

OPINION NO. 71-014

Syllabus:

An optician or other lay person lacks the authority under Sections 4725.01 to 4725.14, inclusive, of the Revised Code, to make any determination concerning whether or not a person may be fitted with glasses or contact lenses, to prescribe lenses and to fit glasses to the eyes in any manner other than by frame bending, and to alter or in any way change the prescription given by a licensed optometrist or physician. Further, minimum standards which constitute a prescription for contact lenses, while not expressly provided by the General Assembly, have been promulgated by the State Board of Optometry in Rule OP-7-01 under the authority granted to it in Section 4725.04, Revised Code, and control prescriptions written by licensed optometrists in this state.

To: A. John Rose, Pres., State Board of Optometry, Columbus, Ohio
By: Paul W. Brown, Attorney General, January 11, 1971

Your request for my opinion on the following questions reads as follows:

1. Should an optician or other lay person be permitted to make the judgment as to whether or not a person may be fitted with contact lenses?
2. What minimum specifications constitute a prescription for contact lenses?
3. Can an optician or other lay person take a prescription for glasses from another pair of eyeglasses or must he manufacture lenses solely on the basis of a written prescription by an optometrist or physician?
4. May an optician or other lay person alter a contact lens prescription without the order of a licensed optometrist or physician?

The answer to the questions presented by your request, with the exception of the second question, involves the construction and application of statutes pertaining to the scope of authority and licensing of optometrists. In defining the authority of optometrists, Section 4725.01 of the Ohio Revised Code, provides as follows:

"The practice of optometry is the application of optical principles, through technical methods and devices in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers and adapting optical accessories for the aid thereof."

The licensing required of persons who wish to engage in the practice of optometry is contained in the following language of Section 4725.02, Revised Code:

"No person shall engage in the practice of optometry or hold himself out as a practitioner of optometry, or attempt to determine the kind of glasses needed by any person, or hold himself out as a licensed optometrist when not so licensed, or hold himself out as able to examine the eyes of any person for the purpose of fitting the same with glasses, excepting those exempted under section 4725.14 of the Revised Code unless he has first fulfilled the requirements of sections 4725.01 to 4725.14, inclusive, of the Revised Code, and has received a certificate of licensure from the state board of optometry, nor shall any person represent that he is the lawful holder of a certificate of licensure such as is provided for in such section, when in fact he is not such lawful holder, or impersonate any licensed practitioner of optometry."

For the purposes of Section 4725.01, supra, the term "optical accessories" can be construed to include contact lenses, even though specific optical accessories were not expressly enumerated in the statute. An examination of the statute also reveals that the General Assembly has granted authority to optometrists to examine and measure the functional power of human eyes in order to ascertain departures from the normal and to adapt optical accessories for the aid thereof. Because of the nature of this science, one that requires a specific degree of training and skill, the General Assembly has enacted legislation to insure the health and safety of the individual citizens who seek eye treatment and care. Therefore, persons who do not qualify as licensed optometrists under the sections of the Revised Code quoted above are prohibited from advertising or performing these functions which are expressly reserved to those who comply with the statutory requirements.

In the case of Fields v. District of Columbia, (C.A.D.C. 1967) 232 A. 2d 300, adhered to 244 A. 2d 643, app.den. 131 U.S. App. D.C. 346, 404 F. 2d 1323, the court construed a statute which is almost identical to Section 4725.01, Revised Code. Based upon the theory that the public should be protected from the serious consequence which may result from improper fitting, the court held that the fitting of contact lenses constitutes the practice of optometry since such fitting is the "adaption of lenses for the aid and relief" of a person's visual defects. This case lends support to the conclusion that the authority granted by the legislature to licensed optometrists was intended to be exclusively granted.

If a person licensed as an optometrist has the authority to examine the human eye and to adapt optical instruments or accessories in aid of vision, it can be implied from the statute that he, and he alone, possesses the authority to make prescriptions for the properties of contact lenses to which the manufacturer who fabricates such lenses must adhere. Otherwise, the function of the optometrist would be inhibited and the purpose of the legislature in enacting Sections 4725.01 to 4725.14, inclusive, of the Revised Code, would be frustrated.

Under the authority granted to the State Board of Optometry by the General Assembly in Section 4725.04, Revised Code, the Board has the power to promulgate rules and regulations to govern the practice of this profession. Such a rule, OP-7-01, pertaining to contact lenses, the effective date of which is November 15, 1970, provides the minimum specifications for a contact lens

prescription. These are as follows: base curve, peripheral curve or curves (including curvature and width), overall diameter, optical zone diameter, power, center thickness, and color. These rules apply only to licensed optometrists, and there is no statute or case law governing the question of what constitutes a minimum prescription for contact lenses. Therefore, your second question is not one which this office can answer, except to state that, in regard to Ohio licensed optometrists, Board Rule is controlling.

A Missouri statute, Section 336.010, R.S.Mo., which, in effect, is quite similar to Section 4725.01, supra, was cited in Opinion No. 77, Opinions of the Attorney General of Missouri for 1966. In that Opinion, the Attorney General stated that "a prescription may not be altered by anyone other than a registered optometrist or licensed physician in any manner which would change the corrective properties of the lenses. The prescribing of lenses to correct defects or abnormal conditions of the eye is a part of the practice of optometry and any alteration or change may be made only by an authorized practitioner."

Section 4725.99, Revised Code, proscribes those who violate Section 4725.02, supra, and contains the following penalty:

"(A) Whoever violates section 4725.02 of the Revised Code shall be fined not more than five hundred dollars for a first offense; for each subsequent offense such person shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned not less than six months nor more than one year."

Therefore, it is my opinion and you are hereby advised that an optician or other lay person lacks the authority under Sections 4725.01 to 4725.14, inclusive, of the Revised Code, to make any determination concerning whether or not a person may be fitted with glasses or contact lenses, to prescribe lenses and to fit glasses to the eyes in any manner other than by frame bending, and to alter or in any way change the prescription given by a licensed optometrist or physician. Further, minimum standards which constitute a prescription for contact lenses, while not expressly provided by the General Assembly, have been promulgated by the State Board of Optometry in Rule OP-7-01 under the authority granted to it in Section 4725.04, Revised Code, and control prescriptions written by licensed optometrists in this state.