

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

JANUARY 30, 1985

The meeting of the Public Health, Welfare and Safety Committee was called to order by chairman, Judy Jacobson, on Wednesday, January 30, 1985 in Room 410 of the State Capitol at 1:00 p.m.

ROLL CALL: All members were present with the exception of Senator Himsl who was excused. Senator Newman arrived late because he was presenting a bill in another Committee. Karen Renne, staff Researcher, was also present.

Many, many visitors were also in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 116: Representative Joan Miles of District 45 in Helena, the sponsor of HB 116, gave a brief resume of the bill. This bill was requested by the Department of Health and Environmental Sciences. The bill is an act to delete the requirement that a privately owned public swimming pool have a lifeguard unless a person certified as trained in basic water safety measures is accessible to the pool and providing an immediate effective date.

Sam Burkette of the Department of Health stood in support of the bill. during the 1983 legisgative session, legislation was introduced to remove lifeguarding requirements from privately owned public swimming pools. This was done largely to ease the burden of finance and manpower on motel and hotel swimming pools. The legislation passed, along with an amendment requested by the Department of Health and Environmental Sciences which required, as a substitute for the lifeguard, that an individual certified in cardiopulmonary resuscitation and in Red Cross basic water safety be accessible to the pool. After passage of the bill, it was discovered that the basic water safety course could be longer than 4 hours and involved a substantial amount of water work by those taking it. Attempts were made to megotiate a shortened course which did not necessitate water activity or boating unites, but those efforts were to no avail. Therefore, the department is of the opinion that the basic water safety course requirement should be stricken. Mr. Burkette handed in written testimony to the Commitee for their consideration. See attachments.

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With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Lynch asked if this bill passes would private pools need a lifeguard. "No", they do not but it would be in their best interest to have a lifeguard.

Senator Stephens asked if the same would apply to places like the Butte Country Club. "Yes", this is the case.

Representative Miles closed.

CONSIDERATION OF HOUSE BILL 141: Representative Rex Manuel of District 11, the sponsor of HB 141, gave a brief resume of the bill. This bill is an act to delete the requirement that the Department of Health and Environmental Sciences perform syphilis tests without charge; and providing an immediate effective date. This bill was requested by the Department of Health and Environmental Sciences. Representative Manuel stated that this bill will just update the statues.

Yvonne Sylva, administrator of Management services Division, of the Department of Health, stood in support of the bill. The intent of the proposed legislation is to delete the requirement that syphilis testing be performed without charge. The 48th Legislature did not adequately fund the laboratories of the Department. This necessitated implementation of a handling charge to be assessed on all microbiological specimens, including syphilis, to generate the additional revenue necessary to maintain current level laboratory services. Passage of HB 141 will allow the Department to continue to generate necessary revenue from syphilis testing by the handling charge. If this bill does not pass it would result in an estimated loss of revenue to the Department of approximately \$25,000 in the next biennium. See attachments.

With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Norman asked how many test are being done per year. There are approximately 6,500 tests being done per year.

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Senator Hager asked Mrs. Sylva when the Department started to charge for these tests. The Department started to charge for the tests in August of 1983.

Representative Manuel closed.

CONSIDERATION OF HOUSE BILL 142: Representative Rex Manuel of District 11, the sponsor of HB 142, gave a brief resume of the bill. This bill is an act to conform the time limit within which a premarital serological test performed outside of Montana must be performed to that required for such tests performed within Montana and providing an immediate effective date. This bill was requested by the Department of Health.

Yvonne Sylva, administrator of the Management Services Division of the State Department of Health and Environmental Sciences, stood in support of the bill. The intent of this legislation is to bring into conformance the time limit within which a premarital serological test performed outside of Montana is the same as one performed in-state. Currently, statutes provide that a premarital test performed in-state within the last six months is acceptable. However, premarital serological performed out-of-state must have been done within the last twenty days. HB 142 will extend the acceptable out-of-state testing to six months, making it the same as required for in-state. See attachments.

With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee. Representative Manuel closed.

CONSIDERATION OF SENATE BILL 174: Senator Bruce Crippen of Senate District 45 in Billings, the chief sponsor of SB 174, gave a brief resume of the bill. This bill is an act to generally revise the law regulating the practice of optometry and the licensure of optometrists. This bill was requested by the Board of Optometry. Senator Crippen handed in some proposed amendments for the bill. See attachments.

Dr. Al Kautz, president of the Board of Optometrists stood in support of the bill and the amendments. Dr. Kautz handed in written testimony for the record. See attachments.

Dr. Douglas McBride stood in support of the bill.

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Dr. Loren McKerrow of Helena stood in support of the bill. He was also in support of the proposed amendments of Senator Crippen.

Dr. Tom Rasmussen stood in support of the bill. He stated that a couple of sessions ago he served on the Senate Public Health Committee when they reviewed the sunset bills and this subject still needs to be made more clear.

With no further proponents, the chairman called on the opponents.

