * * shall prohibit the sale of ready-made eyeglasses and spectacles when sold as merchandise at any established place of business, where no attempt is made to practice optometry."

CALIFORNIA: § 3043. "The provisions of this chapter do not prohibit the sale of * * * complete ready to wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors."

DELAWARE: Chapter 1017 § 1017. "Nothing in this chapter shall be construed to prevent the sale of spectacles or eye glasses in the ordinary course of trade, provided no part of the Chapter is violated in making such sale."

DISTRICT OF COLUMBIA: § 20. "That the provisions of this Act shall not apply * * * (b) To persons selling spectacles and (or) eyeglasses and who do not attempt either directly or indirectly to adapt them to the eye, and who do not practice or profess to practice optometry."

FLORIDA: § 463.16. "Nothing in this chapter shall be construed to prevent the sale of * * * ready-made nonprescription glasses."

GEORGIA: § 84–1108. "Nothing in this Chapter shall be construed * * * to prevent any person or persons selling glasses as articles of merchandise * * *."

IDAHO: § 54–1515. "The following persons, firms and corporations are exempt * * * 3. Persons, firms and corporations who manufacture or deal in eye-

glasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry * * *."

ILLINOIS: § 4. "Nothing contained in this Act shall be construed to apply to * * * persons, firms and corporations who manufacture or deal in eye glasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry."

IOWA: § 154.2 (1) Similar to the Illinois Optometric Law.

KENTUCKY: § 320.200, subdivision (3). "* * * nothing in this Act relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eye glasses or spectacles designed and used solely to magnify."

LOUISIANA: § 1065. "The provisions of this Chapter shall not apply * * * to retail dealers selling glasses as merchandise in their established places of business."

MARYLAND: § 384. Similar to the Illinois Optometric Law.

MICHIGAN: § 7(e) "* * * nor shall such provisions apply to prevent persons selling spectacles or eyeglasses as an article of merchandise and not trafficking or attempting to traffic upon assumed skill."

MISSOURI: § 336.120. (3) Similar to the Illinois Optometric Law.

MONTANA: § 66.1301 (3169) Similar to District of Columbia Law.

NEBRASKA: § 71.1134 Similar to District of Columbia Optometric Law.

NEVADA: § 636.390 Subdivision (2) Similar to California Law.

NEW HAMPSHIRE: § 12. "Persons excepted. Nothing in this chapter shall apply to * * * persons who neither practice nor profess to practice optometry, but who sell spectacles, eye-glasses or lenses * * * as merchandise from permanently located and established places of business."

NEW MEXICO: § 67–7–14. Similar to District of Columbia Law.

NORTH CAROLINA: § 90.127. "Nothing in this article shall be construed to * * * prohibit persons to sell spectacles, eyeglasses, or lenses as merchandise from permanently located and established places of business."

NORTH DAKOTA: § 43–1329 "Nothing in this act shall prohibit the sale of ready-to-wear glasses equipped with convex-spherical lenses, nor sunglasses equipped with plano lenses nor industrial glasses or goggles with plano lenses used for industrial eye protection, when sold as merchandise at any established place of business and where the selection of the glasses is at the discretion of the purchaser."

OHIO: § 4725.14. "Exemptions. * * * (B) To persons selling spectacles and eyeglasses who do not assume to adapt them to the eye, or neither practice nor profess to practice optometry."

OKLAHOMA: § 604–§ 3. Similar to Ohio Optometric Law.

OREGON: § 683.030. Similar to District of Columbia Law.

PENNSYLVANIA: § XII Similar to California Law.

SOUTH CAROLINA: § 56–1083. "Nothing in this chapter shall be construed to apply * * *(b) to persons who sell as merchandise from a regular established place of business ready-made eye glasses or spectacles if such person shall not aid the purchaser in the fitting thereof."

SOUTH DAKOTA: Laws of 1957. Similar to North Dakota Optometric Law.

MISSISSIPPI: § 8846. "The provisions of this chapter shall not apply to * * * merchants and druggists who are actually engaged in business in this state from selling and assisting purchasers in fitting spectacles and eyeglasses in their place of business at time of sale."

TENNESSEE: § 63–816. Persons and practices exempt,—Nothing in this chapter shall be contrued (3) To prevent a retail resident merchant, in a permanently located place of business to sell ready-to-wear spectacles and eye-glasses as merchandise, without advertising other than the price marking on same, after they have been selected by the customer alone, without aid, in person from trays or other containers, containing such merchandise (and any other method of sale or delivery shall be construed as practicing optometry) * * *".

TEXAS: § 4565e "Selling as Merchandise.—For the purpose of this Act the words 'Persons who sell spectacles and eye glasses as merchandise' as employed in Article 4566, shall be construed to mean merchants who do not practice optometry, or offer to practice optometry, but who sell spectacles or eye glasses as merchandise, after they have been selected by their customers alone without aid from the merchant, either in person or indirectly, * * * other than the particular and complete and ready-to-wear spectacles or eye glasses selected by

the customer in person from trays or other containers, containing such merchandise, and any other method of sale or delivery shall be construed as practicing optometry."

UTAH: § 4 subdivision (c) Similar to Illinois Optometric Law.

VERMONT: § 6883. Similar to California Optometric Law.

VIRGINIA: Article 1. § 54–369. "* * * nor shall anything in Sec. 54–396, subsection (10) be construed to prohibit the sale of spectacles and eyeglasses, or any of such articles, as merchandise, from a regularly located and established place of business."

WASHINGTON: § 18.53.040 Similar to District of Columbia Law.

WEST VIRGINIA: § 4. (d) Similar to District of Columbia Law.

WISCONSIN: § 153.02 (2) "This section shall not apply to * * * the sale of spectacles containing simple lenses of a plus power only at an established place of business incidental to other business conducted therein, without advertising other than price marking on the spectacles, if no attempt is made to test the eyes. The term 'simple lens' shall not include bifocals."

WYOMING: § 37.1802. Similar to California Optometric Law.

Legislative Bulletin to Keymen and County Society Secretaries

For easy reference we present this compilation of the official positions of The Medical Society of New Jersey concerning the following bills *relating to the practice of optometry:*

S–209—To include under the scope of laws dealing with the practice of optometry any who offer and market for sale at retail to the general public spectacles or eyeglasses containing other than plano lenses. *DISAPPROVED* as unnecessary, because the vending of such glasses is not proper or exclusive to the practice of optometry, whose fundamental function (under law) is to examine for defects of vision and to prescribe corrective lens. This legislation would deny to the public access to low-cost eye-glasses of simple magnification, and thus is restrictive of free choice and is discriminatory.

S–210—To include in the practice of optometry any person who prescribes or dispenses to the general public spectacles or eye-glasses containing other than plano lenses. *DISAPPROVED* as unnecessary, because the vending of such glasses is not proper or exclusive to the practice of optometry, whose fundamental function (under law) is to examine for defects of vision and to prescribe corrective lens. This legislation would deny to the public access to low-cost eyeglasses of simple magnification, and thus is restrictive of free choice and is discriminatory.

S–213—To provide that any person who practices ophthalmic dispensing in violation of the act governing regulation of the practice shall be liable to a penalty of not more than $200. *DISAPPROVED*, because it would deny to the public access to low-cost eyeglasses of simple magnification, and thus is restrictive of free choice and is discriminatory.

To the Honorable Members of the New Jersey State Senate, Greetings:

Whereas the Academy of Ophthalmology and Otolaryngology of the State of New Jersey, representing, among others, the leading eye physicians practicing in the State of New Jersey, have examined the legislative proposals known as Senate Bills 209, 210, and 213, now before the Senate of the State of New Jersey; and

Whereas each of these bills, though different in wording, is directed toward the same purpose; and

Whereas Senate Bills 209, 210 and 213 are identical with Senate Bills 142, 335 and 336 of 1966, which were opposed by this organization; and

Whereas the alleged purpose of Senate Bills 209, 210, and 213, is to protect the eye health of the public by compelling the purchasers and wearers of eye glasses to buy only under prescription from an ophthalmologist or an optometrist, and thereby afford to such purchasers the protection of the discovery of eye disease and the diagnosis thereof, through the prohibition of the sale of ready-to-wear glasses: Now, therefore, be it

Resolved, That the Academy of Ophthalmology and Otolaryngology of the State of New Jersey is opposed to the enactment of Senate Bills 209, 210 and 213 for the reasons:

1. Such legislation is unnecessary for the protection of the public health;
2. Such legislation will fail to accomplish its stated purpose in that optometrists are neither authorized by law nor qualified by education to administer medicine, or diagnose diseases of the eye;

3. Although the New Jersey Academy of Ophthalmology and Otolaryngology does not recommend the purchase of ready-to-wear reading glasses, such legislation would deprive the public of the right to avail itself of cheap and harmless magnifying aids to assist in reading without the expense of eye examination by an ophthalmologist or optometrist.

And, be it further resolved, That the Senate of the State of New Jersey is respectfully requested to reject the enactment of each of these bills.

In Witness Whereof the Academy of Ophthalmology and Otolaryngology of the State of New Jersey has caused this Resolution to be signed by its Secretary-Treasurer this 5th day of February, 1967.

JOHN SCILLIERI, M.D.,
Secretary-Treasurer.

The following statement was made by Arthur C. Unsworth, M.D., before a Joint Committee of the Senate and House of Representatives of the State of Connecticut. This was in opposition to a bill introduced by the optometrists to outlaw the sale of ready-to-wear magnifying spectacles. It will be noted that Dr. Unsworth is Senior Staff Member of the Hartford Hospital, a member of the American Medical Association, the American College of Surgeons, and has received many other honors. Particular attention is called to his statement—

"It is the optometric group which has proposed this legislation, for which I believe the public good is not the real purpose of bill 984. It is an economic measure to bring the merchandising of all appliances relating to vision under their control.

"As a person becomes older the accommodative power of the eye is less elastic and one's arms are just not long enough to read the telephone book and the newspaper. I do not believe that the public should be denied the right to go to a store and pick out a cheap pair of magnifying glasses to enable him to read. The public should not be compelled to pay for an examination by an eye specialist and then buy an expensive pair of reading glasses if he can do it just as well at a fraction of the cost by picking out a readymade pair of glasses which suit him. If in trying on glasses he finds that his vision is not satisfactorily corrected he can seek medical eye examination, because the optometrist is not qualified to diagnose an eye disease anyway.

"I might add that it is not true that the wearing of the wrong pair of glasses will permanently impair vision or produce a disease of the eye or cause blindness."

The same statement is borne out by Derrick Vail, M.D., who is the head of the Department of Ophthalmology at Northwestern University Medical School and Editor-in-Chief of the American Journal of Ophthalmology. During the war he was Senior Consultant in Ophthalmology to the United States Army in the European Theater of Operations. He has written a book entitled "THE TRUTH ABOUT YOUR EYES," a Medical Book for the Layman, in which he says, among other things—

"But the wearing of wrong glasses will not lead to any organic (anatomical) change in any part of the eye. It will not produce any permanent diseased condition. These dogmatic statements are based on the daily experience of many ophthalmologists. The fallacy of the statement that 'your eyes can be ruined if your glasses are wrong,' used as scare-head advertising, is a very common one. Don't believe it for one minute. Wrong glasses can blur your vision, make your eyes uncomfortable, bother you in many ways, such as causing burning and irritation of the lid margins, but they cannot effect any change in your eyes, let alone 'ruin them'." (Page 54).

Mr. WEIR. Thank you, sir.

Our primary objection is based on the ground that this bill does deprive the public of freedom of choice in the selection of optical aids at considerable expense and, in our opinion, no corresponding benefit.

There is no state in the union that prohibits the sale of such glasses, that is, eyeglasses, magnifying glasses put in a frame.

We base this on four points:

One, the proposal to eliminate the sale of ready-to-wear reading glasses so designed by organized optometry to eliminate competition.

Second, the ready-to-wear magnifying spectacles play an important role in the comfort of mankind.

Third, these glasses are safe to wear.

Fourth, the merchandising and wearing of these glasses is approved by government authority.

Mr. SISK. Would the gentleman explain to which glasses he is referring?

Mr. WEIR. These (pointing) are magnifying glasses that can be used for reading purposes but they are placed for convenience in frames, primarily used for the benefit of the aged.

Mr. SISK. I wanted to get that cleared up. Are they exempt as sunglasses and other types?

Mr. WEIR. I will show you the type of glasses that I mean (handing up samples.)

These will merchandise from $1.95 to $3.50. They look like regular glasses. They are in all styles, "granny" type or regular type glasses. They really are magnifying glasses, not prescription glasses, merely placed in a frame for convenience. You could hold them out like this as you do many magnifying glasses or put them on your face.

Referring back to one of the original reasons for the prohibition of the sale of these glasses, if they were provided for in the District of Columbia this would be at variance with the law as it exists in the State of Maryland and in the State of Virginia.

That completes my basic summary.

This pair is for reading purposes only.

Mr. SISK. I do not know how anybody could wear these. I can't see my way around the room in them. Maybe somebody can. I don't know.

Mr. WEIR. They are utilized for only the person that could. They go in the store and pick out any one. Use it as you would a magnifying glass. These glasses are manufactured by the same firms that manufacture regular glasses you or I may wear, such as Bausch & Lomb, Pennsylvania Optical.

Mr. SISK. Have you completed your statement?

Mr. WEIR. Yes, sir.

Mr. SISK. I really do not have many questions. I am a little concerned the Board of Trade would oppose what we are thinking of doing here, that is, to protect the people locally from the standpoint of visual care. Having been here and dealt with the Board of Trade, I am rather astonished, Mr. Weir, they would take a position in opposition to anything that would enhance and improve health care. Certainly there is nothing in my opinion that we would be more concerned about than our eyes. I doubt there is anything more precious either to a child or adult.

I can understand that you might disagree with some portions of the bill but not oppose upgrading the eye care in the District; that just doesn't seem to be of benefit to the Board of Trade. That is about the only comment I can make.

I would ask the gentleman this one question. Does the gentleman himself feel that permitting the sale of this kind of glasses is really in the best interests of the public?

Mr. WEIR. I certainly do.

Mr. SISK. Have you tried any of these?

Mr. WEIR. As is evidenced by every state of the union, this type of sale is not prohibited.

Mr. SISK. I question that. I am not questioning your testimony at the moment but I think that there are some state laws in connection with this prohibition. It may be that I am in error.

That is all I have.

Does the gentleman from Maryland have any questions?

Mr. GUDE. In looking at your testimony here, Mr. Weir, the statement, it says that the Metropolitan Washington Board of Trade directs its opposition to one particular aspect of these proposals. Is it that the Board of Trade is just considering one particular provision of this?

Mr. WEIR. At this point this is the only position the Board of Trade has taken with reference to the buyer.

Mr. GUDE. It is just objection to this type of merchandise?

Mr. WEIR. That is right. We feel this deprives from the public the privilege of purchasing this kind of merchandise. That is the only position we are taking in the statement.

Mr. SISK. Let me stand corrected then because I understood from your oral statement—unfortunately I hadn't read the written statement—that you were opposed to the entire bill. I was a little disturbed that the Board of Trade would attempt to take a position here on a rather comprehensive bill.

I can understand the concern of the commercial establishments who might lose a few sales. I am not sure that this should be permitted.

Mr. WEIR. You are permitted, of course, to buy magnifying glasses in other forms and this is merely an adaptation of that which permits the person to put on this if it suits their purpose.

I might also say in the testimony further there is an indication that it is not damaging to the eye. It is not harmful to the eye. That has been proven medically.

Mr. SISK. Thank you, Mr. Weir, very much for your testimony. Your statement will be made part of the record.

With that, the committee stands adjourned until 10:00 o'clock Friday morning, or as otherwise advised.

(Whereupon, at 5:32 p.m., the subcommittee was adjourned, to reconvene at 10:00 a.m., Friday, August 18, 1967.)

OPTOMETRY

FRIDAY, AUGUST 18, 1967

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

The Subcommittee met, pursuant to recess, at 10 a.m., in Room 1310 Longworth House Office Building, Hon. B. F. Sisk (chairman of the subcommittee) presiding.

Present: Representatives Sisk, Jacobs, and Gude.

Also present: James T. Clark, Clerk; Hayden S. Garber, Counsel; Sara Watson, Assistant Counsel; and Leonard O. Hilder, Investigator.

Mr. SISK. Subcommittee No. 5 will come to order for the continuation of hearings on bills concerning the practice of optometry in the District of Columbia.

On the last day of the hearings we skipped around on our witnesses list. Today, we want to hear in order those remaining on the list. Our first witness this morning will be Mr. Jerry A. Miller, Executive Secretary, Guild of Prescription Opticians of America, Incorporated, the Guild of Prescription Opticians of Washington, D.C., and the District of Columbia Association of Dispensing Opticians.

We will be happy to hear from you now, Mr. Miller.

The subcommittee wishes, if at all possible, to complete our list of witnesses today, and I am going to request that we follow the 10-minute rule.

I understand, Mr. Miller, that you do have a statement here. Without objection your entire statement will made a part of the record. You may summarize with the thought that the Subcommittee will consider your entire statement.

You may proceed.

STATEMENT OF JERRY A. MILLER, EXECUTIVE SECRETARY, GUILD OF PRESCRIPTION OPTICIANS OF AMERICA, INCORPORATED, APPEARING ON BEHALF OF THE NATIONAL ASSOCIATION AND ITS WASHINGTON AFFILIATE, THE GUILD OF PRESCRIPTION OPTICIANS OF WASHINGTON, D.C., AND THE DISTRICT OF COLUMBIA ASSOCIATION OF DISPENSING OPTICIANS; ACCOMPANIED BY JOSEPH STOUTENBURGH, SPECIAL COUNSEL, AND ROBERT W. BURTON, COUNSEL

Mr. MILLER. Mr. Chairman and members of the Subcommittee.

I appear in opposition to H.R. 12276 and other substantially similar bills relating to the practice of optometry in the District of Columbia.

My name is J. A. Miller, I speak as Executive Secretary of the Guild of Prescription Opticians of America, Inc. on behalf of our national association and our Washington, D.C. affiliate, the Guild of Prescription Opticians of Washington, D.C. The Guild of Prescription Opticians is a national non-profit membership corporation representing skilled and ethical dispensing opticians throughout the United States, including the District of Columbia.

Mr. Paul Pattyson, President of the Washington, D.C. Guild and also president of the District of Columbia Association of Dispensing Opticians planned to be here this morning. He has been here on other days of the hearing, but, unfortunately, he has been in an automobile accident and is unable to be present today. Mr. Alfred Teunis will be here a little later. He has been delayed. These opticians has asked me to speak for them and for other opticians similarly situated.

These opticians are engaged solely in the dispensing of eyeglasses, and/or contact lenses and other optical materials. They and their employees do not refract eyes nor are they in any way associated with any refractionist, whether he be physician, surgeon, osteopath and optometrist.

Also with me is Joseph Stoutenburgh of the firm of Dawson, Griffin, Pickens and Riddell, special counsel for our national association, and Robert W. Burton, counsel for our local organization.

Since it is my understanding that the transcript of the hearings last year on H.R. 12937 and similar bills will be made part of the proceedings of this hearing, I will direct my remarks primarily to the new provisions contained in H.R. 12276, which has been referred to as a cure-all. Gentlemen, it is not.

At this time, however, I wish to submit for the record a copy of my letter of March 31, 1966 which was hand-delivered to the Committee and to each member of the Committee but which was not printed in either edition of the transcript of the hearings on H.R. 12937. This letter, which was prepared in response to a request by the committee, contains our suggested amendments which are equally applicable to the bills under consideration as they were to the bills considered by the 90th Congress.

Mr. Chairman, will this letter be made part of the transcript?

Mr. SISK. Without objection, that may be submitted for the record and will become a part of the transcript.

Mr. MILLER. Thank you.

Mr. SISK. Do I understand that last year you requested a letter to be made part of the record, and you did turn it over but, however, we failed to make it a part of last year's transcript?

Mr. MILLER. That is correct, Mr. Chairman.

Mr. SISK. Let me say, as one member of this subcommittee, although last year I was not chairman, I am sorry that happened. I do not know what the circumstances may have been; but, at any rate, your letter will be made a part of the record.

You may proceed.

Mr. MILLER. We look with favor on efforts to upgrade and improve the practice of optometry but this bill goes farther than that. It takes away traditional rights of dispensing opticians who have an older place in the history of eyecare than the optometrist and restricts his legitimate and appropriate business of serving the public both to

the detriment of the optician and the public need. The bill should deal simply and straightforwardly with the practice of optometry alone.

The present bill, including H.R. 12297, both are, in the main, just as unacceptable as the old bill, both to the Medical Association and to the Guild.

Now, I wish to comment on the objectionable features which have been added or changed in the new bills.

SECTION 2

In Section 2 of H.R. 12276 as well as in other sections of the bills, there is increased preoccupation with identifying optometry as a profession. Defining optometry "as a profession" seems designed to give optometry an unnecessary professional status. We see no need or necessity in legislating a profession. The medical profession fills this need in the field of eyecare.

SECTION 3

In Section 3 (2) of H.R. 12276, the practice of optometry is defined to mean, "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." The definition then lists such acts or practices. What is the significance of the clause "as they are included in the curriculum of recognized schools and colleges of optometry"?

As Mr. Horton has already noted, the meaning is indefinite because by changing the subject matter of a course dealing with one of the practices listed in the definition, the definition of the practice of optometry could be changed without recourse to the Congress and so might include inconsistent and objectionable practices. The bill should be amended to eliminate the reference to curriculum as is the case in H.R. 732 and H.R. 395.

SECTION 4

In Section 4, (7) which deals with the subject matter of examinations for an optometric license, there is included the subject of "practical optometric dispensing". We suggest that the word optometric be deleted and the word optical or ophthalmic be substituted. The reason for this request is that these bills treat the field of eyecare as though it were the exclusive domain of optometry, whereas the optician, as explained in detail in my statement on H.R. 12937, was practicing his skills centuries before there was an optometrist—before the word "optometry" was ever invented.

This insistence upon calling almost everything in the eyecare field "optometric" paves the way psychologically and legislatively for the unwarranted restrictions which these bills place upon the practice of dispensing opticians.

SECTION 8

Section 8(a) (4) prohibits advertising the price or cost or any reference thereto of ophthalmic material of any character. While we do not object to the prohibition against price advertising of prescription eyeglasses and contact lens to the general public, the prohibition in this subsection is so broad that it is unnecessarily restrictive.

It is restrictive because there is no definition of what constitutes optometric or ophthalmic materials, as Mr. Whitener and others have already pointed out. In another section (Section 7(a)(6)), the term "optical" material is used—to further confuse the issue. Are optometric materials, ophthalmic materials and optical materials one and the same or different? These terms need to be defined for it certainly cannot be the intent of the proponents to prohibit advertising the price or cost or any reference thereto of such materials as lens tissue, lens cleaner, magnifiers, binoculars, Murine and eyeglass cases.

Actually, the use of the adjective "optometric" to describe any kind of materials is incongruous. A profession, and this bill would declare optometry "a profession", by its nature deals in services, not products or materials. The word "optometric" should be deleted. Again, however, the word "optometric" is used to pave the way for the legislative restrictions on opticians proposed under this bill.

Section 8(a)(5) makes it unlawful to solicit patients by means of offering credit for the purpose of obtaining patronage. There are dignified and modest advertisements by dispensing opticians in the Yellow Pages which carry the trademark or insignia of Central Charge. Dispensing opticians also display such a sign on their windows. Such a display is a public service and yet this bill, in the interests of "professional" optometry, prohibits such display.

Section 8(a)(6) is unnecessary because the Federal Consent Decree issued by Judge La Buy in the optical rebating cases and the Federal Trade Commission Rules for the Optical Products Industry amply cover rebates and similar stratagems.

Section 8(a)(7) makes it unlawful for anyone other than a licensed optometrist, physician or osteopath to hire an optometrist. An optometrist is defined in Section 3(3) as one who is licensed in the District of Columbia. If a license-holding optometrist should decide to go to work for a dispensing optician as an optician and not as an optometrist and if this optometrist did not want to give up his optometric license, the optician employer would be subject to a fine up to $500 or for a second offense up to $1,000, or one year in jail, or both. This is an unreasonable and perhaps an unconstitutional restriction.

Section 8(a)(8) makes it a misdemeanor for an optician 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 bill. This clause, therefore, must also be read in conjunction with Section 10(a) which prohibits any advertisement which is not modest. Why should the commissioners under a bill entitled "The District of Columbia Optometry Act" be able to regulate signs in the stores of opticians and advertisements by opticians who do not practice nor attempt to practice optometry. This again is in keeping with other sections of the bill which identify virtually almost everything in the eyecare field as the sole province of "professional" optometry. These restrictions should be eliminated.

SECTION 9

In Section 9(a)(3) it is stated that the act shall not apply 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. We see at least two difficulties here.

First, the non-applicability clause is limited to an individual licensed in another jurisdiction. The inference is that it applies to one who holds an optometric license, for certainly we are not speaking about a plumber or a barber licensed in another jurisdiction. However, it is not specific. Suppose an unlicensed optician should be invited to give a clinical demonstration of the fitting of contact lenses before a Government agency. This optician could well be an international authority on contact lens fitting, yet under this bill if he gave such a demonstration he would be subject to criminal prosecution and penalties.

A second objection is that this subsection presumably enumerates all the circumstances under which a clinical demonstration may be made. There are other possibilities besides those listed, for instance, a seminar. Suppose an optometrist licensed in another jurisdiction should be invited to conduct a clinical demonstration in the fitting of contact lenses during an opticians' seminar on the subject here in Washington. This optometrist then would be subject to the penalties listed in Section 8.

In short, this subsection fails to cover all the situations where exemption should be properly made. Both of the situations which I describe are perfectly normal, reasonable and necessary in the practice of opticianry, yet in both instances the clinical demonstrator would be subject to arrest. This is unfair and ridiculous and should be changed.

Let me say again, these bills treat the eyecare field as though it were the optometrist's exclusive domain.

In Section 9(c), these bills pretend to say that this proposed optometry act does not apply to the dispensing optician.

For opticians this is the crucial paragraph. It reads:

> 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.

Before commenting on this section, I wish to point out that there is a serious unintentional error in Section 9(c) as it appears in H.R. 12276. On page 13, line 23, the correct reference is to section 3(2) (e) and not (f). Will this change be made?

Mr. SISK. Your testimony will be taken into consideration. We will check that language.

Mr. MILLER. What are our objections to this purported non-applicability clause?

First, this exemption for opticians does not apply to Section 8, which would make it unlawful for the optician to engage in at least five of the normal and important functions which are all in the public interest.

Secondly, this clause states "this act . . . shall not apply to any person", namely, an optician, "who fills the written prescription of a person licensed to practice optometry, medicine or osteopathy." We object to this clause because the requirement that the prescription must be written is unreasonable and will work unnecessary hardship on opticians, on residents of the District and on the ten to fiften million visitors who come to Washington each year. If a visitor breaks his

lenses, why should this visitor be required to do without his glasses until he gets home or be forced to have his eyes refracted while in this city? Why should this visitor be subjected to this hardship when any optician could easily get the person's prescription over the telephone and make the glasses? Why should residents be subjected to similar inconveniences? Furthermore, this is not a matter for regulation under an optometry law.

Thirdly, there is the question whether an optician under 9 (c) is permitted to fill prescriptions written by an optometrist or a physician or osteopath not licensed in the District of Columbia. As Mr. Whitener has already pointed out, 9(c) must be read together with Section 3(3) which states that "as used in this Act 'optometrist' means . . . an individual licensed to engage in the practice of optometry in the District of Columbia." Therefore, it is definite that Section 9(c) prohibits an optician from filling a prescription written by an optometrist who is not licensed in the District of Columbia. This Section 9(c) could also be interpreted to prohibit the optician from filling the prescription of a physician or osteopath not licensed in the District, for while the bill does not give any definition of physicians or osteopath, it always qualifies him as one "licensed under the laws of the District of Columbia."

We objected very strongly to this prohibition last year as did several members of the Committee, District officials and other witnesses. Amending language was submitted but the present bill has not clarified this point.

Fourthly, Section 9(c) goes on to say that this act shall not apply to any person "who repairs or restores eyeglasses or spectacles to their previous condition of usefulness." What does this mean? It would probably permit the optician to put a new screw in a temple. But would it permit him to put on a new temple? We do not know, because it is not clear. Would it permit him to put on a new front? We do not know, because it is not clear. Can he put on one new temple and a front or can he replace both temples so long as he does not put on a new front? If he can put on a new front, which requires remounting the lenses, why can he not sell the customer a whole new frame? Yet, if he sells a whole new frame, is he doing more than merely restoring a pair of glasses to their previous condition of usefulness?

What about restoring lenses to their previous condition of usefulness? Suppose you crack the right lens in your glasses in two equal parts. This clause would permit the optician to cement the two parts together and put them back in the frame where the cement might bother your vision; but would it permit the optician without a prescription to duplicate your old lens and give you a new one without any obstruction or interference? It is not clear.

Many words were spoken by the proponents of the bill in the last Congress about why the optician should be prohibited from duplicating lenses and supplying a new frame. However, the proponents failed to show how such a prohibition is in the interest of the public. If this bill is intended to permit the optician to supply new frames and to duplicate lenses without a prescription, it should be clearly stated.

Unless the optician is permitted to supply new frames and duplicate lenses without a prescription, it will inflict serious injury on the public. It will mean that the eyeglass wearer, unless there is a written prescription, must have his eye examined, whether he wants to or

not, each and every time he needs a new or extra pair of prescription glasses, whether he just wants a pair with plastic prescription lenses in them to protect his eyes while he is mowing the lawn or working at a hobby, or whether he needs a pair of prescription sunglasses to do a little girl-watching over the weekend at the beach.

A prohibition against the duplication of lenses will do nothing but guarantee that the professional optometrist will get more business at the expense of the public and of the optician.

Mr. SISK. Let me stop you there. You have already consumed 15 minutes. As I said at the beginning, we would like to limit everyone's testimony to ten minutes.

I will give you a couple of minutes to summarize.

Mr. MILLER. I am speaking for three separate organizations. I did not bring the three witnesses here.

Mr. SISK. Are you representing any other witnesses that we have listed?

Mr. MILLER. No. We asked for one witness only, to conserve the time of the Subcommittee, and I would be the spokesman for the three separate organizations.

Mr. SISK. This procedure is in the interest of saving time. Each witness was notified to follow the rule of 10 minutes.

Mr. MILLER. I was not so notified.

Mr. SISK. It is of record. It was so stated.

I am trying to be lenient with you, but you have already gone 15 minutes. I will give you about four or five minutes more to summarize; otherwise, Mr. Miller, we will have to cut you off. I prefer not doing that, but, as I said, this entire statement will be a part of the record and will be considered when the Committee has the transcript printed. We may have some questions. I will give you, as I said, four or five minutes more to complete your statement. It would be appreciated if you do that, especially since this will more than double your allotted time.

Mr. MILLER. May I respectfully request some additional time?

We have prepared this, as we did in that light.

Mr. SISK. Your statement will be made a part of the record, as I have explained to you. It is already a part of the record.

Now, go ahead.

Mr. MILLER. That was true in connection with the last one.

Mr. SISK. I do not desire to argue with you this morning. I am trying to be lenient. You have already gone overtime. We will give you an additional five minutes.

Mr. MILLER. In view of this change, would you bear with me for a minute, while I go over this, without charging it against my time, while I check this through?

Mr. SISK. As I said, I do not wish to be arbitrary. The last time I permitted a gentleman to go over, he took more than the allotted time. I am trying to be lenient with you. We do want to finish these hearings today. As I say, your statement will be made a part of the record. It will all be analyzed and read and considered by the Committee. I will give you time to rearrange your notes.

Mr. MILLER. Section 9(c) does not permit the optician to duplicate lenses. We believe it will be nothing but a guarantee to the so-called professional optometrist to get more business at the expense of the public and of the optician.

The final clause of Section 9(c) prohibits the optician from fitting contact lenses, and I have some very important paragraphs in here which I urge be seriously considered by the Committee, concerning the contributions opticians have made in the contact-lens field, but, despite the invaluable contributions the opticians have made to the public in the contact-lens field, this bill summarily eliminates the dispensing optician as a competing force in the fitting of contact lenses.

What kind of justice is that?

To conclude my remarks on Section 9(c), this bill gives optometry the rule of the Great White Father who takes away everything dispensing opticians own and then in 9(c) the Great White Father parcels out a few tidbits which he knows cannot for long sustain the life of the dispensing optician.

The reason why optometry wants to regulate the dispensing optician under this optometry bill has been unspoken. Let me just begin to explain this basic reason by quoting two resolutions passed by the American Optometric Association in June 1954.

> Resolved that it is the stated policy of the American Optometric Association in convention assembled that the field of visual care is the field of optometry and should be exclusively the field of optometry; and be it further
>
> Resolved, that the individual state associations are recommended to make serious study of the optometry laws prevailing in their states to the end that exemptions be restricted, limited and ultimately eliminated and that encroachments by untrained, unqualified and unlicensed persons into the exclusive field of optometry be prevented . . .

In the resolution just quoted, I wish to point out that in the use of the words "untrained, unqualified, and unlicensed persons", that they are the same words that optometry uses to describe the dispensing opticians, because opticians are not licensed in 33 states and in the District of Columbia.

These are the words optometry uses to describe dispensing opticians, because opticians are not licensed, as I have stated, in 33 states and the District of Columbia. It is these words that optometry uses as its excuse to regulate opticians under optometry laws such as 12276.

What is not generally known is that the American Optometric Association has a firmly-established and long-standing resolution on its books opposing the licensing of opticians. It is not generally known that optometrists have opposed bills to license opticians in state legislature more than 50 times. Nor is it generally known that optometry has taken legal action against dispensing opticians hundreds of times for the so-called unlawful practice of optometry under laws which were enacted primarily to regulate the refractive aspects of optometry.

In February of this year the Guild of Prescription Opticians sponsored a national seminar here in Washington on the subject of licensing of opticians and invited every organization interested in the subject to present its views. Every organization, regardless of its views, accepted our invitation except the American Optometric Association whose Board of Trustees voted not to participate. The seminar dates were changed so that it would not conflict with optometric meetings but no reason was given for not participating. Does this suggest that the optometry policy cannot stand the "light of the day"? They dismiss all discussion on the licensing of opticians with the statement that such licensing is not in the public welfare, that there is no public need for it. Yet optometry is adamant that dispensing opticians be regulated under an optometry bill such as 12276.

Before concluding, I wish to call attention to the efforts which opticians and the District of Columbia Government are making toward the regulation of opticians.

Briefly, here is the story: The Corporation Counsel's Office has given an opinion that the Commissioners have the power to issue regulations for opticians. This opinion dated July 27, 1966 is submitted as Exhibit D. The Department of Occupations and Professions has drafted a proposed set of regulations for opticians and has forwarded them to the Commissioners as an attachment to a memorandum dated April 5, 1967. A copy of this memorandum and attachment is submitted as Exhibit E. Our groups have worked closely with the Department of Occupations and Professions in drawing up these regulations and together we have ironed out most of the major problems. Our revision of the proposed regulations was prepared by Robert W. Burton, Counsel for the Guild of Prescription Opticians of Washington, D.C., and is submitted as Exhibit F. In this exhibit there is the method I referred to earlier for establishing the qualifications of opticians who fit contact lenses and for regulating the fitting of contact lenses by opticians.

I am submitting these exhibits I have mentioned for the record.

Mr. SISK. They will be made a part of the record following the insertion of your prepared statement in full.

(The prepared statement, accompanied by Exhibits A through F, submitted by Mr. Miller reads in full as follows:)

STATEMENT OF J. A. MILLER ON BEHALF OF GUILD OF PRESCRIPTION OPTICIANS OF AMERICA AND GUILD OF PRESCRIPTION OPTICIANS OF WASHINGTON, D.C., AND DISTRICT OF COLUMBIA ASSOCIATION OF DISPENSING OPTICIANS

I appear in opposition to bill H.R. 12276 and other substantially similar bills relating to the practice of optometry in the District of Columbia.

My name is J. A. Miller. I speak as Executive Secretary of the Guild of Prescription Opticians of America, Inc. on behalf of our national association and our Washington, D.C. affiliate, the Guild of Prescription Opticians of Washington, D.C. The Guild of Prescription Opticians is a national non-profit membership corporation representing skilled and ethical dispensing opticians throughout the United States, including the District of Columbia.

With me today are Paul Pattyson, President of the Washington, D.C. Guild, and Mr. Alfred Teunis, Chairman of the Board of the Washington, D.C. Guild. Mr. Pattyson is also President of the District of Columbia Association of Dispensing Opticians. These opticians have asked me to speak for them, and for other opticians similarly situated.

These opticians are engaged solely in the dispensing of eyeglasses, and/or contact lenses and other optical materials. They and their employees do not refract eyes nor are they in any way associated with any refractionist, whether he be physicians, surgeon, osteopath or optometrist.

Also with me is Joseph Stoutenburgh of the firm of Dawson, Griffin, Pickens and Riddell, special counsel for our national association, and Robert W. Burton, counsel for our local organization.

Since it is my understanding that the transcript of the hearings last year on H.R. 12937 and similar bills will be made part of the proceedings of this hearing, I will direct my remarks primarily to the new provisions contained in H.R. 12276, which has been referred to as a cure-all. Gentlemen, it is *not*.

At this time, however, I wish to submit for the record a copy of my letter of March 31, 1966 which was hand-delivered to the Committee and to each member of the Committee but which was not printed in either edition of the transcript of the hearings on H.R. 12937. This letter, which was prepared in response to a request by the committee, contains our suggested amendments which are equally applicable to the bills under consideration as they were to the bills considered by the 89th Congress. Mr. Chairman, will this letter be made part of the transcript? (Exhibit A)

We look with favor on efforts to upgrade and improve the practice of optometry but this bill goes farther than that. It takes away traditional rights of dispensing opticians who have an older place in this history of eyecare than the optometrist and restricts his legitimate and appropriate business of serving the public both to the detriment of the optician and the public need. The bill should deal simply and straightforwardly with the practice of optometry alone.

Now, I wish to comment on the objectionable features which have been added or changed in the new bills.

Section 2.

In Section 2 of H.R. 12276 as well as in other sections of the bills, there is increased preoccupation with identifying optometry as a profession. Defining optometry "as a profession" seems designed to give optometry an unnecessary professional status. We see no need or necessity in legislating a profession. The medical professions fills this need in the field of eyecare.

Section 3.

In Section 3 (2) of H.R. 12276, the practice of optometry is defined to mean, "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." The definition then lists such acts or practices. What is the significance of the clause "as they are included in the curriculum of recognized schools and colleges of optometry"? As Mr. Horton has already noted, the meaning is indefinite because by changing the subject matter of a course dealing with one of the practices listed in the definition, the definition of the practice of optometry could be changed without recourse to the Congress and so might include inconsistent and objectionable practices. The bill should be amended to eliminate the reference to curriculum as is the case in H.R. 732 and H.R. 595.

Section 4.

In Section 4, (7) which deals with the subject matter of examinations for an optometric license, there is included the subject of "practical optometric dispensing". We suggest that the word optometric be deleted and the word optical or ophthalmic be substituted. The reason for this request is that these bills treat the field of eyecare as though it were the exclusive domain of optometry, whereas the optician, as explained in detail in my statement on H.R. 12937, was practicing his skills centuries before there was an optometrist—before the word optometry was ever invented.

This insistence upon calling almost everything in the eyecare field "optometric" paves the way psychologically and legislatively for the unwarranted restrictions which these bills place upon the practice of dispensing opticians.

Section 8.

Section 8 (a) (4) prohibits advertising the price or cost or *any reference thereto* of ophthalmic material of *any character*. While we do not object to the prohibition against price advertising of prescription eyeglasses and contact lenses to the general public, the prohibition in this subsection is so broad that it is unnecessarily restrictive.

It is restrictive because there is no definition of what constitutes optometric or ophthalmic materials, as Mr. Whitener and others have already pointed out. In another section (Section 7 (a) (8), the term "optical" material is used—to further confuse the issue. Are optometric materials, ophthalmic materials and optical materials one and the same or different? These terms *need to be defined* for it certainly cannot be the intent of the proponents to prohibit advertising the price or cost or any reference thereto of such material materials as lens tissue, lens cleaner, magnifiers, binoculars, Murine and eyeglasses cases.

Actually, the use of the adjective "optometric" to describe any kind of materials is incongruous. A profession, and this bill would declare optometry "a profession", by its nature deals in services, not products or materials. The word optometric should be deleted. Again, however, the word optometric is used to pave the way for the legislative restrictions on opticians proposed under this bill.

Section 8 (a) (5) makes it unlawful to solicit patients by means of offering credit for the purpose of obtaining patronage. There are dignified and "modest" advertisements by dispensing opticians in the Yellow Pages which carry the trade mark or insignia of Central Charge. Dispensing Opticians also display such a sign on their windows. Such display *is a public service* and yet this bill—in the interests of "professional" optometry prohibits such display.

Section 8(a)(6) is unnecessary because the Federal Consent Decree issued by Judge La Buy in the optical rebating cases and the Federal Trade Commission Rules for the Optical Products Industry amply cover rebates and similar stratagems.

Section 8(a)(7) makes it unlawful for anyone other than a licensed optometrist, physician or osteopath to hire an optometrist. An optometrist is defined in Section 3(3) as one who is licensed in the District of Columbia. If a license holding optometrist should decide to go to work for a dispensing optician—as an optician and not as an optometrist, and if this optometrist did not want to give up his optometric license, the optician employer would be subject to a fine up to $500.00 or for a second offense up to $1,000, or one year in jail, or both. This is an unreasonable and perhaps an unconstitutional restriction.

Section 8(a)(8) makes it a misdeameanor for an optician to display any sign offering ophthalmic materials for sale in volation of any regulation of the Commissioners issued under authority of section 10 of this bill. This clause, therefore, must also be read in conjunction with Section 10(a) which prohibits any advertisement which is not *modest*. Why should the commissioners under a bill entitled "the District of Columbia Optometry Act" be able to regulate signs in the stores of opticians and advertisements by opticians who do not practice nor attempt to practice optometry. This again is in keeping with other sections of the bill which identify virtually almost everything in the eyecare field as the sole province of "professional" optometry. These restrictions should be eliminated.

Section 9.

In Section 9(a)(3) it is stated that the act shall not apply to an individaul 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. We see at least two difficulties here.

First, the non-applicability clause is limited to an individaul licensed in another jurisdiction. The inference is that it applies to one who holds an optometric license, for certainly we are not speaking about a plumber or a barber licensed in another jurisdiction. However, is not specific. Suppose an unlicensed optician should be invited to give a clinical demonstration of the fitting of contact lenses before a government agency. This optician could well be an international authority on contact lens fitting, yet under this bill if he gave such a demonstration he would be subject to criminal prosecution and penalties.

A second objection is that this subsection presumably enumerates all the circumstances under which a clinical demonstration may be made. There are other possibilities besides those listed, for instance a seminar, Suppose an optometrist licensed in another jurisdiction should be invited to conduct a clinical demonstration in the fitting of contact lenses during an opticians' seminar on the subject here in Washington. This optometrist then would be subject to the penalties listed in Section 8.

In short this subsection fails to cover all the situations where exemption should be properly made. Both of the situations which I describe are perfectly normal, reasonable and necessary in the practice of opticianry, yet in both instances the clinical demonstrator would be subject to arrest. This is unfair and ridiculous and should be changed.

Let me say again, these bills treat the eyecare field as though it were the optometrist's exclusive domain.

In Section 9(c), these bills *pretend* to say that this proposed optometry act does not apply to the dispensing optician.

For opticians this is *the crucial* paragraph. It reads:

"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."

Before commenting on this section, I wish to point out that there is a serious unintentional error in Section 9(c) as it appears in H.R. 12276. On page 13, line 23, the correct reference is to section 3(2) (e) and not (f). Will this change be made?

