

VOLUME NO. 37

OPINION NO. 99

BOARD OF MEDICAL EXAMINERS - Powers to license use of diagnostic, topical drugs by optometrists; BOARD OF OPTOMETRISTS - Licensing functions concerning use of diagnostic, topical drugs by optometrists; DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING - Licensing use of diagnostic, topical drugs by optometrists; powers of Board of Medical Examiners and Board of Optometrists; DRUGS - Licensing use of diagnostic, topical drugs by optometrists; OPTOMETRISTS - Power of Board of Medical Examiners to license use of diagnostic, topical drugs by optometrists; REVISED CODES OF MONTANA, 1947 - Sections 66-1301(1)(b), 66-1301.1 and 66-1305.1.

HELD: The word "board" as used in section 66-1305.1, R.C.M. 1947, means the Board of Medical Examiners.

16 December 1977

Board of Optometrists
Department of Professional and
Occupational Licensing
LaLonde Building
Helena, Montana 59601

Dear Board Members:

You have requested my opinion concerning whether the word "board" in section 66-1305.1, R.C.M. 1947, means the Board of Optometrists or the Board of Medical Examiners.

Section 66-1305.1, R.C.M. 1947, provides:

Course required. (1) In addition to the requirements of 66-1305, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval

by the board of optometry with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

(Emphasis added.)

The section is new. It was enacted by the 1977 Legislature in conjunction with other amendments which change Montana law concerning the use of drugs by optometrists. Laws of Montana (1977), ch. 361. The amendments permit limited use of diagnostic, topical drugs in connection with eye and vision examinations and specifically authorize "the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics." Section 66-1301(1)(b), R.C.M. 1947 (as amended). Prior to the 1977 amendments, optometrists were wholly prohibited from using drugs. See Laws of Montana (1959), ch. 252, sec. 1.

The use of drugs by optometrists is conditioned upon compliance with the provisions of section 66-1305.1. Optometrists who are presently licensed to practice in Montana may use diagnostic drugs only if they complete the course and pass the examination described in that section. All other persons who hereafter apply for registration as optometrists under the licensing provisions of chapter 13 of Title 66 must have completed an approved course in diagnostic drugs in addition to satisfying all other licensing requirements. Section 66-1305.1(1), R.C.M. 1947.

The word "board" is used without further designation in subsections (3) and (4) of section 66-1305.1. Subsection

(1) expressly refers to the "board of medical examiners" and the "board of optometry." Your question is, to which board do subsections (3) and (4) refer? The answer determines which board is delegated the power under subsection (4) to create, administer, and score the examination administered to presently licensed optometrists wishing to use drugs in their practice and to issue certificates to those passing such examination.

Section 66-1305.1 is a part of the optometry regulation chapter generally administered by the Board of Optometrists. Sections 66-1301 through 66-1318, R.C.M. 1947. That chapter includes a definition section. Section 66-1301.1, R.C.M. 1947, provides in relevant part:

Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of optometrists, provided for in section 82A-1602.19; * * *

* * *

(Emphasis added.)

This section creates a general rule, or presumption, that "board" means "board of optometrists." However, the general rule does not apply to section 66-1305.1 because "the context requires otherwise."

As already noted, section 66-1305.1 is new. "The meaning of a given term employed in a statute must be measured and controlled by the connection in which it is employed, the evident purpose of the statute, and the subject to which it relates." Fletcher v. Paige, 124 Mont. 114, 120, 220 P.2d 484 (1950). Placing the new provision in the chapter pertaining to the Board of Optometrists is not conclusive as to the Legislature's intention concerning the definition of "board," see Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, 147 Mont. 271, 277, 411 P.2d 744 (1966), although the existing definition of section 66-1301.1 is entitled to some weight in determining legislative intent, see Fletcher v. Paige, supra, 124 Mont. at 119. A close examination of the language of section 66-1305.1 rebuts any initial presumption which may arise from the inclusion of the section in the optometry chapter. Subsection (1) of section 66-1305.1 explicitly grants the Board of Medical Examiners a role in the licensing of optometrists, empowering it to prescribe a course of study concerning use of diagnostic drugs in the practice of optometry and thereby refuting any notion that regulation of optometry is within the exclusive province of

the Board of Optometry. Although the Board of Optometry is given a role prescribing such course of study, it is a limited one of "consultation and approval," in effect giving it a veto power over decisions of the Board of Medical Examiners.

In subsection (3) of section 66-1305.1, the word "board" clearly refers to the Board of Medical Examiners. The subsection is an express limitation on the Board of Medical Examiners' power to prescribe a course of study in diagnostic drugs, requiring that the course must be conducted at an accredited educational institution. The additional language "[t]he course must also be approved by the board" (emphasis added), does not grant the Board of Optometrists approval powers but merely makes clear that the required course must be both conducted at an accredited institution and approved by the Board of Medical Examiners; i.e., conducting the course at an accredited institution does not vitiate the approval requirement of subsection (1). Thus, the word "board" in subsection (3) means Board of Medical Examiners.

The word "board" in subsection (4) also refers to the Board of Medical Examiners. Since "board" is used in subsection (3) to refer to the Board of Medical Examiners, it is unlikely and illogical that the Legislature intended to refer to a different board when it employed the word a second time. Furthermore, the word "board" in both subsections (3) and (4) is used as an abbreviation, much like a pronoun, referring back to an antecedent. Although subsection (1) mentions two different boards, the Board of Optometrists' role is secondary and ancillary to the Board of Medical Examiners' expressly delegated powers. The Board of Medical Examiners is the principal or primary "board" and is the preferred antecedent.

The plain and obvious purpose of section 66-1305.1 is to insure minimum training, knowledge and competence of individual practitioners of optometry who wish to employ diagnostic drugs. In the process of enacting section 66-1305.1, the Legislature considered but rejected delegating powers and responsibilities thereunder to the Board of Optometrists. As originally proposed in the 1977 Legislature (S.B. 105) the powers under section 66-1305.1 would have vested in the Board of Optometrists. Thereafter, the bill was amended to make provision for the Board of Medical Examiners. Delegating the Board of Medical Examiners with the authority to prescribe the course in diagnostic drugs, administer and score tests on diagnostic drugs, and certify

competency in diagnostic drug use was logical and reasonable. Use of drugs is a specialized, technical area, and determinations concerning minimum requirements for such training, knowledge and competence presuppose the drug expertise of the administrative body which establishes the requirements. At the time of enactment of section 66-1305.1, medical practitioners were the sole source of expertise in the use of drugs in connection with eye examinations. Prior to enactment of S.B. 105, optometrists were not permitted to employ drugs in their examinations and the training, knowledge and competence of optometrists heretofore licensed in Montana have not been tested with respect to the use of diagnostic drugs. On the other hand, the use and prescribing of drugs is an integral part of the practice of medicine. Ophthalmology is a medical specialty in diagnosis and treatment of diseases, injuries and abnormalities of the eye. Both the Board of Medical Examiners (with the exception of one of its seven members) and the Board of Optometrists (all three members) are composed of licensed members of the professions which they license and regulate. Sections 82A-1602.15 and 82A-1602.19, R.C.M. 1947. It is obvious that while the Board of Medical Examiners, through its members, have training and expertise in the use of diagnostic drugs in the examination of eyes and vision, the Board of Optometrists and its members presently do not.

THEREFORE, IT IS MY OPINION:

The word "board" as used in section 66-1305.1, R.C.M. 1947, means the Board of Medical Examiners.

Very truly yours,

MIKE GREELY
Attorney General