Phil Strobe, representing the Montana Society of Dispensing Opticians stood in opposition to the bill. The recodification bills of 1981 tried to amend out the opticians at that time. There is more duplicating with a high degree of accuracy being done today, more than ever before. Mr. Strobe stated that this bill is a money issue regarding contact lens. By the Board limiting the choices to them and those that they represent they are reducing the competition. He told about a case involving an optician in Livingston which was later cleared. Judge Shanstrom's opinion was not appealed. He handed in the opinion from Judge stanstrom and also a copy of the minutes of the Board of Optometry. See attachments. He stated that it seems the board wants the Public Health Committee to legislate out their competition. He urged the Committee to give this bill a do not pass.

Vern Kingston of Big Sky Optical in Butte stood in opposition to the bill. He stated that he has been an optician for 15 years and in that time he has never had a complaint regarding the fitting of the glasses or contacts.

Syl Schied, representing the Montana Optical Dispensers Association, stood in opposition to the bill. He stated that if this bill passes, it would have a dramatic effect on his business. In the 1950-1960's he was asked to make contact lens because the doctors did not have time to make them. At that time lens were for medical reasons rather than looks as today. Now soft lens are extremely easy to fit by today's standards. Economics have now come into the field.

Pat Bertran of Butte stood in opposition to the bill. He as been in practice for 23 years as an optician.

Senator Newman arrived.

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Others standing in opposition to the bill were: J. L. Pennington, Margaret Pennington, Great Falls; Stan Bambauer, Mickey Bone, Toby C. McAdams, Harold Dufrane, Joyce Roach, Ken Swendsen, Mearl Baker, Clay, Butten, Brad Butler, Carlee Ridgeby.

George Allen, representing the Montana Retailers Association, stood in opposition to the bill.

With no further opponents, the chairman opened the meeting to a question and answer period from the Committee.

Senator Jacobson asked what other states are doing about this same situation. No one could answer, however, they will check on this.

Senator Stephens asked what is the danger to the public health as the law now stands. The optometrist and ophthalmologists do not have control.

Senator Towe asked about the present statute. Opticians cannot fit and measure contact lens.

Senator Towe asked Mr. Schied to explain exactly what he does. He fills the prescription as ordered by the doctor and send that patient back to the doctor for a final check.

Senator Lynch asked if the ophthalmologist and the optometrist were in agreement on this bill. Yes, they do agree on this issue.

Senator Jacobson asked what is the training for opticians. They cannot "open shop tomorrow" they must be trained. Five other states have specifically licensed the opticians and most others are just like Montana is at the present time.

Senator Stephens asked Dr. Rasmussen if the patients do come back to him to be check for proper fit and prescription. "Yes", they do come back to him.

Senator Hager asked if the board is expanding their authority by changing their name.

Senator Crippen closed. He stated that the real issue is not money, it in fact is illegal for opticians to fit contacts.. The real issue if "who can fit contact lens". Opticians cannot fit contact lens unless they are under the direct supervision of an optometrist or ophthalmologist. Eyes change and should

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be checked regularly. Senator Crippen stated that the real issue is the public health and safety of the people of the state of Montana. He stated that most people do not go back to their doctor after being fit with lens. Doctors do more than fit the lens to the eyeballs. This is a good bill and is required to clarify the law. He asked for favorable consideration from the Committee.

ANNOUNCEMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be held on Friday, February 1, 1985 to consider Senate Bills 214 and 226.

ADJOURN: With no further business the meeting was adjourned.


SENATOR JUDY JACOBSON, CHAIRMAN

eg

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/30/85

SENATE SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
6 SENATOR JUDY JACOBSON, CHAIRMAN	✓		
5 SENATOR J. D. LYNCH, V. CHAIRMAN	✓		
42 SENATOR TOM HAGER	✓		
30 SENATOR MATT HIMSL			✓
17 SENATOR TED NEWMAN	<i>late</i>		
45 SENATOR BILL NORMAN	✓		
14 SENATOR STAN STEPHENS	✓		
26 SENATOR TOM TOWE	✓		

Each day attach to minutes.

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Yocanna [unclear]	SDHES	141-142	X	
RTM [unclear]		SB 174	X	
[unclear]	BOARD of Optometry	SB174	X	
Sam Muspitt	SDHES	HB116	X	
Douglas J. McBride	Mont. Opt. Assoc. - Pres.	SB174	X	
A.H. Achid	Mont Optical Dispensers	SB174		X
Mearl Baker	" "			X
Mickey Bone	" " "	SB174		X
Starr Bamauer	Montana Optical Dispensers	SB174		X
Joyce Roach	Economy Optical P.F.	SB174		X
Moby C McAdam	Big Sk. Assoc	SB174		
Ben Bruce	Bruce Optical	SB174		
Ken Gundlach	State Optics	SB 174		
J.H. Pennington	OPTICIANS ASSOC	SD174		
Margaret B Pennington	"	SB174		X
David LACKMAN	MT Pub. Hlth. Assn	141-142	X	
P.H. KATHREN, O.D.	Bd. of Optometrists	174	X	
Kathleen Kathren	Public	174	X	
Carla Kadachy	C.F.	174		F
Alan [unclear]	Billings	174		X
Ann Kingston	Butte	174		X
Patricia H. Burtz	Butte	174		X
Harold [unclear]	Bozeman	174		X
George [unclear]	Helena Mt. Retail Assn.	174		X
Edmund [unclear]	Helena	174	X	
Lein [unclear]	Mt. Medical Assn	174	X	