What are our objections to this purported non-applicability clause?

First, this exemption for opticians does not apply to Section 8, which would make it unlawful for the optician to engage in at least five of the normal and important functions which are all in the public interest.

Secondly, this clause states "this act . . . shall not apply to any person" (namely, an optician) "who fills the *written* prescription of a person licensed to practice optometry, medicine or osteopathy." We object to this clause because the requirement that the prescription must be written is unreasonable and will work unnecessary hardship on opticians, on residents of the District and on the ten to fifteen million visitors who come to Washington each year. If a visitor breaks his lenses, why should this visitor be required to do without his glasses until he gets home or be forced to have his eyes refracted while in this city? Why should this visitor be subjected to this hardship when any optician could easily get the person's prescription over the telephone and make the glasses? Why should residents be subjected to similar inconveniences? Furthermore, this is not a matter for regulation under an optometry law.

Thirdly, there is the question whether an optician under 9(c) is permitted to fill prescriptions written by an optometrist or a physician or osteopath not licensed in the District of Columbia. As Mr. Whitener has already pointed out, 9(c) must be read together with Section 3(3) which states that "as used in this Act 'optometrist' means . . . an individual licensed to engage in the practice of optometry in the District of Columbia." Therefore, it is definite that Section 9(c) prohibits an optician from filling a prescription written by an optometrist who is not licensed in the District of Columbia. This Section 9(c) could also be interpreted to prohibit the optician from filling the prescription of a physician or osteopath not licensed in the District, for while the bill does not give any definition of physician or osteopath, it always qualifies him as one "licensed under the laws of the District of Columbia."

We objected very strongly to this prohibition last year as did several members of the Committee, District officials and other witnesses. Amending language was submitted but the present bill has not clarified this point.

Fourthly, Section 9(c) goes on to say that this act shall not apply to any person "who repairs or restores eyeglasses or spectacles to their previous condition of usefulness." What does this means? It would probably permit the optician to put a new screw in a temple. But would it permit him to put on a new temple? We do not know because it is not clear. Would it permit him to put on a new front? We do not know because it is not clear. Can he put on one new temple and a front or can he replace both temples so long as he does not put on a new front? If he can put on a new front, which requires remounting the lenses, why can he not sell the customer a whole new frame? Yet, if he sells a whole new frame, is he doing more than merely restoring a pair of eyeglasses to their previous condition of usefulness?

What about restoring lenses to their previous condition of usefulness? Suppose you crack the right lens in your glasses in two equal parts. This clause would permit the optician to cement the two parts together and put them back in the frame where the cement might bother your vision. But would it permit the optician without a prescription to duplicate your old lens and give you a new one without any obstructions or interference? It is not clear.

Many words were spoken by the proponents of the bill in the last Congress about why the optician should be prohibited from duplicating lenses and supplying a new frame. However, the proponents failed to show how such a prohibition is in the interest of the public. If this bill is intended to permit the optician to supply new frames and to duplicate lenses without a prescription, it should be clearly stated.

Unless the optician is permitted to supply new frames and duplicate lenses without a prescription, it will inflict serious injury on the public. It will mean that the eyeglass wearer, unless there is a written prescription, must have his eyes examined—whether he wants to or not—each and every time he needs a new or extra pair of prescription glasses, whether he just wants a pair with plastic prescription lenses in them to protect his eyes while he is mowing the lawn or working at a hobby, or whether he needs a pair of prescription sunglasses to do a little girl-watching over the weekend at the beach.

A prohibition against the duplication of lenses will do nothing but guarantee that the "professional" optometrist will get more business at the expense of the public and of the optician.

The clause in 9(c) as it regulates to restoring eyeglasses to their previous condition of usefulness is ambiguous. It will cause ridiculous difficulties. It will work hardship on the public, and it will seriously limit the traditional services and business of the optician.

Fifthly, Section 9 (c) then states "This act . . . shall not apply to any person . . . who practices optometry as defined in section 3 (2) (e)." (The sub-

paragraph is corrected from "f" to "e" as previously mentioned.) Section 3 (2) (e) defines *part* of the practice of dispensing opticians. We do not practice optometry. We do not wish to practice optometry and we do not wish to be charged with practicing optometry, even by way of an exception. We are dispensing opticians in our own right by virtue of our noble heritage and by virtue of the unequalled public service dispensing opticians have rendered for centuries.

The final clause of Section 9 (c) prohibits the optician from fitting contact lenses. This clause should be eliminated because, again, the proponents of this bill are trying to take away from the optician his traditional function of fitting contact lenses upon the prescription of an ophthalmologist, the specialist of the medical profession in eyecare.

We believe that the District of Columbia should have regulations on the fitting of contact lenses by opticians. We also believe that those rules should be as strict as, but no more strict than, rules worked out at a conference between the Section on Ophthalmology of the District of Columbia Medical Society and representatives of the Guild of Prescription Opticians and other opticians who dispense contact lenses. A copy of these rules is submitted as Exhibit B. Furthermore, we believe that the qualifications of opticians who fit contact lenses in the District of Columbia should be established. One method for doing this will be found in Exhibit F which will be submitted later.

The man who designed and introduced to America the first successful all-plastic contact lenses was a dispensing optician and a member of the Guild of Prescription Opticians. The man who holds the controlling patents on the present day contact lens was a dispensing optician. Dispensing opticians have made many other valuable contributions to the fitting of contact lenses as contained in my testimony last year. The indispensable role of the dispensing opticians is described in a recent article by Barnet R. Sakler, M.D., President of the American Association of Ophthalmology. A copy of this article is submitted as Exhibit C.

Despite the invaluable contributions dispensing opticians have made to the public in the contact lens field, this bill summarily eliminates the dispensing optician as a competing force in the fitting of contact lenses. What kind of justice is that?

To conclude my comments on Section 9(c), this bill gives optometry the role of the Great White Father who takes away everything dispensing opticians own and then in 9(c) the Great White Father parcels out a few tidbits which he knows cannot for long sustain the life of dispensing opticians.

Section 9(d)(4) states that "nothing in this act shall be deemed to prevent . . . 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." The Medical Society representatives have already commented on this in detail and we agree with their views.

What is the effect of this on dispensing opticians? The bill is so restrictive of the practice of the dispensing optician that he will be driven into the physician's office to avoid violating the law. This paragraph then gives optometry the power to follow him into the physician's office to see that he performs nothing but menial tasks. The words "direct and personal" and everything after the word "osteopathy" should be eliminated.

Section 9(d)(6) states that "nothing in this act shall be deemed to prevent . . . persons from supplying spectacles or eyeglasses on prescription from a person licensed to practice optometry, medicine or osteopathy." Since Section 9(c) requires a *written* prescription, what is the meaning of 9(d)(6) which omits the word "written"? This is a "make believe" clause, that is, one which is intended to make the optician believe he is getting something but which in fact is negated by Section 9(c).

The bill while purporting to regulate exclusively the practice of optometry, is so restrictive and all-encompassing in the field of eyecare and grants so extensive a monopoly to the optometrist, that the optometrists have found it necessary to spell-out a specific exception to its terms in Section 9(d)(7) merely to permit opticians and drug and department stores to sell customary protective eyewear and everyday non-prescription sunglasses without the requirement of a written prescription.

This concludes our comments on the specific objectionable clauses in H.R. 12276.

In order to understand the complete picture of the monopolistic nature of this bill, several additional comments are necessary.

The first deals with the question of profits, which has received a lot of abuse during these hearings. Profit can be defined in a variety of ways, depending on the circumstances and depending on the intent of the one giving the definition. However, all definitions of profit reduce themselves to the net income figure. Any person, as the term is defined in this bill, has the same interest in that net income figure. It applies with equal force to the optometrist with a $100,000.00 practice as it does to a one man dispensing optician's store with a net income of $10,000,00.

Whether their net incomes are obtained from a so-called profit off the sale of glasses or whether it comes from a so-called professional fee, they amount to the same thing—net income. So what difference does it make whether a so-called professional sells his glasses at cost and adds on an extra $10.00 or $15.00 for his services. Is that any different from a dispensing optician adding $10.00 or $15.00 above the wholesale price to the cost of the glasses? In both instances, the additional dollars cover the same type of costs and reimburse the laborer for his labors and skills. The end result is net income or profit. The question of whether the optometrist profits off the sale of glasses is academic.

The fact is that 96%, or more, of optometrists today *do* sell glasses. There is a tie-in between the refraction and the dispensing of glasses. One must question, therefore, whether the optometric patient in general has any freedom to choose where he wishes to have his glasses made. The Code of Ethics of the American Medical Association plainly states that the patient has a right to a copy of his prescription for eyeglasses and that the patient must be given a free choice as to where he wishes to have his glasses made. I do not have access to the optometric code of ethics or their rules of practice but the fact that 96% of optometrists sell their own glasses speaks volumes.

Section 9(c) gives the optician the right to fill the written prescription of an optometrist licensed in the District of Columbia. This is obviously 4% fact and 96% window dressing.

Contrast the position of the optometric patient who has practically no choice with that of the ophthalmologist's patient. The ophthalmologist's patient first of all does get a choice. Furthermore, he gets the services of two experts in their fields. Most importantly, he has the assurance that an objective judgment has been made on the need for glasses.

With net income meaning as much to an optometrist as it does to anyone else, with the optometrist exercising rigid control over the dispensing of glasses to his patients, it is clear that this bill by depriving the optician of his traditional functions will tighten the optometrist's control over the eyecare dollars spent in this city.

Evidence before this committee has shown that the optometry law needs to be updated. There has been no evidence introduced to show that the practice of dispensing opticianry, as such, needs to be regulated under an optometry bill.

The reason why optometry wants to regulate dispensing opticians under this optometry bill has been unspoken.

Let me begin to explain this basic reason by quoting two resolutions passed by the American Optometric Association in June 1954.

"Resolved that it is the stated policy of the American Optometric Association in convention assembled that the field of visual care is the field of optometry and should be exclusively the field of optometry; and be it further

"Resolved, that the individual state associations are recommended to make serious study of the optometry laws prevailing in their states to the end that exemptions be restricted, limited and ultimately eliminated and that encroachents by untrained, unqualified and unlicensed persons into the exclusive field of optometry be prevented..."

My testimony has shown that this bill treats the field of visual care as though it were the exclusive province of optometry and it eliminates a dozen or more traditional functions of the dispensing optician by seriously restricting exemptions. The fact that optometry says that the field of visual care should be exclusively the field of optometry does not make it so nor should the Subcommittee help make it so. Optometrists, ophthalmologists and dispensing opticians share the field of visual care—each performing a definite public service. The subcommittee must not allow this bill or any similar bill out of subcommittee.

In the resolutions just quoted, I wish to point out the use of the words "untrained, unqualified and unlicensed persons". These are the words optometry uses to describe dispensing opticians, because opticians are not licensed in 33 states and the District of Columbia. It is these words that optometry uses as its excuse to regulate opticians under optometry laws, such as 12276.

What is not generally known is that the American Optometric Association has a firmly-established and long-standing resolution on its books opposing the limcensing of opticians. It is not generally known that optometrists have opposed bills to license opticians in state legislatures more than 50 times. Nor is it generally known that optometry has taken legal action against dispensing opticians hundreds of times for the so-called unlawful practice of optometry under laws which were enacted primarily to regulate the refractive aspects of optometry.

In February of this year the Guild of Prescription Opticians sponsored a national seminar here in Washington on the subject of licensing of opticians and invited every organization interested in the subject to present its views. Every organization, regardless of its views, accepted our invitation except the American Optometric Association whose Board of Trustees voted not to participate. The seminar dates were changed so that it would not conflict with optometric meetings but not reason was given for not participating. Does this suggest that the optometric policy cannot stand the "light of day"? They dismiss all discussion on the licensing of opticians with the statement that such licensing is not in the public welfare, that there is no public need for it. Yet optometry is adamant that dispensing opticians be regulated under an optometry bill such as 12276.

Does not this list of facts suggest an unspoken reason for regulating dispensing opticians under this bill? If it is the public that optometry is interested in, then put a clause in this bill stating this Act shall not apply to dispensing opticians, period. Then simultaneously, let the American Optometric Association declare itself in favor of licensing of opticians and let both the American Optometric Association and the District of Columbia Optometric Society unequivocally support a concurrent dispensing optician's bill solely for the regulation of opticians.

The evidence submitted substantiates the statement that optometry seeks to monopolize the field of eyecare in the District of Columbia through this bill.

Before concluding, I wish to call attention to the efforts which opticians and the District of Columbia government are making toward the regulation of opticians.

Briefly, here's the story. The Corporation Counsel's office has given an opinion that the Commissioners have the power to issue regulations for opticians. This opinion dated July 27, 1966 is submitted as Exhibit D. The Department of Occupations and Professions has drafted a proposed set of regulations for opticians and has forwarded them to the Commissioners as an attachment to a memorandum dated April 5, 1967. A copy of this memorandum and attachment is submitted as Exhibit E. Our groups have worked closely with the Department of Occupations and Professions in drawing up these regulations and together we have ironed out most of the major problems. Our revision of the proposed regulations was prepared by Robert W. Burton, Counsel for the Guild of Prescription Opticians of Washington, D.C., and is submitted as Exhibit F. In this exhibit there is the method I referred to earlier for establishing the qualifications of opticians who fit contact lenses and for regulating the fitting of contact lenses by opticians.

I draw these regulations to your attention because we feel it highly desirable that opticians be regulated. We have made substantial progress. While we have no objections to updating the existing optometry law, we do strongly object to having the practice of opticianry controlled by an optometry law which virtually monopolizes the field. We strongly object to defining optometry and regulating it as though it and it alone bears the sole responsibility for the eyecare of the people of the District of Columbia. We strongly object to the bill treating dispensing opticians almost as though they did not exist, while taking away from opticians much of their essential and traditional practice under the guise that all the areas I have discussed are solely optometric in character and subject solely to optometric regulation. Opticians are proud of their heritage. They are proud of the service they have rendered in the District of Columbia. They want to be able to continue this service, and improve this service if and as necessary, but they want it done under their own regulations or law.

Opticians must and will oppose these bills and any other bills which contain the proposed all-encompassing definition of optometry in Section 3. and which contain the inadequate language of the non-applicability clause in Section 9(c). We had submitted amending language to both sections with my letter of March 31, 1966, and we respectfully request the adoption of such amendments should the committee decide for any reason to take favorable action on any of the pending bills.

I want to single out for your special attention our proposed amendment to Section 9 paragraph (c). It reads:

"This Act shall not apply to any person who as a dispensing optician fills the prescription of a physician, surgeon or an optometrist for eyeglasses or spectacles, or to any person who fits contact lenses only on the written prescription and at the direction of a physician or surgeon, or to any person who duplicates, repairs, replaces or reproduces previously prepared lenses, eyeglasses, spectacles, or appurtenances thereto, including their adaptation to the wearer, and who does not practice or profess the practice of optometry."

Conclusion

In conclusion, there are three reasons why H.R. 12276 and other substantially identical bills should not be reported out of this Subcommittee.

1. They would substantially change the traditional pattern of eyecare in this city—without sufficient justification;
2. They would—again without justification—place unbearable hardships on dispensing opticians forcing some of them either out of business or into the suburbs;
3. Instead of being in the public interest, the bills would place unreasonable and ridiculous burdens of expense and inconvenience upon the general public.

EXHIBIT A

GUILD OF PRESCRIPTION OPTICIANS OF AMERICA, INC.,
Washington, D.C., March 31, 1966.

Hon. JOHN DOWDY,
Chairman, Subcommittee No. 4,
Committee on the District of Columbia,
U.S. House of Representatives,

DEAR MR. CHAIRMAN: During our testimony before your Subcommittee March 23rd on H.R. 12937 and its companion bills, we pointed out that—

a. this bill will substantially change the traditional patterns of visual care in this city;

b. this bill will put out of business many opticians in the District; and

c. this bill will work to the detriment of the public.

These objections stem from the fact that the definition of optometry is so broad and all inclusive as to require opticians to obtain an optometric license in order to continue performing services which have traditionally been performed by opticians in the District for generations—in one instance for as many as 111 years. It is true that the bill purports ot give opticians certain exemptions, but the limited nature of the exemptions will give optomery in the District a virtual monopoly over the traditional functions of opticians.

For these reasons Acting Chairman Sisk and Congressman Harsha invited us to submit amendments. The following amendments are submitted on behalf of the Guild of Prescription Opticians of America, the Guild of Prescription Opticians of Washington, D.C., the constituent members of these organizations in the District of Columbia, and other opticians similarly situated.

First, we submit an amended Section 9(c) which, if adopted, will adequately exclude the dispensing optician from the application of the Act—thus preserving his traditional function in the District of Columbia. Our proposed amendment follows:

"Section 9(c). This Act shall not apply to any person who as a dispensing optician fills the written prescription of a physician, surgeon or an optometrist, or to any person who fits contact lenses only on the written prescription and at the direction of a physician or surgeon, or to any person who duplicates, repairs, replaces or reproduces previously prepared lenses, eyeglasses, spectacles, or appurtenances thereto, and who does not practice or profess the practice of optometry."

Second, we endorse generally all of the proposed amendments submitted by the Medical Society of the District of Columbia with the following clarifications and/or modifications:

A. Amend the first sentence of Section 2 to read as follows: "Optometry is hereby declared to be a highly skilled mechanical art involving human vision."

B. Amend Section 3(2) as follows: "'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 purpose of determining visual defects and the adaptation of lenses or prisms for the aid and relief thereof or

the prescribing of optical devices in connection therewith; or the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye."

C. Amend Section 4 to read as follows:

"Sec. 4(a) 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 graduated from a school of optometry approved by the Commissoners which maintains a course in optometry of not less than five years;

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

"(a) Practical optics

"(b) Theoretic optometry

"(c) Anatomy and physiology and such pathology as may be applied to optometry

"(d) Practical optometry

"(e) Theoretic and psysiologic optics

"(f) Theory and practice of orthoptics and visual training

"(g) Theory and practice of contact lens fitting

"(b) The Board, with the approval of the Commissioners of the District of Columbia, is authorized and empowered to alter, amend, and otherwise change the educational standards at any time, but in altering, amending, or changing said standards the board shall not be permitted to lower the same below the standards herein set forth."

D. Amend Section 13(c) to read as follows: "Certificates of visual acuity issued by any duly licensed optometrist shall be accepted by any administrative officer or employee of the Government of the District of Columbia in the performance of his duties."

E. Amend Section 14 to read as follows: "No officer or employee of the District of Columbia shall, in his administrative capacity, prefer or recommend one class of licensed practitioner over the other for the sole purpose of determining visual acuity."

In the foregoing modifications of the proposed amendments offered by the Medical Society of the District of Columbia we have taken note of the fact that under the existing optometry law the way is open for optometry to increase its educational standards and keep pace with scientific progress. This is provided for through the Commissioners of the District of Columbia and has twice been sought and granted.

We have also taken note of the need of certificates of visual acuity in administrative functioning of the Government of the District of Columbia, and that these should be acceptable for administrative purposes when issued by an optometrist licensed in any recognized jurisdiction.

We strongly urge the adoption of these amendments and those others proposed by the Medical Society as being necessary to the public health, welfare and safety in the District of Columbia.

Most emphatically in our own interests we urge the exclusion of the dispensing optician from the application of this proposed Act by amending Section 9(c) as suggested in order to preserve his traditional and proven role in the pattern of visual care in the Nation's Capital.

Sincerely yours,

J. A. MILLER.

cc: John L. McMillan, Thomas G. Abernethy, Howard W. Smith, William L. Dawson Abraham J. Multer, Basil L. Whitener, James W. Trimble, B. F. Sisk, Charles C. Diggs, Jr., G. Elliott Hagan, Don Fuqua, Donald M. Fraser, Carlton R. Sickles, J. Oliva Huot, George W. Grider, John Bell Williams, Ancher Nelsen, William L. Springer, Alvin E. O'Konski, William H. Harsha, Charles McC. Mathias, Jr., Frank Horton, Richard L. Roudebush, Joel T. Broyhill.

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EXHIBIT B

THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA,
SECTION OF OPHTHALMOLOGY,
Washington, D.C.

DEAR DOCTOR: At a recent meeting attended by the officers and executive committee of the Section on Ophthalmology of the District of Columbia Medical Society, and representatives of the Guild of Opticians and other opticians who dispense contact lenses, the following observations were made:

1. Opticians or contact lens fitters must make it clear to their customers that they cannot be fitted with a contact lens unless the customer is a patient of an Ophthalmologist and has a recent prescription for contact lenses.

2. It was agreed that the Ophthalmologist should have placed on the bottom of his prescription the following: "Patient to contact me upon delivery of contact lens." Of course other pertinent information regarding the refraction, as seen fit in the medical opinion of the prescribing doctor should be included.

3. It was further agreed that the Optician should notify the medical doctor in writing when he has delivered the contact lenses to the patient.

Please mark your calendar for our first fall meeting, December 7, 1966. Dr. Miles A. Galin, Associate Professor of Ophthalmology Cornell Medical School, will be the guest speaker.

MELVIN G. ALPER, M.D.,
Secretary-Treasurer.

EXHIBIT C

The Ophthalmologist and the Optician

Barnet R. Sakler, M.D.

Cincinnati, Ohio

Reprinted from **GUILDCRAFT**, Volume 41, Number 3, March, 1967.

The Ophthalmologist and the Optician

The fitting of Contact Lenses by the trained qualified optician or contact lens technician on prescription and supervision of the ophthalmologist is a subject which is currently controversial, not only, because of the lack of understanding of the legal and professional responsibilities involved, but also, because of organized, militant legislative and court actions to restrain the optician in this area. In the June 1964 issue of American Journal of Optometry, (page 394), the so called American Optometric Association White Paper on Contact Lenses states, quote "Optometrists form the only profession which possesses legal authorization and formal academic training to fit contact lenses" end of quote. This rather euphoric and completely irresponsible and erroneous statement points up the Contact Lens problem confronting Medicine and Opticianry.

We know and understand the age old importance of the physician–patient–relationship in the practice of medicine, but there is much to learn and understand about relationship of physician and allied ancillary personnel in the practice of ophthalmology, particularly in the field of Contact Lens fitting.

The opinions that I will present to you do not necessarily reflect the views of ophthalmologists generally nor are they at variance with the views of these men. Agreement or disagreement with these opinions I believe, will depend chiefly, on the technical facilities available, and the medical needs of the specific area in which the ophthalmologist is practicing—the determining basic philosophy being "Whatever is done should always be in the patient's best interest".

At present there are 11 states (Delaware, Michigan, North Dakota, Oklahoma, Kansas, New Mexico, Indiana, New Jersey, Oregon, Iowa and Texas) forbidding contact lens work by opticians–prohibited by court decision or interpretation of optometric laws by the State Attorney General (Iowa and Texas). In some of these states however the prohibitions are not enforced (e.g. Indiana). On the other hand there are 10 states in which contact lens fitting is legally permitted (Arizona, California, Florida, Georgia, Kentucky, Hawaii, Nevada, Washington, Rhode Island and Virginia). In New York State, Contact Lens fitting can only be performed by the optician technician in the presence of the ophthalmologist.

There are approximately 4700 certified ophthalmologists practicing in the U.S.A. This number is increased to somewhat over 8000 when you add the group of well trained physicians treating the eye, but not certified by the American Board of Ophthalmology. It becomes apparent at once, therefore, that these physicians

This is the text of the speech made by Barnet R. Sakler, M.D., president, American Association of Ophthalmology, at the Licensing and Medicaid Seminar held in Washington, D. C., by the Guild of Prescription Opticians of America, Inc.

(ophthalmologists) need well trained ancillary personnel if they wish to render the best possible complete eye care to our ever increasing population.

Historically, the doctor–technician relationship dates back over 100 years, when, in 1827 the first contact lens was suggested by Sir John Herschel, English astronomer and physicist. He constructed a small saucer shaped glass shell for protecting cornea of a physician's patient suffering from diseased eyelids. He did not develop the optical possibilities of this glass disc, it was merely a protective shell. It was not until 1887–(60 years later) after the discovery and use of local anesthetics, that casts of anterior segment of the eye could be made.

In 1887 F. E. Müller, expert glass blower, Wiesbaden, Germany, constructed a hand blown thin glass shell for a patient of Dr. Saemisch to protect the cornea in an eye where the lid had been surgically removed because of malignancy.

In 1888 a Swiss physician in Zurich–Dr. A. Eugene Fick coined term "Kontak Brille" (contact lens) and fitted them to correct refractive errors. These were hand blown corneal lenses fitted by expert glass blowers, working with physician. Here again, we have technician and ophthalmologist working together.

Between 1888 and 1938 investigations were carried on by many men in Germany, Switzerland and U.S.A. (e.g. S. A. Muller, Wiesbaden, Carl Zeiss Company, Jena Germany and Obrig–Muller in U.S.A.)

In 1935 I was completing my residency in ophthalmology at Illinois Eye and Ear Infirmary in Chicago and was working with a technician who many of you may remember–by the name of Hugh Hunter employed by the House of Vision. We were making impressions of the anterior curvature of cornea and sclera, and fitting patients with molded scleral lenses made of glass. It was a time consuming and arduous procedure with few patients being fitted happily. Patients with irregular scleras could not be fitted at all. Corneal edema due to limbal pressures–turbidity of the artificial precorneal layer of fluid (ph)–difficult to regulate made the procedure a very unsatisfactory one. The lenses were large, uncomfortable, and cosmetically poor.

Ophthalmologists tended to lose interest in contact lenses except for cases of keratoconus and a few other special indications. These cases were usually referred to trained ophthalmic technicians who continued to work with these highly motivated patients.

In 1938 with the development of plastics, Obrig and Muller designed and constructed the first molded plastic scleral lenses made of methylmethacrylate (plexiglass–lucite) which was about 65% lighter in weight then the former thin glass lens. These scleral lenses (lacrilens) were used with some degree of success for a few years and are still being used in selected cases (athletes).

The small corneal lens had been known since 1890 having been introduced by Kalt, Muller, and were made in Germany by the Carl Zeiss Company in Jena. These lenses were not successful and like so many other things in medicine, the use of corneal lenses remained dormant until Kevin Toury, an optician and contact lens technician, perfected the first plastic corneal lens in 1948. Now, patients began to wear their contact lenses more comfortably and for longer periods of time.

There quickly followed the Microlens, a smaller lens (9.5 cm.) which tended to relieve peripheral pressure on the cornea, and then the custom fitted lens, even smaller, so that it would center within the border of the limbal flattening. But this lens did not live up to expectations, because in the wearing, it did not center in the desired area and therefore proved to be unsatisfactory.

Today with the so called "custom–fitting" of contact lens paralleling the diminishing curvature of the peripheral portion of the cornea where not only the central base curve but the intermediate and peripheral curves are ground to fit the individual cornea, a contact lens is produced which can be tolerated by a great majority of patients. We see little corneal

edema, stippling or permanent change in the initial "K" reading, after the adaptation period.

Much of this, has been made possible during the past 15 years, by non-medical personnel doing research, in the manufacture of contact lenses and technics in fitting. Much more research in lens design, new materials and fitting technics are necessary. Equally important and in my opinion more important at this time, is the medical research, necessary to evaluate histological changes in corneal tissue, immediate, temporary and long term, by the contact lens. which may affect the visual functions.

We are aware, that a contact lens when placed on the eye, may alter tissue and the changes may be permanent. The ophthalmologist who writes a prescription for contact lenses and sends the patient to the contact lens technician or qualified optician and closes the case, is not fulfilling his duty to that patient and can be held legally responsible for neglect, if this patient suffers eye damage.

The physician must exercise direction and supervision of the (technician) optician, consistent with the qualifications of the optician and the needs of the patient.

It is not the duty or responsibility of the contact lens technician to advise or recommend therapy concerning pain, redness, use of medications, etc. The patient should be referred back immediately and emphatically to the ophthalmologist for any necessary recommendations.

Optometry is continually questioning the right of the ophthalmologist to delegate to a contact lens technician what they claim medicine would deny the optometrist. Their argument may appeal to the uninformed but has no merit in fact. What must be clearly understood, is that the qualified optician or contact lens technician is not fitting contact lens independently but is working under the direction and supervision of the ophthalmologist, thereby insuring a maximum of safety in the fitting and wearing of these lenses.

This card is used in Cincinnati to clarify the position of the ophthalmologist.

> I fully understand that the fitting of my Contact Lenses is to be performed under the *Direction and Supervision* of my Ophthalmologist (eye physician). During the time I am being fitted I am to be subject to *his Judgment and Care* concerning the condition of my eye health with relation to the Contact Lenses. I am fully aware of the importance of medical supervision in the fitting and wearing of Contact Lenses and unqualifiedly agree to cooperate with my Ophthalmologist.
>
> Signed _____
>
> Date _____

"What may a physician legally delegate to an ophthalmic technician?" These duties are usually not specifically spelled out in the Medical Practice Acts of the State or in the Regulations of the Board of Medical Examiners.

The physician has the duty to provide for the patient the therapy indicated. He has the authority under the Medical Practice Act to have certain procedures performed for the patient instead of doing them personally.

The use of an appliance placed on the eyeball (an ocular prosthesis) ocular tonography and tonometry and numerous other technical procedures used in the practice of ophthalmology are procedures that can be performed by the trained and qualified technician as part of medical care rendered to the patient by the physician.

The services of the technician are not supplementary or complementary to the physicians services, but are an important part of it.

The technicians' services, do not replace the physician's care of the patient but facilitates and expedites that care. The technician assists the physician in helping him fulfill his responsibility to the patient.

The technical fitting of the contact lens, (including K readings), the grinding of the intermediate and peripheral curves and their

blending, the polishing of the lens, the instruction of the patient in the care of, and in the inserting and removing of the lens, the necessary adjustments for lens lag, or apical touch, the centering of the lens, smoothing and rounding of edges, are the technical, time consuming but important functions that qualified opticians and contact lens technicians can do for us. The final phase of contact lens fitting, however, is the medical examination and approval of the contact lens fitting by the prescribing ophthalmologist and this is a continuing process periodically, as long as the patient wears contact lenses.

The term "fitting" per se has not yet been legally defined. Medically perhaps, it could be defined, as the determination of the physical characteristics of an appropriate lens and its application to the eye based on anatomical, physiological or pathological corneal or scleral-corneal findings by the physician, on prescription and direction of the physician.

The improvement in fitting technics of plastic contact lenses together with the nation-wide promotional campaigns of the manufacturers of contact lenses, have greatly increased the number of people wearing or attempting to wear contact lenses. The publicity emphasizes the comparative simplicity of the procedure, its safety, and the many satisfied patients wearing these lenses. Full page advertisements in the press have fired the imagination of the public with belief that contact lenses can be worn by anyone, replacing ordinary spectacles. May I say at this time that contact lenses are no substitute for spectacles for average uncomplicated refraction cases. Approximately 90,000,000 people are wearing spectacles to correct vision defects.

It is estimated that there have been about 6 million people fitted for contact lenses, approximately 500,000 patients are being fitted per year, the majority of these for cosmetic, psychological purposes rather than for any actual physical need.

The explosive increase in the number of people wearing contact lenses presented medicine with a challenge and a new source of potential eye disease which has resulted in some instances, not only in permanent visual loss, but in the loss of the eye itself. The contact lens is a nonsterile foreign body and when placed on the cornea can change the metabolism of the cornea and disturbs the normal C02-02 exchange. In many cases contact lens may actually traumatize corneal tissue, resulting in corneal erosion, corneal ulcers, acute secondary iritis etc.

Physicians are the guardians of the health of our nation. Ophthalmologists agree that the use of contact lenses, corneal and scleral, when indicated, are useful adjuncts in therapy of vision defects. Medicine has therefore renewed its interest in this field so that it can provide the leadership so necessary for safety in the fitting and wearing of contact lenses.

The diagnosis and treatment of untoward signs and symptoms of eye conditions, associated with the fitting or wearing of contact lenses is the responsibility of Medicine. (I would like to repeat this statement.)

The close relationship between physician and trained ancillary personnel is a very old, valued, and necessary one in the practice of medicine, if the patients' best interests are to be served.

On the subject to licensure of allied ancillary personnel, medicine has mixed feelings. I know that Mr. Ed. Holman of the A.M.A. legal department discussed this matter with you this morning. Unfortunately I had other commitments and could not be present for his address although he was kind enough to send me a copy of his comments to you, a few days ago.

The physician has the professional and legal responsibility and authority for the medical care of the patient. The medical profession, therefore, has the problem of determining the need for any allied ancillary group that would help facilitate this medical responsibility to the public. The American Association of Ophthalmology supports this position of medicine.

To render complete eye care, the ophthalmologist has historically utilized the services of trained ophthalmic ancillary personnel. In my address to the House of Delegates of the Ameri-

can Association of Ophthalmology in October 1966 meeting at the Palmer House in Chicago, I stressed the importance of allied personnel which statistically adds up to a medical work force of about 30,000 specially trained technicians, which include approximately 10,000 dispensing opticians.

The dispensing optician may be defined as an ancillary medical worker who supplies and fits such glasses, appliances and devices as the physician prescribes for a given patient. The prescribing physician makes the final determination of the acceptability of such glasses (thus the physician's relation with the optician differs from his relation with the druggist whose finished product can not easily be inspected).

It seems apparent that optometry, in its efforts to equate itself with ophthalmology, would like to exercise authority over ancillary ophthalmic personnel serving the medical profession.

Any legislation or court action or state attorneys' interpretation of optometric law which threatens to deny the qualified, trained and ethical dispensing optician the right to continue his craft is of interest and concern to the medical profession generally and to the ophthalmologist in particular, for the optician is a member of the medical team serving the public.

It is urgent therefore that the medical profession understands the vulnerability of the optician's status and takes measures necessary to insure their security. The A.A.O. recognizes the importance and advisability of legally identifying the relationship between medicine and opticianry, which has existed for over a century.

At present there are 17 states where opticians are licensed. Efforts to obtain licensure in many of the 33 remaining states and the District of Columbia have been unsuccessful. These efforts, on the part of opticianry may not have had the blessing of the State Medical Societies but were defeated because of optometry's opposition to the licensing of opticians.

Would licensure protect the opticians from legal attack from optometry?—not necessarily—Optometry has successfully amended the opticians acts to restrict the opticians' privileges to meet optometry's objectives. In many states such as Wisconsin, Oklahoma, and South Carolina amendments to the optometry acts have given the Board of Optometry jurisdiction over optician. Any amendment of the optometric act affecting opticianry affects Medicine. And so, I could go on citing instances where licensure of opticians has not proven as satisfactory, as we would have expected it to be. What then is the alternative?

As I have already stated—the American Association of Ophthalmology supports legal identification of the optician. This may be accomplished in the Medical Practice Act by defining ancillary medical workers to include, specifically by name, the "certified dispensing optician." The certified dispensing optician being a person engaged in the business of fabricating, fitting and supplying eyeglasses and other optical appliances to the patient on order of a physician. Furthermore I would recommend for your consideration the re-organization of the American Board of Opticianry to be composed of acknowledged and representative leaders in ophthalmology and opticianry whose responsibility would be to establish accepted standards of training, examinations and certification for those who qualify. Certification to be renewed annually by the Board. The accomplishment of the above measures would give security and status to the craft of opticianry.

In conclusion, I would like to commend the Guild for the many years, (since its inception in 1925) of activity and support in bringing to the attention of the public, the importance of medical eye care. The American Association of Ophthalmology and the Guild of Prescription Opticians of America are thus dedicated to a common objective "complete eye care". I trust that our relationship will continue to be close and meaningful.

I hope that any problems in the future of mutual concern to ophthalmology and opticianry may be resolved by frank discussions and understanding of the objectives involved so that the public will continue to benefit from our association.

EXHIBIT D

JULY 27, 1966.

In re: Licensing of opticians in the District of Columbia. (CCO: 3.C5.1—Opticians, Licensing of.)

Commissioners of the District of Columbia.

GENTLEMEN: You referred to me the question of whether, in the light of a recent court decision, legislation is necessary to authorize the District of Columbia to license and regulate the practice of opticians.

Judge Harold H. Greene of the District of Columbia Court of General Sessions on May 9, 1966, in the case of *District of Columbia* v. *Norman Fields*, Criminal Action No. D.C. 3628–66, found Fields, an optician, guilty of practicing optometry without a license. In his decision, Judge Greene made the following statement:

"Unlike many other jurisdictions, the District of Columbia has no law regulating the practice of opticianry or providing for the licensing of opticians. The result is that anyone has the legal right to call himself an optician and perform the tasks normally associated with that trade. The prosecution argues from this that opticians must be barred from all phases of the contact lens practice (except the grinding of lenses) whether or not their operations are supervised by a professional.

"Lack of governmental supervision and licensing of opticians and any resulting deficiencies in performance are not cured by attaching the label of optometry to functions which a properly trained optician may legitimately perform; the remedy for the lack of qualification of some opticians is the licensing of opticians generally, in order that this craft may be restricted to those who are properly trained.

"It so happens that this defendant appears to be fully qualified and well capable of measuring eye curvatures and fitting contact lenses[8] under supervision; his future activities in that regard, if supervised in accordance with the standards set forth under V below, will be consistent with the statute and with the public interest. The same may well be true of most opticians operating in the District of Columbia today. But unless opticians are licensed and regulated the public has no assurance that even those functions which opticians may legitimately exercise will be carried out responsibly and without danger to the community.[9]

"Upon inquiry by the Court, the Corporation Counsel stated that the District of Columbia Commissioners lack power on their own to provide for the regulation and licensing of opticians and their adherence to proper standards. Congressional enactment of a statute inaugurating such licensing and supervision would eliminate a potential hazard to the citizens of this community.

While the last sentence in the body of the foregoing quotation from Judge Greene's opinion expresses the desirability of Congressional enactment of a statute for the licensing and supervising of opticians, the immediately preceding sentence indicates that the Court, in so concluding, was relying on an alleged statement by a representative of this office that the "Commissioners lack power on their own to provide for the regulation and licensing of opticians and their adherence to proper standards."

After a review of the provisions of the Optometry Act approved May 28, 1924 (43 Stat. 177; D.C. Code, title 2, chapter 5) and the License Act (section 7 of the Act approved July 1, 1902, as amended; 47 Stat. 550; D.C. Code, title 47, chapter 23), I do not concur in the view allegedly expressed that the Commissioners lack authority to license opticians under existing law. The Optometry Act contains no provisions which would preclude licensing of opticians. Indeed, there are no references at all in the Optometry Act to the occupation of "optician". Although an optometrist may perform functions which are also performed by an optician, such as grinding lenses to fit a prescription, the practice of optometry is defined (D.C. Code, section 2–501) 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 for the aid and relief thereof."

On the other hand, "Optician" is defined by Stedman's Medical Dictionary, Unabridged Lawyer's Edition, 1961, as "A maker of optical instruments; one who

[8] He has had contact lens instruction by three optometrists for a period of six to eight months."

[9] According to the testimony, one can be an optician in the District of Columbia simply by opening an optical shop in a vacant store."

makes and adjusts eyeglasses and spectacles after a formula prescribed by the oculist."

The Optometry Act prohibits the practice of optometry without a license (sec. 2–502) obtained by examination (sec. 2–509) by those meeting prescribed qualifications (sec. 2–511). The only reference in the Act to those who may perform the functions of opticians is in sec. 2–520(b), which specifically excludes certain persons from the Act's coverage, as follows:

"The provisions of this chapter shall not apply—

* * * * * * *

"(b) To persons selling spectacles and (or) eyeglasses and who do not attempt either directly or indirectly to adapt them to the eye, and who do not practice or profess to practice optometry."

Therefore, since some of the functions of opticians are specifically excluded from the coverage of the Optometry Act and the Act is otherwise silent thereon, it is no impediment to the licensing of opticians by the Commissioners under the authority of paragraph 45 of section 7 of the Act of July 1, 1902, as amended (D.C. Code, section 47–2344), which provides in part as follows:

"The commissioners of the District of Columbia are authorized and empowered, when in their discretion such is deemed advisable, to require a license of other businesses or callings not listed herein and which, in their judgment, require inspection, supervision, or regulation by any municipal agency or agencies and to fix the license fee therefor in such amount as, in their judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision, or regulation. . . ."

Respectfully submitted.

MILTON D. KORMAN,
Acting Corporation Counsel, D.C.

EXHIBIT E

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
DEPARTMENT OF OCCUPATIONS AND PROFESSIONS,
Washington, D.C., April 5, 1967.

Memorandum to the Board of Commissioners:

Subject: Proposed Regulations Regarding the Licensing of Opticians in the District of Columbia.

At its meeting on August 2, 1966, the Board of Commissioners noted a Corporation Counsel opinion concerning the establishment of a licensing program for opticians practicing in the District of Columbia. In concluding the discussion of this matter, the Commissioners instructed the Director of the Department of Occupations and Professions to draft regulations regarding the licensing of opticians, for their further consideration.

When the Department of Occupations and Professions completed the initial draft of such regulations, copies were supplied to interested individuals and groups in the fields of opticianry, optometry, and ophthalmology. Thereafter, the Director and members of his staff held a series of meetings with representatives of the interested groups for a full discussion of the draft regulations.

Because of the wide variance in the views expressed, representatives of the interested groups were requested to submit their comments in writing to avoid any possible misunderstanding which might result from the Department attempting to interpret the position of any group to the Board of Commissioners.

The written comments which were received by the Department are being transmitted herewith, together with a second draft of the regulations prepared after the aforementioned series of discussion meetings with interested individuals and groups. In addition, there is also transmitted herewith, the draft of a Commissioners' Order which would amend Reorganization Order No. 59 (amended), by adding a PART XV, containing the necessary machinery for operating a licensing program for opticians, should the Commissioners eventually decide on such a force of action. The comments transmitted herewith were submitted by, or a behalf of, the following:

(1) Dr. Wyrth Post Baker, President, D. C. Board of Examiners in Medicine and Osteopathy
(2) The Section on Ophthalmology of the D. C. Medical Society
(3) The District of Columbia Optometric Society

(4) The District of Columbia Guild of Prescription Opticians
(5) The Sterling Optical Company

In preparing the draft regulations which accompany this memorandum, the Department of Occupations and Professions was guided by the court decision handed down by Judge Harold H. Greene of the Court of General Sessions, Criminal Division, on May 9, 1966, in the case of Norman Fields, an optician charged with engaging in the practice of optometry as a result of his actions in connection with the fitting of contact lenses for a reporter of the Washington Daily News. Since it was this decision by Judge Greene which lead to the Commissioners' initial consideration of the question of establishing a licensing program for opticians, it seemed only logical that Judge Greene's decision should serve as the Department's guide in developing a set of draft regulations for consideration by the Board of Commissioners.

Recommendations: The Department of Occupations and Professions recommends the following course of action:

(1) That the Commissioners refer the draft regulations, prepared by the Department, to the Corporation Counsel for review as to legal sufficiency.

(2) That upon completion of such review by the Corporation Counsel, the Commissioners schedule and personally conduct a public hearing on the draft regulations. The Department recommends that the Commissioners personally conduct such public hearing, because the positions of the groups representing optometrists and ophthalmologists appear to be irreconcilable with respect to the fitting of contact lenses by opticians. From the discussion meetings which Department representatives held with these interested groups, it was clear that feelings are extremely strong and positions poles apart with respect to this question. As a result, it was very difficult to sift pure fact from statements motivated by economic self-interest which were purported to be fact. Therefore, since it is the Commissioners who must eventually decide this highly-controversial issue, it seems advisable that they should personally conduct the public hearing on the draft regulations.

(3) That following the public hearing, the Commissioners decide if it is in the public interest to establish a licensing program for opticians practicing in the District of Columbia.

LAWRENCE E. DUVALL,
Director, Department of Occupations and Professions.

(Enclosures.)