(Please leave prepared statement with Secretary)

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
LOREN B. MCKERROW MD	SELF / OPHTHALMOLOGY	48174	as amended	

(Please leave prepared statement with Secretary)

INFORMATION RELATIVE TO H.B. 116

During the 1983 legislative session, legislation was introduced to remove lifeguarding requirements from privately-owned public swimming pools. This was done largely to ease the burden of finance and manpower on motel and hotel swimming pools. The legislation passed, along with an amendment requested by the Department of Health and Environmental Sciences which required, as a substitute for the lifeguard, that an individual certified in cardiopulmonary resuscitation and in Red Cross basic water safety be accessible to the pool.

The Department of Health and Environmental Sciences endorsed the amended bill in part as a result of assurances given concerning the contents of the basic water safety course, i.e., that the basic water safety course offered by the American Red Cross was a short (4-hour) non-swimming course geared toward the basics of water safety (safety equipment, etc.). After passage of the bill, it was discovered that the basic water safety course could be longer than 4 hours and involved a substantial amount of water work by those taking it. Attempts were made to negotiate a shortened course which did not necessitate water activity or boating units, but those efforts were to no avail.

Therefore, the department is of the opinion that the basic water safety course requirement should be stricken because:

(1) It is difficult to find an instructor to present the course, particularly in rural areas.

(2) The many individuals operating facilities where pools are present who are themselves handicapped or elderly cannot reasonably be expected to undergo the extensive in-water training involved.

(3) In the last two years, no pool operator in Montana has been certified, as a result of the difficulties described in (1) and (2) above.

(4) If, because the operator could not be trained, an individual with the training has to be hired, the original purpose of the legislation is largely defeated.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES



TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

TESTIMONY
January 28, 1985

Senator Jacobson, members of the committee, for the record, I am Yvonne Sylva, Administrator of Management Services Division, State Department of Health and Environmental Sciences, I am here to speak in support of HB 141.

HB 141 was introduced at the request of the Department of Health and Environmental Sciences.

The intent of the proposed legislation is to delete the requirement that syphilis testing be performed without charge. The Forty-Eighth Legislature did not adequately fund the laboratories of the Department. This necessitated implementation of a handling charge to be assessed on all microbiological specimens (including syphilis) to generate the additional revenue necessary to maintain current level laboratory services.

Passage of House Bill 141 will allow the Department to continue to generate necessary revenue from syphilis testing via the handling charge.

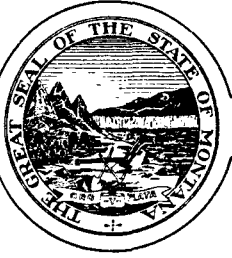
Non-passage of this bill would result in an estimated loss of revenue to the Department of approximately \$25,000 next biennium.

I urge your favorable consideration on this bill.

Thank you.

YS/cmb/200

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES



TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

TESTIMONY
January 28, 1985

Senator Jacobson, members of the committee, for the record, I am Yvonne Sylva, Administrator of Management Services Division, State Department of Health and Environmental Sciences.

House Bill 142 was introduced at the request of the Department.

The intent of this legislation is to bring into conformance the time limit within which a pre-marital serological test performed outside of Montana is the same as one performed in-state.

Currently statutes provide that a pre-marital test performed in-state within the last six months is acceptable. However, pre-marital serological performed out-of-state must have been done within the last twenty days.

House Bill 142 will extend the acceptable out-of-state testing to six months, making it the same required as for in-state.

I urge your favorable consideration of HB 142.

Thank you.

YS/cmb/201

Crippen

AMENDMENTS TO SENATE BILL NO. 174
Amend SB 174, introduced copy

1. Page 2, line 7.
Following: "the"
Insert: "optometric"
Following: "or"
Insert: "optometric"

2. Page 2, line 11.
Following: "be"
Insert: "optometrically diagnosed,"

3. Page 2, line 13.
Following: "any"
Insert: "optometric"

4. Page 2, line 16.
Following: "complete"
Insert: "Optometric"

5. Page 5, lines 13 through 19.
Strike: Section (i) in its entirety.
Insert: "(i) replace or duplicate ophthalmic lenses
with or without prescriptions without having at the time
a valid certificate of registration as an optometrist;
however, this subsection does not prevent an optical
mechanic from:
reinsert subsection (I)
reinsert subsection (II)"

6. Page 6, line 20.
Following: "for"
Insert: ", "

7. Page 10, line 19.
Following: "of"
Insert: "examination or"

8. Page 12, line 11.
Following: "registration"
Insert: "or examination"

NAME Al Kautz BILL NO. 174
ADDRESS 1212 Grand - Billings DATE 1/30/85
WHOM DO YOU REPRESENT MT Board of Optometrists
SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

TESTIMONY

S.B. #174

Senate Public Health Committee
Senate Judy Jacobsen, Chairman

Madam Chairman, members of the Committee,

For the record, my name is AlVerne Kautz, I am president of the Montana Board of Optometrists. I have practiced optometry in Montana for 23 years.

The Board of Optometrists was created by the Montana legislature in 1907. It is administratively supported by the Department of Commerce.

The Board of Optometrists is responsible for protecting the visual health of the people of Montana by insuring that all applicants for registration are qualified and competent in the field of optometry, that optometrists in active practice in Montana maintain their competency in accordance with the statutes and rules, and that all persons practicing optometry are registered optometrists.

It is the Board of Optometrists that requested the changes in Senate Bill #174. Most of the changes are routine language changes, some are directed to a name change and member terms, and still others are directed toward definition of terms in the present law which will assist the Board in enforcement of the statutes. At

issue on this last point is the fitting of contact lenses to the human eye by unqualified, unregistered, or unlicensed persons. Current statutes mandate formal education as a physician or optometrist and licensure only after passing tests of competency. Senate Bill # 174 gives definition that is needed to minimize individual interpretations of the statutes regulating the practice of optometry in Montana. I present Senate Bill #174 to you.

NAME HOREN B MCKERROW MD BILL NO. SB 174
ADDRESS 2225 - 11th Ave #12, Helena DATE 1/30/85
WHOM DO YOU REPRESENT _____
SUPPORT OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

COMMENTS:

In agreement with prepared amendments as presented to committee to restore original wording on pages 2, 5, 10 & 12.

1/30/85

NAME Roland D Pratt BILL NO. SB 174
 ADDRESS Box 908 Helena DATE 1/30/85
 WHOM DO YOU REPRESENT MT Optometric Assoc.
 SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This bill in no way changes present laws except define language already in the law. It does not change the present restriction prohibiting non licensed personnel from fitting contact lenses. This prohibition has been in the law since 1947 and was further amended in 1981. It has not put anyone out of business and this will not either.

THOMAS E. MORLEDGE, M.D.
YELLOWSTONE MEDICAL BLDG.
1145 NO. 29TH ST. . SUITE 403
BILLINGS, MONTANA 59101

TELEPHONE 248-3121

January 29, 1985

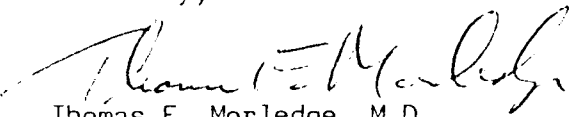
Al Kautz, O.D.
1212 Grand Avenue
Billings, Montana 59102

Re: Optometric bill to limit opticians in fitting contact lenses

Dear Al:

I certainly agree with you regarding the need for protective legislation. As we had discussed before, ophthalmologists and optometrists don't often agree in their fields of interest; however, we are certainly together in ethics in the best interest of the patient. Opticians are often fine, dedicated individuals but certainly do not have the training and knowledge to handle the contact lens patient. It is not even necessary that they have a high school diploma and are not able to use an eye microscope for examining the external eye, including the cornea. Without this knowledge and ability to examine the human eye carefully, as we have both been trained to do, the optician cannot safely have authority to utilize contact lenses on patients. It has been my experience that many problems have occurred with patients who have gone to opticians and these patients have been very unhappy.

Sincerely,


Thomas E. Morledge, M.D.

cc: Senator Tom Hager
Senator Thomas Towe

JP

The OAA Letter

Congress gives FTC -- and OAA -- a victory by allowing the agency to have continued jurisdiction over state-licensed professionals.

Uniform procedural nomenclature and coding system for Third Party payment programs gets new impetus.

AAO reaffirms patient's right to CL prescription.

FTC Jurisdiction over Professions Left Intact by Congress

As a result of Congressional action during December's Lame Duck session, the FTC has retained the ability to regulate state-licensed professionals, including ophthalmologists and optometrists who sell eyeglasses and CLs. The December 19 decision by a joint House-Senate appropriations conference committee deleted references to the professions from a stopgap continuing resolution. This is seen as a major victory for the broad coalition of health-care providers, small businessmen, senior citizens and consumer groups that fought to preserve the FTC's authority over professionals during the 97th Congress. OAA member firms, member state societies and individual dispensing opticians who supported this effort financially and communicated opticianry's views on this issue to their Senators and Representatives played an important part in efforts to defeat this special-interest legislation.