Orig. cc: Hon. Walter N. Tobriner, Hon. John B. Duncan, Brig. Gen. Robert E. Mathe, USA, Mr. F. E. Ropshaw, Secretary.)

DRAFT

DISTRICT OF COLUMBIA REGULATIONS, TITLE 12, OCCUPATIONAL AND PROFESSIONAL LICENSES, CHAPTER 26—OPHTHALMIC DISPENSING

(Government of the District of Columbia, Department of Occupations and Professions, 1145 19th Street, Northwest, Washington, D.C. 20036)

TITLE 12. OCCUPATIONAL AND PROFESSIONAL LICENSES

CHAPTER 26

OPHTHALMIC DISPENSING

QUALIFICATIONS FOR LICENSURE

APPLICATIONS FOR LICENSE

DISTRICT OF COLUMBIA REGULATIONS, TITLE 12, OCCUPATIONAL AND PROFESSIONAL LICENSES, CHAPTER 26—OPHTHALMIC DISPENSING—Continued

12-2601. *Purpose.* In promulgating these Regulations, the Commissioners declare their purpose to be the establishment of a licensing program which will protect the public from incompetent or unqualified persons who might attempt to practice ophthalmic dispensing in the District, and which will protect qualified and ethical practitioners from the unfair competition of unethical and unfit persons.

12-2602. *Scope of Regulations.* The scope of the Regulations in this chapter extends to the examination, licensure, registration, and regulation of persons practicing ophthalmic dispensing in the District of Columbia.

12-2603. *Definitions.* As used in this chapter, unless the context requires a different meaning, the following terms shall mean:

"Board": the District of Columbia Dispensing Optician Examining Board established by PART XV of Reorganization Order No. 59 (amended);

"Class-I License": a license issued by the Commission authorizing the holder thereof to practice ophthalmic dispensing excluding the filling of prescriptions for contact lenses;

"Class-II License": a license issued by the Commission authorizing the holder thereof to practice ophthalmic dispensing including the filling of prescriptions for contact lenses;

"Commission": the District of Columbia Dispensing Optician Licensing Commission established by PART XV of Reorganization Order No. 59 (amended);

"Commissioners": the Commissioners of the District of Columbia sitting as a Board;

"Committee": the District of Columbia Dispensing Optician Hearing Committee established by PART XV of Reorganization Order No. 59 (amended);

"Department": the Department of Occupations and Professions;

"Director": the Director of the Department of Occupations and Professions;

"Dispensing Optician": a person licensed by the Commission to practice ophthalmic dispensing in the District;

"District": the District of Columbia;

"He and derivatives thereof": shall also be construed to include she and derivatives thereof;

"Metropolitan area": the District of Columbia, Montgomery and Prince Georges Counties in the State of Maryland, Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria and Falls Church in the Commonwealth of Virginia, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties and cities;

"Ophthalmic Dispensing": a person practices ophthlmic dispensing who, within the limitation set forth in these Regulations, prepares and dispenses lenses, spectacles, eyeglasses, contact lenses, and/or appurtenances thereto to the intended wearer thereof on the written prescriptions of physicians or optometrists duly licensed to practice their profession, and in accordance with such prescriptions interprets, measures, adapts, fits, and adjusts such lenses, spectacles, eyeglasses, contact lenses, and/or appurtenances thereto for the aid or correction of visual or ocular anomalies of the human eyes. The services and appliances relating to ophthalmic dispensing shall be furnished, dispensed, or supplied to the intended wearer or user thereof only upon prescription of a physician or optometrist, but duplications, replacements, reproductions, or repetitions may be done without prescriptions. In which event, any such act shall be construed to be ophthalmic dispensing the same as if performed on the basis of a written original prescription.

"Person": any natural person, firm, partnership, corporation, or association.

12–2604. *Unlawful acts.*

(a) On and after the effective date of these Regulations, the following shall constitute unlawful acts:

(1) For any person practicing ophthalmic dispensing in the District to engage in the diagnosis of the human eyes, or attempt to determine the refractive powers of the human eyes, or in any manner attempt to prescribe for or treat diseases or ailments of human beings.

(2) For any person practicing ophthalmic dispensing in the District to display any refracting equipment that may tend to mislead the public into the belief that eye examinations are being made on the premises in connection with ophthalmic dispensing.

(b) On and after the ninetieth day following the effective date of these Regulations, the following shall constitute unlawful acts:

(1) Except as otherwise provided in these Regulations, for any person to practice ophthalmic dispensing in the District unless duly licensed as a Dispensing Optician.

(2) Except as otherwise provided in these Regulations, for any person engaged in the business of ophthalmic dispensing in the District to permit anyone in his employ to practice opthalmic dispensing unless such employee is duly licensed as a Dispensing Optician.

12–2605. *Exemptions.*

(a) Nothing contained in these Regulations shall be construed as prohibiting the practice of ophthalmic dispensing by an optometrist or physician duly licensed to practice his profession, or by an employee of such an optometrist or physician when working in his office and under his personal supervision.

(b) Nothing contained in these Regulations shall be construed as prohibiting the practice of ophthalmic dispensing by a trainee, apprentice, unlicensed opti-

cian, or other employee of a Dispensing Optician: *Provided, however,* That such ophthalmic dispensing must be performed under the personal supervision of the Dispensing Optician.

(c) As used in subsections (a) and (b) above, personal supervision means that the physician, optometrist or Dispensing Optician shall be at hand at all times when a trainee, apprentice, unlicensed optician, or other employee is practicing ophthalmic dispensing.

(d) Nothing contained in these Regulations shall be construed as preventing the sale of spectacles for reading purposes, toy glasses, goggles, or sun glasses consisting of plano white, plano colored or plano tinted glasses, or ready made nonprescription glasses, nor shall anything in these Regulations be construed as affecting in any way the manufacture and sale of plastic or glass artificial eyes or as affecting any person engaged in said manufacture or sale of plastic or glass artificial eyes.

12–2606. *Grandfather clause.*

(a) Any person of good moral character who has been engaged in the full-time practice of ophthalmic dispensing for at least two years prior to the effective date of these Regulations in the District, or in the metropolitan area in the employ of a firm with offices in the District, shall be licensed by the Commission, without examination, as a Dispensing Optician with a Class–I License upon making proper application and payment of the required fee or fees within one year following the effective date of these Regulations.

(b) Upon making proper application and payment of the required fee or fees within one year following the effective date of these Regulations, any person of good moral character who has been engaged in the full-time practice of ophthalmic dispensing for at least two years prior to the effective date of these Regulations in the District, or in the metropolitan area in the employ of a firm with offices in the District, shall be licensed by the Commission as a Dispensing Optician with a Class–II License upon successfully passing such practical examination in the filling of contact lens prescriptions as the Board may require.

QUALIFICATIONS FOR LICENSURE

12–2607. *For license by examination.* Every applicant for a license by examination must furnish proof satisfactory to the Commission that he has the following qualifications:

(a) Is at least 19 years of age;

(b) is of good moral character;

(c) is a high school graduate or has had equivalent education as determined by the District of Columbia Board of Education;

(d) has either (1) satisfactorily completed a one year course of study in a school of ophthalmic dispensing approved by the Commission or (2) had at least one year of satisfactory training and experience in ophthalmic dispensing under the supervision of a duly licensed physician, optometrist, Dispensing Optician, or a recognized optician in a jurisdiction where licensure is not required;

(e) has passed such examination in ophthalmic dispensing as the Board may require; and

(f) has paid all required fees.

12–2608. *For license by endorsement.*

(a) To be eligible for a Class-I License by endorsement to practice as a Dispensing Optician in the District, an applicant must furnish satisfactory proof to the Commission that he has the following qualifications:

(1) He has been duly licensed as an Optician, by examination, in another state or territory of the United States, or foreign country, wherein the requirements for licensure are substantially the same as those in effect in the District.

(2) He is currently holding a license in good-standing as an optician in another state or territory of the United States, or a foreign country.

(3) He meets the qualifications specified in subsections (a), (b) and (f) of Section 12–2607 of these Regulations.

(b) Any person who meets the qualifications of subsection (a) of this Section, shall be eligible for a Class-II License to practice as a Dispensing Optician in the District upon successfully passing such practical examination in the filling of contact lens prescriptions as the Board may require.

APPLICATIONS FOR LICENSE

12–2609. *Filing of application.* Every applicant for a license shall duly file with the Director an application on a form prescribed by the Commission and provided by the Director. All required documents must be attached to the application at time of filing.

12–2610. *Photographs of applicant required.* Every application for a license must be accompanied by two recent photographs of the applicant, measuring one inch by one-and-a-half inches.

12–2611. *Application to be notarized.* Every application for a license shall be sworn or affirmed to before a notary public.

12–2612. *Application not duly made.* The Commission shall review and take action on all duly made applications. However, the applicant for a license has upon him the burden of proving that he meets the qualifications required for obtaining the license sought. The Commission may not presume qualifications not shown on the application. The Commission may refuse to act on an application and may require the applicant to submit additional information, if the application contains incomplete, evasive, or insufficiently supported assertions where supporting evidence is required.

12–2613. *False statements, disqualifications.* The Commission may, after notice and opportunity for hearing, disqualify the application of an applicant for a license, (a) if the applicant has knowingly made or allowed to be made on his behalf, either to the Commission or to any officer or employee of the Department, any false or misleading statements in connection with his application; or (b) if the applicant has attempted improperly to influence any member of the Commission or the Board or any officer or employee of the Department in the discharge of his duties relating to the application of the applicant. At the discretion of the Commission, any applicant whose application has been so disqualified may reapply for the license desired.

12–2614. *Application for a license by examination.* Every applicant for a license by examination shall file his application not later than thirty days prior to the date of the examination for which he desires to sit. The Director shall notify each applicant of the Commission's action with respect to his eligibility to take the examination. At least ten days prior to the examination, the Director shall notify each eligible applicant of the time and place of examination.

EXAMINATIONS

12–2615. *Examination, frequency, place.* The Board shall conduct in the District at least two examinations each year. The Board may, however, schedule such additional examinations as it determines to be necessary. The Board shall fix the time and place for each examination.

12–2616. *Nature of examination.* The examination administered to applicants for licensure as a Dispensing Optician shall be both written and practical in nature. The Board may, however, when the circumstances so warrant, permit the written portion of the examination to be administered orally.

12–2617. *Exception.* The preceding Section shall not be construed as applying to an applicant for a Class-II License as a Dispensing Optican who meets the qualifications of subsection (a) of Section 12–2608 of these Regulations. Such an applicant shall only be required to pass a practical examination in the filling of contact lens prescriptions.

12–2618. *Type and content of examination.*

(a) The written portion of the examination shall consist of objective type questions pertaining to ophthalmic dispensing as defined in Section 12–2603 of these Regulations.

(b) The practical portion of the examination shall consist of a demonstration by the applicant of his knowledge and skills in the actual practice of ophthalmic dispensing as defined in Section 12–2603 of these Regulations. *Provided, however,* That applicants for a Class-I Dispensing Optician License shall not be required to demonstrate their knowledge and skill in the filling of contact lens prescriptions.

12–2619. *Examination rules.* The examination shall be administered to applicants in accordance with the examination rules established by the Board.

12–2620. *Infraction of examination rules.* At the discretion of the examiner in charge, any applicant may be excluded from the examination for violating the examination rules. The examiner shall report such action promptly to the Commission.

12–2621. *Scoring of examination.*

(a) Each portion of the examination shall be scored on the basis of 100 points. In order to be eligible for a license, an applicant must attain a score of at least 70 on the written portion of the examination and a score of at least 70 on the practical portion of the examination. An applicant for a Class-II Dispensing Optician License must, in addition, attain a score of at least 70 on the practical demonstration of his knowledge and skill in filling contact lens prescriptions. An applicant who fails any portion of the examination shall be deemed to have failed the examination. *Provided, however,* That the Board may, if it so desires, establish rules permitting carry-over credits for applicants who pass a portion of the examination.

(b) In order to be eligible for a Class-II Dispensing Optician License, an applicant who meets the qualifications of subsection (a) of Section 12–2608 of these Regulations must attain a score of at least 70 on the practcial demonstration of his knowledge and skill in filling contact lens prescriptions.

12–2622. *Notification of examination results.* The Director shall notify each applicant of the examination results as determined by the Board.

12–2623. *Second and subsequent examinations.* Any person who fails his first examination may reapply and sit for subsequent examinations. *Provided, however,* That an applicant who has failed three examinations shall be permitted to take a fourth examination only after presenting satisfactory proof to the Commission that he has, since failing his third examination, received such additional training in ophthalmic dispensing as the Commission may require.

ISSUANCE OF LICENSE

12–2624. *License to be issued.* A Class–I License or a Class–II License, as the case may be, to practice in the District as a Dispensing Optician shall be issued to each applicant who meets all of the requirements for such a license. The Commission shall certify the name of each such applicant to the Director.

12–2625. *Director to prepare and issue license.* The Director shall prepare and issue a license for each duly qualified applicant certified to him by the Commission.

ISSUANCE OF LICENSE RENEWAL

12–2626. *Annual renewal required.* Every license in good-standing issued in accordance with these Regulations shall expire on the 31st day of January of each year and must be renewed annually in order to remain in goodstanding. Approximately sixty days prior to the annual expiration date, the Director shall mail an application for renewal to the last known address of each person holding a license in good-standing.

12–2627. *Filing of renewal application.* Each person holding a license in good-standing issued in accordance with these Regulations shall file with the Director, on or before the 31st day of January of each year, an application for renewal of his license, accompanied by the required renewal fee.

12–2628. *Issuance of annual renewal.* Each year, upon receipt of a renewal application and the required renewal fee, and upon verifying the absence of any reason for withholding renewal, the Director shall issue a renewal of the license concerned, for the period beginning February 1 of that year and ending January 31 of the following year.

12–2629. *Lapse of license.* Any person holding a license in good-standing who fails to file an application for renewal and pay the required renewal fee on or before the 31st day of January of any year, shall be guilty of practicing without a license if, on or after February 1 of that year, he engages in the business of or practices ophthalmic dispensing in the District.

12–2630. *Restoration of a lapsed license.* Any person who has permitted his license to lapse in the manner specified in Section 12–2629 of these Regulations, may restore his license to good-standing by duly filing a current renewal application, accompanied by the annual renewal fee and late-filing fee for each license year, or portion thereof, in which his license was in a lapsed status. *Provided, however,* That the provisions of this Section shall not apply to the period of time during which a licensee is in an inactive status as provided for in Section 12–2631 of these Regulations.

12–2631. *Inactive status.* Any person holding a license but not so practicing in the District, may apply to the Director, in writing, for inactive status. Upon being so notified, the Director shall place the name of such person on the non-practicing list. While remaining in such inactive status, the holder of a license

shall not be subject to the payment of any annual renewal fee and he shall not engage in the business of or practice ophthalmic dispensing in the District.

12–2632. *Restoration to active status.* Any person on the non-practicing list may restore his license to active status by requesting such a change in status and filing with the Director a properly completed application and renewal fee for the current license year. *Provided, however,* That a person who permitted his license to lapse prior to requesting inactive status, must comply with the restoration provisions contained in Section 12–2630 of these Regulations.

DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

12–2633. *Grounds for denial, suspension or revocation of license.* The Commission may refuse to issue or may suspend or revoke any license to practice ophthalmic dispensing in the District, for any one or combination of the following grounds:

A person—

(a) has been guilty of fraud or deceit in procuring or attempting to procure a license required by these Regulations;

(b) has been convicted of a crime involving moral turpitude;

(c) has willfully or repeatedly violated any provision of the Regulations promulgated by the Commissioners;

(d) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;

(e) is guilty of conduct which disqualifies him to practice ophthalmic dispensing with safety to the public;

(f) is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice ophthalmic dispensing in the District, except as authorized by Section 12–2605 of these Regulations;

(g) is guilty of practicing while his license is suspended;

(h) is guilty of willfully deceiving or attempting to deceive the Commission with reference to any matter which it has under investigation;

(i) is guilty of making a rebate of any kind to any person for directing ophthalmic dispensing business to him or his establishment;

(j) is guilty of advertising individual superiority or the performance of ophthalmic dispensing services in a superior manner;

(k) is guilty of knowingly violating or aiding any person to violate the laws or regulations governing ophthalmic dispensing of any jurisdiction; and

(l) is guilty of knowingly practicing in the employment of, or in association with, any person who is practicing in an unlawful manner.

12–2634. *Investigation of grounds.* The Commission may upon its own motion and shall upon the sworn complaint in writing of any person setting forth charges which, if proved, would constitute grounds for refusal, suspension, or revocation of the license as hereinabove set forth, request the Director to investigate the actions of any person holding, claiming to hold, or applying to hold any license provided for in these Regulations.

12–2635. *Opportunities for applicant or licensee to have a hearing.* Every licensee or applicant for a license except applicants for reinstatement after revocation, shall be afforded notice and an opportunity to be heard prior to the action of the Commission, the effect of which would be:

(a) to deny permission to take examination for a licensee, for which applicant has correctly filed and whose application has been accepted;

(b) to deny a license after examination for any cause other than failure to pass an examination;

(c) to deny a license by endorsement to an applicant who meets the qualifications specified in Section 12–2608 of these Regulations;

(d) to suspend a license; or

(e) to revoke a license.

12–3636. *Notice of contemplated action. Request for hearing and notice of hearing.*

(a) When the Commission contemplates taking any action of the type specified in subsections (a), (b), or (c) of Section 12–2635 of these Regulations, it shall give to the applicant a written notice containing a statement:

(1) that the applicant has failed to satisfy the Commission as to his qualifications to sit for examination or to be issued a license, as the case may be;

(2) indicating in what respect the applicant has failed to satisfy the Commission; and

(3) that the applicant may secure a hearing before the Committee by depositing in the mail within twenty days after service of said notice, a certified letter addressed to the Commission and containing a request for a hearing.

(b) When the Commission contemplates taking any action of the type specified in subsections (c) and (d) of Section 12–2635 of these Regulations, it shall give the licensee a written notice containing a statement:

(1) that the Commission has sufficient evidence, and setting forth the same, which, if not rebutted or explained, justifies the Commission in taking the contemplated action; and

(2) that unless the licensee, within twenty days after service of said notice, deposits in the mail a certified letter addressed to the Commission and containing a request for a hearing, the Commission will take the contemplated action.

12–2637. *Procedure when a person fails to request a hearing.* If an applicant for or holder of a license does not mail a request for a hearing within the time and in the manner required by Section 12–2636 of these Regulations, the Commission may, without a hearing, take the action contemplated in the notice. The Commission shall, in writing, inform the applicant or licensee, the Corporation Counsel, and the Director of the Commission's action.

12–2638. *Notice of hearing.* If an applicant for or holder of a license does mail a request for a hearing as required in Section 12–2636 of these Regulations, the Commission shall, within twenty days of receipt of a request, notify the applicant or licensee of the time and place of hearing, which hearing shall be held by the Committee not more than thirty days nor less than ten days from the date of service of such notice.

12–2639. *Method of serving notice of contemplated action and notice of hearing.* Any notice required by Section 12–2636 or Section 12–2638 of these Regulations, may be served either personally by an employee of the Department or by certified mail, return receipt requested, directed to the applicant for or holder of a license, at his last known address as shown by the records of the Department. If notice is served personally, it shall be deemed to have been served at the time when delivery is made to the person addressed. When notice is served by certified mail, it shall be deemed to have been served on the date born upon the return receipt showing delivery of the notice to the addressee or refusal of the addressee to receive notice. In the event that the addressee is no longer at the last known address as shown by the records of the Department and no forwarding address is available, the notice shall be deemed to have been served on the date the return receipt bearing such notification is received by the Department.

12–2640. *Procedure when a person fails to appear for a requested hearing.* If an applicant for or holder of a license who has requested a hearing does not appear and no continuance has been or is granted, the Committee may hear the evidence of such witnesses as may have appeared, and the Committee may proceed to consider the matter and render a decision on the basis of evidence before it, in the manner required by Section 12–2641 of these Regulations.

12–2641. *Majority of Committee to hear and decide.* At each hearing, at lease a majority of the members of the Committee shall be present to hear the evidence and render a decision.

12–2642. *Rights of person entitled to hearing.* A person entitled to a hearing shall have the right:

(a) to be represented by counsel;

(b) to present all relevant evidence by means of witnesses and books, papers, and documents;

(c) to examine all opposing witnesses on any matter relevant to the issues; and

(d) to have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request therefor to the Committee.

12–2643. *Powers of the Committee in holding hearings.* In connection with any hearing held, the Committee shall have the power:

(a) to request of the Commissioners that counsel from the Office of the Corporation Counsel be appointed to represent the District in any case before the Committee;

(b) to administer oaths or affirmations to witnesses called to testify;

(c) to subpoena witnesses and relevant books, papers, and documents;

(d) to take testimony;

(e) to examine witnesses; and
(f) to direct continuance of any case.

12–2644. *Contempt procedures.* In proceedings before the Committee, if any person refuses to respond to a subpoena or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of the Commission rendered pursuant to a decision made by the Committee after hearing, the Commission may make application to the proper court for an order requiring obedience thereto.

12–2645. *Evidence.* In all proceedings held by the Committee, the Committee shall receive and consider any evidence or testimony. However, the Committee may exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence or testimony.

12–2646. *Burden of proof.*

(a) In any Committee proceeding resulting from the Commission's contemplated action to deny a license, the applicant shall have the burden of satisfying the Committee of his qualifications.

(b) In any Committee proceeding resulting from the Commission's contemplated action to refuse to renew, to suspend, or to revoke a license, the District Government shall have the duty of producing evidence to establish that a prima facie case exists for refusing to renew, suspending or revoking a person's license, and when such evidence is produced, then such person shall have the burden thereafter of going forward with the evidence.

12–2647. *Transcript of proceedings.* In all hearings conducted by the Committee, a complete record shall be made of all evidence presented during the course of a hearing.

12–2648. *Manner and time of rendering Committee decision.* The members of the Committee who conduct the hearing shall submit their decision to the Commission, in writing, as soon as practicable, but not later than sixty days after the date the hearing is completed.

12–2649. *Content of Committee decision.* The decision of the Committee shall contain:

(a) findings of fact made by the Committee;
(b) application by the Committee of these Regulations to the facts as found by the Committee; and
(c) the decision of the Committee based upon (a) and (b) of this Section.

12–2650. *Notification by Commission of final determination.* Within thirty days following receipt of a Committee decision rendered after hearing, the Commission shall notify the applicant or licensee concerned, in writing, of the final determination of the matter at issue. In any such matter, the Commission shall not make a final determination which is inconsistent with the Committee decision in such matter. The notification of final determination shall contain the Order of the Commission based upon the decision of the Committee and a statement informing the applicant or licensee involved, of his right to appeal to the court and the time within such an appeal may be sought. A copy of the Committee decision shall be attached to the notification of final determination.

12–2651. *Service of written notice.* The written notification of final determination shall be served upon the applicant or licensee involved, or his attorney of record, either personally or by certified mail. If sent by certified mail, it shall be deemed to have been served on the date contained on the return receipt.

12–2652. *Reopening proceedings.* Where, because of accident, sickness, or other good cause, a person fails to receive a hearing or fails to appear for a hearing which he has requested, the person may, within thirty days from the date born upon the Commission's notification of final determination, apply to the Commission to reopen the proceedings; and the Commission, upon finding such cause sufficient, shall authorize the Committee to immediately fix a time and place for hearing and give the person, the Corporation Counsel, the Director, and the Commission notice thereof, as required by these Regulations. The Commission may also reopen a proceeding for any other cause sufficient to it, provided no appeal is pending before a court or has been decided by a court.

12–2653. *Reconsideration or reinstatement.* Upon the application, after six months, of any person who has been denied a license or who has had a license revoked by the Commission, the Commission may, upon showing of cause satisfactory to it, reinstate the license or issue a new one.

CONTACT LENS REGULATIONS

12–2654. *Dispensing Optician with a Class–II License to be in charge and on duty.* Every place of business in the District wherein ophthalmic dispensing including the filling of contact lens prescriptions is practiced, must have a Dispensing Optician with a Class–II License in full charge of ophthalmic dispensing and on duty at all times when ophthalmic dispensing is practiced.

12–2655. *Work to be performed in presence of Dispensing Optician.* No Dispensing Optician who is in charge of a place of business in the District wherein ophthalmic dispensing including the filling of contact lens prescriptions is practiced shall permit any trainee, apprentice, unlicensed optician, or other employee in such place of business, to perform any ophthalmic dispensing service required in the filling of contact lens prescriptions, unless a Dispensing Optician with a Class–II License is at the side of and is supervising the trainee, apprentice, unlicensed optician, or other employee during the entire time he is rendering such ophthalmic dispensing service.

12–2656. *Direct dispensing of contact lenses prohibited.* It shall be a violation of these Regulations for a Dispensing Optician, when filling a contact lens prescription, to dispense such lens or lenses directly to the intended wearer thereof, or to permit the dispensing of such lens or lenses directly to the intended wearer thereof. When a Dispensing Optician has completed the filling of a contact lens prescription, including fitting, adapting and instruction in wearing, proper handling and care, he shall be responsible for delivery of such contact lens or lenses directly to the physician or optometrist who wrote the prescription. Under no circumstances shall a Dispensing Optician, upon filling a contact lens prescription, permit the intended wearer thereof to leave the premises of the place of business with such lens or lenses in his possession. In the event that the physician or optometrist who wrote the original prescription concludes from examination that additional work is needed on the lens or lenses, he shall be responsible for the return delivery of same directly to the Dispensing Optician. Thereafter, when the Dispensing Optician has completed the additional work, he shall once more return the contact lens or lenses directly to the physician or optometrist concerned.

MISCELLANEOUS REGULATIONS

12–2657. *Licensee to be in charge and on duty.* Every place of business in the District wherein ophthalmic dispensing excluding the filling of contact lens prescriptions is practiced, must have a Dispensing Optician in full charge of ophthalmic dispensing and on duty at all times when ophthalmic dispensing is practiced.

12–2658. *Display of license required.* Each person to whom a license has been issued shall keep such license displayed in a conspicuous place in his principal office or place of business wherein he practices ophthalmic dispensing. He shall, upon request, exhibit such license to any authorized agent of the Department. Should any licensee maintain more than one office or place of business in which he practices ophthalmic dispensing, he shall keep a duplicate of his original license displayed in a conspicuous place in each such additional office or place of business in which he practices ophthalmic dispensing.

12–2659. *Prescriptions to be on file and open to inspection.* Every person engaged in the business of filling prescriptions for ophthalmic dispensing services shall keep a suitable book or file in which shall be preserved, for a period of at least three years, the original of every prescription for ophthalmic dispensing services filled at that place of business. Upon request, the Dispensing Optician in charge of such place of business shall furnish to the prescribing physician or optometrist, or to the person for whom such prescription was written, a true and correct copy thereof. All prescriptions, files and records pertaining to the sale of ophthalmic dispensing services shall at all times be open to inspection by duly authorized agents of the Department.

12–2660. *Notification of change of name or address required.* Each holder of a license shall, within five days after any change of name or address, register such change, in writing, with the Director.

12–2661. *Fees to be collected for services rendered.* The Commissioners shall, from time to time, fix the amount of the fees which shall be charged for the following services:

(a) for reviewing and processing an application for a license;
(b) for administering examinations and re-examinations;
(c) for issuing licenses and renewals thereof,

(d) for issuing duplicates of licenses and renewals thereof;
(e) for furnishing a license renewal application a second time if no timely notification of change of name or address has been made;
(f) for late filing of renewal application; and
(g) for any other services which may be required for administration of the licensing program established by these Regulations.

12–2662. *Enforcement.* Any person violating any provision of these Regulations shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $300, or by imprisonment not exceeding six months, or by both such fine and imprisonment, and if the offense is continuing in its character, each week or part of a week during which it continues shall constitute a separate and distinct offense. In the event that such person is the holder of a license provided for by these Regulations, such license may, in addition, be suspended or revoked.

12–2663. *Effective date.* These Regulations shall take effect on the ninetieth day following their promulgation by the Commissioners.

12–2664. *Severability provision.* If any clause, sentence, paragraph, or Section of these Regulations shall, for any reason, be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, repeal or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or Section thereof so found unconstitutional or invalid.

EXHIBIT F

GUILD OF PRESCRIPTION OPTICIANS OF WASHINGTON, D.C.
Washington, D.C., March 21, 1967.

Mr. LAWRENCE E. DUVALL,
Director, Department of Occupations and Professions,
Washington D.C.

DEAR MR. DUVALL: Enclosed is the re-draft of the proposed Regulations pertaining to Ophthalmic Dispensing. We are having copies made and will send you a few more sets by the end of this week.

The re-draft essentially embodies the changes discussed in our conference with your office on February 21st, except for the part involving contact lenses. This latter is new wording which seeks to insure the public health and at the same time embody the formula worked out between the Ad Hoc Committee of the Section on Ophthalmology of the D.C. Medical Society and the Opticians.

It has been impossible to submit this re-draft to everyone involved, but I believe it represents the fundamental thinking of the group.

I call your attention to changes made in 12–2662—Enforcement. These changes may be in conflict with existing statutes or regulations.

Would you please convey to the Corporation Counsel our desire to discuss these Proposed Regulations with his office when they have the matter under consideration.

Sincerely yours,

ROBERT W. BURTON, *Counsel.*

[Enclosure]

RE-DRAFT

DISTRICT OF COLUMBIA REGULATIONS

TITLE 12

OCCUPATIONAL AND PROFESSIONAL LICENSES

CHAPTER 26—OPTHALMIC DISPENSING

Proposed by Guild of Prescription Opticians of Washington, D.C., 917–15th Street, Northwest, Washington, D.C. 20005, Robert W. Burton, Counsel

(DRAFT)

COMMISSIONER'S ORDERS

(DATE).

Subject: Reorganization Order No. 59, as amended
Department of Occupations and Professions

Ordered:

That Reorganization Order No. 59, as amended, dated June 30, 1953, relating to the Department of Occupations and Professions, is hereby further amended by adding at the end of PART XIV, a PART XV as follows:

"PART XV. DISPENSING OPTICIAN LICENSING COMMISSION, DISPENSING OPTICIAN EXAMINING BOARD, AND DISPENSING OPTICIAN HEARING COMMITTEE

"A. *Establishment.* Pursuant to authority contained in paragraph 45 of Section 7 of the Act of July 1, 1902, as amended, (D. C. Code, 1961 edition, section 47–2344), there is hereby established, within the Department of Occupations and Professions, a Dispensing Optician Licensing Commission, a Dispensing Optician Examining Board, and Dispensing Optician Hearing Committee.

"B. *Delegation of Functions and Authority.* The Dispensing Optician Licensing Commission, the Dispensing Optician Examining Board, and the Dispensing Optician Hearing Committee shall be responsible for the technical and professional functions of administering the licensing program governing ophthalmic dispensing established by regulations approved by the Commissioners (date), and the Director of the Department of Occupations and Professions shall be responsible for the administrative functions of administering such licensing program. The Dispensing Optician Licensing Commission is hereby authorized to approve or reject applications for licensure and to make final determinations in connection with the issuance, denial, suspension, or revocation of licenses. The Dispensing Optician Examining Board is hereby authorized to make final determinations in connection with time, place, content, conducting, and results of examinations administered to applicants for licensure. The Dispensing Optician Hearing Committee is hereby authorized to conduct a public hearing and render a decision whenever the Dispensing Optician Licensing Commission contemplates denying, suspending, or revoking a license.

The Director of the Department of Occupations and Professions is hereby authorized to make decisions with respect to fiscal, administrative, and housekeeping matters.

"C. *Composition and Qualifications.*

1. The Dispensing Optician Licensing Commission shall be composed of the Director of the Department of Occupations and Professions and two members appointed by the Board of Commissioners. An appointed member must be licensed in the District of Columbia as a Dispensing Optician and must have had at least five years of experience in the practice of opthalmic dispensing in the District of Columbia prior to his appointment. He must be actively engaged n the practice of ophthalmic dispensing in the District of Columba at the time of such appointment.

2. The Dispensing Optician Examining Board shall be composed of five members appointed by the Board of Commissioners. Two members shall be opthalmologists duly licensed to practice in the District of Columbia; and three members shall be Dispensing Opticians duly licensed to practice in the District of Columbia. Each such member shall have had at least five years of experience in practice in the District of Columbia and shall be actively engaged in such practice in the District of Columbia at the time of his appointment, and at least one of the Dispensing Optician members shall be licensed to dispense contact lenses in the District of Columbia.

3. The Dispensing Optician Hearing Committee shall be composed of the Director of the Department of Occupations and Professions and two members appointed by the Board of Commissioners. One appointed member shall be an attorney-at-law who is authorized to practice in the District of Columbia, and one appointed member shall be a Dispensing Optician licensed to practice in the District of Columbia. Each appointed member shall have had at least five years of experience in such practice in the District of Columbia and shall be actively so engaged at the time of his appointment.

"D. *Terms of Appointment.*

1. The two appointed members of the Dispensing Optician Licensing Commission shall hold office for three years, except that of the initial appointments of members following the effective date of this PART, one shall serve for two years and one shall serve for three years. Following establishment of this Commission, all provisions of PART V of this Order shall apply.

2. The members of the Dispensing Optician Examining Board shall hold office for three years, except that of the initial appointments of members following the effective date of this PART, of the ophthalmologists appointed one shall serve for two years and the other for three years, and of the three Dispensing Opticians appointed one shall serve for one year, and one shall serve for two years, and one shall serve for three years. Following the establishment of this Board, all provisions of PART V of this Order shall apply.

3. The two appointed members of the Dispensing Optician Hearing Committee shall hold office for three years, except that of the initial appointments of members following the effective date of this PART, one shall serve for two years and one shall serve for three years. Following establishment of this Committee, all provisions of PART V of this Order shall apply.

"E. *Applicability.*

Except where inconsistent with this Part, all other Parts of this Order shall apply to the Dispensing Optician Licensing Commission, the Dispensing Optician Examning Board, and the Dispensing Optician Hearing Committee."

By order of the Board of Commissioners, D.C.

TITLE 12. OCCUPATIONAL AND PROFESSIONAL LICENSES, CHAPTER 26

OPHTHALMIC DISPENSING

QUALIFICATIONS FOR LICENSURE

APPLICATIONS FOR LICENSE

EXAMINATIONS

ISSUANCE OF LICENSE

ISSUANCE OF LICENSE RENEWAL

TITLE 12. OCCUPATIONAL AND PROFESSIONAL LICENSES, CHAPTER 26—Con.

DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

CONTACT LENS REGULATIONS

MISCELLANEOUS REGULATIONS

12–2601. *Purpose.* In promulgating these Regulations, the Commissioners declare their purpose to be the establishment of a licensing program which will protect the public from incompetent or unqualified persons who might attempt to practice ophthalmic dispensing in the District, and which will protect qualified and ethical practitioners from the unfair competition of unethical and unfit persons.

12–2602. *Scope of Regulations.* The scope of the Regulations in this chapter extends to the examination, licensure, registration, and regulation of persons practicing ophthalmic dispensing in the District of Columbia.

12–2603. *Definitions.* As used in this chapter, unless the context requires a different meaning, the following terms shall mean:

"Board": the District of Columbia Dispensing Optician Examining Board established by PART XV of Reorganization Order No. 59 (amended);

"Commission": the District of Columbia Dispensing Optician Licensing Commission established by PART XV of Reorganization Order No. 59 (amended);

"Commissioners": the Commissioners of the District of Columbia sitting as a Board;

"Committee": the District of Columbia Dispensing Optician Hearing Committee established by PART XV of Reorganization Order No. 59 (amended);

"Department": the Department of Occupations and Professions;

"Director": the Director of the Department of Occupations and Professions;

"Dispensing Optician—Class I": a person licensed by the Commission to practice ophthalmic dispensing excluding the filling of prescriptions for contact lenses;

"Dispensing Optician—Class II": a person licensed by the Commission to practice ophthalmic dispensing including the filling of prescriptions for contact lenses;

"District": The District of Columbia;

"He and derivatives thereof": shall also be construed to include she and derivatives thereof;

"Ophthalmic Dispensing": a person practices ophthalmic dispensing who prepares and dispenses lenses, spectacles, eyeglasses, contact lenses, and/or appurtenance thereto to the intended wearer thereof on the written prescriptions of physicians or optometrists duly licensed to practice their professions, and in accordance with such prescriptions interprets, measures, adapts, fits, and ad-

justs such lenses, spectacles eyeglasses, contact lenses, and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes. The services and appliances relating to ophthalmic dispensing shall be furnished, dispensed, or supplied to the intended wearer or user thereof only upon prescription of a physician or optometrist, but duplications, replacements, reproductions, or repetitions may be done without prescriptions. In which event, any such act shall be construed to be ophthalmic dispensing the same as if performed on the basis of a written original prescription.

"Person": any natural person, firm, partnership, corporation, or association.

12–2604. *Unlawful acts.*

(a) On and after the effective date of these Regulations, the following shall constitute unlawful acts:

(1) For any person practicing ophthalmic dispensing in the District to attempt to determine the refractive powers of the human eyes, or in any manner attempt to diagnose, prescribe for, or treat diseases or ailments of the human eyes.

(2) For any person practicing ophthalmic dispensing in the District to make or maintain any display of equipment that would tend to mislead the public into the belief that eye examinations are being made on the premises in connection with ophthalmic dispensing.

(b) On and after the ninetieth day following the effective date of these Regulations, the following shall constitute unlawful acts:

(1) Except as otherwise provided in these Regulations, for any person to practice ophthalmic dispensing in the District unless duly licensed as a Dispensing Optician.

(2) Except as otherwise provided in these Regulations, for any person engaged in the business of ophthalmic dispensing in the District to permit anyone in his employ to practice ophthalmic dispensing unless such employee is duly licensed as a Dispensing Optician.

(3) Except as otherwise provided in these Regulations, for any person to engage in contact lens dispensing unless duly licensed as a Dispensing Optician—Class II; or to permit anyone in his employ to practice, or assist in the practice of contact lens dispensing unless under the personal supervision of the person duly licensed as a Dispensing Optician—Class II.

12–2605. *Exemptions.*

(a) Nothing in these Regulations shall apply to duly licensed physicians or optometrists, or to an employee of any such physician or optometrist when working in his office and under his personal supervision.

(b) Nothing in these Regulations shall apply to a trainee, apprentice, unlicensed optician, or other person when working in the same office and under the personal supervision of a duly licensed Dispensing Optician.

(c) As used in subsections (a) and (b) above, "personal supervision" shall be construed to mean that a licensed physician, optometrist, or dispensing optician shall be available to assist at all times when any such employee, trainee, apprentice, unlicensed optician, or other person is engaged in ophthalmic dispensing.

(d) Nothing contained in these Regulations shall be construed as preventing the sale of spectacles for reading purposes, toy glasses, goggles, or sun glasses consisting of plano white, plano colored or plano tinted glasses, or ready-made nonprescription glasses, nor shall anything in these Regulations be construed as affecting in any way the manufacture and sale of plastic or glass artificial eyes or as affecting any person engaged in said manufacture or sale of plastic or glass artificial eyes.

(e) Nothing in these Regulations shall apply to any person employed by the United States Government or any Agency thereof, while such person is acting in the discharge of his official duties.

12–2606. *Grandfather clause.*

(a) Any person of good moral character who is at least nineteen years of age and has been engaged in the full-time practice of ophthalmic dispensing in the District for at least two years prior to the effective date of these Regulations shall be licensed by the Commission, without examination, as a Dispensing Optician—Class I upon making proper application and payment of the required fee or fees within one year following the effective date of these Regulations.

(b) Any person, qualified for licensure under subsection (a) above upon making proper application and payment of the required fee or fees within one year following the effective date of these Regulations, shall be licensed by the Commission as a Dispensing Optician-Class II upon successfully passing such practical examination in the filling of contact lens prescriptions as the Board may require.

(c) Where any person has been engaged for two years in the full-time practice of ophthalmic dispensing in the Metropolitan Area of Washington, and during such time has been employed by or associated with an ophthalmic dispenser or ophthalmic dispensing firm whose main or comparable office has been in the District during such period, shall be considered to have been so engaging in the District for the purposes of subsections (a) and (b) above; and the "Metropolitan Area of Washington" for this purpose is hereby defined as the "District of Columbia, Montgomery and Prince George's Counties in the State of Maryland, Arlington and Fairfax Counties in the Commonwealth of Virginia, the City of Alexandria, and any city, township, or other political or incorporated subdivision within the geographical perimeter of the whole."

QUALIFICATIONS FOR LICENSURE

12–2607. *For license by examination.* Every applicant for a license by examination must furnish proof satisfactory to the Commission that he has the following qualifications:

(a) Is at least 19 years of age;

(b) is of good moral character;

(c) is a high school graduate or has had equivalent education as determined by the District of Columbia Board of Education;

(d) has either (1) satisfactorily completed a one year course of study in a school of ophthalmic dispensing approved by the Commission or (2) had at least one year of satisfactory training and experience in ophthalmic dispensing;

(e) has passed such examination in ophthalmic dispensing as the Board may require; and

(f) has paid all required fees.

12–2608. *For license by endorsement.*

(a) to be eligible for license by endorsement to practice as a Dispensing Optician—Class I in the District, an applicant must furnish satisfactory proof to the Commission that he has the following qualifications:

(1) He has been duly licensed as an optician, by examination, in another state or territory of the United States, or a recognized foreign country, wherein the requirements for licensure are substantially the same as those in effect in the District, and currently is in good standing.

(2) He meets the qualifications specified in subsections (a), (b), and (f) of Section 12–2607 of these Regulations.

(b) Any person who meets the qualifications of subsection (a) of this Section, shall be eligible for a license to practice as a Dispensing Optician—Class II in the District upon successfully passing such practical examination as the Board may require in the filling of contact lense prescriptions.

APPLICATIONS FOR LICENSE

12–2609. *Filing of application.* Every applicant for a license shall duly file with the Director an application on a form prescribed by the Commission and provided by the Director. All required documents must be attached to the application at time of filing.

12–2610. *Photographs of applicant required.* Every application for a license must be accompanied by two recent photographs of the applicant, measuring one inch by one-and-a-half inches.

12–2611. *Application to be notarized.* Every application for a license shall be sworn or affirmed to before a notary public.

12–2612. *Application not duly made.* The Commission shall review and take action on all duly made applications. However, the applicant for a license has upon him the burden of proving that he meets the qualifications required for obtaining the license sought. The Commission may not presume qualifications not shown on the application. The Commission may refuse to act on an application and may require the applicant to submit additional information, if the application contains incomplete, evasive, or insufficiently supported assertions where supporting evidence is required.

12–2613. *False statements, disqualifications.* The Commission may, after notice and opportunity for hearing, disqualify the application of an applicant for a license, (a) if the applicant has knowingly made or allowed to be made on his behalf, either to the Commission or to any officer or employee of the Department, any false or misleading statements in connection with his application; or (b) if the applicant has attempted improperly to influence any member of the Commission or the Board of any officer or employee of the Department in the discharge of his duties relating to the application of the applicant. At the discretion of the Commission, any applicant whose application has been so disqualified may reapply for the license desired.

12–2614. *Application for a license by examination.* Every applicant for a license by examination shall file his application not later than thirty days prior to the date of the examination for which he desires to sit. The Director shall notify each applicant of the Commission's action with respect to his eligibility to take the examination. At least ten days prior to the examination, the Director shall notify each eligible applicant of the time and place of examination.

EXAMINATIONS

12–2615. *Examination, frequency, place.* The Board shall conduct in the District at least one examination semi-annually. The Board may, however, schedule such additional examinations as it determines to be necessary. The Board shall fix the time and place for each examination.

12–2616. *Nature of examination.* The examination administered to applicants for licensure as a Dispensing Optician—Class I or Dispensing Optician—Class II shall be both written and practical in nature. The Board may, however, when the circumstances so warrant, permit the written portion of the examination to be administered orally.

12–2617. *Exception.* The preceding Section shall not be construed as applying to an applicant for licensure as a Dispensing Optician—Class II who meets the qualifications of subsection (a) of Section 12–2608 of these Regulations. Such an applicant shall only be required to pass a practical examination in the filling of contact lens prescriptions.

12–2618. *Type and content of examination.*

(a) The written portion of the examination shall consist of objective type questions pertaining to opthalmic dispensing as defined in Section 12–2603 of these Regulations.

(b) The practical portion of the examination shall consist of a demonstration by the applicant of his knowledge and skill in the actual practice of ophthalmic dispensing as defined in Section 12–2603 of these Regulations. *Provided, however,* That applicants for a Dispensing Optician—Class I license shall not be required to demonstrate their knowledge and skill in the filling of contact lens prescriptions.

12–2619. *Examination rules.* The examination shall be administered to applicants in accordance with the examination rules established by the Board.

12–2620. *Infraction of examination rules.* At the discretion of the examiner in charge, any applicant may be excluded from the examination for violating the examination rules. An applicant who is deemed guilty of dishonesty during an examination may be excluded by the Commission from future examinations for a period of not more than 3 years.

12–2621. *Scoring of examination.*

(a) Each portion of the examination shall be scored on the basis of 100 points. In order to be eligible for a license, an applicant must attain a score of at least 70 on the written portion of the examination and a score of at least 70 on the practical portion of the examination. An applicant for a license as a Dispensing Optician—Class II must, in addition, attain a score of at least 70 on the practical demonstration of his knowledge and skill in filling contact lens prescriptions. However, in its discretion, the Board may allow reexamination in the failed parts only at the next examination.

(b) In order to be eligible for a license as a Dispensing Optician—Class II, an applicant who meets the qualifications of subsection (a) of Section 12–2608 of these Regulations must attain a score of at least 70 on the practical demonstration of his knowledge and skill in filling contact lens prescriptions.

12–2622. *Notification of examination results.* The Director shall notify each applicant of the examination results as determined by the Board.

12–2623. *Second and subsequent examinations.* Any person who fails his first examination may reapply and sit for subsequent examinations. *Provided, however,* That an applicant who has failed three examinations shall be permitted

to take a fourth examination only after presenting satisfactory proof to the Commission that he has, since failing his third examination, received such additional training in ophthalmic dispensing as the Commission may require.

ISSUANCE OF LICENSE

12–2624. *License to be issued.* A license to practice in the District as a Dispensing Optician shall be issued to each applicant who meets all of requirements for such a license. The Commission shall certify the name of each such applicant to the Director.

12–2625. *Director to prepare and issue license.* The Director shall prepare and issue a license for each duly qualified applicant certified to him by the Commission.

ISSUANCE OF LICENSE RENEWAL

12–2626. *Annual renewal required.* Every license in good standing issued in accordance with these Regulations shall expire on the 31st day of January of each year and must be renewed annually in order to remain in good standing. Approximately sixty days prior to the annual expiration date, the Director shall mail an application for renewal to the last known address of each person holding a license in good standing.

12–2627. *Filing of renewal application.* Each person holding a license in good standing issued in accordance with these Regulations shall file with the Director, on or before the 31st day of January of each year, an application for renewal of his license, accompanied by the required renewal fee.

12–2628. *Issuance of annual renewal.* Each year, upon receipt of a renewal application and the required renewal fee, and upon verifying the absence of any reason for withholding renewal, the Director shall issue a renewal of the license concerned, for the period beginning February 1 of that year and ending January 31 of the following year.

12–2629. *Lapse of license.* Any person holding a license in good standing who fails to file an application for renewal and pay the required renewal fee on or before the 31st day of January of any year may be considered to be guilty of practicing without a license if, on or after February 1 of that year, he engages in the business of or practices ophthalmic dispensing in the District.

12–2630. *Restoration of a lapsed license.* Any person who has permitted his license to lapse in the manner specified in Section 12–2629 of these Regulations, may restore his license to good standing by duly filing a current renewal application, accompanied by the annual renewal fee and late-filing fee for each license year, or portion thereof, in which his license was in a lapsed status. *Provided, however,* That the provisions of this Section shall not apply to the period of time during which a licensee is in an inactive status as provded for in Section 12–2631 of these Regulations.

12–2631. *Inactive status.* Any person holding a license but not so practicing in the District, my apply to the Director, in writing, for inactive status. Upon being so notified, the Director shall place the name of such person on the nonpracticing list. While remaining in such inactive status, the holder of a license shall not be subject to the payment of any annual renewal fee and he shall not engage in the business of or practice ophthalmic dispensing in the District.

12–2632. *Restoration to active status.* Any person on the nonpracticing list may restore his license to active status by requesting such a change in status and filing with the Director a properly completed application and renewal fee for the current license year. *Provided, however,* That a person who permitted his license to lapse prior to requesting inactive status, must comply with the restoration provisions contained in Section 12–2630 of these Regulations.

DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

12–2633. *Grounds for denial, suspension or revocation of license.* The Commission may refuse to issue or may suspend or revoke any license to practice ophthalmic dispensing in the District, for any one or combination of the following grounds:

A person

(a) has been guilty of fraud or deceit in procuring or attempting to procure a license required by these Regulations;

(b) has been convicted of a crime involving moral turpitude;

(c) has willfully or repeatedy violated any provision of these Regulations promulgated by the Commissioners;
(d) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;
(e) is guilty of conduct which disqualifies him to practice ophthalmic dispensing with safety to the public;
(f) is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice ophthalmic dispensing in the District, except as authorized by Section 12–2605 of these Regulations;
(g) is guilty of practicing while his license is suspended;
(h) has willfully deceived or attempted to deceive the Commission with ence to any matter which it has under investigation;
(i) is guilty of making any rebate of any kind to any person for directing ophthalmic dispensing business to him or his establishment;
(j) is guilty of advertising individual superiority in the performance of ophthalmic dispensing services, or advertising in a manner derogatory of others performing similar services.
(k) who knowingly practices in the employment of, or in association with, any person who is unlawfully practicing ophthalmic dispensing.
12–2634. *Investigation of grounds.* The Commission may upon its own motion and shall upon the sworn complaint in writing of any person setting forth charges which, if proved, would constitute grounds for refusal, suspension, or revocation of the license as hereinabove set forth, request the Director to investigate the actions of any person holding, claiming to hold, or applying to hold any license provided for in these Regulations.
12–2635. *Opportunity for applicant or licensee to have a hearing.* Every licensee or applicant for a license, except applicants for reinstatement after revocation, shall be afforded notice and an opportunity to be heard prior to the action of the Commission, the effect of which would be:
(a) to deny permission to take examination for a license, for which applicant has correctly filed and whose application has been accepted;
(b) to deny a license after examination for any cause other than failure to pass an examination;
(c) to deny a license by endorsement to an applicant who meets the qualifications specified in Section 12–2608 of these Regulations;
(d) to suspend a license; or
(e) to revoke a license.
12–2636. *Notice of contemplated action. Request for hearing and notice of hearing.*
(a) When the Commission contemplates taking any action of the type specified in subsections (a), (b), or (c) of Section 12–2635 of these Regulations, it shall give to the applicant a written notice containing a statement:
(1) that the applicant has failed to satisfy the Commission as to his qualifications to sit for examination or to be issued a license, as the case may be;
(2) indicating in what respect the applicant has failed to satisfy the Commission; and
(3) that the applicant may secure a hearing before the Committee by depositing in the mail within twenty days after service of said notice, a certified letter addressed to the Commission and containing a request for a hearing.
(b) When the Commission contemplates taking any action of the type specified in subsections (c) or (d) of Section 12–2635 of these Regulations, it shall give the licensee a written notice containing a statement:
(1) that the Commission has sufficient evidence, and setting forth the same, which, if not rebutted or explained, justifies the Commission in taking the contemplated action; and
(2) that unless the licensee, within twenty days after service of said notice, deposits in the mail a certified letter addressed to the Commission and containing a request for a hearing, the Commission will take the contemplated action.
12–2637. *Procedure when a person fails to request a hearing.* If an applicant for or holder of a license does not mail a request for a hearing within the time and in the manner required by Section 12–2636 of these Regulations, the Commission may, without a hearing, take the action contemplated in the notice. The Commission shall, in writing, inform the applicant or licensee, the Corporation Counsel, and the Director of the Commission's action.
12–2638. *Notice of hearing.* If an applicant for or holder of a license does mail a request for a hearing as required in Section 12–2636 of these Regulations,

the Commission shall within twenty days of receipt of a request, notify the applicant or licensee of the time and place of hearing, which hearing shall be held by the Committee not more than thirty days nor less than ten days from the date of service of such notice.

12–2639. *Method of serving notice of contemplated action and notice of hearing.* Any notice required by Section 12–2636 or Section 12–2638 of these Regulations, may be served either personally by an employee of the Department or by certified mail, return receipt requested, directed to the applicant for or holder of a license, at his last known address as shown by the records of the Department. If notice is served personally, it shall be deemed to have been served at the time when delivery is made to the person addressed. When notice is served by certified mail, it shall be deemed to have been served on the date born upon the return receipt showing delivery of the notice to the addressee or refusal of the addressee to receive notice. In the event that the addressee is no longer at the last known address as shown by the records of the Department and no forwarding address is available, the notice shall be deemed to have been served on the date the return receipt bearing such notification is received by the Department.

12–2640. *Procedure when a person fails to appear for a requested hearing.* If an applicant for or holder of a license who has requested a hearing does not appear and no continuance has been or is granted, the Committee may hear the evidence of such witnesses as may have appeared, and the Committee may proceed to consider the matter and render a decision on the basis of evidence before it, in the manner required by Section 12–2641 of these Regulations.

12–2641. *Majority of Committee to hear and decide.* At each hearing, at least a majority of the members of the Committee shall be present to hear the evidence and render a decision.

12–2642. *Rights of person entitled to hearing.* A person entitled to a hearing shall have the right:

(a) to be represented by counsel;

(b) to present all relevant evidence by means of witnesses and books, papers, and documents;

(c) to examine all opposing witnesses on any matter relevant to the issues; and

(d) to have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request therefor to the Committee.

12–2643. *Powers of the Committee in holding hearings.* In connection with any hearing held, the Committee shall have the power:

(a) to request of the Commissioners that counsel from the Office of the Corporation Counsel be appointed to represent the District in any case before the Committee;

(b) to administer oaths or affirmations to witnesses called to testify;

(c) to subpoena witnesses and relevant books, papers, and documents;

(d) to take testimony;

(e) to examine witnesses; and

(f) to direct continuance of any case.

12–2644. *Contempt procedures.* In proceedings before the Committee, if any person refuses to respond to a subpoena or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of the Commission rendered pursuant to a decision made by the Committee after hearing, the Commission may make application to the proper court for an order requiring obedience thereto.

12–2645. *Evidence.* In all proceedings held by the Committee, the Committee shall receive and consider any evidence or testimony. However, the Committee may exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence or testimony.

12–2646. *Burden of proof.*

(a) In any Committee proceeding resulting from the Commission's contemplated action to deny a license, the applicant shall have the burden of satisfying the Committee of his qualifications.

(b) In any Committee proceeding resulting from the Commission's contemplated action to refuse to renew, to suspend, or to revoke a license, the District Government shall have the duty of producing evidence to establish that a prima facie case exists for refusing to renew, suspending, or revoking a person's license, and when such evidence is produced, then such person shall have the burden thereafter of going forward with the evidence.

12–2647. *Transcript of proceedings.* In all hearings conducted by the Committee, a complete record shall be made of all evidence presented during the course of a hearing.

12–2648. *Manner and time of rendering Committee decision.* The members of the Committee who conduct the hearing shall submit their decision to the Commission, in writing, as soon as practicable, but not later than sixty days after the date the hearing is completed.

12–2649. *Content of Committee decision.* The decision of the Committee shall contain:

(a) findings of fact made by the Committee;

(b) application by the Committee of these Regulations to the facts as found by the Committee; and

(c) the decision of the Committee based upon (a) and (b) of this section.

12–2650. *Notification by Commission of final determination.* Within thirty days following receipt of a Committee decision rendered after hearing, the Commission shall notify the applicant or licensee concerned, in writing, of the final determination of the matter at issue. In any such matter, the Commission shall not make a final determination which is inconsistent with the Committee decision in such matter. The notification of final determination shall contain the Order of the Commission based upon the decision of the Committee and a statement informing the applicant or licensee involved, of his right to appeal to the court and the time within such an appeal may be sought. A copy of the Committee decision shall be attached to the notification of final determination.

12–2651. *Service of written notice.* The written notification of final determination shall be served upon the applicant or licensee involved, or his attorney of record, either personally or by certified mail. If sent by certified mail, it shall be deemed to have been served on the date contained on the return receipt.

12–2652. *Reopening proceedings.* Where, because of accident, sickness, or other good cause, a person fails to receive a hearing or fails to appear for a hearing which he has requested, the person may, within thirty days from the date born upon the Commission's notification of final determination, apply to the Commission to reopen the proceedings; and the Commission, upon finding such cause sufficient, shall authorize the Committee to immediately fix a time and place for hearing and give the person, the Corporation Counsel, the Director, and the Commission notice thereof, as required by these Regulations. The Commission may also reopen a proceeding for any other cause sufficient to it, provided no appeal is pending before a court or has been decided by a court.

12–2653. *Reconsideration or reinstatement.* Upon the application, after six months, of any person who has been denied a license or who has had a license revoked by the Commission, the Commission may, upon showing of cause satisfactory to it, reinstate the license or issue a new one.

CONTACT LENS REGULATIONS

12–2654. *Dispensing Optician—Class II to be in active charge.* Every place of business in the District wherein the practice of ophthalmic dispensing includes the filling of contact lens prescriptions must have a Dispensing Optician—Class II in full charge of the filling of contact lens prescriptions, and on duty at all times when such ophthalmic dispensing is practiced.

12–2655. *Work to be performed in presence of Dispensing Optician.* No Dispensing Optician—Class II who is in charge of the filling of contact lens prescriptions in the District shall permit any trainee, apprentice, unlicensed optician, or other person, to perform any ophthalmic dispensing service required in the filling of contact lens prescriptions which involves physical contact with the intended wearer, unless under the constant direct visual supervision of a Dispensing Optician—Class II.

12–2656. *Prohibition against contact lense dispensing without prescription.*

(a) It shall be a violation of these Regulations for any Dispensing Optician—Class II to dispense, attempt to dispense, or test any contact lens or lenses in the District to or on the intended wearer thereof unless such intended wearer has a recent prescription for a contact lens or lenses from a duly licensed ophthalmologist and/or physician.

(b) Before or upon completion of the filling of a contact lens prescription, including the fitting, adapting, and instruction in wearing, proper handling and care, such Dispensing Optician shall contact and receive from such ophthalmologist and/or physician full instructions as to delivery of such lens or lenses. Unless such Dispensing Optician has been otherwise so instructed or directed

he shall be responsible for delivery of such contact lens or lenses directly to the ophthalmologist and/or physician who wrote the prescription, and not to the intended wearer.

(c) Duplications and/or replacements of contact lenses shall be dispensed under the same formula or procedure as provided for in subsections (a) and (b) above, except that no new or duplicate prescription or instructions shall be required.

(d) When the Dispensing Optician—Class II has been instructed or directed to make delivery direct to the intended wearer of a contact lens or of contact lenses, it shall be his responsibility to promptly notify the ophthalmologist and/or physician in writing that delivery has been made to his patient as per his instructions and/or direction.

MISCELLANEOUS REGULATIONS

12–2657. *Licensee to be in charge and on duty.* Every place of business in the District wherein ophthalmic dispensing excluding the filling of contact lens prescriptions is practiced, must have a Dispensing Optician of either Class in full charge of ophthalmic dispensing and on duty at all times when ophthalmic dispensing is practiced.

12–2658. *Display of license required.* Each person to whom a license has been issued shall keep such license displayed in a conspicuous place in his principal office or place of business wherein he practices ophthalmic dispensing. He shall, upon request, exhibit such license to any authorized agent of the Department. Should any licensee maintain more than one office or place of business in which he practices ophthalmic dispensing, he shall keep a duplicate of his original license displayed in a conspicuous place in each such additional office or place of business in which he practices ophthalmic dispensing.

12–2659. *Prescriptions to be on file and open to inspection.* Every person engaged in the business of filling precriptions for ophthalmic dispensing services shall maintain records in an accessable location in the District in which shall be preserved, for a period of at least three years, the original or a true copy of every prescription for ophthalmic dispensing services filled by him. Upon request, the Dispensing Optician or other person in charge of such records shall furnish to the prescribing physician or optometrist, or to the person for whom such precription was written, a true and correct copy thereof. All prescriptions, files and records pertaining to the sale of ophthalmic dispensing services to any individual shall at all times be open to inspection by duly authorized agents of the Department; and upon notice and at reasonable times all such records shall be open for such inspection.

12–2660. *Notification of change of name or address required.* Each holder of a license shall, within thirty days after any change of name or address, register such change, in writing, with the Director.

12–2661. *Fees to be collected for services rendered.* The Commissioners shall from time to time, fix the amount of the fees which shall be charged for the following services:

(a) for reviewing and processing an application for a license;

(b) for administering examinations and re-examinations;

(c) for issuing licenses and renewals thereof;

(d) for issuing duplicates of licenses and renewals thereof;

(e) for furnishing a license renewal application a second time if no timely notification of change of name or address has been made;

(f) for late filing of renewal application; and

(g) for any other services which may be required for administration of the licensing program established by these Regulations.

12–2662. *Enforcement.* Any person knowingly violating any provision of these Regulations shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $300, and if, after notice by the Director or his agent, the offense is continuing in its character, each week or part of a week during which it continues shall constitute a separate and distinct offense, and, upon conviction thereof, shall be punished by a fine not exceeding $300, or by imprisonment not exceeding six months, or both, for each such offense. In the event that such person is the holder of a license provided for by these Regulations, such license may, in addition, be suspended or revoked.

12–2663. *Effective date.* These Regulations shall take effect on the ninetieth day following their promulgaton by the Commissioners.

12-2664. *Severability provision.* If any clause, sentence, paragraph, or Section of these Regulations shall, for any reason, be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, repeal, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or Section thereof so found unconstitutional or invalid.

Mr. MILLER. Thank you.

I draw these regulations to your attention because we feel it highly desirable that opticians be regulated. We have made substantial progress. While we have no objections to updating the existing optometry law, we do strongly object to having the practice of the opticianry controlled by an optometry law which virtually monopolizes the field. We strongly object to defining optometry and regulating it as though it and it alone bears the sole responsibility for the eyecare of the people of the District of Columbia. We strongly object to the bill treating dispensing opticians almost as though they did not exist, while taking away from opticians much of their essential and traditional practice under the guise that all the areas I have discussed are solely optometric in character and subject solely to optometric regulation. Opticians are proud of their heritage. They are proud of the service they have rendered in the District of Columbia. They want to be able to continue this service, and improve this service if and as necessary, but they want it done under their own regulations or law.

Opticians must and will oppose these bills and any other bills which contain the proposed all-encompassing definition of optometry in Section 3, and which contain the inadequate language of the non-applicability clause in Section 9(c). We had submitted amending language to both sections with my letter of March 31, 1966, and we respectfully request the adoption of such amendments should the Committee decide for any reason to take favorable action on any of the pending bills.

Iwant to single out for your special attention our proposed amendment to Section 9 paragraph (c). It reads:

This Act shall not apply to any person who as a dispensing optician fills the prescription of a physician, surgeon or an optometrist for eyeglasses or spectacles, or to any person who fits contact lenses only on the written prescription and at the direction of a physician or surgeon, or to any person who duplicates, repairs, replaces or reproduces previously prepared lenses, eyeglasses, spectacles, or appurtenances thereto, including their adaptation to the wearer, and who does not practice or profess the practice of optometry.

In conclusion, there are three reasons why H.R. 12276 and other substantially identical bills should not be reported out of this Subcommitte:

1. They would substantially change the traditional pattern of eyecare of this city—without sufficient justification;
2. They would—again without justification—place unbearable hardships on dispensing opticians forcing some of them either out of business or into the suburbs;
3. Instead of being in the public interest, the bills would place unreasonable and ridiculous burdens of expense and inconvenience upon the general public.

Mr. SISK. Thank you, Mr. Miller. You spoke for about 30 minutes, thus you received 10 minutes for each one of your organizations.

What organization besides the Guild in the District do you represent?

Mr. MILLER. The National Association of the Guild of Opticians of America, Incorporated, the Washington Guild of Washington, D.C., and the District of Columbia Association of Dispensing Opticians.

I am sorry that the president of that organization was not able to be here this morning, because I know he wanted to says a few words to the Committee about the statement that I made, endorsing the statement, and about the constitution of that organizaion.

Mr. SISK. Is that practically the same group that is represented as the United Optical Workers? Is that the union under which your group generally operates?

Mr. MILLER. On the contrary.

Mr. SISK. I beg your pardon?

Mr. MILLER. No, the answer is "No". The Optical Workers Union?

Mr. SISK. Yes. The United Optical Workers Union, I believe that is the correct name.

Mr. MILLER. The members of the Guild are primarily employers, and this is the major group that I represent. We are not related to the union in any way.

Mr. SISK. In other words, you say that you represent the corporate part?

Mr. MILLER. No, we represent the opticians who may practice either as individuals or partners—some of them do practice, do have a corporate setup.

Mr. SISK. The United Optical Workers Union which testified earlier represented a considerable number of opticians.

I am curious to learn where the conflict is.

I do not quite distinguish between who you represent and who the Union represents.

Mr. MILLER. If there is such conflict in your mind, let me state that there is not any conflict.

Mr. SISK. I am not saying that there is any conflict. I am seeking information for the record, to clarify it as to whether or not we are talking about the same group of people.

Mr. MILLER. Our members are men who are in business in the field of dispensing opticianry for themselves, and they practice dispensing opticianry, either as an individual—I mean, the legal setup does not make for any business. Basically, they are independent businessmen who do not perform any functions—rather, whose primary function is the filling of prescriptions for eyeglasses.

Mr. SISK. In other words, you are saying that the members of the Guild who are prescription opticians in the District of Columbia or in the national organization are not members of the United Opitical Workers Union—none of them?

Mr. MILLER. No. The union represents primarily the wholesale optical workers and the retail optical workers, but they do not represent, to my knowledge at least, the dispensing opticians. And when we say "dispensing opticians", we are referring to the persons who actually deliver the glasses to the customers, the one who determines what the specifications of these glasses should be and who writes the work order for the optical worker and who delivers the glasses to the customer when he returns to the place of business.

Mr. GUDE. Will you yield?

Mr. SISK. Yes.

Mr. GUDE. Would it be correct that the members of the union would be employed by the members of the Guild? Is this the case?

Mr. MILLER. It is possible. That is true; it is possible.

Mr. GUDE. In other words, the union represents the actual workers, the technicians?

Mr. MILLER. Yes, the technicians, but it is, again, Mr. Gude, a difference. If I understand and recall correctly the union's testimony the other morning, they have one place in the District of Columbia. The only place is in the American Optical Company which is a wholesale laboratory and distributor. The type of people that would be in the wholesale laboratory doing the mass production, the actual grinding and polishing of the lenses is not the same type of persons, necessarily, who would be the actual dispensing optician.

Mr. GUDE. Thank you. That is all.

Mr. MILLER. Frequently, they graduate from this area and become dispensing opticians.

Mr. SISK. Let me ask you one other question, and then I will be finished.

My question concerns the Hart bill, which deals primarily with the same subject. Other subjects are covered which seek to eliminate the dispensing of eyeglasses by optomologists and the like. As I understand it, in reading the testimony, that bill was supported by the opticians. This was done on the basis that the job of a doctor was, of course, with the patient relationship and that the writing of the prescriptions and the optician's job was to do the technical work. I am curious. Were you in support of the Hart bill?

Mr. MILLER. We did not support the Hart bill.

Mr. SISK. Did you oppose it?

Mr. MILLER. We did not oppose it.

Mr. SISK. You had no position on the Hart bill?

Mr. MILLER. We had no position.

Mr. SISK. Those are all of the questions I have.

Mr. Gude?

Mr. GUDE. I have no further questions.

Mr. SISK. Thank you, Mr. Miller, for your appearance.

Mr. MILLER. Thank you very much.

Mr. SISK. The next witness is Mr. Bernard J. Englander, President, Group Optical Consultants, Inc., of New York City.

Is Mr. Englander present?

(No response.)

Mr. SISK. All right.

Our next witness, Mr. Anthony Mazzocchi, Citizenship-Director, Oil, Chemical and Atomic Workers International Union, is not here today and has requested that his statement be made a part of the record.

Without objection, the prepared statement of Mr. Anthony Mazzocchi will be included in the record at this point.

(The prepared statement of Mr. Anthony Mazzocchi is as follows:)

STATEMENT OF ANTHONY MAZZOCCHI, CITIZENSHIP-LEGISLATIVE DIRECTOR, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION

Organized labor is strongly opposed to the proposed legislation now before this subcommittee which would: prevent the employment of optometrists by corporations, lay persons, health and welfare plans and unions; prevent truthful, informational or pure advertising of services or materials; prevent the display of optical materials to the public; and prevent the practice of optometry, including

the sale of optical materials in any commercial location. The effect of such legislation would be to give the high priced privately practicing optometrist a monopoly in the area of eye care and the sale of optical merchandise and thereby greatly increase the cost of eyeglasses to the public. It is a known fact that these individuals mark up optical merchandise from 200 to 300%. The average working man cannot afford these exhorbitant prices and should not be forced to either pay luxury prices or go without such vital needs as eye care and eyeglasses.

In light of the fact that such legislation would in no way benefit the public, its adoption would clearly be to the detriment of the public welfare. By prohibiting the optometrist from advertising or displaying his merchandise, the consumer is denied the opportunity to compare products and to select the most desirable and economic sources of optical merchandise. Especially in light of the wide price range of these products and the style and fashion aspect of selecting eyeglasses, denying the public an opportunity to obtain relevant information is a serious disservice.

In addition, there are hundreds of labor unions, trust funds, and health and welfare plans throughout the nation, which, for decades, have satisfactorily and economically utilized the services of corporate sellers of eyeglasses to provide eye examinations and eye care for these members. Such corporations would no longer be permitted if this legislation were to be adopted. Further, these bills would prohibit a labor union, trust fund or health and welfare plan from directly employing an optometrist to provide their members with eye care and eyeglasses.

During the final days of the recently concluded session of the New York State Legislature, a bill was passed without hearings or investigation, which would have had achieved substantially the same purposes and had the same effect as the proposed legislation now before this subcommittee. Immediately after the legislative approval of the New York bill (Senate Bill 3335–A) scores of labor unions, trust funds and health and welfare plans joined news media, retail and merchant organizations and government agencies in advising the Governor of the evils of that bill and in requesting his veto. After receiving the relevant facts and arguments, Governor Rockefeller vetoed the bill on May 2, 1967, quoting the memorandum of the Insurance Department to the effect that the bill would result in increased costs "with no increase in the quality of service." The Governor indicated in his veto message that disapproval of the bill was also recommended by the New York State 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 following statements are quoted from a few of the scores of letters, memoranda, and telegrams which were sent to Governor Rockefeller by well-respected labor leaders, requesting his veto of the New York Optometry bill.

In a telegram of April 3, 1967, Louis Stulberg, President of the International Ladies Garment Workers Union, speaking about corporate retail sellers of eyeglasses who employ optometrists, said:

"By restricting the continuance of this useful social service the bill would automatically raise the cost of necessary eye care for hundreds of thousands of New Yorkers who could ill afford this sort of increase. The bill is pure special interest legislation. It is an attempt on the part of individual practitioners to strike a blow at low-cost optical care so that they may continue their private practice unsupervised and unregulated."

In a letter of April 4, 1967, Kolodny, Secretary of the United Federation of Teachers said:

"This bill is clearly not in the public interest. The only effect enactment of this bill could have would be to increase the income of single proprietor optometrists at the expense of the public, by limiting the number of optometrists serving the public. The legislature must protect the public welfare, and not the selfish interests of a small group.

"The retail sale of eyeglasses by corporations has been practiced in New York State for a great many years, with great benefit to the public. The public is assured of proper optometric care because the optometrists who are employed by corporations, many of whom are union members, are fully licensed by the State and are as competent to treat the public as are optometrists in individual practice. Even group plans such as HIP and GHI would be prohibited from employing optometrists by this bill, to the public detriment. . . .

"The purpose of this bill is purely economic—namely, to corner the market for the individual optometrists. The purpose is not to raise professional standards, because otherwise optometrists would discontinue the commercial sale of eyeglasses."

A telegram from the New York City Central Labor Council dated April 11, 1967, sent by Harry Van Arsdale, President, Jay Rubin, Chairman of the Hospital and Medical Care Committee and Walter J. Sheerin, Coordinator, states that:

"The effect of this bill would be to outlaw corporations, now providing low-cost optometric services to the public and employees covered by union health and welfare plans.

"It would affect low-income workers and their families. And would not improve upon the quality of service. It is discriminating against group practice, which has proven successful and beneficial to millions of people in our state and would deny many of these people needed eye care while inflating costs."

In a communication dated April 11, 1967, Raymond R. Corbet, President of the New York State AFL–CIO stated:

"The result of this bill would be that these individual optometrists would corner the market on the sale of eyeglasses, thus driving up the cost of eye care for the public as well as increasing welfare and medicaid costs.

"For many years New Yorkers have benefited from group or corporate practice of optometry, which provide eye examinations by fully licensed and qualified optometrists and which are able to provide the necessary eyeglasses at reasonable price. Many union health and welfare plans have arrangements with such groups or corporations to provide glasses to their members and their families at low cost. Under this bill, group corporate practice of optometry would be prohibited.

"In addition, employees of presently existing corporations in the optical field, many of whom are union members, would suffer layoffs and unemployment. This bill would serve only the special interest of the private optometrist who would have his competition eliminated and thus be assured of greater profits."

A telegram dated April 11, 1967 from James Trenz, President, Local 463 IUE, AFL–CIO, states that:

"If this bill is signed eye-care and eyeglasses generally available to everyone at modest cost will be lost to many union health and welfare funds as well as to the public at large. We request you veto this bill as not in the public interest."

These statements are representative of those made by scores of unions and union leaders who are deeply concerned with the public welfare. These statements clearly reflect labors' position on the proposed legislation now before this subcommittee.

In the interest of the thousands of workers and members of the general public, I urge that the proposed legislation now before this subcommittee not be adopted.

Mr. SISK. The next witness is Mr. Galen E. Rowe, Jr., on behalf of the National Association of Optometrists and Opticians.

We will be glad to hear from you now, Dr. Rowe.

Are you a doctor?

Dr. ROWE. I am an optometrist, yes, sir.

Mr. SISK. Do we have a copy of your statment?

Dr. ROWE. I gave it to the Clerk of the Committee.

Mr. SISK. Again, in the interest of time, I would appreciate it, if you would conform as much as possible to the time allowance.

Dr. ROWE. If I could be assured that the prepared statment would, with some additional comments, be made a part of the record, I would forego the reading of my statement and submit it for the record.

Mr. SISK. Without objection, your entire statement will be made a part of the record, and of course, any of your oral remarks will also become a part of the record.

STATEMENT OF GALEN E. ROWE, JR., O.D., PRESIDENT, THE NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS

Dr. ROWE. Mr. Chairman and members of the Subcommittee, I will forego the reading of this statement and will attempt to give some answers to some of the questions that have been raised by various members of the Subcommittee during the course of the testimony here.

First of all, I would like to say that a question was raised as to just how far the optometric group have attempted to go in usurping this work. This was discussed at length, but I would like to read here from a paper presented here a paper presented at the Conference on Public Health and Optometric care held in St. Louis, Missouri, January, 1967, by the American Optometric Association.

In the December, 1966, issue of the Journal of the American Optometric Association, Dr. Henry Peters, discusses vision problems in schools. He lists vision problems as follows: disease, acuity, squint, refractive error, coordination, visual performance, developmental problems, and perceptual problems.

The article goes on to say:

Uniquely, optometry is the only group that functions in all of the areas that Dr. Peters refers to in his article.

I believe here there was a statement that very definitely indicates the feeling of the American Optometric Association.

I believe here there was a statement that very definitely indicates the feeling of the American Optometric Association that it is their responsibility and function when they discuss disease as a visual problem. There is very little question that they are attempting to usurp the practices of medicine in the practice of optometry, and I would like to present this quote as a matter of record.

As the president of the National Association of Optometrists and Opticians, I have had the opportunity to observe since 1957 the tremendous amount of legislation relating to the optical industry. Over 140 bills were introduced throughout the United States on this very subject. Many of these bills are optometric in nature and many of them is similar to the bill being considered here, H.R. 1283, and they would restrict in some manner the operation of the optometric practice outside of the members of the AOA. There were bills in Michigan, Minnesota, Missouri, New York, and these bills were not passed because the members of those legislatures investigated these bills and found that the ultimate purpose was to create a monopolistic situation for certain optometrists and exclude the right of other optometrists and opticians to conduct their business.

One bill did pass, and I would like to read from this bill, because I believe it indicates the ultimate objective of the American Optometric Association to control or to monopolize the business of dispensing eyeglasses. This was Senate Bill No. 137, introduced January 20, 1967, in the Montana Legislature which subsequently passed and was enacted. It reads as follows:

Be it enacted by the legislative assembly of the State of Montana:

Section 1. Section 66–1302, R.C.N. 1947, is amended to read as follows:

" 'Section 66–1302. Provisions regulating practice of optometry. It shall be unlawful for any person:

'1. To practice optometry in the state of Montana unless he shall first obtain a certificate of registration, in the manner hereinafter provided, and filed the same or a certified copy thereof with the county clerk and recorder of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; . . . .

'9. To replace or duplicate ophthalmic lenses with or without prescription or to dispense ophthlmic lenses from prescription, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided,

however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a duly licensed optometrist and is dispensed only by said optometrist or a person employed by said optometrist and who does so in the office of and under the direct personal supervision of an optometrist.'"

That bill has been enacted, and what is means is this: That no one in the state of Montana shall sell or dispense a pair of eyeglasses except an optometrist.

I believe that is monopolistic if anything ever was, and I would like to submit a copy of this bill for the record, if I may.

Mr. SISK. Without objection, the copy of the bill and the other document you referred to will be made a part of the record at this point.

(The copy of the bill and the document referred to follow:)

[From the Optical Journal-Review, July 15, 1967]

—RESPONSIBILITIES AND OPPORTUNITIES*

(By Nathan Flax, O.D., Member of the Attending Staff, Optometric Center of New York)

Present public policy in this country is that access to educational services is a basic human right. A very important governmental agency is called the Department of Health, Education, and Welfare. It is easy to treat this title as three separate words, but are they really separate entities? Is it possible to draw a distinction between where health ends and education begins, or where health ends and human welfare begins, or where education ends and welfare begins? Quite obviously, this cannot be done. The more concerned we as a nation become with the problems of our citizens, the more we must realize that health, education, and welfare are intertwined and not isolable one from the other.

This intertwining of health, education, and welfare is present in the school surrounding. *In the December, 1966, issue of the Journal of the American Optometric Association, Dr. Henry Peters discusses vision problems in schools. He lists vision problems as follows: disease, acuity, squint, refractive error, coordination, visual performance, developmental problems, and perceptual problems.* Dr. Peters also indicates that many disciplines have overlapping areas of responsibility that pertain to visual functions and includes among the disciplines listed the pediatrician, the ophthalmologist, the optometrist, the educator, the school nurse, and the psychologist.

Uniquely, optometry is the only group that functions in all of the areas that Dr. Peters refers to in his article. Each of the other disciplines has interest in one or more area of visual function but not in the totality of vision as it relates to the school and learning. There are many ways that an optometrist can function in the school setting to bring his full professional background to bear on the problems of educating our children. The most obvious aspect of optometric participation in the schools has to do with visual screening. Because this aspect is so obvious, let us put it aside for the moment.

EYE HAZARD PROBLEMS

Safety programs are now becoming mandatory in many states. New York State, for instance, now requires that protective eye wear be worn in any hazardous situation in the school. This presents a unique opportunity for optometry to assist in providing professional guidance to the solving of eye hazard problems. One facet of this would be safety glasses but this is certainly not the sole consideration in the school eye protective program. There is a need for the special background of an optometrist in determining how to organize and implement a safety program and also in the necessary education to insure such a program's success.

Student education is an extremely important but neglected area. There is a need for proper optometric public relations materials to be presented to elementary school children for their health education courses. This material should be available at suitable levels of comprehension for all grades.

*A paper presented at the Conference on Public Health and Optometric Care, held in St. Louis, Mo., Jan. 14–16, 1967, by the American Optometric Association.

INTRODUCED JAN. 20, 1967, SENATE BILL NO. 137 INTRODUCED BY SWANZ, HILLING, DUSSAULT, SCHOTTE, VAINIO, AND TURNAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 66-1302, R.C.M. 1947, BY THE ADDING THERETO A PROVISION AUTHORIZING THE MONTANA STATE BOARD OF EXAMINERS IN OPTOMETRY TO SEEK TO ENJOIN VIOLATIONS OF SAID SECTION, TO EMPLOY LEGAL COUNSEL, AUTHORIZING THE DISTRICT COURTS TO ENJOIN SUCH VIOLATIONS, AND PROVIDING FOR THE EXCEPTIONS THERETO"

Be it enacted by the legislative assembly of the State of Montana:

Section 1. Section 66-1302, R.C.M., 1947, is amended to read as follows:

"66-1302. Provisions regulating practice of optometry. It shall be unlawful for any person:

1. To practice optometry in the state of Montana unless he shall first have obtained a certificate of registration, in the manner hereinafter provided, and filed the same or a certified copy thereof with the county clerk and recorder of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; or

2. To sell or barter, or offer to sell or barter any certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or

3. To purchase or procure by barter any such certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or

4. To alter with fraudulent intent in any material regard such certificate of registration; or

5. To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or

6. To practice optometry under a false or assumed name; or

7. To willfully make any false statement in a material regard in any application for an examination before the state board of optometry or for a certificate of registration; or

8. To advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time of so doing a valid unrevoked certificate of registration; or

9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a duly licensed optometrist and is dispensed only by said optometrist or a person employed by said optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eyeglasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be demeed to be practicing optometry within the meaning thereof; provided, that nothing in this section shall apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

11. To advertise at a price, or any stated terms of such a price, or as being free, any of the following: The examination or treatment of the eyes; the furnishing of optometrical services, or the furnishing of a lens, lenses, contact lens, contact lenses, glasses, or the frames or fitting thereof.

The provision of this subdivision does not apply to the advertising of goggles, sunglasses, colored glasses, or occupational eye protective devices, provided the same are so made as not to have refractive values and are not advertised in connection with the practice of optometry or of any professional service.

12. To adopt any lens to direct contiguous contact to the human eyeball without having at the time of so doing a valid, unrevoked certificate as an optometrist.

Whenever the Montana state board of examiners in optometry has reasonable cause to believe that any person is violating any provision of this section, or

any lawful rule or regulation issued under this chapter, it may, in addition to all other remedies and provisions provided for in this chapter and without prejudice thereto, bring an action on the relation of the people of the state of Montana in the county in which said violation should occur to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. Said board is hereby empowered to employ legal counsel to prosecute such actions. In any such action, and upon notice and hearing, an order or judgment may be entered awarding such interlocutory or final injunction as may be deemed proper by the judge of the district court in which county said violation may have occurred, said district court hereby being vested with jurisdiction over such injunction action. Provided, however, that this act shall not be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to any person acting under the supervision of any such physicians or surgeons, nor to any person as expected from the operation of this chapter by the provisions of section 66-1316, R.C.M. 1947.

Dr. ROWE. Thank you, Mr. Chairman.

One of the unfortunate things that comes about as the result of this tremendous amount of legislation which has become discriminatory in nature has been the confusion, or the creation of a state of confusion, making it appear that medicine and optometry are alike. This is not true.

I have talked to optomologists and to opticians throughout the United States. They all agree that there sufficient areas for all three disciplines to operate and to function. As a matter of fact, the optomologists are happy to have the optometrists available, because they cannot take care of the visual problems of the population.

As I have indicated in my statement, taken from statistics of the United States Public Health Service, the average number of optometric graduates from all of the optometric colleges in the United States for the past eight years has been 389 per year, less than eight per state.

There is not the conflict of interest that there might appear to be. The problem with certain groups is that they are attempting to replace disciplines, personal development, the creation of education, with legislative attempts, and attempting to legislate themselves into this without doing the work necessary to deserve being there. This is the unfortunate part.

I have made some recommendations, and I would like to emphasize four recommendations that I feel would help to resolve this problem, because I recognize the desire of optometrists to professionalize themselves. I think this can be done without legislative attempts. As a matter of fact, I believe that the only way it can be done is that they should:

1. Concentrate more heavily on student recruitment and development of the educational facilities available to students;

2. Furnish greater assistance to these young men when they graduate from school in becoming established in practices;

3. Expand and develop research facilities so that the services which optometrists are legally licensed and authorized to provide can be provided in the best possible manner.

I feel if they would follow these three recommendations, optometry would find itself growing rather than diminishing.

I would like to make one further recommendation:

Dispensing opticians got their start when they came into being, first, as dispensers of eyeglasses, and then they began to develop and

improve themselves to the point that they were capable of examining patients for the purpose of prescribing eyeglasses. Unfortunately, when they had achieved this position, they continued to demand that they had the right to sell the eyeglasses.

I feel, as the No. 4 recommendation, it would be that the optometrists begin to direct themselves to the task of getting out of the business of selling eyeglasses and to deovte themselves to the professional services which will then help them to achive the professional status that they desire.

Members of the Subcommittee, I am not opposed to this bill in some senses, but I am opposed to it because I feel we cannot allow a bill to pass which will create great problems for the public and contribute to the detriment of the public and the inconvenience of the public and would accomplish nothing for them but would accomplish a great deal for those who have proposed this bill.

I thank you for this opportunity.

Mr. SISK. Thank you for your statement.

Your prepared statement will be printed herein in full.

(The prepared statement submitted by Mr. Rowe reads in full as follows:)

STATEMENT OF GALEN E. ROWE. JR. O.D., PRESIDENT, THE NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS

Mr. Chairman and members of the committee, my name is Galen Rowe. I am an optometrist, licensed in the State of Colorado since 1947. I appear here today as president and representative of the National Association of Optometrists and Opticians. This association is a national organization comprised of optical firms, companies and individual optometrists and opticians engaged in the optical business throughout the United States. Membership in the associations is represented by owners and operators of optometric and optical retail offices. The organization represents approximately 400 individual optical offices with over 2,000 employees. Our members serve over three million optical consumers each year.

The NAOO is concerned and alarmed at the potential effects of passage of HR 1283 because, if enacted, the bill would serve the interests of only a few optometrists and definitely *not* the welfare of the residents of the District of Columbia. An indentical bill (HR 2937) was introduced into the 89th Congress, and it was opposed at that time by the following groups:

The District of Columbia Bar Association
The District of Columbia Government
The Guild of Prescription Opticians of America
The Guild of Prescription Opticians of Washington, D.C.
The Medical Society of the District of Columbia
The American Newspaper Publishers Association
The District Wholesale Drug Corporation
The Houston Ophthalmological Society
The American Association of Ophthalmologists
The National Association of Broadcasters
The Maryland-Delaware-District of Columbia Jewelers Association
The National Newspaper Association
The Northern Virginia Academy of Ophthalmology
The Ophthalmic Dispensing Association of Texas
The Texas Ophthalmological Association
The National Association of Optometrists and Opticians
Washington, D.C. Publisher's Association.

It was supported by the American Optometric Association and some of its state affiliates.