The effect of this legislative victory on the willingness of the FTC to proceed with Eyeglasses II initiatives focusing on state-imposed restrictions on CL dispensing by opticians and the commercial practice of optometry remains to be seen. Insiders believe that the agency may limit its activities. It may publish studies and present testimony to state legislators, for example, rather than challenge restrictive state laws on an industry-wide basis through trade regulation rulemaking proceedings as it has done in the past.

In a separate but related matter, the FTC currently is investigating the reimbursement of non-physician providers, including dispensing opticians, by various Blue Shield plans throughout the country.

OAA Gives Names of Member Firms to Metropolitan

At the request of the manager of Metropolitan Life Insurance Company's MediMET Programs, OAA provided the company with a complete list of OAA member firms. This helps to insure that member firms receive current information about vision-care plans in their area being underwritten or administered by Metropolitan.

In another development in third party payments, Scott Davis of Davis Opticians, Beverly, MA, represented OAA at a January 13 meeting in Chicago. The feasibility of developing a uniform procedural nomenclature and coding system for use in public and private insurance programs, including vision-care benefits, was discussed. Other participants included representatives of the American Optometric Association, Blue Cross/Blue Shield and Health Care Financing Administration.

American Academy of Ophthalmology Issues Prescription Release Policy

The Board of Directors of the American Academy of Ophthalmology has approved the following policy on release of CL prescriptions: "A patient must be provided with his or her prescription for appropriate drug and medical devices as required by law. In the case of a prescription for contact lenses, such prescription need only include those specific measurements and directions which would be included in a prescription for spectacle lenses. All prescriptions shall include the information required by applicable state law, if any. The patient has the right to have the prescription filled wherever he or she wishes subject to the requirements of state law."

AAO's policy is patterned after similar language contained in the prescription release provisions of the FTC's Eyeglasses I trade regulation rule.

JAN 83

32nd day
DEC 12 A.D. 1982
o'clock
EMMA DOWNS NELSON
Clark of District Court

1 IN THE DISTRICT COURT Park County, Montana
2 OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF MONTANA
3 IN AND FOR THE COUNTY OF PARK

4 * * * * *

5 BOARD OF OPTOMETRISTS,)
6 DEPARTMENT OF COMMERCE,)
7 STATE OF MONTANA,)
8 Plaintiff,)
9 vs.) Civil Cause No. 82-11
10 DAVID FAIRFAX, d/b/a)
11 FAIRFAX OPTICIANS,)
12 Defendant,)
13 and)
14 MONTANA SOCIETY OF)
15 DISPENSING OPTICIANS)
16 and)
17 F. HANLEY BURTON, M.D.,)
18 Intervener)
19 -----)

17 FINDINGS OF FACT
18 AND
19 CONCLUSIONS OF LAW

20 This cause came on regularly for trial after notice to all
21 parties on December 1, 1982, before the Honorable Jack D. Shanstrom,
22 District Judge, presiding without a jury, the Plaintiff being
23 represented by Robert J. Wood, Attorney at Law, and the Defendant
24 David Fairfax and Intervenor F. Hanley Burton being present and
25 in person and said Defendants and Interveners being represented
26 by Philip W. Strobe and John L. Peterson, whereupon the court took
27 under advisement until conclusion of the evidence the motion of
28 the Plaintiff to continue said cause, which motion was thereupon
29 denied by the court, and the parties having introduced evidence
30 in support of their respective positions on the merits of said
31 cause, and having submitted Proposed Findings of Fact and Con-
32 clusions of Law, and the court having considered the evidence,

1 said Proposed Findings of Fact and Conclusions of Law, and the
2 law, and being duly advised in the premises, finds generally in
3 favor of the Defendant and Intervenors and against the Plaintiff,
4 makes the following Findings of Fact and Conclusions of Law,
5 to-wit:

6 FINDINGS OF FACT

7 1. Plaintiff Board of Optometrists is a duly constituted
8 agency of the State of Montana responsible for the administration
9 and enforcement of Title 37, Chapter 10, MCA. Said Board is
10 attached to the Department of Commerce of the State of Montana
11 for administrative purposes pursuant to Section 2-15-1846 MCA.

12 2. The Defendant David Fairfax is engaged in the business
13 as an optician doing business as Fairfax Opticians in the County
14 of Park, Montana. That said Defendant is not licensed by the
15 Plaintiff Board of Optometrists as an optometrist in the State of
16 Montana. The Intervenor Montana Society of Dispensing Opticians
17 is an association of opticians in the State of Montana. The
18 Intervenor, F. Hanley Burton, M D , is a duly licensed Physician
19 and Surgeon in the State of Montana, engaged in the practice of
20 ophthalmology in Butte-Silver Bow County, Montana.