The number of citizens represented by the opposition, in contrast to those represented by the proponents, was woefully disproportionate. Because the committee considering the bill at that time recognized that the testimony against the passage of HR 12937 represented such a considerably larger segment of the

population than did the proponents, the committee took no action on the bill during the 89th Congress. Now, once again, the same groups are appearing before this committee and expressing the same views relative to the proposed legislation. Because the technical frailties of this legislation are being thoroughly covered and will be covered, I would like to address my remarks to a consideration of the end versus the means.

The end, which is desired from the passage of this legislation, as stated by the proponents, is the protection of the consumer. The means, is this particular legislation, which once passed will be carried to all the state legislatures with a demand for universal enactment.

Under the currently popular banner of "consumer protection," a small group has come before you asking not really for protection of the consumer, but for protection of their own personal interests, for the opportunity to fatten their own pocketbooks and egos, all at the sacrifice of free enterprise and the consumers' freedom of choice. Recently, a high state executive official told a group of Optometrists and their attorneys that he was not surprise that the "professional" group through their self-serving, self-perpetuating board of examiners wished to gain control of the dollars represented by their industry in their state.

He stated that he, as a government official, did not envision himself being held responsible for the resolution of this interprofessional squabble and he had no desire to act as their referee. At that time, he charged the board of examiners with the responsibility of administering the statutes, as written, for the protection of those for whom the statutes were written to protect, the public, and he stated that they should refrain from utilizing legislative and judicial branches of the government to restrict and harrass economic competition.

I believe this was an excellent statement because it pierced directly and realistically into the real reasons for the persistent requests for this legislation by this small non-public minded group.

This statement placed the responsibility correctly for the resolution of the problems which had been expressed by the group. The gentleman was saying that professionalism and self-respect gained through education and personal application to principles cannot be administered like a coat of paint by the legislative or judicial hands of the government. Rather it must come about as a result of the efforts of the group itself in setting aside personal interests relegating economic factors to their proper level giving prime consideration to the education and development of their own candidates for licensure and the development of proper internal controls.

But contrary to such wise advice this group, which is again appearing before you in support of this bill and proposing themselves to be representative of the consumer has enlisted shrewd publicists and skilled organizers a well-paid staff of political experts who can outwait the legislative process and continuously cultivate legislative interests in their so-called consumer objectives. As reported by the clerk of the house and printed in the Congressional Record the American Optometric Association spent $25,943.59 in 1966 for lobbying purposes in Washington, D.C. I am sure their expenditures during the 90th session of Congress will exceed this figure. These experts have been charged with the duty of developing an umbilical cord connecting Uncle Sam with every consumer of optical goods and services. They recognize and prey upon the reality that *every* consumer at one time or another has had an unhappy experience with a particular product or appliance or service or merchant. And they attempt to convert these frustrations and thereby establish an atmosphere of public resentment and personal damages to these experiences in the optical business. According to their arguments this atmosphere should logically lead to a consumer-complaint counter backed up by the government and enforced by laws which would be administered by selected and conditioned appointees of the self-seeking group.

What will really follow would be the severence of the business-consumer ties which are at the heart of a healthy private enterprise and the displacement of consumer choice business and professional self-discipline and local regulations with a funneling of every citizen frustration to the legislative bodies of this country there to be supposedly remedied by endless new laws and regulations.

The paid political experts hardened veterans of political wars are patient people with the long view, willing to slog along year in and year out toward a legislative goal accepting repeated reverses along the way, until at last the legislators tire of their doors being battered down and the public becomes sufficiently sloganeered so that the plan can be forced through.

The business community in the United States, including the optical industry, *does* detest malfeasance and is eager to redress justified complaint.

In fact, scrupulous attention to this very fact on the part of the members of the NAOO and all of the employers of optical personnel has caused them to exist successfully and has brought the optical consumer to their offices and places of business.

And these people continue to return for their services and optical goods through the years. The conveniences of accessible locations, persistent concern for high quality, fair prices, freedom of choice, attractive and varied selection of style, fair and courteous treatment and the satisfaction of their needs and demands have proven to the public they can purchase from these establishments with confidence and trust.

This confidence and trust has been fulfilled and there is no significant evidence presented here at this or previous hearings to the contrary. If there were a lack of confidence on the part of the public in the practices of optometry and opticianry under conditions which this bill would prohibit, then the public would have long ago raised its objections in the form of boycotts. This has not happened. As a matter of fact, just the opposite has happened.

It has been suggested previously and by implication that the concept that a "package price" offered in advertisements by profit oriented companies creates undesirable conditions and is totally wrong. In a statement submitted by Dr. W. Judd Chapman on behalf of the American Optometric Association to the senate subcommittee on Anti-trust and Monopoly, the following statement was made and became part of the record "Explicitly an Optometrist's fee should cover the examination and prescription, as well as selection of a frame which is cosmetically and technically correct taking the facial measurements ordering from the laboratory neutralizing and verifying prescriptions fitting the glasses or lenses to the patient to assure they fit comfortably and that they effectively corrent the vision deficiency."

Apparently, it is correct to offer a "package price" so long as you are a member of the AOA. Advertising of optical services and materials has been criticized and labeled as injurious to the public welfare. Advertising has served the public to inform it of what is available, what can be expected in terms of cost, what the selection is and where particular services and materials can be conveniently obtained. There is no reason to deny this basic right to any legitimate, ethically operated company or individual.

Optometry has progressed greatly since its emergence from the field of dispensing opticianry. Educational facilities have been expanded and improved. Members of the profession donate much time and effort and service to the care of those who cannot afford medical eye care. However, there have been many problems in the area of student recruitment, and over the past years the number of optometrists being graduated has been far below the demand for their services.

According to health source statistics of the United States Public Health Department, the average number of optometric graduates from all of the optometric colleges in the United States for the past eight years has been 389 per year, less than eight per state. This is far from being a sufficient number to serve the public adequately. What the optometrists should do in order to improve themselves and upgrade their status and their image with the public is: 1) concentrate more heavily on student recruitment and development of the educational facilities available to students. 2) furnish greater assistance to these young men when they graduate from school in becoming established in practice. 3) expand and develop research facilities so that the services which optometrists are legally licensed and authorized to provide can be provided in the best possible manner. They might not then be so eager to usurp the province of medicine and medical practice.

If all of the time, money and effort which is currently being put into legislative attempts by the optometric groups were put into these three areas of activity, optometry would find itself growing rather than diminishing. It is unfortunate that the small powerful groups who control the politics of optometry continue to attempt to replace education, self-discipline and personal development with legislative attempts.

Members of the committee, we cannot allow these small groups to influence us to pass legislation which can serve only personal interests and which can contribute greatly to the detriment and the inconvenience of the consumers seeking the services we are discussing here.

I thank you for your consideration in allowing me to speak before you today, and if there are questions, I would be happy to answer them.

Thank you.

Mr. SISK. I would like a little more information on the people you represent. As I understand it, you represent the National Association of Optometrists and Opticians. Are you president of an Association?

Dr. ROWE. I work for the Cole National Corporation. I am not president of it.

Mr. SISK. What is your official capacity?

Dr. ROWE. My official capacity is Director of Dispensing, Development and Research.

Mr. SISK. What is Cole National Corporation?

Dr. ROWE. Cole National Corporation is a publicly-held company.

Mr. SISK. I beg your pardon?

Dr. ROWE. Cole National Corporation is a publicly-held company with five major divisions, one of which is the Optical Division. This division operates an optical department in various department stores, in exclusive locations. They employ opticians and optometrists.

Mr. SISK. Do you know approximately what your company grossed last year?

Dr. ROWE. The total of the company or the Optical Division?

Mr. SISK. Your total company?

Dr. ROWE. It grossed—this is a pro forma figure, because one of the divisions has been sold and the gross sales have been revised to reflect the sale. The total was $34,000,000 for the fiscal year, last year.

Mr. SISK. The optical section earned about how much?

Dr. ROWE. About $10 million.

Mr. SISK. You operate primarily, as I understand it, in the Penney, Montgomery, Sears-Roebuck stores, for example?

Dr. ROWE. The majority of our offices are in the Sears-Roebuck stores, yes, sir.

Mr. SISK. One other question with reference to the people you represent. I note in your statement that your Association is a national organization comprised of optical firms, companies, and individual optometrists and opticians engaged in the optical business throughout the United States.

Last year, as I recall, from the record, Congressman Whitener of North Carolina, questioned you as to whether or not individual opticians could become members of your organization.

Has your position changed from that of last year or not? I note you stated then: "No, an individual optician can not be a member".

Is that correct or not correct at this time? You state today that you do represent individual optometrists and opticians.

Dr. ROWE. May I take a look at the statement?

Mr. SISK. That is on page 234 of last year's hearings. I am not trying to trap you.

Dr. ROWE. That is all right.

Mr. SISK. This was the discussion occurring between Congressman Whitener, yourself and some other members of the committee.

Dr. ROWE. They would probably have to be on the premises, the owner of the firm or company—limited to a number of the general offices which would be a qualification. This does hold true.

Mr. SISK. That is what I wanted to make clear.

Really, then, you represent the owners or the management of the corporate interests concerned with the optical stores rather than the professional people? I am using professional in regard to the optometrists and even the technical professional opticians.

Dr. ROWE. I represent the management and the employees of these companies, yes, sir.

Mr. SISK. As I understand it, individual opticians and optometrists could not be members of your Association?

Dr. ROWE. We have members who are optometrists, licensed in one state and practicing in another state. We have a new member from Michigan who is an optometrist there. He has several offices and he has optometrists employed in the several offices.

Mr. SISK. Is he operating a business and employing people?

Dr. ROWE. Yes.

Mr. SISK. In other words, you are not a society representing professional people?

Dr. ROWE. Well, if optometrists are professionals, we represent optometrists. The majority of the officers of the organization are optometrists.

Mr. SISK. I find it somewhat difficult to compare the representatives of different companies and individual optometrists who are considered to be professionals. I think nationally that the profession of optometry is recognized as a profession. It is recognized by all Federal agencies, including the Veterans' Administration. As I understand your statement of last year and this morning, you represent a group of business firms dealing in the dispensing of optometric equipment and material. Is that correct, basically, or not?

Dr. ROWE. Well, I can go back to say that I represent—I can give you the names of the people, the companies, that I represent, if you would like, so that you will know that.

Mr. SISK. Could I ask you, locally here for example, if you would name some of the firms you represent?

Do you have a list of those firms?

Dr. ROWE. I represent Colton Optical of D.C. This is a company owned by Cole National.

Mr. SISK. Is Sterling Optical a member of your Association?

Dr. ROWE. Sterling Optical is a member.

Mr. SISK. Is Kay Jewelry Store a member?

Dr. ROWE. No, they are not.

Mr. SISK. Kinsman Optical Company?

Dr. ROWE. No, sir.

Mr. SISK. Vent-Air Contact Lens Specialists?

Dr. ROWE. No.

Mr. SISK. King Optical Company?

Dr. ROWE. They are a member of our organization, yes, sir.

Mr. SISK. Are your members the same as those of the Guild of Prescription or the United Optical Workers Union? Is there an overlap?

Dr. ROWE. No, sir.

Mr. SISK. Neither of them are in your organization?

Dr. ROWE. Sterling is a member of our organization.

Their employees are members of the United Optical Workers Union, but they are not synonymous with the United Optical Workers Union nor with the Guild of Prescription Opticians.

Mr. SISK. Do any of your members manufacture optical goods?

Dr. ROWE. Yes, sir.

Mr. SISK. Would you name those for the record?

Dr. ROWE. Optics, Incorporated.

Mr. SISK. Optics, Incorporated?

Dr. ROWE. They manufacture frames. That is the only manufacturer that is a member of our group.

Mr. SISK. Is that the only manufacturer that your Association represents?

Dr. ROWE. The only manufacturer, yes.

Mr. SISK. What about dispensing companies?

Could you have for the record a list of those companies, or does the materials you submitted list the dispensing companies you represent?

Dr. ROWE. No. I can tell you the names of some of them.

Mr. SISK. If you will, to save time, supply those for the record.

Dr. ROWE. Certainly, I will.

(The information requested was not furnished.)

Mr. SISK. Do you have any questions, Mr. Gude?

Mr. GUDE. No questions.

Mr. SISK. Mr. Jacobs?

Mr. JACOBS. Thank you, Mr. Chairman.

I take it from your testimony, both prepared and oral, that you do not think that there is any conflict in interest where a corporation such as a department store hires an optometrist for the purpose of that optometrist serving the public when at the same time that corporation is in the business of selling glasses?

Is that your general statement?

Dr. ROWE. At one time I was Director of Operations of the company that I now work for. I directed the operations of the offices. I can assure you that there was no conflict of interest. He is given complete authority in the eye examination. He determines what to prescribe for the patient and is not in any way influenced in the results otherwise. As a matter of fact, our research program continues to place additional instrumentation in the offices of these people, to acquire the necessary training in the use of these new instruments, so that they can perform a better examination. We have those programs going on at the present time. We are conducting research into the effectiveness and the feasibility of various types of instrumentation which has not yet been proven scientifically to accomplish what they purport to accomplish. We want to know how they work. There are some electronic instrumentations, one of which claims to be an accurate screening device for screening out glaucoma, that is, potential glaucoma. We are not satisfied that they actually do this. We are conducting research programs. We have placed these instruments out in the field. We have 15 of these instruments, approximately, out—as a matter of fact we have 17. We have 12 electronic; we have four what we call "applanation", and we have one applanation-electronic combination. We are comparing the results of these, from the standpoint of how effective they are in screening potential glaucoma patients, because when we find that this instrument communicates the possibility of glaucoma, we refer this to a physician for verification of the information that comes back from the instrument. A number of referrals have been made. A number of examinations have been made, and we are attempting to determine the effectiveness and the veracity of these instruments.

Mr. JACOBS. Could you cite some examples of where other professions that serve the public are hired by profit-making corporations for the purpose of serving the public?

I mean, the members of a profession.

Dr. ROWE. I think, as a general rule, physicians are employed by corporations who represent——

Mr. JACOBS. No, no. You misunderstood my question.

Will you cite other examples where members of your profession are hired by profit-making corporations for the purpose of that professional serving the public in individual capacities, serving members of the public?

Dr. ROWE. I cannot think of any offhand, no, sir.

Mr. JACOBS. Frankly, this is what gives me a little bit of trouble. Whenever I am on thin ice with respect to my own experience and knowledge, I look around for analogies. As Senator Monroney used to say, in Oklahoma, if they wanted to know what a cowboy would do when he gets drunk, they found out what he did the last time he got drunk.

I am thinking that I would be somewhat surprised to find, for example, a doctor employed by a large, we will say, non-medical corporation for profit, merely sitting in an office and administering to the public, the individual members of the public, who come along.

The same thing would be true in the case of lawyers.

Public services such as are in the welfare department or in the Neighborhood Legal Services and that sort of thing are one thing, because there is no private profit implied which might create or tend to create a two-way stretch, or what is commonly known as a conflict of interest, namely (a) he who pays the piper primarily is interested in selling an article, and in this case glasses; and (b) he who plays the tune is primarily, because of his professional responsibility, interested in the individual client-doctor relationship.

Dr. ROWE. And an example might be an attorney employed to administer services to the trust customers of a bank.

Mr. JACOBS. Are you suggesting that any trust company pays an attorney who is personally advising an individual member of the public as to his rights as opposed to that of a corporation or lawyer?

Dr. ROWE. My understanding is that if I went to a bank for the purpose of establishing a trust and I asked for advice from the bank, that they would supply it to me.

Mr. JACOBS. That is a far cry from depending upon that attorney who works for the bank for individual advice to you when you are dealing with the bank—you would not want that, would you?

Dr. ROWE. Of course, what we are really discussing here is optometrists, professionals. I think your question is well put, but optometry is a new field relative to the established learned professions. It is going through a series of transitional steps, from the time when they began to develop, and this is not too long ago, I would say perhaps in 1920 or 1925, when they really began to exist. Since that time, it has increased in its ability and knowledge. I feel that for the full reason that I stated, in the total over-all way, that we are still involved in the business of selling a commodity and he does not quite meet the professional standards, and, therefore, still could be considered to be an occupation, or let us say a highly educated trade, and still have some

problem in recommending himself as a profession. I think that they can achieve this.

Mr. JACOBS. You don't want me to stop calling you "doctor", do you?

Dr. ROWE. No, I was given the degree by a school from which I graduated. The school is not recognized by any university.

Mr. JACOBS. I do not want to belabour the point, but as I understand it, you do want to be on record as saying that where a person, who is entrusted to advise an individual member of the public as to whether he needs a pair of glasses, is paid by a large corporation which is in the business of selling glasses, you see no possible conflict of interest there?

Dr. ROWE. At this point I do not, sir. I feel this, that this is something that must come from the individual through their own efforts and something that cannot be applied like a coat of paint. You cannot just have it handed to them. They have to earn it. Since they are trying hard to earn it, I think that they will eventually earn it. Up to this point they have not accomplished this. I do not see that the services they have rendered are affected by the fact that they are employed.

Mr. JACOBS. Do you feel that due to its relative newness, it is only logical that around the country legislative bodies are looking into the questions about possible conflicts of interest in the practice of optometry, human nature being what it is, and would you agree that it would be only logical that we would look into these questions?

Dr. ROWE. There is no question about that.

Mr. JACOBS. You mentioned that you represented the Colston Company here in Washington.

Is that the name it used throughout the states by corporations that are affiliated with your national organization?

Dr. ROWE. That is a subsidiary of Cole National.

Mr. JACOBS. Would there be any state where you do not have a subsidiary?

Dr. ROWE. Is there any state?

Mr. JACOBS. Yes.

Dr. ROWE. No, we do not have one in every state. Is that what you mean?

Mr. JACOBS. Yes. Do you have a subsidiary in the state of Ohio?

Dr. ROWE. Yes, sir.

Mr. JACOBS. What is its name?

Dr. ROWE. Colston Optical of Ohio.

Mr. JACOBS. Are you familiar with the laws of my home state of Indiana regarding the activities of corporations in recruiting people, where you recruit optometrists?

Dr. ROWE. Well, in Indiana, an optometrist cannot be employed by a corporation.

Mr. JACOBS. Therefore, is not recruited?

Dr. ROWE. Yes, sir.

Mr. JACOBS. You mentioned in your testimony that you thought that the profession and occupation of optometry could be upgraded if the optometrists would assist in establishing a practice.

Did you include your own organization as assisting optometrists in being established in practice?

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Dr. ROWE. If we can afford it, which is an opportunity for them to get a start on the basis of earning a living rather than to go through a period of somewhat starvation, this would be an assistance toward that. I would like very much to cooperate with schools in providing these opportunities where we can.

Mr. JACOBS. Is this what you meant, though, when you said that the optometrists should assist in establishing young graduates in their practices? Are you referring to the activities of those who establish young graduatees in individual practics, not employed by corporations?

Dr. ROWE. As a general rule, there is very little assistance given to graduates by the optometric associations throughout the United States. There is some assistance in the form of loans, but, generally, the young optometrist does not have any help from his local organization to get started either financially or by referral or anything else. He has to go in and develop and establish his own practice on his own without any help from any organization.

Mr. JACOBS. Do you know of any intersts in which your organization or any one of its subsidiaries has ever operated in one state in contravention of the state laws of the state next to it?

Dr. ROWE. I am not aware of that, no, sir.

Mr. JACOBS. Do you know about a case where the Colston Company did recruiting in Indiana by correspondence from Ohio?

Dr. ROWE. I never heard of it.

Mr. JACOBS. For example, are you aware of the case in which the Colston Company in Ohio wrote recruitment letters to young graduates at the optometry school, the Indiana University Optometry School, in order to employ them by a corporation in Indiana?

Dr. ROWE. I am not aware of it. When was this correspondence that you are referring to?

Mr. JACOBS. I am just asking you.

Would you be willing to look into that question?

Here is what I had in mind: Since we are not in a court of law, I take it, Mr. Chairman, that I can submit for the record, without the strict rules of evidence regarding hearsay, a letter received by me sometime after August 17, 1967, from Dr. Robert D. Corns, O.D., member of the AOA Legal Affairs Committee and Secretary of the Indiana State Board of Examiners—and I presume that means of optometrists—in which he says:

I have proof in my files that the Ohio corporation—

Referring to the Colston Corporation—

has recruited and guaranteed a salary for optometrists to work in a Sears Roebuck optical department in Fort Wayne, Indiana. The officers and records of the Ohio corporation, Colston Company, are not subject to the Indiana records subpoena powers, so it appears that we are at an impasse to stop this circumvention of the state statute.

I have been handed some material here which purports to be from the Governmental Research Public-Affairs Associates, 30 East Broad Street, Columbus, 16, Ohio.

Does that have anything to do with the Colston Corporation?

Dr. ROWE. I am not familiar with that at all.

Mr. JACOBS. Would you check that out and perhaps write us a letter later about that?

If you want to take it down, it is the Governmental Research Public-Affairs Associates, 30 East Broad Street, Columbus, 16, Ohio, and the Executive Director is Theodore M. Gray.

Will you tell me whether that organization is connected in any way with your organization or is it a subsidiary thereof?

Dr. ROWE. I believe that I can tell you at the persent time that it is not, but I will verify that.

Mr. JACOBS. Fine.

(Subsequently, Dr. Rowe submitted the following letter:)

AUGUST 21, 1967.

Congressman ANDREW JACOBS, Jr.,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN JACOBS: In response to information requested by you during House District Subcommittee No. 5 hearings on HR 1283 I held on August 18, 1967, I have secured the following information.

GOVERNMENT RESEARCH PUBLIC AFFAIRS COUNCIL

I spoke with Mr. Theodore M. Gray, Jr., who is presently serving as a Senator in the Ohio Legislature. Senator Gray informed me that the above-named council was an organization run by his father, Theodore M. Gray, up to the time of his death five years ago. Senator Gray was not very familiar with the operations of the council but stated that his father had organized this council after he left the Retail Merchants Association of Ohio.

I have had the records of Cole National thoroughly checked, and at no time since acquiring Colston Optical in October, 1961, has Cole National had any association with the Government Research Public Affairs Council. This is the extent of the information I was able to get, and I hope it satisfactorily answers your questions.

COLE NATIONAL CORPORATION AND AFFILIATES POLICIES OF OPERATION IN OHIO AND INDIANA

In these two states, Cole National Corporation through its affiliates operates opticianry departments in Sears, Roebuck and Montgomery Ward department stores in strict compliance with all applicable laws, rules and regulations governing such enterprises. Cole National subleases office space in these department stores, together with optometric equipment to optometrists. These optometrists rent this space on a flat rental basis.

Such opometrists are completely independent practitioners and the relationship between them and Cole National is solely that of tenant-landlord.

If there is further information you wish, I will be happy to cooperate as much as possible. Insofar as this information was requested at the hearings and Chairman Sisk left the record open to include this information, I am sending a copy of the above information to the Clerk of the District Committee for inclusion in the record.

Very truly yours,

NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS, INC.
GALEN E. ROWE, O.D., *President.*

Mr. JACOBS. I have what appears to be a photocopy of a letter which is headed "Colston Optical Company, 9th–Chester Building, Cleveland 14, Ohio," and under that is "Superior 1–5351"—I guess that is a telephone number. It is dated May 12, 1959, and I wish that you would make a note of this, because if you do not know about it you probably will want to find out about it, I would hope.

This is addressed to a Dr. A. R. Johnson, 134 East Berry Street, Fort Wayne, Indiana.

And if I may, Mr. Chairman, it is relatively a short letter, just read it into the record?

"Dear Dr. Johnson:" First, let me say that there is no signature appearing on this letter, though the line for the signature is designated as "Maurice Stonehill, Colston Optical Company." And the letter reads:

DEAR DR. JOHNSON: I have your letter of May 8th, and will attempt to answer your queries.

1. The terms of the lease are very flexible. The length of time the lease will run can be mutually arranged; however, the lease we get from Sears has a 60-day cancellation clause in it. Which, incidentally, they have never used in practice.

2. The anticipated opening date would be at least two months away; however, the certain date cannot be determined until the manager of the store returns from his vacation two weeks from now.

3. The salary guarantee would exist as long as you are associated with us.

4. Names of O.D.'s and locations follow and are all in Sears Roebuck and Company stores. Myron Chalfin, East 86th and Carnegie, Cleveland, O.; Arthur Gore, W. 110th, Lorain Street, Cleveland, Ohio; Frank Berger, 21000 Libby Road, Maple Heights, Ohio; Herman Raines, Adams and Whitaker Streets, Philadelphia, Pennsylvania; Nathan Burnthal, 515 Sandusky Street, Pittsburgh, Pennsylvania. Other stores are located in Baltimore and Buffalo.

5. In advertising, we never mention the O.D.'s name. In your state we cannot mention that examinations are available. However, by mentioning complete optical department the general public assumes that such a service is available.

It is entirely possible that some of the eye-ware salesmen who call on you are familiar with us and from them you can learn something about us.

Bear in mind that most of our advertising is done on radio and television and hence samples are not available.

I trust that this is the information you desire.

There we have a letter which, obviously, is in response to a letter addressed to Colston from an optometrist in Indiana. We have an allegation by Dr. Corns of the State Board of Examiners in Indiana that solicitation has been made by the Colston Corporation in Ohio of optometrists in Indiana for the employment in Ohio corporations.

Your testimony is that this has not come to your attention?

Dr. ROWE. I think that I can say this, that in 1959, the Colston Optical Company was purchased by the Cole National Corporation and they have not been associated with us since the time of that purchase. This was done by someone who is not in the optical business today. He sold it subsequent to this letter. So, I cannot answer for that gentleman, for Cole National. I am aware of the present policy, the present philosophy, and I am aware of the philosophy that existed since Cole National took over the Colston business which is not to solicit optometrists for employment where it is illegal to solicit them, whether it be from one state or another state or anywhere. In other words, if it is illegal to employ optometrists in Indiana as it is in Ohio, as it is in Pennsylvania, we do not solicit optometrists for employment in those states. That has been the policy of Cole National since they assumed the ownership of the distributor.

Mr. JACOBS. That is a very likely answer, and I appreciate it. However, since this was raised on August 17, 1967, I wonder if you would be kind enough, Dr. Rowe, to look into the practice of the Colston Company in Ohio, and perhaps write to this committee and make an assertion with respect to your inquiry of the activities along the lines I have suggested. I am quite interested as the Representative from Indiana, Indianapolis as a matter of fact, in this problem inasmuch as an official of my state has brought it to my attention. Would you be kind enough to supply this committee with the results of your inquiry on this matter?

Dr. ROWE. I can get you that; I will see that you receive it.

(The information referred to was not received.)

Mr. JACOBS. Mr. Chairman, I am sorry to have taken so much time, but when one of my constituents writes me, I most certainly wish to respond.

May this be made a part of the record (indicating file)?

Mr. SISK. Yes.

(The documents referred to follow:)

GOVERNMENTAL RESEARCH PUBLIC AFFAIRS ASSOCIATES,
Columbus, Ohio, March 29, 1960.

WOULD YOU LIKE AN INCOME OF $12,000 A YEAR TO START?

a. practicing optometry.
b. in an air conditioned department store.
c. a store that values its reputation just as carefully as you will your clients for examination.
d. in an Indiana city with the maximum of cultural and civic facilities.
e. where industry is diversified and the air is clean.
f. where your wife and children will find a real permanent home in a neighborhood you could then afford.
g. where the express highway cuts your travel time. The population, while growing, is more native than cosmopolitan as found in Gary for instance.

Some of our optician licensees in situations like this one earn an income of $20,000 annually.

This is a permanent situation. If you feel you are qualified, call for an interview today.

THEODORE M. GRAY.

SOUTH BEND, IND., *March 29, 1960.*

Mr. THEODORE M. GRAY,
Columbus, Ohio.

DEAR MR. GRAY: I am interested in the position mentioned in your letter. If you are going to be in South Bend soon, please call me as I would like additional information on said position.

Respectfully yours,

R. E. STULLER, O.D.

INDIANA OPTOMETRIC ASSOCIATION, INC.,
Indianapolis, Ind., April 12, 1960.

Approximately in the middle of March, I returned home one evening to find a card in the front door, bearing the name of Mr. Theodore M. Gray, and whether I would be interested in a position in Ft. Wayne doing optometric work which would pay a minimum of $12,000.00 a year. Also stamped on the card was the title, Governmental Research Affairs Associates. Mr. Grays phone number and address were also listed.

I replied by mail to Mr. Grays card, at 30 E. Broad St., Columbus 16, Ohio, and indicated I was interested in the position.

On April 6, a Mr. M. L. Stonehill from the Colston Optical Co., Cleveland 13, Ohio, called me at my home and said he was the one offering the position in a Sears Roebuck Store, Ft. Wayne. It appeared Mr. Gray was just the go-between man. Mr. Stonehill said I would make a minimum of $12,000.00 a year guaranteed. There would be no salary but a yearly contract. I pay $100.00 a month rental to store for rental of space and equipment. The work would be refracting only and this would be my remuneration.

When I told him I belonged to the Association and would have to think this over, he replied, if I was married to the Association to forget the whole deal. He thought this type of work was much more ethical than belonging to the association. There has been no further contact or correspondence at date of this report.

COLSTON OPTICAL CO.,
Cleveland, Ohio, May 12, 1959.

Dr. A. R. JOHNSON,
Fort Wayne, Ind.

DEAR DR. JOHNSON: I have your letter of May 8th., and will attempt to answer your querries.

1. The terms of the lease are very flexible. The length of time the lease will run can be mutually arranged however the lease we get from Sears has a 60 day cancellation clause in it. Which incidentally they have never used in practice.

2. The anticipated opening date would be at least two months away—however the certain date cannot be determined until the manager of the store returns from his vacation two weeks from now.

3. The Salary guarantee would exist as long as you are associated with us.

4. Names of O.D.'s and locations follow and are all in Sears Roebuck and company stores. Myron Chalfin, E. 86th. and Carnegie, Cleveland., O. Arthur Gore, W. 110th. U Lorain St., Cleveland, O., Frank Berger, 21000 Libby Road, Maple Hts. o., Herman Raines, Adams & Whitaker St., Philadelphia, Pa., Nathan Burnthal, 515 Sandusky St., Pittsburgh, Pa. Other stores are located in Baltimore and Buffalo.

5. In our advertising we never mention the O.D.'s name. In your state we cannot mention that examinations are available. *However, by mentioning complete optical department the general public assumes that such a service is available.*

It is entirely possible that some of the eye-ware salesmen who call on you are familiar with us and from them you can learn something about us.

Bear in mind that most of our advertising is done on radio and television and hence samples are not available.

I trust that this is the information you desire.

Very truly yours,

MAURICE STONEHILL.

Mr. SISK. The gentleman from Maryland?

Mr. GUDE. I have several questions that I would like to ask, Mr. Sisk.

Did your Association have any requirement, so far as your members are concerned, as to the technical or professional qualifications of optometrists or opticians employed by you?

Dr. ROWE. The optometrists and the opticians employed must be qualified by licensing where it is required or they must have gone through an apprenticeship. If they have not had the proper apprenticeship, we place them in a training program of apprenticeship, because in ever state, as to the optometrists, he must be licensed, and, of course, we require that he have his license, because, otherwise, he cannot practice without it. Where opticians are required to have a license we also hire licensed opticians. But they are not licensed in all states, and they achieve their skills through a process of apprenticeship.

Mr. GUDE. Over and above what is required by local law, you do not have any problem as to qualification?

Dr. ROWE. We feel that the law establishes the standards by which we can operate. They have to be at that level. That is a part of the law. Beyond that point, we simply attempt to secure the best personnel available as the situation requires.

Mr. GUDE. Do you have any code or requirements so far as the member firms of your Association are concerned as to the procedure they must follow in the examination of customers or clients who come to those firms? For example, if a certain state permitted a member firm to have an optometrist on the payroll, do you have requirements that he must perform certain examinations when an individual comes in for an eye examination?

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Dr. ROWE. If we did that, Mr. Congressman, we would be dictating to the optometrist as to what his professional judgment tells him he should do, and we do not attempt to dictate to the optometrist as to what he should do. If he has become licensed, then he should be able to perform these functions without being told by someone else how to perform them. By establishing standards, in effect it would be telling him that he must do certain things. We do not think that is proper, that an optometrist should be told to do certain things. We tell him that he should do the best job that is necessary in his professional judgment.

Mr. GUDE. In other words, your Association does not have a standard or ethic so far as being an optometrist is concerned?

Dr. ROWE. We have ethics. I do not have them with me. It is a part of our bylaws, and if you would like I can send you a copy of the bylaws and indicate the standards by which our members operate; but I thought you were referring to the fact that we tell the optometrist what he must do. We do not attempt to do that, because this can work both ways. If we have the right to dictate to him to operate under certain standards, then we will have the right to dictate to him how much time he must do this in and how much time he must do that in. We do not feel that we should do that. He is licensed to do that. He has had training and has qualified himself to do this work, in the eyes of the public and in the eyes of the State government, to do that. We tell him to use his judgment, and his judgment is his own. We do not interfere with his right to do that.

So far as the ethics of our members are concerned, we have established an ethical code. I am sorry that I do not have it with me. I think that the best way to give you this evidence is to send it to you.

(The information requested was not furnished.)

Mr. GUDE. Does this ethical code require that they should perform their job in a certain manner or to do certain things or merely to be governed by the ethics of their profession?

Dr. ROWE. By the ethics of their profession, to be so governed.

Mr. GUDE. Thank you. That is all.

Mr. SISK. Dr. Rowe, you said earlier that the King Optical Company was a member of your Association?

Dr. ROWE. Yes.

Mr. SISK. Are you familiar with a Mr. Driscoll of Ritholz Company?

Dr. ROWE. There are three Ritholz's; Dr. Ben, Mr. Don, and Mr. Julius Ritholz.

Mr. SISK. They are all major stockholders in King Optical Company.

Dr. ROWE. Mr. Don is a stockholder; I do not believe that Julius Ritholz is a stockholder.

Mr. SISK. I ask this question, Dr. Rowe, in connection with the ethical standards required of the members of your Association. Are you familiar with the situation where a Mr. Ritholz went to prison for attempting to bride a member of the Michigan Board of Optometric Examiners?

Dr. ROWE. Yes, I am.

Mr. SISK. You are familiar with that case?

Dr. ROWE. Yes.

Mr. SISK. I wanted to establish this for the record, to indicate a trend. One of the things we are concerned about is the so-called corporate practice where, after all, the dollar profit of course has to be

the primary motive. If I buy stock in a corporation, I am going to expect that corporation to make a profit. That becomes the predominant thing.

This committee, as I have indicated before, is concerned about the care of the public. In the public health field, eyes are the most precious commodity that I think any of us have. Do you still maintain—and I know that the question was asked by my colleague from Indiana, Mr. Jacobs—that there is no conflict of interest involved in things that cause men to attempt to bribe examiners? As I say, we have had charges of solicitation of people to practice in the corporate firms. When you sum this all up, is it in the interest of the American public to permit this kind of a practice?

Dr. ROWE. We are engaged in the process of selling a service and a product that is necessary to the public. They must have these things, eye care and eyeglasses, to fill the requirements of their eye care. We feel that there is every right to sell the product, because it is a product that has more implication than just the eye care. It affects the appearance; not just the condition of the eye. It takes care of visual problems and it still has other effects. So, it is a necessary item, and it is sold as a general practice throughout the United States, whether it by us or by opticians or by optometrists. All of these disciplines sell eyeglasses.

Mr. SISK. The gentleman from Indiana.

Mr. JACOBS. If you will yield, Mr. Chairman.

I have some questions about my own state of Indiana, Dr. Rowe, with reference to your organization. Do you, in fact, have a subsidiary in my state of Indiana?

Dr. ROWE. Yes, sir.

Mr. JACOBS. Colston?

Dr. ROWE. Yes.

Mr. JACOBS. Is it a subsidary of your organization?

If I have got it straight, it is contrary to the state law for a corporation to hire an optometrist?

Dr. ROWE. Yes, sir.

Mr. JACOBS. However, I suppose that a corporation under the law of my state can hire an optician?

Dr. ROWE. Yes, sir.

Mr. JACOBS. Is that correct?

Dr. ROWE. Yes.

Mr. JACOBS. Does your subsidiary in Indiana in any case arrange leases for optometrists in the premises of a business corporation?

Dr. ROWE. Yes, sir.

Mr. JACOBS. I naturally wonder about that, because I recall from the letter that I read into the record that there was some talk about a lease one moment, and then a guarantee of an income to the lessee in the next, and I just wondered whether any of the leases that your organization in Indiana arranged had similar terms whereby the lessee through some kind of an arrangement is guaranteed some kind of an income as a result of the lease?

Dr. ROWE. In Indiana, we lease space and accept this lease and put in the equipment for the optometrist for his use. He pays rent on that. He collects his fees for the examination and gives the patient the prescription.

Mr. JACOBS. Excuse me. He collects his fees from the patient?

Dr. ROWE. Yes, sir.

Mr. JACOBS. Directly from the patient and receives no compensation?

Dr. ROWE. He receives the fee.

Mr. JACOBS. Does he pay any rent on the equipment?

Dr. ROWE. He pays a flat rental on the place and the equipment.

Mr. JACOBS. That price does relate to the going rate of rental on the space and on the equipment?

Dr. ROWE. Yes, and it will rent from $100 to $200 a month.

Mr. JACOBS. You say the rent is $100 to $200 a month for, let us say, in Sears Roebuck in Fort Wayne, Indiana. And how many square feet, if you know, would he be getting for that rental?

Dr. ROWE. He would be getting about, let us say, somewhere between 160 and 200 square feet plus the equipment.

Mr. JACOBS. That is a rather small space.

Dr. ROWE. That is right.

Mr. JACOBS. 16 by 10 feet.

Dr. ROWE. The refracting room is 6 by 10 feet and the reception space.

Mr. JACOBS. Would he get, for example, those 160 square feet plus the equipment to work with for as little as $100 a month?

Dr. ROWE. It ranges from $100 to $200. I am not familiar with the leases in Indiana.

Mr. JACOBS. Would that not leave the impression that there is a little bit of implied income from the rental itself?

I do not have much of an apartment at all here, and I have to pay $140 a month.

Dr. ROWE. I am familiar somewhat with how much money these optometrists do make, based upon the patients that they see and the examination fees that they collect. They are making at least as much as the average optometrist in private practice is making.

Mr. JACOBS. Is not the income augmented by the low rental?

Dr. ROWE. It is based on the space and the equipment.

Mr. JACOBS. $100 in a Sears-Roebuck store. That is a pretty good business location for $100, is it not?

Dr. ROWE. It is.

Mr. JACOBS. Plus the equipment?

Dr. ROWE. That is right.

Mr. JACOBS. That leads to this question: Is there not an implied compensation by the corporation, if the rental is very low, a so-called indirect income?

Dr. ROWE. Of course, we have to——

Mr. JACOBS. In the middle of a Sears-Roebuck store, he should do pretty well there.

Dr. ROWE. The optometrist does.

Mr. JACOBS. He does well?

Dr. ROWE. That is the optometrist.

Mr. JACOBS. Not because of the fees when he is paying $100 for the equipment and those 160 square feet in the middle of the store. At least, there is a great deal of generosity there.

I have no further questions.

I am quite curious about the question, because it was implied in the letter from Dr. Corns.

Mr. SISK. Why would Sears Roebuck make this space available on these very liberal terms?

Dr. ROWE. They provide this space—they do not receive any rental on their space in the first place.

Mr. SISK. They do not receive any rental on this space?

Dr. ROWE. Not from the optometrist. We pay them.

Mr. SISK. That is, the Colston Company or the Marsten Company in this case pays the rental?

Dr. ROWE. They do not get anything from the optometrists.

Of course, Sears is a commercial enterprise. They serve a lot of customers. They attempt to provide as much as they can to their customers, as much in their stores, as they possibly can, and they feel that this is a service, one that is basic, and that it helps to bring people in from the outside, and when people are there, they have opportunity to see the store and perhaps to buy other merchandise. It is a part of the total image projection that they provide, as to their stores, to get people into their stores.

Mr. SISK. Who provides the optometric and ophthalmic materials for the optometrist located in the Sears Roebuck Company store in Fort Wayne, Indiana, under this arrangement?

Dr. ROWE. I do not know. That is up to him.

Mr. SISK. Marsten Company and the parent company, the Cole National, place no requirements whatsoever upon him. What does Marsten Company get out of this arrangement?

Dr. ROWE. We have an optical department in the Sears store.

Mr. SISK. You have an optical department in the Sears store?

Dr. ROWE. Yes.

Mr. SISK. This is what I am trying to develop.

What is the interest of the Marsten Company with this optometrist? As I understand the laws of the State of Indiana, you would not say that this is a surreptitious attempt to evade the laws of the state of Indiana?

Why don't you do it the same way in Indiana, as you do everywhere else? Is it because the law in Indiana is different?

Would you recruit in Indiana as you do in Ohio, if the laws were the same?

Dr. ROWE. I would do what?

Mr. SISK. Actually, the optometrist in Indiana there would become an employee of Sears Roebuck. He is actually a corporate employee if the same operation was in Ohio.

Dr. ROWE. In Ohio, we cannot hire an optometrist either.

Mr. SISK. Is that operation possible, if it were here in the District of Columbia?

Dr. ROWE. Then, we would handle it.

Mr. SISK. Then why do you go through this procedure in Indiana? Is it because of the law? Is it an attempt to sell ophthalmic and optometric supplies for a profit? Isn't that the only interest of your company?

Dr. ROWE. We are in the business of doing that, in the state of Indiana, based upon the prescriptions of the ophthalmologists and optometrists in the same manner that an optician's location, his office, is as close to the ophthalmologist as it is, very often in the same building. He can be there for the convenience of the patient. He can bring

his prescription to him easier. So, we are located as close as we can be to them.

Mr. JACOBS. If you will yield?

Mr. SISK. Yes.

Mr. JACOBS. Then, the difference between the two situations that you have described is that the optician does not draw his source of income from the same place as the optometrist, in the first place, and, in the second place there, would that be a fair comment under the two analogies?

Dr. ROWE. I think so.

Mr. SISK. Dr. Rowe, as I say, these are merely indicative of, I think, the evil of the corporate approach. Aside from your company, Dr. Rowe, what has been developed here is that the corporations make profits for their stockholders. I do not blame them for that. The only concern of this committee is the eyecare and the doctor-patient relationship within the District of Columbia. We can only legislate for the District of Columbia and not for the Nation.

You recognize that many of our States have outlawed the corporate practice of optometry as not being in the best interests of the welfare and health of the public. This is, of course, what we seek to stop, here in the District.

You, apparently, oppose that position?

Dr. ROWE. Yes, because I feel that an optometrist is capable of doing his job wherever he may be located; that is, if he wants to do the proper job. If he does not want to do the proper job, it does not matter where he is located. This is not going to affect him.

These are optometrists with the same training and qualifications as any other optometrist. They are just as capable as the others, and to the extent that is so, I send my children to the optometrist in the Sears-Roebuck store in Cleveland, because they are there. My children go to these optometrists. I know they are well taken care of, because I know that the optometrist is vested with knowledge and education and background and has as much personal concern over his patient as any optometrist anywhere.

Mr. SISK. You must be confident, Dr. Rowe, in the particular store to which you are referring. As for myself, I would not personally send my children into some of these stores. As I say, this is a matter of confidence.

Mr. JACOBS. I would like to say, Dr. Rowe, that the fellow in Cleveland who has your confidence, nobody would ever question his ability in every respect except to show undivided concern for the individual patient. Is this not the old quarrel that has been going on since way back in 1949 when my father was here in Congress? Is this not the same quarrel that has been going on year in and year out, about socialized medicine? Is it not part and parcel of the same thing?

The idea is that in England where the doctor works for some huge impersonal entity and is going to be paid not by the patient, there is a tendency to become a little calloused with respect to "one more fellow coming through the line." The doctor is going to be making money one way or the other—Is that not part and parcel of the whole dialog about socialized medicine as opposed to the doctor-patient relationship?