21 3. Section 37-10-301(2), MCA, provides in part that if
22 the Board of Optometrists "has reasonable cause to believe that a
23 person is violating this section or a rule issued under this
24 chapter, it may, in addition to other remedies provided in this
25 chapter, bring an action for injunctive relief in District Court
26 in the county where the violation occurs to enjoin the person
27 from engaging in or continuing the violation". That by reason
28 of said section as a condition precedent to bringing any action
29 for injunctive relief, the Board must have filed with it a com-
30 plaint alleging violation of Title 37, Chapter 10, MCA, and there-
31 upon hold a hearing and make a determination that reasonable
32 cause exists that a person has violated or is violating Title 37,

1 Chapter 10. That in any action for injunctive relief brought
2 pursuant to Section 37-10-310(2) evidence must be introduced to
3 show the action taken by the Board at a regularly constituted meet-
4 ing based on the evidence before the Board which justifies its
5 filing of any civil action in District Court.

6 4. That Lee Ammerman of Livingston, Montana engaged Dr.
7 Everett Lensink, M.D., a duly licensed physician and surgeon in
8 the State of Montana engaged in the practice of ophthalmology in
9 Bozeman, Montana, to examine and treat Ammerman for eye correction.
10 That Dr. Lensink advised Ammerman he needed corrective lens and
11 issued a prescription to Ammerman for such lens or optical glasses.
12 That thereupon Ammerman took said prescription to the Defendant
13 for fitting of a pair of contact lens That the Defendant
14 utilized recommended mechanical measuring devices to fill said
15 prescription. That in so doing the Defendant was performing re-
16 quired mechanical work under an order or prescription issued and
17 signed by a duly licensed physician, surgeon and optometrist,
18 namely Dr. Lensink. That thereafter Defendant fitted said con-
19 tact lens for the eyes of Ammerman. That Ammerman had no com-
20 plaints, returned to Dr. Lensink and was advised said fitting
21 by the Defendant was proper. That after this action was commenced
22 by the Plaintiff Ammerman changed treating doctors and consulted
23 with an optometrist in Livingston, Montana That the action and
24 activity of the Defendant in filling the prescription for Ammer-
25 man signed by Dr. Lensink did not require the Defendant to measure,
26 fit or adapt a lens to direct, contiguous contact to the human
27 eyeball of Ammerman. That the changing of the lens size from
28 U-4 as prescribed to U-3 is a mechanical function associated
29 with proper fitting of contact lens for Ammerman.

30 5. That under Section 37-10-102(3) MCA, the licensing of
31 optometrists for practice of optometry, provided in Title 37,
32 Chapter 10, MCA, does not apply to an optician performing the

1 required mechanical work under an order or prescription signed
2 by a duly licensed physician, surgeon or optometrist. That the
3 work performed by the Defendant on the patient Ammerman was with-
4 in said exemption provided by law.

5 6. That Plaintiff has failed to prove by substantial
6 credible evidence or by the preponderance of the evidence that
7 the Defendant engaged in the practice of optometry in violation
8 of Title 37, Chapter 10, MCA.

9 7. That as a person engaged in the business of dispensing
10 optical devices including contact lens, the Defendant, and all
11 other similarly situated, may not measure, fit or adapt a contact
12 lens to direct, contiguous contact to a human eye without being
13 duly licensed by the Board of Optometry, but said Defendant, as
14 an optician, and all other similarly situated, may perform the
15 required mechanical work under an order or prescription signed
16 by a duly licensed physician, surgeon or optometrist in fitting
17 contact lens. That the business of an optician is not hazardous
18 or injurious to public health, or the welfare of any person who
19 has a prescription prepared by a physician, surgeon or optometrist
20 to wear contact lens. That it is lawful, proper and ethical in
21 Montana for a licensed ophthalmologist to issue a prescription to
22 a patient after examination for corrective lens and have that
23 prescription filled by an optician, as was done in this case.

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CONCLUSIONS OF LAW

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I.

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This Court has jurisdiction over the parties and subject
28 matter of this action.

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II.

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The Plaintiff has failed to prove by substantial credible
evidence or the preponderance of the evidence that the Board of
32 Optometrists before commencing this action had reasonable cause

1 to believe that the Defendant engaged or is engaging in any
2 activity contrary to Title 37, Chapter 10, MCA.

3 III.

4 That evidence shows the Defendant at all times material
5 hereto was an optician performing the required mechanical work
6 under an order or prescription signed by a duly licensed physi-
7 cian, surgeon or optometrist.

8 IV.

9 That Plaintiff failed to sustain its burden of proof in
10 this action.

11 IT IS THEREFORE ORDERED That the Petition for Permanent
12 Injunction is dismissed and all relief sought by the Plaintiff
13 in this action is denied.