Dr. ROWE. Well, this is possible maybe. It is just as possible I think for an optometrist, in spite of the fact of that, to become calloused

in any state, and the fact that his employer is there, or no employer, to this legislation here the employment is based upon the profitability that he may not have the same interest or may become calloused. It is not going to change that emphasis, because if he is of this nature, he will be the same way in his own practice. The only thing that will keep it from being that way is his interest in maintaining a level of income. He will be interested in his practice from that standpoint, unless he really truly is there to serve the public. If he is there to serve the public, he will do it in one place or the other.

Mr. JACOBS. Is that not the whole theory of the free-enterprise system, the professional, the private practitioner's attitude? It may be true that a lot of people may be sick and need eyecare, and, therefore, the optometrist has a long line at his door. But is it not still true that when he has to collect money for his fee from each individual patient, at least, he has the interest of not wanting to turn the bill over to a collection agency, and he does have that much extra interest in the individual, quite apart from a professional quality which we hope that the optometrist would have? We hope that everybody is nice, but we found out a long time ago that we do need to cope with human nature. So, are you quite sure that you want to go on record as saying that the man who must depend upon the individual patient for an individual fee is not more motivated towards that individual patient than the man who has a yearly salary guaranteed?

Dr. ROWE. This is a two-edged sword, apparently. A man in private practice has financial responsibility which he has to meet, drug bills and utility bills and reception-room salary and taxes. Certainly, he is motivated from the financial standpoint. It may not be well motivated. He may have a tendency to do a little bit of over-selling in order to meet that rent bill, and the like.

The point I am trying to stress is that the practice has nothing to do with what he is going to do for his patient. That is not quite necessarily correct——

Mr. JACOBS. Would socialism not be preferable to our private practice program in the United States—by that reasoning?

Dr. ROWE. I would not say that socialism would be better. The effect is brought about by the private practice that would not exist where an optometrist is employed.

Mr. JACOBS. The abstract reasoning that you submitted for the record is not that the doctor in the United States has to worry about paying his receptionist, his rent, and all that sort of thing, but that he would be less motivated towards his patient than that of the fellow in Great Britain who draws down a check every month, regardless of all of those incidentals in private practice?

Dr. ROWE. As I say, it is a two-edged sword. There are possibilities on both sides. The employed optometrist can become calloused and not care. The self-employed optometrist can have some pressure, financial responsibilities, which affects his judgment as to what is really good for the patient or whether to get the most dollars out of the patient. It works two ways. Once again, this depends upon the individual.

If the man goes into optometry and spends a number of years to become one and makes the investment that is needed in his education, then he should still, during that period of time, be primarily concerned to take care of the patients regardless of whether he is employed or whether he is not.

This bill says that employment creates a bad situation. I am saying that employment does not create that bad situation anymore than any other employment can create that bad situation. So, we are attempting to work on a problem here by saying what they can do and forcing them into private practice. I do not feel that we would be doing much good for the public in doing this. When they no longer have this, and they will have to go and develop their own practice, in face of competition from their colleagues, they are going to be in trouble. It will be difficult. You do not establish a practice overnight. You either have to have the financial resources to survive that period of time or you are very much in danger of over-selling the patient that comes in and prescribing that which may or may not be needed. Then, I say that the financial responsibility will influence the self-employed optometrist in prescribing something that he is not thoroughly convinced is necessary for the patient. This bill is not going to correct either situation, because there are problems in both. The solution to the problem is in the optometrist himself in developing his education, his research facilities, in developing his associations and in developing the internal control so that even one member can work with another member rather than having to go to the Government and saying "We want to establish a Government-backed thing here so that all of these people who have any problems can come and say that this is the problem.

And also the bill gives the optometrists who are on the board the right to determine what people will be able to do. I do not think that this is correct. I think that there should be other influences on the determination on the rules and regulations and the laws that are going to influence the behavior of optometrists.

Mr. JACOBS. Would you have the same opinion with respect to the medical doctors, examining boards and the like?

Dr. ROWE. Medicine is a much older profession. They have gone through their period of transition. I think that they have established these things through their educational processes. They, certainly, know them; they are far more extensive than ours, and they also have a control which the optometrists do not have, that is, for example, hospital centers. If one of their members is not behaving satisfactorily, let us say, according to their ethics or their behavior, they can have that leverage—they can take away his living if they wish.

Mr. JACOBS. I might just say, in closing, as I understand this is our final session of public hearings, that I began the hearings without much knowledge about optometry, and I have wound up the same way, but I have a little more of an idea about the practice of optometry. I have questions about certain provisions in this bill, questions that I expect to raise in executive session, but there is one thing on which I have become somewhat clear. And that is that there is here an analogy between the argument between socialized medicine in England and the private practice of the profession in the United States. Based on the very old and well-accepted principle of mankind, that "he who pays the fiddler calls the tune," and that the doctor-patient relationship is best served by a private relationship between optometrist and patient, I do believe that it is the duty of those of us who are charged with the public interest in this matter in the District of Columbia, to see what we can do to help along that individual doctor-patient relationship.

With that I have nothing further to say.

Thank you.

Mr. SISK. I thank my colleague from Indiana. I just have one further question, Dr. Rowe. I appreciate your patience this morning.

We find ourselves, I think, in substantial disagreement in some areas. I want to ask you, because of your statement with reference to the laws in the states of Ohio and Indiana where the optometrist cannot be employed and must practice on his own, why do you oppose a separation here in the District of Columbia?

Dr. ROWE. Because we do not see anything here that would be helped by what happened in Ohio. In other words, I do not feel that the public is served any better by reason of the fact that the optometrist cannot be employed. We see no reason to impose restrictions on the optometrist which would not be for the good of the public.

Mr. SISK. You feel that a great many of the states, like my own state of California, Florida, New Jersey, Arkansas, Indiana, Ohio, and so on, all have made bad moves?

Dr. ROWE. I think that the quality of the optometric care in the District of Columbia is just as good as it is in Ohio or in Pennsylvania or in Indiana. I think that the quality of the optometric care in the state of New York is just as good as in any other state and that the quality of the care in the state of Maryland is just as good as it is in any other state.

In other words, as the Governor of the State of New York said when he vetoed a similar bill, he said that the adoption of this bill will not in any way bring any benefits to the public but will increase the cost of eyecare. So that there is no benefit to be derived, and the people of Ohio and of Maryland and of Pennsylvania and of Indiana are not getting better eyecare as the result of the fact that an optometrist cannot be employed than they are in the State of New York or in the District of Columbia.

Mr. SISK. Apparently, you have not had an opportunity to read the record as to the complaints of malpractice here in the District of Columbia.

We will be printing them in the record, and I can assure you if you will take a look and read not just one or two or three but literally hundreds of instances of malpractice here in the District, you will find that conditions are not just as good here in the District as they are in some states.

Dr. ROWE. We do not know if there have been any complaints regarding advertising here; they say that they have had none.

Mr. SISK. Under the present law, there is no prohibition against advertising?

Dr. ROWE. I was talking about the Bureau of Advertising that is responsible for the advertising being truthful and not being misleading, that they accept for the newspapers. They say that they have not had any complaints from the newspaper readers that their advertising was in any way untruthful or misleading.

Mr. SISK. Have you read the statement made last year by the Board of Optometry here in the District?

Dr. ROWE. I have not as yet.

Mr. SISK. There have been many complaints. When these were called to their attention, the Board had no legal power to act. As I say, Dr. Rowe, I think that you and I have certain basic disagree-

ments. They are matters, of course, which have caused these public hearings to be held.

We appreciate very much your statement this morning.

Unless the gentleman from Maryland has further questions, you may go.

Mr. GUDE. I have no questions, but I would like to comment with reference to a statement by Dr. Rowe in particular, Mr. Sisk: I do not think that we are dealing with a black-and-white situation in this field: Whether optometry is a profession or whether it remains what it is at the present time. Necessarily, a large number of measures can be carried out and give the public satisfactory eyecare at a reasonable cost. We have to safeguard that, so that that be done, to safeguard those individuals who need such attention, to see that they are properly served. I hope that we can present some such measure as that.

Mr. SISK. Thank you very much.

We will now hear from Mr. Moyer and Dr. Heath of the District of Columbia government.

Again, I will suggest that the statement of the Commissioners be made a part of the record. If you have any statement in addition to that, you may certainly proceed.

STATEMENT OF THOMAS F. MOYER, ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA GOVERNMENT; ACCOMPANIED BY DR. F. C. HEATH, DEPUTY DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC HEALTH

Mr. MOYER. I will just say a few words. I will guarantee that.

The Commissioners' report which you suggested be made a part of the record is very similar to the one which was submitted last year. The bills are very similar in many respects.

Their first recommendation was, as you know, that they would prefer, rather than any optometry bill, a general licensing bill which they feel, in the long run, would be better for a number of occupations in the District.

Therefore, they have submitted a number of proposed amendments to the optometry bill.

Their main concern has been brought out in much of the testimony as to the expanded definition of "optometry" and the dangers that others fear, particularly the ones affected in the District which has eyecare, visual testing by school nurses and by school teachers or people of that sort.

As to the provisions of the bill which have to do with corporate practices, we have not been made aware of any reason why these provisions should be changed. Basically, their report is the same as that which was submitted to the committee last year.

I will defer to Dr. Heath from the District of Columbia Department of Public Health at this point.

Mr. SISK. Thank you. The commissioners' letter will be included in the record at this point.

(The letter referred to follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
Washington, May 18, 1967.

Hon. JOHN L. MCMILLAN,
Chairman, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

DEAR MR. MCMILLAN: The Commissioners of the District of Columbia have for report H.R. 595, H.R. 732, and H.R. 1283, 90th Congress, substantially similar bills, "To amend the Act of May 28, 1924, to revise existing law relating to the examination, licensure, registration, and regulation of optometrists in the District of Columbia, and for other purposes." Each of these bills amends in its entirety the Act entitled "An Act to regulate the practice of optometry in the District of Columbia", approved May 28, 1924 (43 Stat. 177; D.C. Code, sec. 2-501 et seq.; hereinafter, "the Act").

Initially, the Commissioners desire to note that on January 30, 1967, they forwarded to the Congress draft legislation "To revise and modernize procedures relating to the licensing by the District of Columbia of persons engaged in certain occupations, professions, businesses, trades, and callings, and for other purposes", introduced in the Senate on April 13, 1967 as S. 1535. A primary purpose of the Commissioners' proposed bill is to relieve the Congress of the constantly recurring necessity of amending twenty Acts of Congress governing the licensing of more than that number of occupations, professions, businesses, trades and callings (including the practice of optometry), by vesting in the Commisisoners authority by regulation to revise and modernize these statutes. If the Commissioners' proposed bill should be enacted, it would be possible for them to establish higher standards in the practice of optometry, to the extent such action is indicated, and to take similar action with respect to the standards applicable to the other occupations, professions, businesses, trades and callings specified in the Commissioners' proposed bill, without the necessity for continual requests to the Congress respecting amendments to these various statutes. The Commissioners accordingly urge the enactment of their proposed District of Columbia Licensing Procedures Act, rather than H.R. 595, H.R. 732, or H.R. 1283.

In addition, the Commissioners have considered the provisions of these bills and have concluded that they impose requirements which are, to a large extent, inferior to those of the present law relating to optometry. An analysis of the provisions of these bills is attached for the consideration of the Committee.

However, if the Committee determines that the enactment of any of these bills is desirable, the Commissioners recommend the attached amendments, which are substantially similar to those proposed by the Medical Society of the District of Columbia, the Guild of Prescription Opticians, the Bar Association of the District of Columbia, and the Commissioners, to similar bills in the 89th Congress.

Sincerely yours,

/S/ WALTER N. TOBRINER,
President, Board of Commissioners, D.C.

ANALYSIS OF PROVISIONS OF H.R. 595, H.R. 732 AND H.R. 1283.

The first section of each of the bills replaces the Act with an act comprised of fifteen sections. References in this report to a "proposed section" mean one of such fifteen substitute sections.

The proposed section 1 gives the Act the title "District of Columbia Optometry Act."

The proposed section 2 declares optometry to be a profession; states its practice affects the public health, welfare, and safety, thus requiring regulations; and declares that the practice of optometry should be limited to qualified persons, admitted to practice under provisions of the bills.

The proposed section 3 of H.R. 732 contains definitions, including the following:

"(2) 'practice of optimetry' means any one, any combination, or all of the following acts or practices: the employment of any objective or subjective means for the examination of the human eye, including its associated structures; the measurement of the powers or range of human vision; the determination of the accommodative and refractive powers of the human eye; the determination of the scope of the functions of the human eye in general; the prescription, adaptation, use or furnishing of lenses, prisms, or frames for the aid thereof; the prescribing, directing the use of, or administering vision training or orthoptics, and the use of any optical device in connection therewith; the prescribing of

contact lenses for, or the fitting or adaptation of contact lenses to the human eye; and the identification of any departure from the normal condition or function of the human eye, including its associated structures; . . ."

H.R. 595 and H.R. 1283 contain similar definitions of the practice of optometry, except that in H.R. 595 it is stipulated that such practices are to be without the use of drugs and H.R. 1283 specifies that such practices are those included in the curriculum of recognized schools and colleges of optometry.

Section 1 of the present Act provides:

"The 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 for the aid and relief thereof."

A reading of the substitute definition indicates a much broader scope than under the present Act. The Commissioners believe that this proposed definition is too comprehensive and intrudes not only on the practice of medicine, but on long recognized functions of opticians and other persons, including officers and employees of the District of Columbia.

The Commissioners recommend that if the Committee accepts the broader definition of the practice of optometry, as contained in the bills, that at least simple visual screening procedures conducted by District teachers, school nurses, and others for the purpose of detecting eye trouble in children and adults be excepted from the definition "practice of optometry".

The proposed section 4 of each of the bills sets out qualifications for licensure, requiring that applicants be 21 years of age or older; be of good moral character; mentally competent; posses the education equivalent to a high school education; complete a two-year college preoptometric course; complete a four-year course in a school or college of optometry; pass the examination; and pay all required fees.

Section 12 of the present Act, in addition to setting a 21-year age minimum and requiring good moral character of applicants for examination, authorizes the Commissioners to alter, amend, and otherwise change the educational standards at any time, provided they are not lowered.

The proposed section 5 provides for reciprocity with the States. However, there are requirements that an applicant for license by reciprocity must have practiced for at least five of the last seven years and must practice in the District within one year of receiving the license by reciprocity. It occurs to the Commissioners that these provisions might work a hardship on a qualified optometrist who before or after seeking license by reciprocity was unable to practice because of injury, illness, military service, or other good cause.

The proposed section 6 provides for annual renewal of licenses.

The proposed section 7(a) sets forth 19 causes for which the Commissioners are authorized to refuse to issue, renew, or restore a license or to suspend or revoke a license. At least one of these, in H.R. 732, is vague and indefinite; i.e., "(19) any other unprofessional conduct." Others of these are questionable with respect to their definiteness or reasonableness, such as the following:

"(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 my 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;

* * * * * * *

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

* * * * * * *

"(17) practice optometry in any retail, mercantile, or commercial store, office, or premises, not exclusively devoted to the practice of optometry or other health care professions;

"(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: . . ."

With respect to causes for suspension or revocation related to advertising, practicing under a name other than the licensee's own name, practice in stores, display of eye glasses, and the like, the Commissioners wish to bring to the attention of the Committee the decision of the United States Court of Appeals for the District of Columbia in the leading District case of *Silver* v. *Lansburgh*

and Bro. et al. 72 App. D.C. 77, 111 F. 2d 518 (1940). In this case, involving the practice of optometry in commercial premises by persons affiliated with a corporation, the court said:

"Appellants are licensed and registered optometrists. They brought this suit in behalf of themselves and others similarly situated against appellees, Lansburgh & Bro., a corporation conducting a large department store in Washington City, and Buhl Optical Company, a District corporation organized to operate and own optical and optometrical stores, to restrain them from directly or indirectly engaging in the practice of optometry in the District of Columbia. The right to bring the suit is not challenged. Cf. Ezell v. Ritholz, 188 S.C. 39, 198 S.E. 419, 423, and cases cited there.

"Appellants, in the main, base 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. In the recent case of United States v. American Medical Association (decided March 4, 1940), [72] App. D.C. [12], 110 F. 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 lawfully be 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 object 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. (Bracketed language added.)

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

"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 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, organised 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 find nothing in the statute to indicate that Congress intended to prohibit corporations from employing licensed optometrists. Its primary purpose was to insure that the service would be rendered by competent and licensed persons and thereby to protect the public from inexpertness. That purpose may be fully accomplished, though the person rendering the service is employed by a corporation.

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

In the light of the foregoing, the Commissioners believe that some of the causes for the suspension or revocation of a license, or for which they may refuse to issue, renew or restore any such license, are not in the best interests of the public.

The proposed section 7(b) sets out procedures for suspension or revocation, while the proposed section 7(c) provides for reinstatement after a year of revocation of a license.

The proposed section 8(a) specifies ten unlawful practices, including practice without a license; practice under a name which is not the licensee's; fraud in obtaining a diploma, license, or record; holding oneself out to be an optometrist; practice during suspension or revocation; selling glasses (or, in H.R. 732, frames) without a written prescription from a physician or optometrist licensed in the District of Columbia; advertising the cost of any optometric or ophthalmic material; offering inducements to obtain patronage; splitting prescription fees; hiring an optometrist on salary; displaying a sign offering ophthalmic materials for sale in violation of the regulations adopted by the Commissioners; and not displaying in one's office his license to practice optometry.

With respect to the prohibitions relating to advertisting by optometrists, and the hiring of an optometrist by anyone other than another optometrist, the Commissioners are of the view that prohibitions of this nature do not serve the best interests of the general public, and accordingly they recommend their deletion from the bills.

In addition, the Commissioners question the advisability of the provision in H.R. 732 which prohibits the filling of a prescription for eyeglesses written by a physician or optometrist not licensed in the District of Columbia. This provision might work a hardship on many visitors to the District each year who may break or lose their eyeglasses while here and who would be precluded from having the prescription of their own physician or optometrist filled while they are in the District of Columbia.

The proposed section 8(b) declares violations of the section to be misdemeanors, with a first offense fine of not more than $500, and for second or subsequent offenses, not less than $500 nor more than $1,000, or by imprisonment "in the District jail" for not less than three months nor more than one year, or both.

The Commissioners note that these penalty provisions are a restatement of those contained in section 2 of the Act. However, if penalty provisions are to be provided in a new section, the Commissioners recommend that the minimum fine or imprisonment provision be omitted as an unreasonable restriction on the discretion of the sentencing judge. Also, an alternative jail sentence to the first offense fine should be provided. Further, the Commissioners believe the bill should not restrict the place of incarceration to the "District jail".

The proposed section 9(a) provides that the bill shall not apply to (1) a student of optometry in the clinic rooms of an approved school of optometry; (2) an officer of the armed services in the performance of his military duties; or (3) an individual licensed in another jurisdiction who is in the District to make certain clinical demonstrations.

The proposed section 9(b) exempts from the provisions of the bill physicians and surgeons, while 9(c) exempts those persons filling prescriptions of physicians, surgeons, or optometrists. Such persons are specifically not authorized by this section to fit contact lenses. In this connection, the Corporation Council, by opinion dated October 8, 1946, has construed the present Optometry Act as prohibiting the fitting of contact lenses by anyone but an optometrist or ophthalmologist.

The proposed section 9(d) states that the bill shall not be deemed to prevent such activities as (1) an optometric clinic; (2) an optometrist working for a clinic, hospital, the government, an employer solely for the benefit of his employees, and the like; (3) a widow or widower continuing the practice through a hired optometrist for not more than one year; (4) (in H.R. 732 only) a wife or husband utilizing the services of another optometrist to continue the practice of a temporarily mentally incapacitated ontometrist; or (5) a husband or wife utilizing the services of another optometrist to continue the practice of a permanently mentally incapacitated optometrist for a period not exceeding one year. H.R. 595 and H.R. 1283 authorize, as a fourth exception, vision screening programs conducted under the direction or supervision of a licensed optometrist or physician.

The proposed subsection 9(e) permits the use of the title "doctor" by optometrists, with a qualification indicating he is an optometrist.

The proposed section 10(a) directs the Commissioners to prescribe regulations to implement the bill, including the number, size, location, and illumination of signs offering optometric services or the sale of ophthalmic materials.

The proposed section 10(b) authorizes the Commissioners to set such fees and charges as may be necessary to defray the cost of administering the bill.

The proposed section 10(c) directs the Commissioners to adopt a seal for the

authentication of records and papers relating to the licensing and regulation of optometrists.

The proposed section 11 authorizes the Commissioners in their administration of the bill to make inspections, studies, and investigations, to require furnishing of information under oath, and to subpoena documents.

The proposed section 12 authorizes the Commissioners to seek injunctions against violations of the bill.

The proposed section 13(a) provides for the prosecution of violations, while the proposed section 13(b) declares that only a single prohibited act may constitute a violation, rather than a general course of conduct.

In H.R. 732, a proposed section 13(c) declares that testimony of an optometrist shall be received at any trial or hearing in the courts of the District as qualified expert evidence, and certificates of optometrists are to be accepted by courts and by District Government officers and employees as qualified evidence in respect to the practice of optometry. The Commissioners question the advisability of affording to optometrists, by legislation, the status of expert witnesses in court proceedings, a status which, in the case of all other occupations and professions, must be established by competent evidence, qualifying a witness as an expert.

The proposed section 14 in H.R. 732 prohibits officers and employees of the District Government from "depriv(ing) any person of his freedom of choice of practitioner with respect to his visual problems" and in H.R. 595 and H.R. 1283, from "depriv(ing) any person of his right to exercise his freedom of choice of an optometrist or a physician". This provision of the bill is intended to prevent school nurses from advising the parents of children with eye problems to seek medical treatment for them. The Commissioners strongly oppose a statutory provision which prohibits any person, including District personnel, from advising anyone to seek medical care.

The proposed section 15 in H.R. 595 and H.R. 1283 (15(1) in H.R. 732) authorizes the Commissioners to delegate their functions under the bill to the Board of Optometry or to any other agency of the District Government.

Section 2 of H.R. 595 and H.R. 1283 (incorrectly designated as a proposed section 15(2) in H.R. 732) continues existing licenses in effect.

Section 3 of H.R. 595 and H.R. 1283 (incorrectly designated as a proposed section 15(3) in H.R. 732) amends section 11–742 of the District of Columbia Code, relating to the exclusive jurisdiction of the District of Columbia Court of Appeals to review the orders and decisions of certain administrative agencies of the District, so as to extend its jurisdiction to the review of optometry license cases.

Section 4 of H.R. 595 and H.R. 1283 (incorrectly designated as a proposed section 15(4) in H.R. 732) makes the legislation effective on the ninetieth day after the date of its enactment.

The Commissioners have discussed the merits of the bills with representatives of the Guild of Prescription Opticians and with representatives of the Medical Society of the District of Columbia. Both groups, for reasons which appear sound to the Commissioners, expressed the strongest opposition to the enactment of any of the bills.

In the above analysis, the Commissioners have indicated their concern respecting provisions of the bills which they anticipate will have an adverse effect on the mechanics of providing adequate and convenient eye care for the members of the general public. Accordingly, the Commissioners recommend that none of these bills be enacted, not only because of the Commissioners' support of their proposed District of Columbia Licensing Procedures Act, as they have stated in their report, but also because the Commissioners have been made aware of no compelling reasons for enactment of this legislation. No reasons have been submitted to the Commissioners to justify the curtailment of the number of long established practices of opticians, District employees, and others in the District of Columbia which would result from the passage of this legislation. Therefore, the Commissioners reiterate their recommendation that none of these bills be enacted.

Proposed Amendments to H.R. 595, H.R. 732 and H.R. 1283, bills "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."

1. *Section 2*, strike "profession" and insert, in lieu thereof, "mechanical art involving human vision".

2. *Section 3(2)*, amend definition of "practice of optometry" to read as follows:

"(2) 'practice of optometry' means the application of optical principles through technical methods and devices in the examination of the human eye for the pur-

pose of determining visual defects, and the adaption of lenses for the aid and relief thereof."

3. *Section 4:*

(a) Redesignate existing section as section 4(a).

(b) Amend clause (7) of such section 4(a) by striking "in the following subjects:" and inserting in lieu thereof "in optometric subjects, which may include the following:".

(c) Insert a subsection "(b)", reading as follows:

"(b) 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."

4. *Section 5*, amend to read as follows:

"Sec. 5. The Commissioners are authorized to issue a license, without examination, to any applicant licensed to practice optometry in any State which through reciprocity similarly accredits persons licensed by the District of Columbia to practice optometry, on his filing with the Commissioners a true and attested copy of the license issued him by said State: *Provided*, That the standard of requirements for the practice of optometry in said State is at least equal to that provided by this Act and the regulations promulgated hereunder: *And Provided Further*, That such applicant has not previously failed an examination given by the Commissioners of the District of Columbia under the authority of this Act."

5. *Section 7(a):*

(a) strike clauses (8), (9), (10), (11), (14), (16), (17) and (18), and renumber remaining clauses accordingly.

(b) amend clause (19) to read as follows:

"any conduct specified by the Commissioners, by regulation, after public hearing, to be unprofessional conduct."

6. *Section 8(a):*

(a) Strike clauses (2), (5), (6), (8) and (9).

(b) Amend clause (4) of H.R. 732 to read as follows:

"with the exception of nonprescription sunglasses or nonprescription protective eyewear, to sell or offer to sell eyeglasses, spectacles, or lenses without a prescription from a licensed physician or optometrist;".

7. *Section 8(b)*, amend to read as follows:

"(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 or by imprisonment for not more than six months, or by both such fine and imprisonment, and upon a second or subsequent conviction thereof, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment."

8. *Section 9(c)* in H.R. 732, strike "written" and "and who does not otherwise practice optometry".

9. *Section 9(d)* in H.R. 732:

(a) Clause (3), strike "for a period not to exceed one year after the death of such deceased optometrist."

(b) Clause (4), strike "temporarily" and insert a period in lieu of the semicolon at the end thereof.

(c) Strike clause (5).

10. *Section 10(a)*, insert a period after "optometry" and strike the remainder of section 10(a).

11. *Section 12* of H.R. 732, strike ", upon recommendation of the Board".

12. Strike *sections 13 and 14*, and renumber remaining section accordingly.

13. In H.R. 732, the proposed section 15(1) should be section 15 and the proposed sections 15(2), 15(3), and 15(4) should be sections 2, 3, and 4 of the bill.

Mr. SISK. You may proceed, Dr. Heath.

STATEMENT OF DR. FREDERICK C. HEATH, DEPUTY DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC HEALTH

Dr. HEATH. I will simply point out about nine short items and submit the statement.

Mr. SISK. Without objection, your full statement will be made a part of the record.

Dr. HEATH. The Department of Public Health, of course, is interested in the maximum care and the highest quality of care for the people.

We have no objection to improving the standards of care, not only for optometrists but for every other profession related to health or the disciplines related to health that render services to the people.

I would like to point out nine items, that is, that under the definition of the practice of optometry, we think it is too comprehensive and impinges on the ethical practices of medicine and also of the oculist.

The second point in this proposed definition, I think in the activities of the Department as to the screening procedures which are only preliminary and have to be reaffirmed by a competent authority, and, secondly, with some of our training that we are doing in the District of Columbia General Hospital.

The third point: We have thought of fraud or very bad practice on the part of the occulists, but we cannot say that there is a public health reason for denying them their present activities; however, I understand that the Commissioners are considering the licensing and the setting up of standards for the practice of the occulist, the optician.

And my fourth point, and I think this is a very important one, with reference to licensing by reciprocity, we feel very strongly that licensing by reciprocity would be simplified, without additional restrictions being imposed in the bill. And, also, with reference to the fact that the person would have to practice within one year of the time that he gets his reciprocity license, there may be circumstances, such as military service and other incidents where he could not start practice within one year, and there cannot be any public health reasons for this added restrictive—that is, we cannot see any.

The fifth point: On the practice of optometry in department stores. Likewise, we have no thought of a public health hazard being associated with such practice. There may be, but we cannot prove any, so that we cannot take any position one way or the other on that particular item.

The sixth point: Forbidding the optometrists to work on a salary basis for someone other than an optometrist. We believe it would be a bad public health practice, likewise.

The seventh point: We do not feel that it is necessary for a technician working under the supervision of a physician to obtain a license as proposed.

The eighth point, on pages 18 and 19, we see no reason why an optometrist should not have the same requirements for establishing himself as an expert which the courts require presently for any other expert witness.

The ninth point is: It is difficult to understand the purpose of section 14 that would prevent him in the District of Columbia using his judgment in recommending where a patient would go for further consultation.

Those are the nine points.

Of course, we do support the opinion of the Commissioners on the over-all licensing bill, which would affect the licensing act.

I would like to point out just two little things that I have talked to before, that is, on H.R. 12276. On page 14, line 23:

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.

That word "direct" could be construed to mean that a person could be right in the same room or in the immediate vicinity. This might not be possible under all circumstances.

And another one, if I may, that has not been brought out before: I will show what I have in mind. I notice that the court reporter has a hearing aid. I have one, too. You see, this is done or taken care of by audiology. You go to the audiologist. They remove the temples from the existing frame, and they have different sizes of temples and listening devices, and this has a switch here, and batteries, and so on and so forth. This is done by the audiologist. This might be of interest and ought to be considered in the definition of "optometry."

That is all I have, thank you Mr. Chairman.

(The prepared statement submitted by Dr. Heath is as follows:)

STATEMENT OF DR. FREDERICK C. HEATH, DEPUTY DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC HEALTH

These proposed Bills have been studied in the Department of Public Health, and compared with the current provisions of law with respect to the examination, license, registration and regulation of optometrists and the practice of optometry in the District of Columbia, and in comparison it is believed that the present law is more desirable than the proposed revisions in many respects. In part, the reasons for such conclusion are as follows:

The definition of the terms "practice of optometry" as contained in the proposed Bills is objectionable in that it is vague and subject to various interpretations not consistent with what is generally regarded as the field of the practice of optometry. The proposed language might very well be interpreted to encompass procedures which are now considered practicing the healing art and not included in the practice of optometry. The proposed definition is also so broad as to encompass the visual screening procedures conducted by teachers, school nurses, and other persons who have had the instruction and experience necessary for these mass screening programs to be successfully accomplished. It would be impracticable and against the public interest to forbid the "measurement of the powers or range of human vision" by these trained persons and require that these programs must be carried out by an optometrist or a physician or "conducted under the direction or supervision of a licensed optometrist or physician". There are not enough such persons available.

There is no public health reason for not recognizing the practice of oculists as such practice is now legally conducted in the District.

There are many provisions in these Bills that are, to some extent, inconsistent with the present legal concept of the field of the practice of optometry. Some of them are expansions and some are contractions of the field of the practice of optometry in the District.

Therefore, if it should be decided to enact one of these Bills, it would be most beneficial for the present definition of the "practice of optometry" to be substituted for the proposed definition.

It is suggested that the restrictions placed upon obtaining a license by reciprocity are drastic in the proposed Bills. It will be much better if they were brought more in line with those of the other health disciplines. The proposed reciprocity requirements are so restrictive as to forbid the licensing of newly trained optometrists from one of the state or of an optometrist who may have had a recent interruption of his practice due to illness, military service, or other temporary occupation.

There is no public health reason for limiting the practice of optometry in certain areas such as department stores where it is now practiced without detriment to the public health. Nor, is there any public health reason whatsoever for forbidding optometrists to work on a salary or on some other basis with someone other than an optometrist.

It should not be necessary for a technician working in this area under the supervision of a physician to obtain a license as is proposed.

There is no reason why an optometrist should not have the same requirements for establishing himself as an expert witness in court as is required of any other expert witness.

It is difficult to understand the purpose of Section 14, unless it is designed for the purpose of preventing any government official, either a medical officer or any other, from expressing his judgment where his judgment is qualified and should be exercised. If the judgment is not qualified, or for any reason should not be exercised, there are remedies available to the aggrieved.

It is understood that the Commissioners have proposed in their current Legislative Program that the Congress delegate to them authority to develop rules governing the licensing of the professions and occupations in the District of Columbia. Such an Act would be in the public interest and would enable the District to establish standards consistent with the local requirements.

Therefore, it is recommended that none of these three Bills be enacted unless materially amended, and it is suggested that it would be preferable for the Congress to enact the Commissioners' proposed general licensing bill.

Mr. SISK. Thank you, Dr. Heath.

As to your reference to page 14, line 23, of H.R. 12276, as you know, that section has had a good deal of discussion. It is a matter which the committee in executive session will consider. I think a legal interpretation of this word "direct" will certainly require more consideration.

Dr. HEATH. May I add a suggestion?

Under "dental hygienists", the wording of the law is "under the general supervision and direction."

Mr. SISK. I have only one question, Dr. Heath, that I would like to discuss with you briefly.

I am as certain as I can be that we both have, basically, the same objectives so far as medical care of the people are concerned. Although my services are in a different capacity than yours. You are, as I understand your position in the City of Washington, concerned with the medical care of the people here and their protection, let us say, from unethical practices or malpractices. I am sure that you share with me the same concerns.

Dr. HEATH. That is right.

Mr. SISK. You made one statement that you had no position, or had made no real determination, as to whether or not an optometrist (who, as I understand it, takes care of about 75 percent of the eye care of the people nationally, and, I presume, that same percentage as it would be about the same percentage in the District) being employed by corporations has a bearing on the quality of the services rendered by him to the patient. I am paraphrasing your statement, but, generally, was that the basis of your statement?

Dr. HEATH. Yes, that is in effect what I said, because an individual is an individual and the motivation is natural to all. As I say, we have had no valid data from which we could say that this is a bad practice and we do not take a position unless we can justify such a position.

Mr. SISK. I realize that. I think you are right. You could not take a position unless you can justify that position.

You are concerned with the health of the people in the District. What, in your opinion, would be the situation if we hired a dentist, and he was employed by a corporation. Would your position be the same in this case?

Dr. HEATH. I think that I can respond to that.

The issue of individual practice and corporate practice has been one that has been in the limelight for many years, as you know. I could give you a very good example, in the practice of medicine.

Mr. SISK. I was going to ask about that later. Let us take, for example, the general practitioner.

Whether or not you, as an employee of the corporation, drawing your salary from the corporation, and the average individual however dedicated that you might be, would feel that the doctor-patient relationship would be the same as to the public where he takes care of the patient? These are matters that we want to discuss with you.

Dr. HEATH. There are some very high class medical group health practices in the District of Columbia. I do not wish to mention their names, but I will say that we have a group of men in group practice who use a combination of the disciplines specialties.

They have sometimes more elaborate x-ray equipment, more medical equipment, because it is a bigger enterprise. The laboratory work is immediately available. A patient goes there to Dr. A, and he feels that a certain diagnostic test should be performed, and the patient just goes downstairs to the laboratory and the tests are made or the x-ray is made or some other specialized examination is made. Then, they prescribe for them.

If I may go off the record, pleace?

Mr. SISK. Yes.

(Discussion was had outside the record.)

Mr. SISK. We will now go back on the record.

Dr. HEATH. On the other hand, the individual physician can utilize specialized diagnostic services and consultations by sending his patient to certain laboratories, x-ray installations, and whatnot. I think it all comes down to the individual physician. In the group practices, in these centers, they have to be good. The patient has to be satisfied, otherwise, they will not last. And the group practice will not last. They have seminars and lectures and patient evaluation from time to time to keep all the men on their toes. I think that they are associated with their fellow physicians in a very close manner, and they talk very clearly about problems.

So, I think that you have more than one approach there.

I could not say that the group practice is not as good as individual practice.

Mr. SISK. Dr. Heath, let me say that I certainly agree with your views on group practices. I think we are speaking of the same thing. Maybe I did not make my question entirely clear. You understand, of course, the employment of physicians by non-profit groups such as health clinics.

Dr. HEATH. They are profit-making.

Mr. SISK. I beg your pardon?

Mr. HEATH. They are profit-making.

Mr. SISK. In group practices, there is a profit, however, there is an individual responsibility of the doctor to the patient.

Dr. HEATH. Yes, sir.

Mr. SISK. Does the patient pay the doctor, or the group?

Dr. HEATH. The bill is sent by the medical center.

Mr. SISK. What I have in mind here is the employment of a doctor, dentist, or an optometrist who is a specialist, as he specializes in just one thing and that is the eye. What about his employment by a profit-

making corporation? I am speaking strictly of a profit-making corporation not in the business of medicine or anything else; strictly a corporate enterprise such as Sears Roebuck and Company, Montgomery Ward, the Penney stores, Sterling Optical, or any other corporation you want to mention—Cole National for example which was mentioned here.

I am not trying to put you on the spot.

Dr. HEATH. You are not putting me on the spot.

Mr. SISK. This goes to the heart of what we are attempting to do in this bill. And let me say, I am sure that many things will be changed in the bill. In our efforts to improve the eyecare in the District, we are concerned about many of these abuses which have been brought to our attention. This is why I am asking you these questions.

This whole business is strictly what I call a corporate practice for profit—irrespective of any patient relationship or any personal relationship with the corporation.

Dr. HEATH. Of course, I would never attempt to be evasive with you. I will try to answer your questions as directly as I can.

In all professions you have people with various levels of morale and motivation and sincerity. A person properly motivated and qualified, if he is working for a profit corporation, if he found that it interferred with his performance of his duty as he saw it, he would terminate his employment with such corporation. There would be others that perhaps, well, we will say, go with the wind. I could not approve any of that. I can tell you things which have been in the literature at times. Sometimes companies will have what we call a company doctor. This is a profit-making corporation that takes care of the persons who may be injured.

Mr. SISK. Right.

Dr. HEATH. There have been instances in which that company doctor has not rendered as complete a service to the person as was required and they have gone to a private physician and have received additional services. This is a matter of general record.

Mr. SISK. Yes, sir.

Dr. HEATH. Maybe that is the best way I could answer your question directly and as honestly as I can.

Mr. SISK. I appreciate your comments.

This bill does not go against an optometrist being employed by a firm to take care of that firm's employees. There are some cases in this country where many large corporations have their own medical set-ups, and this, of course, is not what we are talking about. We are speaking of corporations for profit. The profit is from pulling in the public, the general public. I am sure you are aware of that from the hearings thus far.

Dr. HEATH. The Department of Public Health, let me say, feels that this is bad and should not be permitted if they were called upon to justify such.

Mr. SISK. I realize that.

I thank you very much for your appearance here this morning. We appreciate your patience. I am sorry that the hearings have gone on as long as they have; however we have tried to give all the time necessary to everyone.

Thank you Mr. Moyer, for your statement.

Mr. MOYER. Thank you.

Dr. HEATH. It was a pleasure to be here before you.

Mr. SISK. It has been called to my attention that we do have two witnesses left. At this time I would like to call on Mr. Albert E. Schoenbeck, representing the Missouri Optometric Association, Inc., of St. Louis, Missouri.

We shall be glad to hear from you now.

I might state that time is getting away. We do not want to restrict you in your presentation, but if you desire to summarize it, your entire statement will be made a part of the record.

You may handle it as you desire.

STATEMENT OF ALBERT E. SCHOENBECK, COUNSEL, THE MISSOURI OPTOMETRIC ASSOCIATION, INC., ST. LOUIS, MO.

Mr. SCHOENBECK. Mr. Chairman and members of the Subcommittee No. 5 of the House District of Columbia Committee:

On behalf of the Missouri Optometric Association, may I express the Association's thanks for this opportunity to appear before you in support of H.R. 1283.

My name is Albert E. Schoenbeck. I am an attorney-at-law, engaged in the general practice of my profession in the city of St. Louis. I am counsel for the Missouri Optometric Association, and have served in that capacity for 26 years.

During those years I have had the opportunity to become acquainted with the optometric profession, its members, the invaluable work optometry is performing in the field of eyecare for the public.

By way of summary of my statement, may I say that I have become familiar with the fact that the optometry laws of the various States have been strengthened through the years, both by amendments to the statutory law and also by interpretations of the courts of individual States. For example, the laws of the State of Missouri have been strengthened by legislation on five separate occasions and also by court decisions.

It is my understanding that the law in the District of Columbia has remained substantially unchanged since 1924, and I believe it has become apparent, as I have listened to these hearings, that there is a great concern on the part of the members of the Subcommittee to see to it that the provisions of the District of Columbia law now be brought up to date and made similar to the laws and regulations that control the practice of optometry in other States of the nation.

Basically, one of the provisions of this bill would eliminate the exploitation of public need for visual care by unlicensed laymen and corporations.

I was particularly impressed this morning by the discerning questioning by Congressman Jacobs of Indiana, because I believe that he was getting to the very heart of the matter. I think that he was coming to the very crux of this bill.

This bill would prohibit laymen and corporations from engaging in the practice of optometry by hiring optometrists to work for them. It will assure the public that, primarily, the optometrist's allegiance is to his patient and that his primary loyalty is not to an unlicensed layman or to any corporation whose primary motive is to sell eyeglasses.

And Congressman Jacobs put it very well when he said that he who pays the fiddler calls for the tune.

In this connection, may I say that if the District of Columbia comes along and prohibits the practice of optometry by unlicensed laymen and by corporations, it will be getting itself in line with the general body of American law throughout the United States, and this general body of law is stated very succinctly in American Jurisprudence which is, of course, the encyclopedia on law, where it states:

> It is generally held that in the absence of express statutory authority, a corporation may not engage in the practice of optometry either directly or indirectly through the employment of a duly registered optometrist.

Now, there was some questioning going on this morning in connection with the King Optical Company.

Mr. Chairman, I have here what purports to be a copy of the minutes of the meeting of the general membership of the National Association of Optometrists and Opticians, Inc. Dr. Rowe represented them here this morning. This is a meeting that was held on February 15, 1961. And Mr. Ritholz was present at that meeting. This is the same man who later served five years in the penitentiary in the state of Michigan. And it is interesting, in these minutes, to note that Mr. Ritholz reviewed the finances of the Association and volunteered to help in raising the funds necessary to get the public relations program under way. Subsequently, the question of electing a president and an assistant treasurer came up. Mr. Ritholz was nominated and unanimously elected as assistant treasurer.

Further, a resolution was made and carried that the disbursing of all of the Association's funds should be subject to the approval and the countersigning of the checks by Mr. Ritholz. Such checks carried two signatures, one signature by an Association representative and the second one the signature of Mr. Ritholz.

I am somewhat familiar with the Ritholz operation in some of the states, particularly in the state of Missouri where they operated the King Optical Company, registered under a fictitious name in that state.

It was argued in the Supreme Court of Missouri, on the 29th day of September. It was a suit that Robert Bressler and others brought against the State Board of Optometrists. They were trying to set aside the optometric rule in the state of Missouri which would strike at the subterfuges which King Optical Company, one of the key members of the National Association of Optometrists and Opticians, were engaging in. What are they doing there? They are guaranteeing to an optometrist a certain amount of money that he will make per week. They go in and they lease the premises, and then they partition off a little cubbyhole for an optometrist and put him in this little cubbyhole. This is based upon the depositions which I will be happy to make available, the depositions of the men involved, the optometrists employed by King and Lee, and so on. And then, what do they do? To get around the law, they agree, supposedly, to pay some rent to King Optical Company, but instead of that, what they do, they send a check to King at Chicago, and they pay the telephone bills in their own name, and then the Ritholz organization, the King Optical Company, sends back a cashier's check to Missouri reimbursing them for the amount of the rent and the telephone bill and all of the other expenses.

This goes to the question of who controls the optometrists. This is the type of corporate or lay practice of optometry that this bill is designed to get at.

And I say, again, it goes to the very discerning observation of the Congressman from Indiana in his statement that he who pays the fiddler calls the tune.

And the depositions in that case can be made available—the sworn testimony.

Mr. SISK. A copy of that will be placed in the Subcommittee's files for examination purposes, but not for inclusion in the record.

Mr. SCHOENBECK. Thank you. May I make one or two other observations with regard to some of the charges that have been leveled against this bill?

Something has been said to the effect that this bill would create a monopoly or would create guidelines. That just is not accurate. This bill will not prevent anyone from selling prescription eyeglasses, dispensing opticians may continue to operate—dispensing opticians may continue to sell eyeglasses. They are specifically exempted by section 9, subparagraph C and also subparagraph E(6). They are not only wearing a belt but are wearing suspenders there.

There are two specific provisions at pages 13 and 15 which make it clear that the optician will be able to continue to sell prescription eyeglasses; that is, the dispensing optician.

Then, there has been some observation—and in this connection, may I say that I was interested in the concern of Congressman Horton on Monday morning, when he was speaking of an optical company.

Now, for the sake of the record, may I say that most of the optometrists throughout the United States—perhaps, not most, but I will say a great, perhaps almost, majority of them obtain their frames and their lens from Bausch and Lomb. They supply a great number of them. And there is nothing in this bill that in any way is going to work to the detriment of Bausch and Lomb Optical Company.

Optometrists, historically, have furnished to the patient a visual care. The patient goes to the optometrist for his examination. In the event it is determined that the patient needs glasses, the optometrist furnishes those glasses. Where does he get them? He gets them from Bausch and Lomb, from American Optical Company, and from others, from the large optical supply houses, and then the optometrist furnishes those to the patient after checking them, as a part of his professional service. And so this ought to be very clear in this connection.

The optometrist will permit the patient to pay the supply house direct, as is done in some prepaid business programs or as a convenience to the patient, to pay the optometrist, or the patient may, if he so desires, take the prescription to an optician, physician, or an optical store.

And so the ethical optometrist is charging for his time, for his knowledge, his skill. He is no more an agent in the selling of eyeglasses than a dentist who is engaged in doing dental work selling a pair of dentures. He furnishes the eyeglasses as a part of his unified service to the patient, just as the dentist supplies the denture as a part of his professional services to the patient.

There has been some concern expressed that the optometrist was trying to get over into the field of the practice of medicine. Here, again, I would say that the bill itself destroys any thought of that

kind, because Section 9, subsection F, at page 15, makes it very clear that nothing in this Act shall confer that right, by the use of drugs and medicines, or otherwise, and so forth.

And so we feel that this, again, is an undue concern.

Basically, what this bill would do would be to make optometry in the District of Columbia that which it already is in every other state where the question has come before the courts, and that is to recognize it as a profession. And in this connection, I would call to the attention of the Subcommittee the language of the Supreme Court of the United States in 1955 in the case of Williamson versus Lee Optical Company of Oklahoma, Inc., in which the Court said:

> We see no constitutional reason why a state may not treat all who deal with the human eye as members of a profession who should use no merchandising methods for obtaining customers.

We believe that if this bill as prepared by the Congress and as introduced is enacted into law it will go a long way towards affording to the residents of the District of Columbia the same protection and the same fine standard of care as has been enjoyed by the residents and citizens of other states.

That concludes my statement, Mr. Chairman.

(The prepared statement submitted by Mr. Schoenbeck reads in full as follows:)

STATEMENT OF ALBERT E. SCHOENBECK, COUNSEL FOR THE MISSOURI OPTOMETRIC ASSOCIATION, INC.

Mr. Chairman and Members of Subcommittee Number Five of the House District of Columbia Committee:

On behalf of the Missouri Optometric Association may I express the Association's thanks for this opportunity to appear before you in support of H.R. 1283.

My name is Albert E. Schoenbeck. I am an attorney-at-law, engaged in the general practice of my profession in the City of St. Louis. I am counsel for the Missouri Optometric Association, and have served in that capacity for twenty-six years.

During those years I have had the opportunity to become acquainted with the optometric profession, its members, the invaluable work optometry is performing in the field of visual care, and with some of the problems affecting the eye care of the public.

A study of the optometry laws of the individual States and of the Court decisions interpreting those laws shows there are substantial similarities in the laws of most States and shows there have been numerous changes in the law to upgrade and safeguard the visual care of the public.

The Missouri Optometry law, which first provided for State examination and licensure of optometrists, was adopted in 1921. Since that time it has been amended, improved and strengthened by the State legislature on five occasions. The Missouri courts, interpreting the law, have updated and strengthened the law on additional occasions.

It is my understanding that the law pertaining to the practice of optometry in the District of Columbia has remained substantially unchanged since 1924. There have been significant changes in visual care in the past 43 years and in the type of regulation and control needed to protect the vision of the public. H.R. 1283 will supply that need.

It seems to me that H.R. 1283 proceeds on three basic premises:

First, that protection of the visual care of people of the District is all important;

Second, that optometry, as the profession serving the largest number of people with visual problems, should be regulated in such a manner as to afford maximum protection for the public; and

Third, that the taint of commercialism and practices of the market place should be eliminated from this important area of health care.

Many of the provisions of H.R. 1283 which would update the provisions of the Code of the District of Columbia pertaining to the practice of optometry have long been the established law in many States, including Missouri.

Let us take a few examples. H.R. 1283 would eliminate price-cost advertising and other bait-advertising techniques. Since 1947, it has been unlawful in Missouri for an optometrist to advertise "prices or terms for optometric services." If an optometrist does so in Missouri, his license may be suspended or revoked. The reasons that suggest the impropriety of a physician's advertising his price for performing an appendectomy, or for a lawyer's advertising his price for filing a divorce suit, are equally valid and applicable to an optometrist's advertising his price for performing an eye examination. It makes no more sense to permit a dentist to advertise the price of dentures than to permit an optometrist to advertise the price of conventional eyeglasses or contact lenses. As the dentist supplies the dentures as part of his professional services, the optometrist supplies the eyeglasses or the lenses to the patient as part of his professional service.

H.R. 1283 would make it clear that the acts of prescribing, fitting or adapting contact lenses to the human eye may be performed only by optometrists or by physicians. By decision of the State Supreme Court this has been clear in Missouri since 1963, when the Court held squarely that the fitting of contact lenses constitutes the practice of optometry in the State. Surely it is in the public interest to see to it that the delicate task of fitting contact lenses is entrusted to only qualified optometrists and physicians, and to prohibit unlicensed laymen from engaging in the practice.

H.R. 1283 proceeds on the premise that optometry is a profession and should be freed from the taint of commercialism and the practices of the market place. As a Missouri Appellate Court said 14 years ago: "It (optometry) has become one of the important professions and because of this has received the attention of our legislative body, which has surrounded its practice with certain requirements." (State ex rel. Schneider's Credit Jewelers, Inc. v. Brackman (1953), 260 S.W. (2d) 800).

In 1955, the Supreme Court of the United States declared:

"We see no constitutional reason why a state may not treat all who deal with the human eye as members of a profession who should use no merchandising methods for obtaining customers." "*Williamson vs. Lee Optical of Oklahoma, Inc.* (1955) 348 U.S. 483, 99 L. ed. 563, 75 S. Ct. 461.

Here is reason enough to get the optometrist out of the department store, the supermarkets and the tire shops. The vision care of the patient will be better served when a doctor-patient relationship can be conducted in the doctor's office, free from the pressures of merchandising methods in which sales volume is all important.

H.R. 1283 would eliminate exploitation of the public need for visual care by unlicensed laymen and corporations. It will prohibit laymen and corporations from engaging in the practice of optometry by hiring optometrists to work for them. It will assure the public that the optometrist's primary allegiance is to his patient, and that his primary loyalty is not to an unlicensed layman or corporation whose primary motive is to sell glasses.

This is in accord with the general body of law stated in *American Jurisprudence* as follows:

"It is generally held that in the absence of express statutory authority a corporation may *not* engage in the practice of optometry either directly or indirectly through the employment of a duly registered optometrist." 13 *AM. Jur.*, Corporations, Section 837.

So on behalf of the Missouri Optometric Association, may I urge your favorable consideration of H.R. 1283. Its adoption will give to the residents of the District of Columbia safeguards in the field of vision care that the residents of many States have long enjoyed. It is legislation that is needed in an important field of public health.

Mr. SISK. Thank you very much, Mr. Schoenbeck for a very concise statement.

I appreciate very much the remarks that the gentleman made, particularly with reference to the questioning by my colleague from Indiana this morning. Actually, it got into what I believe is the crux of the question—a desire to improve the eye care of the people in the District of Columbia.

I do not have any questions.

Thank you very much.

Mr. SCHOENBECK. Thank you.

Mr. SISK. We have a request from a witness desiring to be heard, Mr. Leo Goodman, Chairman of the Legislative Committee of the District of Columbia Public Health Association.

We will be glad to hear from you now.

STATEMENT OF LEO GOODMAN, CHAIRMAN, LEGISLATIVE COMMITTEE OF THE DISTRICT OF COLUMBIA PUBLIC HEALTH ASSOCIATION

Mr. GOODMAN. Mr. Chairman, I am happy to state that my statement is very short, and I will present it to you. It represents the view of the District of Columbia Public Health Association, a voluntary membership organization, and I am here to oppose the enactment of this bill under instructions of its president.

The bills relating to and in behalf of some of the optometrists in the District of Columbia ought not pass.

These bills in contrast to S. 260 which was heard in the Senate last February are in direct contradiction. The Hart bill, "The Medical Restraint of Trade Act," was endorsed and supported by many organizations representing the consumer interest, in contrast to optometry bills pending before this committee which are endorsed by some optometrists are opposed by the Medical Society of the District of Columbia and are clearly against the public interest. The fundamental effect of the enactment of any one of the pending bills would be to double or triple the cost of eyeglasses to that portion of the population in the District of Columbia which could least afford it.

If the purpose of these bills were to improve the quality of visual care, it would provide a simple program. The elements of a quality improvement bill would necessarily include the following points:

(1) A mandatory 21-point refraction;

(2) A requirement that all glasses be made exclusively of first quality lenses;

(3) A program for testing and licensing of all opticians;

(4) A prohibition of those who are not licensed from assisting optometrists and others in the manufacture of glasses and the servicing of patients.

It is significant to me representing a public health interest group that these items are not provided in the bills proposed. If the problem to be dealt with here is the control of advertisements, there are other and more direct ways than provided by the sections of the various bills pending here. They have been introduced to provide a monopoly practice in this area. I can only repeat my opening statement these bills ought not pass.

Mr. SISK. Thank you very much. You say you are chairman of the Legislative Committee of the District of Columbia Health Association. What is the District of Columbia Public Health Association?

Mr. GOODMAN. We are a local affiliate of the American Public Health Association with practically 1200 members interested in public health matters and have appeared before various branches of this committee in regard to a number of health matters that have come before the District of Columbia Committee this year.

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Mr. SISK. Who composes the body of the organization?

Who are some of its members?

Mr. GOODMAN. There are many different groups. There are public health workers, doctors, nurses.

Mr. SISK. Generally, medical doctors, medical people?

Mr. GOODMAN. Medical-oriented people, associated with health matters.

Mr. SISK. You make the statement which apparently indicates that you were in support of the Hart bill S. 260. Is that correct?

Mr. GOODMAN. No, we did not testify in connection with that. We were struck by the contrast between the testimony as given in February of this year on that bill and——

Mr. SISK. Were you opposed to the Hart bill?

Mr. GOODMAN. No. We did not participate.

Mr. SISK. In other words, neither you nor your organization had a position on that bill?

Mr. GOODMAN. We did not take a position on the Hart bill.

Mr. SISK. I remember very well introducing the president of my own home-town county medical society to testify in opposition to the provisions of the Hart bill. He happened to be an ophthalmologist. I was just a little bit curious as to whether you or your organization had taken a position on the Hart bill.

Mr. GOODMAN. No, sir, we do not or we did not.

Mr. SISK. Thank you, Mr. Goodman, for your appearance here this morning.

Mr. GOODMAN. Thank you.

Mr. SISK. Without objection, the statement of Mr. Charles M. Babb, representing the Texas Optometric Association, will be made a part of the record at this point.

(The statement referred to follows:)

STATEMENT OF CHARLES M. BABB, ATTORNEY AT LAW, 1005 CAPITAL NATIONAL BANK BUILDING, AUSTIN, TEXAS, FOR THE TEXAS OPTOMETRIC ASSOCIATION

Mr. Chairman and members of the committee, the officers and directors of the Texas Optometric Association have asked me to express their gratitude to this Subcommittee for this opportunity to be heard in support of H.R. 1283.

Texas optometrists are concerned that Washington, D.C. is practically the only place left in the Nation where their profession is permitted to be practiced on the lowest levels of ethics and professional standards. For more than a quarter of a century the Legislatures and Supreme Courts of practically every State in the Union have repeatedly recognized optometry as one of the important health professions and upheld its regulation on the very highest ethical standards in keeping with those of other learned professions. See attached excerpts from State Supreme Court opinions. While Congress in other legislation has repeatedly recognized the vital impact of the practice of optometry upon the public health, here in the District it continues to permit the profession to be exploited and commercialized by the optical products industry which measures its profits by the volume and content of optical prescriptions. As Americans, the members of the Texas Optometric Association protest the continuation of this National eyesore and respectfully implore this Subcommittee and the Congress to let their profession in this District reflect the ethical and professional standards long and firmly established in practically every State in the Union. Unless the Congress acts now, the eyes of the world on this City will continue to see a distorted image of the real concern for human vision found in the rest of the country.

The enactment of H.R. 1283 during the administration of President Johnson will be of special significance to the optometrists of Texas, for it was through the leadership and advocacy of his Father, the Honorable Sam Elay Johnson, as a member of the House of Representatives of the 37th Texas Legislature in 1921,

that Texas first recognized optometry as a health profession by enactment of its original Optomerty Act. For many years in Texas it was the privilege of some of the members of the Texas Optometric Association to have the President's Father and President Johnson as their patients. We respectfully submit that it is altogether fitting that this measure should become law bearing the signature of Lyndon Johnson.

As an added Texas interest let me also point out that one of your colleagues, the Honorable Jake Pickle, Congressman from the Tenth District of Texas, for five years served as Executive Secretary of the Texas Optometric Association, and I highly recommend him to this Subcommittee as an expert in his own right on the profession of optometry and well acquainted with the need for high ethical and professional standards in the practice of optometry such as those established by H.R. 1283.

Is H.R. 1283 in the best interest of the public? Does the visual health and welfare of the public require such strict regulation of the profession of optometry as that contained in H.R. 1283? Legislatures of practically every State in the Union have considered these same issues and answered repeatedly and resoundingly—*YES!* The highest courts of practically every State have thoroughly considered these questions and repeatedly and forcefully answered—*YES!* The long chain of affirmative decisions on these issues contained in statutes, administrative regulations and court decisions for other thirty years are matters of public record and no longer subjects of debate scarcely anywhere except in the District of Columbia.

Why is it that in practically every American jurisdiction optometry is recognized by law as a profession, and its practitioners required to adhere to high standards of ethics and professional conduct? Certainly not to flatter the dignity of optometrists. It is because State after State has discovered one unvarying characteristic about optometry—either government regulates the profession in the interest of the public or the commercial optical chain operators will regulate it, run it and thoroughly control optometry and optometrists for their own profit.

Experience in this country has demonstrated that antiquated optometry licensing laws are inadequate to maintain the professional freedom and independence of the practitioner, to assure the efficacy of the optical prescription or safeguard the confidential relationship between doctor and patient. In the early 1920's, when the District's and many of the State licensing laws were first enacted, eyeglasses were not a popular item. Instead of being stylish they were strictly functional appliances which the public sought to avoid if at all possible. Today, many people wear glasses to be stylish or because they think it improves their appearance. Optometric science developed the contact lens so that now they can be worn with ease and comfort by most people. Eyeglasses, stylish frames and contact lenses have become highly merchantable items and extremely attractive to commercial interests seeking to reap profits from millions of dollars in sales annually to an eyewear conscious public.

However, as this market began to grow, the optical merchants had one big problem. Most people buy glasses on a prescription. Before there can be a prescription there must be a doctor, an optometrist or a physician, the only two health care practitioners licensed by law to practice optometry. In such a rapidly expanding market, the doctor became the fly in the optical ointment. The optical business world, sitting on top of an exploding market for lenses and frames, which they saw strictly as merchandise, was frustrated by doctors who wasted time with talk of professional ethics, adequate eye examinations, a duty to the patient not to prescribe glasses unless really necessary and refusal to solicit patients by advertising. What the commercially minded optical industry wanted was sales volume. To get it the doctor would have to prescribe more often: so, it became obvious to the titans of the optical industry that the doctors must be dealt with and deal with them they did. And thus there began what has become known as the optical rebate or kickback. At that time optometry had not become sufficiently prominent to deserve the attention of the optical kings, so they concentrated their financial arrangements on the medical doctors, the oculists.

The optical rebate or bickback system helped sales of glasses tremendously. With the average rebate amounting to almost 50% of the sales price, the oculists suddenly discovered that more of their patients needed glasses. Also, the price of glasses went up. Under medical ethics the doctor would have been concerned that his patients not be robbed, but now the higher the price the greater the rebate.

Just before World War II such practices came to the attention of the Justice Department resulting in six antitrust suits brought against several of the largest

American optical manufacturers and wholesalers and also naming as defendants 75 individual oculists as representative of some 3,000 ocuplists as a class throughout the United States. These are commonly known as the optical rebate cases. The government's evidence revealed that the 75 named doctor defendants garnered some $783,000 from the defendant companies in a single year. It was never determined what the total take of all 3,000 doctor defendants amounted to but, assuming that on the average they fared equally well as the 75 named defendants, it would have amounted to more than $30,000,000 a year out of the pocketbooks of the American public.

Although these cases were terminated by a judgment in 1946, the threat of optical rebating, in new and more subtle forms, remains a threat today not only in medicine but also optometry, and we commend the author of this bill for including Sec. 8(a)(7) which makes it unlawful for the doctor writing the prescription, "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 the person writing a prescription any part of the sum paid or other valuable considerations received by such third person for the filling of such prescription."

While optical rebates and kickbacks must be guarded against, they never became a widespread technique in optometry. With the filing of the optical rebate cases the commercial optical interests looked around for a safer and cheaper way to keep sales booming. They found it. By this time optometry was emerging as a leader in the field of visual care. Each year there were more and more optometrists licensed, and they were seeing more and more patients. However, as the optical merchants soon discovered, unlike state laws regulating medicine, the optometry laws in most of the states were weak and untried. The profession of optometry was not as powerfully organized as medicine and didn't have the control over its members such as the medical associations exercised over physicians. They didn't need to rebate anything to the optometrists. They could control them.

In many states they could form corporations and hire optometrists to turn out prescriptions as fast as they wanted them to. Or, they could find them a puppet optometrist, set him up in practice under an assumed name, open up as many offices as they wanted, have their puppet doctor hire other optometrists to staff the other offices and establish a chain optical operation. Also, through subterfuge lease and lease back arrangements they could legally set optometrists up along the aisles of department or jewelry stores and operate "optical departments" just like the home appliances department. Under the weak laws prevailing at the time and without any regulations to stop them, some optometrists without regard for the standards and ethics of their profession, set up such commercial operations and became known as commercial optometrists to distinguish them from their professional brethern who were unwilling to abandon their professional ethics or their patients to enter the competition for commercial sales of optical products.

But the real bonanza for the commercial operators lay in the lack of enforceable restrictions in most of the early optometry laws on soliciting patients by all forms of advertising. Under the rebate-kickback arrangement with the medical doctors, getting the patient to the doctor for glasses was relatively slow since most of the state medical practice acts took a dim view of medical doctors stimulating their practice by advertising. This was, of course, based on the "old fashioned" theory that those suffering from disease or illness would fare best at the hands of doctors who must stand or fall on the merits of their services and build their practices on the recommendations of satisfied patients, rather than prospering from suffering humanity lured to their offices by baseless promises, exaggerated claims and selflaudatory advertising. This has been well put by one of our State Supreme Courts in these words:

" * * * it is not likely that a physician would hire an agent to drum up patients for him, only to say to them: 'Go thy way: thou dost not need a physician.' A physician who has secured a patient by means of a hired agent has paid a certain sum to obtain his patient, and is under a strong temptation to put him through a course of treatment, whether he needs it or not, in order to get him money back and make a profit on his investment. And therein lies a danger to the public from such a practice. * * *." *Thompson* v. *Van Lear*, 92 S.W. 773, 775 (Ark. 1906)

Unrestrained by such limitations in most of the optometry laws of that day, the commercial optical interests had a field day. No longer need they wait for the potential patient-customers to decide they needed glasses. Get them to the optometrist by constantly reminding them in newspaper ads, on the radio and

television that they might be going blind with glaucoma. And don't forget the children. With the population explosion statistics showed there were millions to be made in sales of glasses to children. Tell the parents their children may be suffering from any variety of eye diseases which might cause blindness. Of course. the fact that the doctor knows such an eye examination is no assurance that glaucoma, cataract or many other diseases are not present did not deter the optical merchants. So what! The patient would never know the difference—until he went blind! And along with the scare technique goes the appeal to save money. Unfortunately, there are many families in this country to whom the matter of a dollar or even less makes the difference in health care or no health care. So the promise of glasses at "lowest possible price" or at a low fixed price has a powerful appeal to all budget minded families but especially to the poor who may be suffering from defective vision. Here again, the credulous, unsuspecting patient is at the mercy of whoever supplies the glasses. The patient has no way to judge whether he has been cheated or not. The price may be right but the prescription may be wrong. The glasses may be comfortable, they may even enable the patient to "see better," and at the same time be doing serious damage to his vision.

Needless to say, under these conditions, the sales volume of eyeglasses, contact lenses, etc. broke all records. As the commercial control of optometry spread across the country state by state, the issue became—whether the commercial optical interests were going to control and regulate the profession and manipulate the doctors for their own financial benefit, or the states were going to control and regulate the profession to make sure the public was honestly and competently served. As I see it, this is the issue which this Committee must resolve in approving or rejecting this bill. The overwhelming majority of state legislatures have considered and passed optometry laws substantially similar to the Act now proposed for the District. In other states, such as Texas, legislatures have delegated to the optometry boards the responsibility of regulating the profession in the public interest.

The evils inherent in government's failure to establish and enforce ethical and professional standards in the practice of optometry are common to all areas of the country. That such evils do exist when government fails to regulate the profession is a matter of public record, the most accessible being appellate court opinions of our State Supreme Courts describing in lurid detail how patients fare in a commercialized health profession. In February of this year the Texas Supreme Court upheld the validity of a Texas regulation of optometry requiring optometrists to practice only in the name under which they are licensed, forbidding rebates, fee-splitting and other unethical practices. These same practices are forbidden by H.R. 1283. In its opinion the Texas Supreme Court noted the necessity for such regulations was supported by "* * * the record which abounds with evidence of the specific evils the rule was designed to correct." *Texas State Board of Examiners In Optometry* v. *Ellis Carp, Et. Al.*, 412 S.W. 2d 307 (Tex. 1967). The Court then proceeds to describe and analyze some of those evils. For the convenience of the Subcommittee a copy of that opinion is attached hereto. This is typical of optometry regulation cases. The records and opinions generally abound with evidence of what happens to patients in an unregulated health profession.

On behalf of the Texas Optometric Association it is respectfully urged that the opportunity for such evils to continue in the District be ended, insofar as the law can do so, by the enactment of H.R. 1283.

I have been asked by the President of the Texas Optometric Association to offer all aid and assistance to this Subcommittee in its consideration of H.R. 1283 and to this purpose the services and facilities of the Association, including its legal counsel, are available to the Subcommittee on request.

APPENDIX

ARIZONA

"Dentistry and optometry both belong to the healing arts, and the reason for regulating one is equally applicable to the other. The following observations might as well have been made of optometry: '* * * Dentistry is a *profession* having to do with public health, and so is subject to regulation by the state. * * *'". *Funk Jewelry Co.* v. *State*, 50 p. 2d 945 (Ariz. 1935)

ARKANSAS

"There can be little doubt that the General Assembly had power to declare optometry a learned profession, and this it has done on two occasions * * *."

"* * * What the measure prohibit is employment of an optometrist by one who is not licensed. In other words, a layman may not engage in the profession by employing a licensed optometrist." *Melton* v. *Carter*, 164 S.W.2d 453, 455, 457

CALIFORNIA

"The error of petitioner herein is that he considers and refers to the science of optometry as the 'business' of optometry, and that the license fee of $12 is imposed as a tax for revenue purposes, and that such license fee, being imposed upon a business is limited to the amount necessary for licensing, including reasonable compensation for supervision over the particular industry.

"There can be no question but that the practice of optometry is more than a business: It is a profession relating to the public health, and as such, is particularly subject to state control."

"The regulation of such activity is not for the benefit of the licensee but for the protection of the state * * *."

"The right to practice a learned profession comes from the state and is held subject to conditions implied by the state and may be taken away for noncompliance with such conditions." *Pennington* v. *Bonelli*, 59 p. 2d 448 (Calif. 1938)

CONNECTICUT

"* * * the patient who resorts to an optometrist for advice and help is entitled to the same undivided loyalty that he should receive from a physician." *Lieberman* v. *Board of Examiners in Optometry*, 130 Conn. 344, 349 (1943)

FLORIDA

The Florida Board promulgated rules limiting the size and number of signs, prohibiting the display of eyeglasses or eye signs; prescribing the contents of a professional card; prohibiting display advertising or window displays, etc.

In upholding the Board's rules, the Supreme Court of Florida said that the power to make rules and regulations not inconsistent with the provisions of the law governing the practice of optometry "involves a very broad discretion. Each and every one of the rules complained of has been examined; and while some of them may be said to explain, expand or expound the statute, we cannot say that they are not contemplated by it or comprehended in the power conferred."

"It is * * * our view that the rules * * * are within the express or implied authority of the board * * * and that they are not only valid but necessary to effectuate the full intent and purpose of the law." *Fisher* v. *Schumacher*, 72 So. 2d 804 (Fla. 1954)

GEORGIA

"The only questions the writs of error present for decision are whether or not the corporate defendant is unlawfully practicing the profession of optometry by employing and paying the defendant Gold, a licensed optometrist, to examine eyes of persons for it when no charge is made to such persons for the service he renders them and whether or not the defendant Gold is violating the rules and regulations which the board of examiners in optometry adopted pursuant to an act which was passed in 1963 (Ga.L.1963, p. 214) by accepting employment from the corporate defendant to render such optometric services for it.

"These two questions are fully answered in the affirmative by the unanimous decision which this court rendered on October 10, 1963, in *Pearle Optical of Monroeville, Inc.* v. *State Board of Examiners in Optometry*, 219 Ga. 364 (133 SE2d 374); and since the opinion in that case so exhaustively deals with and settles the questions presently before us for review adversely to the contentions of the plaintiffs in error, no further discussion of them is here deemed necessary and the motion to overrule that case, after being fully considered, is denied. A ruling different from the one here made is not required by the decision this court rendered on December 4, 1936 in *Georgia State Board of Examiners in Optometry* v. *Friedmans' Jewelers*, 183 Ga. 669 (189 SE 238); and this is true for the reason that the law respecting optometry has been materially changed since that case was decided and optometry is now by statute expressly declared to be a learned profession and not merely a mechanical art as it was classified

and deemed to be when Friedmans' case was decided. See Ga. Laws 1956, p. 94, as amended by Ga. Laws 1963, p. 214." *Lee Optical of Georgia Inc.* v. *Georgia State Board of Examiners in Optometry*, 138 SE2d 165 (Ga. 1965).

ILLINOIS

"There is no argument but what the practice of optometry has an effect on the public health and welfare sufficient to justify that practitioners be licensed, and from such fact we believe it is reasonable for the legislature to prescribe the use of the license which they have suffered a registrant to receive."

"While at first blush it would seem that Sections 13(k), (l) (m) appear to be an arbitrary interference with the right of one to practice optometry, such thoughts are dispelled when the relative aspects of public health and welfare are considered. * * * the legislature is not dealing with traders in commodities but with the vital interest of public health in the treatment of bodily ills."

"In addition, the community is concerned in providing safeguards not only against deception, but against practices which tend to demoralize the business or profession by forcing its members into unseeming rivalry, and which would tend to enlarge the opportunities of the least scrupulous." *Klein* v. *Department of Registration and Education*, 105 N.E.2d. 758 (Ill. 1952)

INDIANA

"The practice of optometry bears a close relationship to the health and welfare of mankind. The eye is a delicate organ closely connected with intellectual, nervous, and physical functions. This fact brings the practice of optometry within the scope of legislative supervision through the exercise of the police power. The principal purpose of the statute is to give protection to the public from quacks, and persons or firms not licensed, but who, as non-resident manufacturers of eyeglasses, etc., employ licensed optometrists to conduct the manufacturer's business in this State for profit." *Bennett* v. *Indiana State Board of Optometry*, 7 N.E.2d 977 (Ind. 1937)

IOWA

"We might suggest that there is no difference, under our Code, in the law applicable to the practice of dentistry and optometry, and that the general rules laid down by the courts are alike applicable to these as well as all other of the learned professions." *State* v. *Kindy Optical Co.*, 216 Iowa 1157, 248 N.W. 332 (1933)

KANSAS

"Defendant carried on an extensive advertising campaign in the local newspapers. There were usually rather large display ads. They would devote considerable space to the jewelry business of defendant but always a portion would be devoted to the optical business.

* * * * *

"In practically every authority we have examined on the question the courts have been compelled to examine and consider a course of dealing such as we have here. They have universally held that a lease arrangement such as these parties entered into is a subterfuge." *State v. Zale Jewerly Company*, 298 P.2d 283 (Kan. 1956)

KENTUCKY

"Our statutes, therefore, place the practice of optometry upon a rather high professional plane." *Kendall v. Beiling*, 295 Ky. 782, S.W.2d 489 (1943)

LOUISIANA

"These courts [in other States] have decided that the statutes are a reasonable exercise of the police power; they prevent 'bait advertising' which attracts the unwary to purchase inferior glasses; eliminate the temptation to, and the pressure upon, customers that result from the assurance that no more than a named price will be charged; protect an incautious and unwary public from being misled and deceived; prevent the increase in sales and the incidental harm that come from unfitted glasses; eliminate to some extent poor quality and poor workmanship which naturally result from the desire to sell spectacles in quantity at a low advertised price for the purpose of underselling competitors." *State v. Rones*, 67 So.2d 99 (La. 1953)

MASSACHUSETTS

"In recent times abnormalities of the eye, like those of the teeth, have been found sometimes to indicate and often to result in serious impairment of the general health. The work of an optometrist approaches, though it may not quite reach, ophthalmology. The learning and the ethical standards required for that work, and the trust and confidence reposed in optometrists by those who employ them, cannot be dismissed as negligible or as not transcending the requirements of an ordinary trade. We cannot pronounce arbitrary or irrational the placing of optometry upon a professional basis." *McMurdo v. Getter*, 10 N.E.2d 139 (Mass. 1937)

MICHIGAN

"It overlooks the fact that optometry has become a real science devoted to the measurement, accommodation, and refractory powers of the eye without the use of drugs, thus superseding obsolete and archaic methods of fitting glasses. It has become one of the important professions, and for the preparation of its proper practice courses in optometry, physics, physiology, pathological conditons of the eye, the proper use of the retinascope, refractor, prisms, lenses, etc., are given as part of the cirriculum in many of our largest universities as well as colleges specializing in optometry." *Seifert v. Buhl Optical Co.*, 276 Mich. 692, 268 N.W. 784 (1936)

MINNESOTA

"The legislature need not enumerate what specific acts or omissions constitute unprofessional conduct since the phrase 'unprofessional conduct' itself provides a guide for, and a limitation upon, the exercise by the board of its power to revoke a practitioner's license * * *. The board is thereby empowered to declare as 'unprofessional' *only* such conduct as fails to conform to those standards of professional behavior which are recognized by a consensus of expert opinion as necessary for the public's protection. It follows that the board is not determining when and upon whom the delegated discretionary power is to take effect but is simply ascertaining the existence of a member's acts or omissions which, if they violate the accepted standards of professional behavior, automatically bring the law into operation by its own terms." *Reyburn v. Minnesota State Board of Optometry*, 78 N.W.2d 351 (Minn. 1956)

MISSISSIPPI

"The law contemplates that the controlling principle in the use of the State's franchise will be the eye of the patient, and its preservation, and not the eye of the employer in its scrutiny and search for profits.

"In other words, the conscience of the practitioner should guide him in his service, and not the company's cash register where the sales are rung up.

"Professional responsibility and the public welfare demand that the human eye, above all things, be held sacred, and in no sense an object of commerce in routine traffic of equipment purporting to be for its benefits.

"It is not thinkable that the State, after a scientific and studied examination of the applicant, would issue him a license, over its Great Seal, to go out and tamper with the human eye as with a commodity in the market place, and the wares which merchants buy.

"And when we think of the children, in increasing numbers, who are helpless in submission to this procedure when their sight is at stake, we lose patience with everything except fidelity to duty, and the highest altruism in providing what Nature requires in such delicate and vital situations.

"Surely an optometrist should be absolutely independent of everthing and everybody except his profession, and the people who confidently depend upon him to aid them in improving and preserving their sight." *State Board of Optometry v. Sears, Roebuck & Co.*, 57 So.2d 726 (Miss. 1952)

MISSOURI

"It can hardly be disputed that optometry has become a real science . . . It has become one of the important professions . . ." *State v. Brackman*, 260 S.W.2d 800 (1953, rev. on procedural grounds, 272 S.W.2d 297)

NEW JERSEY

"Thus by its very nature, the practice of optometry is subject to regulation for the protection of the public against ignorance and incapacity and deception and fraud, equally with the practice of ophthalmology and the other 'learned professions' * * *. The Legislature recognizes optometry as a profession calling for the exercise of scientific skill. * * *." *Ableson v. New Jersey State Board of Optometry*, 5 N.J. 412, 75 A.2d 867, 22 A.L.R.2d 929 (1953)

NEW MEXICO

"The Legislature of New Mexico enacted Section 67–7–13 [Optometry Act], supra, to protect its citizens against the evils of price-advertising methods tending to satisfy the needs of their pocketbooks rather than the remedial requirements of their eyes." *New Mexico Board of Examiners In Optometry v. Roberts*, 370 P2d 811 (N.M. 1962), affirmed in 374 U.S. 424 (U.S. 1963)

OHIO

"* * * it is specifically held that optometry is a profession under the statutes of Ohio * * *." *State v. Optical Co.*, 2 N.E.2d 601 (Ohio, 1936)

OKLAHOMA

"* * * This regulation is on the same constitutional footing as the denial to corporations of the right to practice dentistry. *Semler v. Dental Examiners*, [*infra*]. 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 that nexus may be too great for safety, if the eye doctor is allowed inside the retail store. Moreover, it may be deemed important to effective regulation that the eye doctor be restricted to geographical locations that reduce the temptations of commercialism. Geographical location may be an important consideration in a legislative program which aims to raise the treatment of the human eye to a strictly professional level." *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955)

OREGON

"The practice of optometry is undoubtedly one of the subdivisions of the practice of medicine, which have arisen in modern times by reason of the necessity for specializing. It would seem that the public has as much need to be protected from quacks and charlatans in optometry as in dentistry or any other subdivision of medicine. * * * One who consults an optometrist for ocular examination is entitled to the same undivided loyalty that he should receive from a physician. The fact that the optometrist is the employee of an optical concern whose main interest is the sale of optical goods tends to be a distracting influence which may adversely affect his loyalty to the interests of his patient."

"While it is true that an optometrist is not permitted by law to treat diseases of the eye, nevertheless his training enables him to diagnose pathological conditions, and his duty requires him to refer the patient to a practitioner who is qualified to treat such conditions. The fact that he is trained to diagnose pathological conditions in itself indicates that the optometrist is not a mere skilled craftsman or mechanic. His failure to diagnose a pathological condition, with resultant delay or neglect in proper treatment thereof, might result in serious impairment of a patient's eyesight, or even in blindness." *State v. Standard Optical Co.*, 188 P. 2d. 309 (Ore., 1947)

PENNSYLVANIA

"All those who have had any experience with eyeglasses, and, after a certain age has been reached, that number embraces the vast majority of the educated citizens of the State, know that an improper fitting or frame to glasses can destroy the therapeutic value of the prescribed lenses. Glasses which do not obey the axis prescribed by the optometrist or which tilt at an inaccurate angle can do as much damage to the wearer as striking ones eye against a door. It must be assumed that the legislature had in mind these possibilities when it acted legislation on the subject of eyeglasses. * * * To fit inferior lenses to

an already weakened or bruised organ of sight is like supporting a cripple with papermache' crutches." *Ullom v. Boehm*, 142 A. 2d 19.

SOUTH CAROLINA

"Suffice it to say that the legislature of this State, as we have hereinbefore suggested, has given due recognition to the professional status of the practice of optometry, and, so far as the protection of professional rights is concerned, has placed it in a parity with other professions charged with important duties to the general public." *Ezell v. Ritholz*, 198 SE. 419 (S.C., 1938)

SOUTH DAKOTA

"The cases and legislative enactments involved further reveal that as to physicians, surgeons, and dentists advertising in the usual sense, and except for the professional card provided by our statute for the optometrist, is almost universally prohibited. 'It would seem that the public has as much need to be protected from quacks and charlatans in optometry as in dentistry or any other subdivision of medicine.'" *Norwood v. Parenteau*, 63 N.W. 2d 807, 813 (S.D. 1954)

TENNESSEE

"The complainants are engaged in the practice of optometry in the City of Nashville and advertise in show-windows, by cars, neon signs, etc., various articles used in the practice of their profession. The Section of the Act herein assailed, the same being Section 43, is the only Section which affects them in their business or profession. It * * * expressly prohibits them from advertising eyeglasses, spectacles, ophthalmic lenses, or prisms, or frames, or mountings, etc., and confers upon the Board the authority to suspend, or revoke any license of any holder for any alleged violation of the Act." The entire Act was held constitutional. *Seawell v. Beeler*, 287 S.W. 2d 54 (Tenn. 1956)

TEXAS

"* * * The statute [Medical Practice Act] is the result of the Legislature's effort, in the exercise of the police power, to preserve and protect the public health. There is implied an intent to take note of the organs of the body. The eye is the organ of vision. In the eye there are many parts, each performing a distinct function, but all designed by nature to produce the sense of night."

"It seems obvious that defects of vision may result from disease of the eye and other organs of the body. It is conceded and the optometrist must discern that the impairment which he seeks to remedy by lenses is not consequent upon disease. It follows that, while the eye operates upon mechanical principles, it cannot be treated as a mechanism alone. Its vitality as an element of the human body cannot be overloked. Other organs of the body function upon mechanical principles; for example, the heart as a pump, the muscles as levers; but they, like the eye, are nevertheless organs of the human body, and each organ is, to a degree, interrelated with all others." *Baker v. State*, 240 S.W. 924 (Tex. 1921)

VIRGINIA

"The advertising of the sale of glasses with optometrical service at a price certain is apt to be used as a lure and bait to the unwary and as a means of deception of those who are attracted by a seemingly low price without considering the degree of skill involved. It tends to promote unfair competition against those skilled in the profession. The 'barker' and others who make their livelihood out of human gullibility cannot apply their talents to human eyesight without serious consequences. The Legislature undoubtedly had these evils in mind when it adopted the Optometrical Act in its present form. Reasonable Statutory regulation of advertising involving professional services is proper where, in the absence of such legislation, great evils will follow." *Ritholz v. Commonwealth of Virginia*, 35 S.E. 2d 210 (Va. 1945)

WASHINGTON

"It is difficult to overestimate the importance of good sight. The use of lenses to improve vision, is very great, and the prescribing of properly prepared glasses and the advice, in proper cases, that glasses are unnecessary are equally important. Incalculable harm may result from improper diagnosis and advice in con-

nection with these matters, or from the use of glasses not correctly ground." *State v. Superior Court*, 135 Pac. 2d 839 (Wash. Sup. Ct. 1943)

WEST VIRGINIA

"Vision is essential to the highest usefulness of the individual. The eye is proverbially a delicate organ. It is closely connected with intellectual, nervous and physical functions. Advice as to its care and prescribing for the correction of its defects by tests and examinations without the use of drugs is closely connected with health." *Eisensmith, et al v. Buhl Optical Co.*, 178 S.E. 695 (W. Va. 1934)

WISCONSIN

"We do not have to rest the constitutionality of the statute wholly upon the dentist case, supra. The evidence in this case shows that the advertising used by plaintiffs actually does operate to defraud the public. The customers of plaintiffs are mostly poor persons. The plaintiffs by their own testimony aim to advertise where their advertisements will reach 'workers, foreigners and negroes' particularly. They used the advertisement as a lure or bait, or as they call it 'an inducement' to draw such persons to their stores. The general nature of their advertising is shown by the photostatic copy of an advertisement. Note the following in the photostat: '$12 value $3.88;' 'at the low price of $3.88;' 'Get the glasses you need at a price you can afford'; 'No extra costs'; 'FREE'; 'No extra charge.' This on its face is dishonest advertising. It manifestly aims and tends to mislead the public within the rule of Semler v. Oregon State Board, etc., supra, and Commonwealth v. Ferris, 305 Mass. 233, 235, 25 N.E. 2d 378, and is therefore fraudulent advertising." *Ritholz v. Johnson*, 17 N.W.2d 590 (Wis. 1945)

Cite as 412 S.W.2d 307

TEXAS STATE BOARD OF EXAMINERS IN OPTOMETRY et al., Petitioners,

v.

Ellis CARP et al., Respondents.

No. A-11478.

Supreme Court of Texas.

Feb. 8, 1967.

Suit against Texas state board of examiners in optometry and certain of its members for judgment declaring invalid professional responsibility rule adopted by board. Judgment adverse to plaintiffs rendered by District Court, Dallas County, Dallas A. Blankenship, J., was reversed in part and affirmed in part by Dallas Court of Civil Appeals, Fifth Supreme Judicial District, 401 S.W.2d 639, and defendants petitioned for review. The Supreme Court, Pope, J., held that rules promulgated by board of examiners in optometry prohibiting fee splitting by licensed optometrist with unlicensed person and division of fees by treating optometrist with another optometrist and practice of optometry under assumed or trade names and requiring presence of optometrist at office with which his name is identified and at which he holds himself out as practitioner were not new and inconsistent provisions to Optometry Act and were consistent with one or more of its specific proscriptions and were valid.

Judgment of Court of Civil Appeals reversed and judgment of trial court affirmed.

Smith, J., dissented.

1. Physicians and Surgeons ⇐5(1)

Purpose of statute requiring, inter alia, that optometrist be licensed before he may practice and that he must evidence his identity and professional qualifications by registering and recording his license in any county in which he practices was to assure and protect personal and professional relationship between optometrist and his patient. Vernon's Ann.Civ.St. arts. 4556, 4561–4563; Vernon's Ann.P.C. arts. 735, 736.

2. Administrative Law and Procedure ⇐390
Physicians and Surgeons ⇐10

Rule of professional responsibility adopted by board of examiners in optometry prohibiting fee splitting by licensed optometrist with unlicensed person was specifically related to provision in optometry act prohibiting deceit or misrepresentation in practice of optometry and provision authorizing revocation of license when licensee directly or indirectly solicits patronage and did not state new or inconsistent grounds and was not in excess of board's delegated powers. Vernon's Ann. Civ.St. arts. 4556, 4563 and (b, h); Vernon's Ann.P.C. art. 773.

3. Administrative Law and Procedure ⇐390
Physicians and Surgeons ⇐10

Rule of professional responsibility adopted by board of examiners in optometry prohibiting division of fees by treating optometrist with another optometrist was relevant to provision in Optometry Act providing that board may refuse to issue or may cancel license if applicant or licensee is guilty of any fraud, deceit or misrepresentation and did not add new or inconsistent grounds to those provided in statute and was not in excess of board's delegated powers. Vernon's Ann.Civ.St. arts. 4556, 4563 and (b, h); Vernon's Ann.P.C. art. 773.