14 Let the proper Judgment be prepared by counsel for
15 Defendant.

16 DATED this 21st day of December, 1982.

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JACK D. SHANSTROM

JACK D. SHANSTROM
District Judge

MINUTES

BOARD OF OPTOMETRISTS

- DATE: March 23, 1984
- PLACE: Conference Room, Department of Commerce, 1430 - 9th Avenue,
Helena, Montana
- CALL TO ORDER: The meeting was called to order at 10:10 a.m. by President Alverne
S. Kautz, O.D.
- MEMBERS PRESENT: Alverne S. Kautz, O.D., President
Paul L. Kathrein, O.D., Vice President
John D. Dedrickson, O.D., Secretary
Sara Gertrude Malone, Public Member
- OTHERS PRESENT: Brenda St.Clair, Administrative Assistant
Geoffrey "Jeff" Brazier, Staff Attorney
- MINUTES: Dr. Kathrein moved to approve the minutes of the November 14, 1983
meeting. Dr. Dedrickson seconded the motion. Motion Carried.
- FINANCIAL REPORT
& EPP Expenses through the month of February 1984 were scrutinized and
compared with the budget. The Executive Planning Process proposals
for FY 86 and FY 87 budgets were considered satisfactory as submitted.
- DISTRIBUTION OF
LAW BOOK: Mrs. Malone moved to have enough law books printed to send to all
in-state licensees. Dr. Kathrein seconded the motion. Motion
Carried. The law books will be sent with 1984/1985 annual renewals
of registration.
- C.E. GRANT TO
MOA: Dr. Dedrickson moved to grant an additional \$1000 this year to the
Montana Optometric Association (MOA) for continuing educational
purposes and to request an accounting from the MOA on how the funds
are used. Mrs. Malone seconded the motion. Motion Carried.
- POSTPONEMENT OF
AGENDA ITEMS 3,
4, and 5: It was decided to postpone discussion on legislation, optician's
advertising, and complaints until 1:30 p.m. when the staff attorney
was requested to be present.
- PROPOSED CONTENT
OUTLINE FOR
NATIONAL BOARD: The Proposed Content Outline for the Entry-Level Examinations of
the National Board of Examiners in Optometry (NBEO) was examined and
discussed by the Board. It was agreed by the members that Dr. Kautz
prepare the response to the NBEO on this document.

ANNUAL IAB
MEETING:

Mrs. Malone moved to send a representative to the International Association of Boards of Examiners in Optometry (IAB) Annual Meeting scheduled for June 17 and 18, 1984 in Waikiki, Hawaii. Dr. Dedrickson seconded the motion. Motion Carried. It was decided that Dr. Kautz would appoint a representative for the Board. Dr. Kathrein was tentatively appointed and he is to let Dr. Kautz know as soon as possible if he is unable to attend.

RECESS:

The meeting was recessed at 12:00 noon.

RECONVENED:

The meeting was reconvened at 1:15 p.m.

STAFF ATTORNEY
APPEARANCE:

Mr. Brazier joined the meeting to review and discuss the complaints and other legal issues with the Board.

COMPLAINTS:

#83-49 and #83-51: The Board was brought up to date on correspondence since the last meeting. Dr. Kathrein moved to table the complaints. Dr. Dedrickson seconded the motion. Motion Carried.

#83-55: After reviewing the status, it was the consensus of the Board that Mr. Brazier should respond to the complainant that the Board has no jurisdiction over claims for money and the complaint is being referred to the Consumer Affairs Unit of the Department of Commerce.

#84-60: The complaint is pending and Mr. Brazier is in contact with attorneys for Sears Optical to obtain copies of "confession" agreements. The Consumer Affairs Unit is to be contacted regarding possible false advertising by Sears Optical.

#84-61: It was the consensus of the Board that the complaint remain tabled.

#84-63: It was the decision of the Board to authorize an investigation to determine the nature and extent of the business operation involving State Optical and Gregory Zell, O.D.

ADVERTISING BY
OPTICIANS:

Numerous advertisements for contact lenses by opticians extracted from Yellow Pages and daily newspapers were examined. It was the decision of the Board to have the staff attorney pursue one of the advertisements as a test case. The Board directed the attorney to initiate an investigation into the Capital Contact Lens Center in Helena.

1985 LEGISLATION:

By consensus, it was decided to schedule a meeting in May with the staff attorney to study legislation. Not all members would need to be in attendance. Each member will review the statutes, indicate changes needed, and send them to the office prior to the meeting to enable time to review the suggestions.

REGIONAL IAB
MEETING:

Attendance at the meeting for regional state boards scheduled for April 12, 1984, in Las Vegas, Nevada (prior to the Annual Congress of the Mountain West Congress of Optometry) was considered. The finances were examined and it was decided that funds were not available for a member to attend the two hour meeting. Dr. Kathrein mentioned that Dr. Keller, his associate, was planning to attend the Congress and would probably attend the meeting and report back to the Board. It was the consensus of the Board to have Dr. Keller represent the Board at this meeting. The administrative assistant was instructed to prepare a letter of introduction for Dr. Keller to take to the meeting.

JULY 1984
EXAMINATION:

The Board discussed the content of the July 1984 examinations. Dr. Kathrein will contact the other members prior to the examination with the arrangements.

REQUEST FROM
MOA:

A request from the MOA to allow optometrists attending the Northern Rockies Optometric Conference in Jackson Hole, Wyoming, June 1-4, 1984, to opt to claim the C.E. credit for the following year's requirement 1984/1985 (which would be for the renewal year 1985/1986) was read and discussed. Dr. Kathrein moved to grant the request under the conditions that optometrists cannot split the hours to satisfy C.E. requirements for two renewals and they must indicate which year they want the hours applied to. Dr. Dedrickson seconded the motion. Motion Carried.