4. Administrative Law and Procedure ⇐390
Physicians and Surgeons ⇐10

Rule of professional responsibility promulgated by board of examiners in optometry prohibiting practice of optometry under assumed or trade names was relevant to provisions of Optometry Act and did not add new or inconsistent grounds thereto for refusal to issue license or for cancellation of license and was not in excess of board's delegated powers. Vernon's Ann.Civ.St. art. 4563.

5. Physicians and Surgeons ⇐10

Evidence that one optometrist operated 71 offices in Texas under 11 trade names and from time to time added, dropped or changed trade name at particular office and that optometrist's advertising represented to public that certain offices were in competition supported adoption of professional responsibility rule by board of examiners in optometry prohibiting practice of optometry under assumed or trade names. Vernon's Ann.Civ.St. art. 4563.

6. Administrative Law and Procedure ⇐383

Practice of profession under trade name may be regulated and prohibited by rules.

7. Administrative Law and Procedure ⇐390
Physicians and Surgeons ⇐10

Rule promulgated by board of examiners in optometry requiring presence of optometrist at office with which his name is identified and at which he holds himself out as practitioner was not inconsistent with Optometry Act and was valid. Vernon's Ann.Civ.St. arts. 4556, 4561–4563; Vernon's Ann.P.C. arts. 735, 736.

8. Physicians and Surgeons ⇐10

Fact that general public has means by which to discover and identify persons practicing optometry under trade name does not render such practice consistent with public interest; disapproving Southwestern Bell Tel. Co. v. Texas State Optical, 253 S.W.2d 877. Vernon's Ann.Civ. St. art. 4563.

9. Administrative Law and Procedure ⇐386
Statutes ⇐217.4

Any implication that legislature did not intend to prohibit trade name practice of optometry and fee splitting arising from fact that before passage of optometry act sections prohibiting trade name practice and fee splitting were deleted from bill was overcome by legislature's express grant of broad rule making powers to board of examiners in optometry empowering board to make appropriate rules grounded upon substantial evidence of evils against which public should be protected. Vernon's Ann. Civ.St. art. 4563.

Crawford C. Martin, Atty. Gen., Hawthorne Phillips and John Reeves, Asst. Attys. Gen., Will Garwood and Tom Gee, Sp. Asst. Attys. Gen., Niemann & Babb, Charles N. Babb, Austin, Strasburger, Price, Kelton, Miller & Martin, Mark Martin, Dallas, for petitioners.

Price Daniel, Austin, Douglas E. Bergman, Dallas, Keith, Mehaffy & Weber, Quentin Keith, Beaumont, for respondents.

POPE, Justice.

Doctors Ellis Carp, S. J. Rogers, and N. Jay Rogers sued The Texas State Board of Examiners in Optometry and sought a declaratory judgment that the Professional Responsibility Rule adopted on December 21, 1959 by the Board was void. They also asked for a permanent injunction against the Board's enforcement of the rule. The trial court denied the relief prayed for and sustained the validity of the rule. The court of civil appeals held that although there was substantial evidence which supported the rule, the Board exceeded its delegated powers in promulgating it and therefore, the rule was invalid. 401 S.W. 2d 639. In our opinion the Board did not exceed its statutory powers in promulgating the rule. We reverse the judgment of the intermediate court and affirm that of the trial court.

The court of civil appeals held that the rule was not arbitrary or capricious and that there was substantial evidence of the relationship between the rule and the general welfare of the citizens of Texas. We too find that the rule is grounded upon substantial evidence. The necessity for such a rule was demonstrated by the general support it received from the members of the optometry profession and professional so-

cieties and the record which abounds with evidence of the specific evils the rule was designed to correct. Some portions of the record will be mentioned and commented on in our analysis of the specific provisions of the rule.

[1] The central question presented by the points before us is whether the Board exceeded its delegated powers in promulgating the Professional Responsibility Rule. In determining this issue, we must examine the general purposes of the Optometry Act as well as certain specific provisions of the act. The Legislature's primary purpose in passing the act was to assure and protect the personal and professional relationship between an optometrist and his patient. To make certain that this purpose was carried out, the act requires an optometrist to be licensed before he may practice within the state. The optometrist must evidence his identity and professional qualifications by registering and recording his license in any county in which he practices. Articles 4561–4562[1]; article 735 Vernon's Ann. Penal Code. He must also display his license in his office, and when he practices away from his office, he must identify himself by affixing to each bill for glasses his signature, address and the number of his license. Article 736, Vernon's Penal Code. Personal identification by those practicing any of the healing arts is of such significance that the Legislature requires a licensee to identify the particular system which his license permits him to practice. Article 4556. It is in this statutory context of fixing professional identification and personal responsibility that we now examine the powers delegated to the State Board of Examiners in Optometry and the provisions of the particular statutes and the rule which the Board promulgated. Article 4556 is the source of the Board's rule-making authority. It provides:

"* * * The Board shall have the power to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of optometry and the enforcement of this Act. * * *"

Article 4563 provides that the Board of Examiners may refuse to issue a license to an applicant and may cancel, revoke or suspend any license it has granted for any of the following reasons:

"(a) That said applicant or licensee is guilty of gross immorality;

"(b) That said applicant or licensee is guilty of any fraud, deceit or misrepresentation in the practice of optometry or in his seeking admission to such practice;

"(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

"(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

"(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

"(f) That said licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry in this State, to so practice;

"(g) That said licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;

"(h) That said licensee directly or indirectly employs solicitors, canvassers or agents for the purpose of obtaining patronage;

"(i) That said licensee lends, leases, rents or in any other manner places his

1. Unless indicated otherwise, all articles cited in this opinion are contained in Vernon's Civil Statutes.

license at the disposal or in the service of any person not licensed to practice optometry in this State;

"(j) That said applicant or licensee has wilfully or repeatedly violated any of the provisions of this Act."

The questioned Professional Responsibility Rule, except for its severability clause, is copied in the footnote to Texas State Board of Examiners in Optometry v. Carp, 388 S.W.2d 409, 411–412 (Tex. 1965). The footnote to the opinion of the court of civil appeals, 401 S.W.2d 639, 640–641, is a good summary of section 1 of the rule, which we adopt. Section 1 provides that no optometrist shall:

"(a) Divide, share or split fees with any lay person, firm or corporation. However, it shall not be construed a violation of the Rule if an optometrist (1) pays an employee in the regular course of employment, or (2) leases space on a percentage or gross receipts basis; and (3) he may sell or assign accounts receivable.

"(b) Divide, share or split fees with another optometrist or physician except (1) on a division of services and (2) then only with the knowledge of the patient, but (3) the Rule will not be interpreted to prevent partnerships.

"(c) Practice under or use an assumed name in connection with his practice. However (1) partners may practice under their full or last names, and (2) optometrists employed by other optometrists may practice under their own names in an office listed in the names of their employers.

"(d) Use or allow his name or professional identity to be used on the door, window, wall or sign of any office or location where optometry is practiced unless said optometrist is actually present and practicing therein during office hours.

"(e) Practice in any office or location where any name or professional identification on any sign shall indicate that such office or location is owned, operated or supervised by any person not actually present and practicing therein during office hours.

"(f) Requirements (d) and (e) above shall be deemed satisfied if the optometrist is (1) physically present more than half the total hours the office is open for at least nine months of the year; or (2) physically present in such office at least one-half the time such person conducts, directs or supervises any practice of optometry; or (3) regularly makes personal examinations of eyes at such location or regularly directs or supervises such examinations."

Section 2 of the rule provides that the wilful or repeated failure of an optometrist to comply with any provision of section 1 shall be considered prima facie evidence that such optometrist is guilty of a violation of law, and shall be grounds for filing charges to cancel, revoke, or suspend his license or to enjoin him from continuing such violation. Section 3 of the rule provides that if any part of the rule be held invalid, the intent of the Board was to promulgate the remainder of the rule.

The court of civil appeals in striking down the rule in its entirety, held that article 4563 and other statutes stated specific grounds for refusing or cancelling a license, that the statement of specific grounds was an exclusion of all others, and that the Legislature intended that the Board should not add new or inconsistent grounds. The authorities in support of the legal principles applied by the court of civil appeals are listed in the court's opinion. Our opinion is, however, that each provision of the rule must be separately examined to determine whether it is related to and consistent with the grounds for cancellation or refusal that the Legislature listed. In other words, the real question presented is whether the rule states new or inconsistent grounds as held by the intermediate court.

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

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

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

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

although they are no longer associated with the respective offices in any manner. Illustrative of Dr. Carp's trade or assumed name practice is the situation that exists in Wichita Falls. Within a two-block area in that city, Dr. Carp maintains offices operated under the names of Mast Optical, Luck Optical, and Lee Optical. The same supervisor oversees these three offices. Each office dispenses the same optical goods and services and uses the same kind of equipment. Optometrists are shifted from one location to the other. Dr. Carp's advertising represents to the public that these three offices are in competition with each other thereby creating the false impression that they are each independently owned and operated. Similar situations exist in Dallas and El Paso. On the other hand, Texas State Optical, owned by the Doctors Rogers, operates eighty-two offices in Texas and advertises only under the one trade name. Although no trade name can be licensed to practice optometry, Texas State Optical advertises by the use of such statements as "a scientific TSO eye examination."

The practice of optometry under a trade name is a holding out to the public that the trade name is licensed. The result is that the identity of the licensed practicing optometrists is hidden behind the unlicensed trade name. Prescriptions belong to those operating the trade name business rather than the prescribing optometrist. The practice is confusing and misleading to the public. In Kee v. Baber, supra, this court upheld a Board rule which required an optometrist to separate his practice from the business operations of mercantile establishments, and did so on the grounds that it was a safeguard for the optometrist-patient relationship and would avoid confusion on the part of the public. The court there held that the rule which prohibited corporate practice of optometry was reasonably referable to article 4563(i), which prohibits placing an optometrist's license "in the service or at the disposal of unlicensed persons." Practice under a trade name is similar to practice under a corporate name which was denounced in *Kee*. Section 1(c) is also reasonably referable to article 4563 (b) which prohibits "deceit or misrepresentation in the practice of optometry." See also article 738a, Vernon's Penal Code.

[6] The practice of a profession under a trade name has often been regulated and prohibited by rules. Fisher v. Schumacher, 72 So.2d 804 (Fla.1954); Pearle Optical of Monroeville Inc. v. Georgia State Board of Examiners in Optometry, 219 Ga. 364, 133 So.2d 374 (1963); State Board of Dental Examiners v. Bohl, 162 Kan. 156, 174 P.2d 998 (1946); Silverman v. Board of Registration in Optometry, 344 Mass. 129, 181 N.E.2d 540 (1962); Toole v. Michigan State Board of Dentistry, 306 Mich. 527, 11 N.W.2d 229 (1943); State Board of Optometry v. Orkin, 249 Miss. 430, 162 So.2d 883 (1964); Strauss v. Univ. of New York, 2 N.Y.2d 464, 161 N.Y.S.2d 97, 141 N.E.2d 595 (1957); Strauss v. Univ. of New York, 282 App.Div. 593, 125 N.Y.S.2d 821 (1953); Straus Inc. v. Univ. of State of New York, 186 Misc. 242, 59 N.Y.S.2d 429 (Sup.Ct. 1945); 41 Am.Jur. Physicians and Surgeons § 52 (1942); 70 C.J.S. Physicians and Surgeons §§ 31, 33 (1951).

Sections 1(d), 1(e), and 1(f) of the rule require and assure the presence of an optometrist at the offices with which his name is identified and at which he holds himself out as a practitioner. Substantial evidence was presented to prove that such rules were needed to correct the evil of misleading representations to the public. Named optometrists have been identified with scores of widely separated offices in Texas, notwithstanding the fact that they have neither practiced at nor been inside many of the places with which their names are associated. Dr. Carp has advertised and practiced under the names of Douglas Optical, Shannon Optical, Pearl Optical, Lee Optical, Lee Optical Company and Dr. L. H. Luck. Those are the names of licensed optometrists who sold Dr. Carp their locations

and the use of their names but continued their practice independently of Dr. Carp.

Texas State Optical's advertising leaves the impression that one of the Doctors Rogers is present at a particular office. Actually they have neither been inside nor seen some of their eighty-two offices distributed generally over Texas. They list their names in phone books in cities where they do not purport to practice optometry and on plaques showing the names of the optometrists who serve particular offices though they do not in fact practice at such offices. Since such practices are deceptive and misleading, sections 1(d), 1(e), and 1(f) are relevant to article 4563(b). Toole v. Michigan State Board of Dentistry, supra, and Campbell v. State, 12 Wash.2d 459, 122 P.2d 458 (Wash. 1942).

[7] We conclude that the court of civil appeals erred in its holding that the Professional Responsibility Rule added new and inconsistent provisions to the Optometry Act. To the contrary, our opinion is that the rule's provisions are in harmony with the general objectives of the act and referable to and consistent with one or more of its specific proscriptions. We believe that the Legislature, by investing the Board with broad rule-making powers "[for] the enforcement of this Act" and "[for] the regulation of the practice of optometry," contemplated that the Board would use these powers to correct the evils generally classified in article 4563, or some other provision of the Optometry Act. If these rule-making powers did not authorize the Board to regulate evils not encompassed in the specific wording of the act, they would be nothing more than meaningless excess.

[8] Respondents urge two additional reasons in support of the judgment of the court of civil appeals—the case of Southwestern Bell Tel. Co. v. Texas State Optical, 253 S.W.2d 877, (Tex.Civ.App. 1952, no writ) and the legislative history of the Optometry Act. In the *Southwestern Bell Tel. Co.* case the Doctors Rogers brought an injunction suit and compelled the telephone company to list Texas State Optical, the trade name, in the yellow pages of the Port Arthur telephone directory. At that time the Board had not yet undertaken to implement the act. The case did not come to this court, and the opinion contains a number of holdings that are inconsistent with our views expressed above. The court held that "[t]he fact that no license to practice optometry has been issued to 'Texas State Optical' is not material." The decision reflects an absence of factual background about the evils of the trade name practice of optometry as evidenced by its holding that such practice is not against the public interest so long as the public by making a search can discover the persons using the name. We disapprove these holdings. Whether the telephone company should list an optometrist's trade name is not the same issue as that of the Board's power to make rules prohibiting practice under a trade name.

Respondents urge that the Legislature did not enact proposed legislation which would have prohibited trade name practice of optometry and fee-splitting. The argument is that the original Optometry Act, as introduced, had a provision which prohibited the practice of optometry under any name other than a licensee's own proper name and also had a provision which would have made it a penal offense to falsely impersonate any person licensed as an optometrist. Acts 46th Leg.R.S.1939, ch. 4, pp. 360–368. Before passing the bill, the Legislature deleted the sections which prohibited trade name practice, Vol. II House Journal, 46th Leg.1939, pp. 2529–2534, and fee-splitting, Senate Journal, 46th Leg.1939, pp. 1958–1968. Respondents urge that the Legislature by deleting the prohibitions against the practices from the bill, implied an intent that such practices should be permitted. Respondents' reasoning is that "[n]o court should read into a statute by implication that which both Houses of the Legislature have expressly rejected

* * *." Grasso v. Cannon Ball Motor Freight Lines, 125 Tex. 154, 81 S.W.2d 482 (1935).

[9] The Legislature did not adopt specific prohibitions of trade name practice and fee-splitting; however, any implications which might be derived from that action are overcome by the Legislature's express grant of broad rule-making powers to the Board. Kee v. Baber, supra. The Legislature expressly empowered the Board to make rules to regulate the practice of optometry and enforce the act. Rather than an implied limitation of Board powers, the act extended the powers of the Board. Instead of an implied grant of permission to practice under a trade name, the act's rule-making provision empowered the Board to make appropriate rules grounded upon substantial evidence of the evils against which the public should be protected. Gibbs v. United States Guarantee Co., 218 S.W.2d 522 (Tex.Civ.App.1949, writ ref.). In Kee v. Baber, supra, this court so treated the grant of rule-making powers and we sustained the rule which prohibited corporate practice of optometry on the reasoning that it implemented the Legislature's prohibition against placing an optometrist's license "in the service or at the disposal of unlicensed persons." On similar reasoning, the Board had the power to prohibit the same result under a different scheme. The trade name entity is no more a licensee than a corporate entity. The Board passed its rule after substantial evidence showed that a widespread practice existed in Texas which undermined sections (b), (h), and (i) of article 4563 and the general purpose of the act to identify and establish personal responsibility of the licensee. It is our opinion that the Legislature in failing to enact the specific provisions, intended instead to provide a better method for the Board to regulate the profession, and that it did this by an express authorization for the Board to tailor and make its rules for the particular needs of the profession and the public so long as they are relevant to the statutory proscriptions.

We reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

SMITH, J., dissenting.

DISSENTING OPINION

SMITH, Justice.

I respectfully dissent. The Legislature provided in Article 4563 ten grounds for refusing or canceling the license of an optometrist. The rule now under attack was adopted by the Texas State Board of Examiners in Optometry. In my opinion, each of the rules' outright proscriptions has been added as a new ground to those enumerated by the Legislature for the revocation of licenses. Since the Legislature through the enactment of Article 4563 has definitely listed the reasons authorizing the Board, in its discretion, to refuse to issue a license to any applicant in the first place, and to cancel, revoke or suspend the operation of any license by it granted, any rule adopted by the Board must by its own terms be referable to or related to a specific provision of Article 4563. An examination of the specific provisions of Article 4563 and the provisions of the rules under attack leads me to conclude that each provision is an outright and independent proscription. The forbidden acts as stated in Section 1 of the rule are not by their own terms referable to or related to any specific provisions of Article 4563. On this point I can add very little to the holding of the Court of Civil Appeals, 401 S.W.2d 639. However, I do wish to emphasize that when the Legislature said to the Board that it may cancel, revoke or suspend a license for ten specific reasons, it negatived any other grounds that might have been permitted under general rule-making powers. See State v. Mauritz-Wills Co., 141 Tex. 634, 175 S.W.2d 238, 241 (1943); 41 Am.Juris. 172, Physicians & Surgeons, 44; Graeb v. State Board of Medical Examiners, 55 Colo. 523, 139 P. 1099, 1101, 47 L.R.A.,N.S., 1063 (Sup.Ct.Colo.1913). This latter case in-

volved a Colorado statute which assigned nine specific "acts and conduct as may justify the revocation of a license". The Court held: "[q]uite clearly the causes designated in the statute are exclusive, and the maxim, 'expressio unius est exclusio alterius,' applies. * * *"

The Board contends and this Court seems to approve the contention that the rule under attack does not add new offenses to those listed in Article 4563. Both the Board and the Court rely heavily upon our holding in Kee v. Baber, 157 Tex. 387, 303 S.W.2d 376 (Sup.Ct.1957). In considering and approving the *Kee* case, I was of the opinion and still maintain that the rules considered in *Kee* were specifically tied to and closely related to specific sections of Article 4563. The rules there involved were designed to implement rather than to add a new and independent rule. Our decision in *Kee* stressed the idea and, in fact, the Court found that the board rule-making powers (emphasized by the Court in the present case) were intended "to vest the Optometry Board with authority to *fill in the details relating to the proscribed actions.*" [emphasis added]. My analysis of *Kee* leads to the conclusion that this Court was not holding in *Kee* that the Board could do the proscribing itself. In our case, the Board makes no contention that the rule under attack in any manner is enacted to fill in the details or in implementation of a prospective enactment. The Board is seeking, at the hands of this Court, power to make the proscriptions in the first instance and for such rules to have the force of law just as though the Legislature had included them in the statute. I respectfully maintain that an administrative agency may not enlarge the causes for which a license may be revoked or suspended. See Cherry v. Board of Regents of the University of State of New York, 289 N.Y. 148, 44 N.E. 2d 405 (1942). In *Cherry*, the Court held that since the New York Legislature has enumerated the reasons for suspension or revocation of licenses, the Board cannot, by adoption of rules, add to the statutorily enumerated grounds. The Court said in *Cherry*:

> "[W]e have said that the Board of Regents' 'specific supervisory powers over the practice of dentistry * * * enable it, within reasonable limits, to prescribe canons by which conduct deemed by it, in the exercise of fair judgment, to be unprofessional and objectionable may, in the interest of rescuing that profession from vulgar commercialism, be banned.' Matter of Dr. Bloom Dentist, Inc., v. Cruise, 259 N.Y. 358, 363, 182 N.E. 16, 17. The field in which that power may be exercised is nonetheless subject to restriction by the Legislature, and even within the field in which the Legislature has delegated to the Board of Regents power to prescribe canons banning conduct which it deems unprofessional and objectionable, the Board of Regents cannot by the exercise of that power enlarge the causes for which the license of a dentist may be revoked or suspended, as defined in subdivision 2 of section 1311.
>
> "* * *
>
> "[T]he bill which had been introduced in the Legislature defining the grounds for the revocation of a dentist's license included as an additional ground 'that the dentist has violated the rules of the regents governing advertising or any other rules.' That ground was stricken out before the bill was passed.
>
> "* * *
>
> "[T]he Legislature has, itself, specified the grounds upon which a license to practice dentistry may be suspended or revoked. The Legislature has not delegated to the Board of Regents power to create offenses which shall furnish additional grounds."

Here again, I wish to emphasize that the Court in the present case has misconstrued its holding in Kee v. Baber, supra. We simply held in that case that the Board may enact such rules and regulations as would be consistent with the power given it under the provisions of Article 4556.

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

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

> "From time to time as to the Court may seem proper, the Supreme Court of Texas shall prepare and propose rules and regulations for disciplining, suspending, and disbarring attorneys at law; for the operation, maintenance and conduct of the State Bar and prescribing a code of ethics governing the professional conduct of attorneys at law. * * *"

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

Respondents in their conditional application for writ of error and in a supplemental brief filed herein present additional points[1] for declaring the rule under attack invalid. I think these points merit consideration. In my opinion the rule is arbitrary and capricious and bears no relationship to the health and well being of the citizens of Texas. The rule is invalid because there was no substantial evidence to support a finding

1. "STATEMENT OF RESPONDENTS' CROSS-POINTS

"FIRST CROSS-POINT

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

"SECOND CROSS-POINT

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

"THIRD CROSS-POINT

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

"FOURTH CROSS-POINT

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

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

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

"A. Yes, we do.

"Q. And what is that?

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

The Board wholly failed to establish its contention that a person employed by another optometrist in a trade-name organization lacks professional responsibility to this patient. In fact this contention was refuted by the following testimony:

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

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

The Respondent, Dr. Carp, also testified:

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

"A. By all means to the patient."

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

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

contained in the Board rule now before us. A court cannot substitute its judgment for that of the legislative branch of the government. There is no provision of the Board's rule here involved that bears any reasonable relationship to the public welfare. It is clear that the rule is advanced for the economic protection of a particular class rather than for the protection of the public generally. There is no evidence of any *need* for the regulation insofar as the public is concerned. Simply stated, the Board has failed to discharge its burden that there was substantial evidence in existence at the time of the adoption of the rule to justify its adoption. See Kost v. Texas Real Estate Commission, 359 S.W.2d 306, (Tex.Civ.App.1962, writ ref'd). Not only has the Board failed in this regard, but more important, it has, in adopting this rule, exceeded the authority conferred upon it by law. In striking down a regulation promulgated by a Board, this Court in Teachers Retirement System of Texas v. Duckworth, 153 Tex. 141, 264 S.W.2d 98 (1954) adopted the opinion of the Court of Civil Appeals, Tex.Civ.App., 260 S.W.2d 632. The adopted language which is applicable here reads:

> "Even if it can be said that the regulation adopted by the Board making the last payment due on the last day of the month next preceding the month in which the beneficiary dies has the effect of canceling the exceptions to the common-law rule against apportionment which would otherwise be applicable to this case, we are inclined to agree with appellee that the judgment must still be sustained because, as contended by her, the Board was without power to adopt and enforce the regulation. It has been held in this State that the Board of Insurance Commissioners can exercise only the authority conferred upon it by law '* * * "in clear and unmistakable terms, and will not be deemed to be given by implication, nor can it be extended by inference, but must be strictly construed." * * *' Commercial Standard Ins. Co. v. Board of Insurance Com'rs of Texas, Tex.Civ.App., 34 S.W.2d 343, 345, writ refused. And in like manner has the power of the Railroad Commission of Texas been construed."

There is another reason which is perhaps greater than any reason thus far advanced to support the argument that the rule should be stricken down by the courts. The rule strikes at the fundamental right of an optometrist to lawfully engage in his profession. I agree with the Respondents that the rule impairs the obligation of contracts. Not only that, it is arbitrary and capricious in nature and has been adopted without regard to the law as enacted by the Legislature and in violation of both the state and federal constitutions. The rule amounts to a taking of Respondents' property without due process of law. The rule has not been enacted for the benefit of the public, but to the contrary there is every indication that the rule has been adopted to protect the economic welfare of a few optometrists, despite the fact that the rule will place in jeopardy property rights which the Legislature has thus far chosen to safeguard. Some of the consequences of this unwarranted rule will be to prohibit the use of an assumed name in the practice of optometry and to impose strict limitations on the operation of multiple offices and the splitting of fees with employee-optometrists. The maintenance of 82 offices at many locations in Texas, at a cost of between $10,000.00 and $12,000.00 per office and at a cost of more than $1,000,000.00 in publicizing the assumed name "Texas State Optical", so far as the record shows, means nothing to the relators, but it should have some significance to this Court in deciding the question of the validity of the rule. In this connection, I repeat that there is no evidence in the record which would tend to show any public need or necessity for the rule. To the contrary, the rule arbitrarily interferes with private business in that it imposes unnecessary restrictions upon the

lawful occupation of the respondents, Lawton v. Steele, 152 U.S. 133, 14 S.Ct. 499, 38 L.Ed. 385 (1894).

The Courts should not hesitate to intervene to protect the property rights of a citizen when it is discovered from a record such as we have here that a Board has exceeded its powers under the guise of the exercise of the police power of the State. This Court in the case of Houston & T. C. R. Co. v. Dallas, 98 Tex. 396, 84 S.W. 648, 70 L.R.A. 850 (1905), in considering the exercise of the police power, has this to say:

"The power is not an arbitrary one, but has its limitations. It is commensurate with, but does not exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private property rights. As those needs are extensive, various, and indefinite, the power to deal with them is likewise broad, indefinite, and impracticable of precise definition or limitation. But as the citizen cannot be deprived of his property without due process of law, and as a privation by force of the police power fulfills this requirement only when the power is exercised for the purpose of accomplishing, and in a manner appropriate to the accomplishment of, the purposes for which it exists, it may often become necessary for courts, having proper regard to the constitutional safeguard referred to in favor of the citizen, to inquire as to the existence of the facts upon which a given exercise of the power rests, and into the manner of its exercise, and if there has been an invasion of property rights under the guise of this power, without justifying occasion, or in an unreasonable, arbitrary, and oppressive way, to give to the injured party that protection which the Constitution secures."

This Court supported its position with a quotation from Lawton v. Steele, 152 U.S. 133, 14 S.Ct. 499 (1894) which reads:

"* * * [t]o justify the state in thus interposing its authority in behalf of the public, it must appear—First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

In the case of Smith v. Decker, 158 Tex. 416, 312 S.W.2d 632 (1958), this Court held unconstitutional a statute which deprived citizens of the right to earn a living, a property right. In holding void the act there involved, we said:

"Appellants having a vested property right in making a living, subject only to valid and subsisting regulatory statutes, and being prevented from performing their business otherwise lawful but for the statute in question, we believe that we are permitted under the rule announced in Kemp Hotel Operating Co. v. City of Wichita Falls, [141 Tex. 90, 170 S.W.2d 217], supra, to order the issuance of the injunction. There it was stated that courts of equity may be resorted to for the purpose of enjoining the enforcement of a criminal statute or ordinance when same is void and when its enforcement invades a vested property right of the complainant."

The judgment of the Court of Civil Appeals should not only be affirmed, but this Court should go further and declare the rule unconstitutional.

Mr. SISK. We will also make a part of the record, without objection, a letter and statement of the Washington, D.C. Publishers Association; a statement of the National Newspaper Association; a resolution of the Federation of Citizens Associations of the District of Columbia; and a letter dated March 9, 1967 from Mr. Ralph Barstow, of Covina, California.

(The documents referred to follow:)

WASHINGTON (D.C.) PUBLISHERS ASSOCIATION,
Washington, D.C., June 2, 1967.

Hon. B. F. SISK,
Chairman, Subcommittee 5,
District of Columbia Committee,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN SISK: We understand that Subcommittee No. 5 of the House District Committee is presently considering H.R. 595, H.R. 732 and H.R. 1283 which are similar bills to regulate the practice of optometry in the District of Columbia.

The Washington Publishers Association, composed of The Evening Star, The Washington Daily News and The Washington Post, strongly opposes enactment of these bills which appear to go beyond the limits of appropriate regulation and unduly restrict the services traditionally provided by opticians, optical companies and others.

In particular, we oppose the prohibitions in these bills upon advertisements by optometrists and references to prices of optical products in advertisements by opticians and others. Restrictions of this nature serve no legitimate purpose other than the elimination of competition contrary to the public interest.

The present bills are substantially similar to H.R. 12937 and related bills which were before Subcommittee No. 4 last year. At that time, this Association submitted a statement which fully set forth its reasons for opposing legislation of this nature. For your convenience, we attach a copy of that Statement. We request that this letter and the attached statement be placed in the record concerning the above bills.

We respectfully urge that the Committee not act favorably with respect to these bills.

Sincerely,

HENRY C. GRONKIEWICZ,
Executive Director.

STATEMENT OF WASHINGTON PUBLISHERS ASSOCIATION

The Washington Publishers Association herewith respectfully submits its views in connection with the consideration of H.R. 12937 and related bills before the Subcommittee No. 4 of the House District Committee. It is requested that this statement be incorporated in and made a part of the written record with respect to the proposed legislation.

The Washington Publishers Association is an organization composed of Washington's three daily newspapers, The Evening Star, The Washington Daily News, and The Washington Post.

The newspapers of this community are vitally interested in the maintenance of high standards in connection with the rendering of eye care services to the public. We firmly believe that the public should be adequately protected against anyone providing eye care services who is not qualified to do so.

To the extent that there are abuses in the practice of optometry or in connection with the sale of optical products in the District of Columbia, which are not adequately protected against under existing law, we believe that the law should be strengthened and vigorously enforced.

H.R. 12937, however, appears to go beyond the limits of appropriate regulation of the practice of optometry in the public interest. It would, for example, unduly restrict the services traditionally provided by opticians, optical companies and others without regard to the nature and quality of the services performed or the qualifications and competence of the persons who perform such services.

We particularly oppose the provisions of H.R. 12937 prohibiting all advertisements by optometrists and any reference to prices of optical products in adver-

tisements by opticians and others. We agree with the conclusion reached by the Commissioners of the District of Columbia that "prohibitions of this nature do not serve the best interests of the general public." Letter from Honorable Walter N. Tobriner, President, Board of Commissioners, District of Columbia to Honorable John L. McMillan, Chairman, Committee on the District of Columbia, dated March 18, 1966, p. 9.

Initially, we note that all advertising in connection with the sale of optical products is subject to stringent requirements of existing law prohibiting advertising which is false or misleading. There is a statutory ban against "false, untrue or misleading" advertising in the District (Code Section 1 of the Act of May 29, 1916, 39 Stat. 165; § 42–21, District Code, 1961 edition), and Section 5 of the Federal Trade Commission Act declares unlawful "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce" (15 U.S.C. § 45). In addition, the FTC has promulgated comprehensive trade practice rules for the optical products industry which set forth in detail advertising practices in connection with the sale of optical products which the Commission deems to be violations of the Act.

Section 7(a)(8) of the proposed bill authorizes revocation of a license to practice optometry if the licensee engages in:

"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. . . ."

We fail to see why an optometrist should not be free to make the availability of his services known to the public through advertising. As the District Commissioners have pointed out, the United States Court of Appeals for the District of Columbia has held in *Silver* v. *Lansburgh and Bro. et al.*, 72 App. D.C. 77, 111 F. 2d 518 (1940), that the relationship between the optometrist and his patient, unlike that between a physician and his patient or a lawyer and his client, is not such a professional relationship as to render legitimate commercial activities by the optometrist inappropriate. We see nothing in the record of the hearings with respect to the present bill that would alter this conclusion.

Nor is there anything in the record of the present hearing to establish that there is a necessary casual relationship between advertising and lower standards or abuses in the practice of optometry. In the absence of convincing evidence in this regard, we believe that it is improper to assume that an optometrist who advertises is less qualified than one who does not, or that a qualified optometrist who advertises will perform to a lesser extent of his ability than one who does not.

To the extent that there are abuses of the practice of optometry by optometrists who advertise, or who are employed by corporations which advertise, we submit that these abuses should be publicly examined to see if there are not other more direct and effective ways or regulating or preventing them. To prohibit all optometrists from legitimate advertising merely because a few who do so abuse or may abuse their profession, however, is clearly "burning the barn to roast the pig."

This is not to say that the practice of optometry should not be treated as a skilled profession in which the highest standards of ethical conduct should be required. It merely means that one group of optometrists should not by statute be able to improse their views as to the propriety of advertising upon all members of their profession without a clear and conclusive showing that advertising necessarily has a detrimental effect upon standards in the profession.

Section 8(a)(5) of the proposed bill makes it unlawful for *any* person: "[T]o advertise or cause to be advertised 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 items or devices."

This provision eliminates price advertising in connection with the entire range of optical products sold in the District of Columbia. Strictly construed, it would prohibit price advertising of such "optometric material[s]" as nonprescription sunglasses and such "ophthalmic material[s]" as Murine.

Even if the proposed bill is amended or clarified to eliminate such items from its coverage, we do not believe that the optician, optical company or optometrist should be prohibited from informing the public as to the prices of lenses, glasses or frames by advertising which is not false or misleading. These products are in most respects no different from other commodities which embody skilled craftsmanship. This is particularly true with respect to frames which, like shoes or

dresses, are frequently purchased primarily on the basis of cosmetic considerations.

While the manufacture and grinding of lenses and glasses requires considerable skill and attention and an inferior product may directly affect the health of the eye, price advertising of these products should be prohibited only if it is clearly shown that such advertising necessarily results in lower quality standards.

The price competition which such advertising engenders in the sale of optical products allows the public to benefit from lower prices, which in many instances encourage or enable persons to obtain visual aids that they need but that they would otherwise be unable or unwilling to purchase. Moreover, experience in this country demonstrates that healthy competition promotes innovation and frequently results in better products being made available to the public.

The record of the present hearings fails to establish that healthy price competition fostered by advertising is incompatible with the maintenance of acceptable quality standards in connection with the sale of optical products. If the use of inferior materials or inferior workmanship is or becomes prevalent, we submit that proper protection of the public requires the establishment of minimum quality standards and/or required checks of the finished lenses and glasses by a qualified optometrist or ophthalmologist rather than the stifling of competition through a blanket prohibition against price advertising.

In conclusion, we submit that prohibitions against legitimate advertising are an extremely inappropriate method of regulation. They are a poor and ineffective substitute for more direct regulatory provisions which go to the core of whatever abuses or improper practices may exist. Frequently the only effect of such prohibitions is the elimination of competition contrary to the public interest.

For the above reasons, the undersigned members of the Washington Publishers Association respectfully urge that if the Committee decides to act favorably with respect to H.R. 12937 that it first delete therefrom the restrictions upon advertising contained in Section 7(a)(8) and Section 8(a)(5).

Respectfully yours,

WASHINGTON PUBLISHERS ASSOCIATION,
By HENRY C. GRONKIEWICZ,
Executive Director.
THE EVENING STAR NEWSPAPER CO.,
By JOHN H. KAUFFMANN,
Vice President and Business Manager.
THE WASHINGTON DAILY NEWS,
By RAY F. MACK,
Business Manager.
THE WASHINGTON POST CO.
By JAMES J. DALY,
Vice President and General Manager.

April 2, 1966.

STATEMENT OF THE NATIONAL NEWSPAPER ASSOCIATION ON H.R. 1283

Mr. Chairman, the following statement is submitted in behalf of the 6,600 weekly and community daily newspapers making up the membership of the National Newspaper Association, and of their state newspaper associations affiliated with NNA.

This association supports standards of professional training, examination and licensing to insure that the practice of optometry in the District of Columbia is conducted on the highest possible level. Insofar as H.R. 1283 strengthens existing statutes in this area, we have no objection to this legislation.

In the area of advertising, however, the District of Columbia code already prohibits any form of fraudulent advertising and makes ample provision of enforcement of this prohibition. (Section 22–1411, Fraudulent Advertising; and Section 22–1413, Penalty, quoted below).

H.R. 1283 makes no further distinction between fraudulent or misleading advertising, and truthful advertising of optometric services. Instead it would prohibit all advertising. This, our association submits, would:

1. Deprive the public of the convenience resulting from advertising—notice of optometrists' office location, hours of service, credit arrangements available.
2. Lose the "reminder" value of advertising, which by its very presence in advertising media, serves to encourage those needing eye care services to take advantage of optometric services available.

3. Eliminates competition—particularly price competition—which is the only effective deterrent to excessive charges.

The Committee will recognize Point No. 3 as most vital, underscoring the motivation of the bill's proponents, and indicating the significant threat it constitutes to the consuming public.

It is the position of this association that truthful advertising is neither criminal nor immoral. Therefore, Congress should make no law rendering truthful advertising a criminal act punishable by the municipality, as would be the effect of Sec. 8 of the bill.

Nor should Congress make truthful advertising grounds for license revocation, as provided in Sec. 7.

This association further objects to language of Sec. 10 which reinforces other prohibitions against truthful advertising by providing that the section does not "authorize any optometric service or opthalmic material to be advertised in any manner which includes or contains any price, cost, or reference thereof."

Finally, from experience with similar legislation presented to various state legislatures, we are compelled to call attention to implications of Sec. 7 (a) (19), which would place upon the District Commissioners the burden of determining what constitutes "any other unprofessional conduct" of optometrists. Even if advertising prohibitions of Sec. 7, 8 and 10 were removed, the Commissioners would be under pressure to declare advertising "unprofessional" under subsection (a) (19).

It should be the province and the obligation of the municipality to insure that optometry is practiced only by persons properly trained and licensed. Whether or not these licensed practitioners choose to advertise their services—and their prices—should be left to their individual determinations. It should not be a function of government to enforce arbitrary standards of so-called "ethical" restraint, as determined by a segment of the optometric profession.

On the contrary, we feel it should be the function of government to insure that the practice of optometry be conducted in as free and as competitive an atmosphere as possible, in the interest of affording the public these services at a reasonable cost. This can best be accomplished by protecting the right of the individual practitioner to advertise if he so chooses.

THEODORE A. SERRILL,
Executive Vice President.

District of Columbia Code Sec. 22–1411—Fraudulent Advertising—"It shall be unlawful in the District of Columbia for any person, firm, association, corporation or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail, or send to any person, firm, association or corporation any false, untrue or misleading statement, representation, or advertisement with the intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead, or induce any person, firm, association or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable considerable to employ the services of any person, firm, association or corporation so advertising such services."

(s 22–1413 provides for a fine of up to $50, or imprisonment up to 60 days, or both, for violation of the fraudulent advertising statutes.)

FEDERATION OF CITIZENS ASSOCIATIONS OF THE DISTRICT OF COLUMBIA—RESOLUTION

SUBJECT: H.R. 595, H.R. 732, H.R. 1283

Whereas H.R. 595, H.R. 732, and H.R. 1283 are identical bills 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

Whereas these bills declare optometry to be a profession, and

Whereas these bills limit the practice of optometry in the District of Columbia to qualified persons who have been graduated from an approved school or college of optometry and have passed examinations prescribed by the D.C. Commissioners, and

Whereas these bills, if enacted, will improve optometric service to the District of Columbia citizens and protect them from incompetent and fraudulent operators, now, therefore, be it

Resolved that the Federation of Citizens Association in regular meeting assembled on June 8, 1967, does endorse H.R. 595, 732, and 1283.

Approved unanimously by the Federation, June 8, 1967.

Dr. EDWARD A. KANE,
Chairman, Health Committee.
Mrs. EDWARD B. MORRIS,
Secretary.

COVINA, CALIF., *March 9, 1967.*

Hon. JOHN L. MCMILLAN,
House Office Building,
Washington, D.C.

DEAR MR. MCMILLAN: It was a bit of testimony offered by a "commercial" optometrist that needs revising, although your colleague Congressman Sisk may have checked it.

In the State of California it is true that optometrists may not work for corporations or firms, but it is not true that they may not advertise. They may and they do. The significant thing is that they may not advertise prices. This weakens their appeal to the uninformed and so we do have a cleaner and better quality of optometry in California.

It probably is true that patients in California are paying more for real optometric services than the residents of the District of Columbia pay for the subquality care of the advertising optometrists in the District, but the statement that the District services are "the same" is not a fact. There are, as I am sure you know, some splendid optometrists in the District. The President and his two daughters bear witness to that fact. At the same time there is a scandalous debasement of visual service in the District because these subquality commercial men are allowed to advertise prices. Would you allow a physician to advertise prices in the District?

Cordially yours,

RALPH BARSTOW.

Mr. SISK. Is there anyone in the room who at this time would like to make a statement to the committee or to offer any testimony to the committee, or to insert a statement into the record? If not, this concludes the hearings on these various bills with regard to the regulation and practice of optometry in the District of Columbia.

Dr. ROWE. Congressman Jacobs asked me to supply some information for the record. How long will the record be open so that I can get that information in?

Mr. SISK. I would say that the record would be kept open until a week from this coming Monday which would be the 28th.

Could you get that in by the 28th?

Dr. ROWE. Yes, sir.

Mr. SISK. The record will be kept open for the information that you have agreed to supply.

There being no further requests, this adjourns the hearing.

(Whereupon, at 1:00 p.m., the Subcommittee adjourned.)

(Subsequently, the following was received for the record:)

CONTACT LENS SOCIETY OF AMERICA,
640 South Fourth Street,
Louisville, Ky., August 25, 1967.

The Hon. JOHN L. MCMILLAN,
House of Representatives, Washington, D.C.

SIR: I am writing to you on behalf of the Contact Lens Society of America. This national organization is comprised of contact lens technicians and opticians who are active in the fitting of contact lenses. We, as a group, are deeply concerned about H.R. 12276, on which your subcommittee recently held hearings and all similar bills. We are concerned because the proposed legislation, without justification, eliminates the optician/technician from the field of contact lens fitting in the District of Columbia.

We can appreciate the need for updating the regulation of optometry in the District, but see no reason why this particular group should be allowed to assume the authority of eliminating another qualified group from this work. This bill, if enacted, would restrain the contact lens technician from pursuing his chosen field of endeavor for no just cause.

The optician/technician has been active in the fitting of contact lenses for many years and holds patents on the manufacturing and designing of contact lenses. They have also been responsible for much of the advancement in fitting technology through the years and have contributed instrumentation which is utilized in contact lens offices of all types throughout the country. They also are members of the teaching staffs in Medical schools and hospitals in various parts of the country and are recognized as authorities in the field.

I have read the testimony given to your committee by Mr. J. A. Miller, Executive Secretary of the Guild of Prescription Opticians of America, and the Contact Lens Society endorses Mr. Miller's testimony and concurs with him in all regards to contact lenses. He has presented fairly the case for us and I earnestly urge you to consider these arguments when you deliberate this particular legislation.

We feel this bill must be amended to allow the optician/technician to fit contact lenses upon prescription and under the direction of a physician.

I earnestly request my letter be included in the written record of these hearings.

Thank you for your consideration.

Sincerely yours,

FRANK B. SANNING,
President.

FBS: jh

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