MISCELLANEOUS
CORRESPONDENCE:

Miscellaneous correspondence and information reviewed that did not require Board action included departmental memos on physical facility improvements and public meetings, the FTC's Contact Lens Study, letter and response to proposed rules on unprofessional conduct, Montana Elder Prevention Act, IAB surveys and information, NBEO information, and requests for information. Items requiring action by the Board and the action taken were:

Survey from the Administrative Code Committee of the Montana Legislature concerning policies, guidelines, or standards not adopted by rules - It was the consensus of the Board that there are none;

Montana Professional Corporation Act which requires P.C.'s to file copies of Articles of Incorporation and annual reports with the Board - Send to MOA to have published in their newsletter;

Letter from Midwest Ophthalmic Recovery Association on non-payment of account by Dr. Len Vainio - Consensus of the Board to refer the matter to Consumer Affairs Unit and notify the company that the Board has no jurisdiction at this time.

Review of apprenticeship program of the Department of Labor and industry for opticians - Consensus of the Board to request the staff attorney to send a letter to the Department addressing the issue of training individuals to do work which is in violation of Montana law

Copy of letter from Dr. Wistey to Consumer Affairs Unit on optician practicing optometry without a license - Request Dr. Wistey to file complaint.

ADJOURNMENT:

There being no further business to come before the Board, Dr. Kautz adjourned the meeting at 4:30 p.m.

Ed Kautz

PRESIDENT *7/21/84*
DATE

Noxe at Present

SECRETARY DATE

Brenda St. Clair

ADMINISTRATIVE ASSISTANT *7-21-84*
DATE

NAME Vern Kingston

BILL No. SB 174

ADDRESS Bottle

DATE 1/3/85

WHOM DO YOU REPRESENT Big Sky Optical

SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Art Schied BILL No. SB 174
ADDRESS P.O. Box 1577 - Billings DATE 1-20-88
WHOM DO YOU REPRESENT Mont Optical Dispensaries Assn
SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

THOMAS E. MORLEDGE, M.D.
YELLOWSTONE MEDICAL BLDG.
1145 NO. 29TH ST. . SUITE 403
BILLINGS, MONTANA 59101

TELEPHONE 248-3121

January 29, 1985

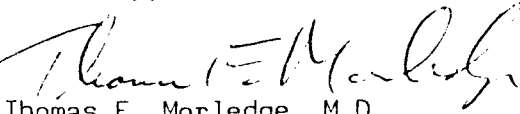
Al Kautz, O.D.
1212 Grand Avenue
Billings, Montana 59102

Re: Optometric bill to limit opticians in fitting contact lenses

Dear Al:

I certainly agree with you regarding the need for protective legislation. As we had discussed before, ophthalmologists and optometrists don't often agree in their fields of interest; however, we are certainly together in ethics in the best interest of the patient. Opticians are often fine, dedicated individuals but certainly do not have the training and knowledge to handle the contact lens patient. It is not even necessary that they have a high school diploma and are not able to use an eye microscope for examining the external eye, including the cornea. Without this knowledge and ability to examine the human eye carefully, as we have both been trained to do, the optician cannot safely have authority to utilize contact lenses on patients. It has been my experience that many problems have occurred with patients who have gone to opticians and these patients have been very unhappy.

Sincerely,


Thomas E. Morledge, M.D.

cc: Senator Tom Hager
Senator Thomas Towe

NAME _____ BILL No. S.B. 174
ADDRESS Patrick H. Burlew Butte, Mt. DATE 1-30-85
WHOM DO YOU REPRESENT Butte Opticians
SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

January 31, 1985
Silesia, MT. 59080

Public Health, Welfare and Safety Committee
State Capitol
Helena, MT. 59620

Dear Committee members,

We are writing to urge you to oppose SB 174. This twelve-paged bill is much too aggressive in its wording.

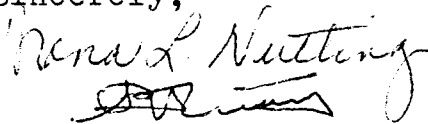
If this bill is passed it would mean that opticians could no longer fill prescriptions, dispense or supply lenses---it would make these people, "bench opticians", for the optometrists and ophthalmologists. This SB 174 would mean that opticians would have no retail operation--it is an economic measure that would put opticians out of business.

These opticians, most certainly, are not going to risk public health. The story related by Senator Crippen describing poorly fitted contact lenses by an optician, does not mean that the same incident could not happen with an optometrist or an ophthalmologist.

Opticians must be certified and are required to pass a national test.

If the fitting of lenses is to be left to the optometrists, it would result in a restraint of trade and an increase in the cost of lenses and frames. Competition cannot be destroyed.

Sincerely,



Mona L. Nutting
R.A. "Dick" Nutting