

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

DR. J. BURKE, President
Professional Building
East Grand Forks, Minnesota 56721
773-0143 Area Code 218

DR. JOHN R. KENNEDY, Vice President
451 Lowry Medical Arts Building
St. Paul, Minnesota 55102
488-6771 Area Code 612

DR. LEO A. MEYER, Secretary
3069 Shorewood Lane
Roseville, Minnesota 55113
631-0447 Area Code 612

DR. B. J. DAVISON
Lincoln Arcade
Olivia, Minnesota 56277
523-1330 Area Code 612

DR. CORA BRABAZON RUHR
2555 E. County Road E
White Bear Lake, Minnesota 55110
770-2955 Area Code 612

MR. HOWARD S. MARKER, Legal Counsel
909 1st National Bank Building
Minneapolis, Minnesota 55402
336-4375 Area Code 612

STATE OF MINNESOTA

BOARD OF OPTOMETRY

February 1, 1974

RECEIVED
FEB 4 -
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

Mr. Thomas Mattson
Office of the Attorney General
State Capitol
St. Paul, Minnesota 55155

Dear Mr. Mattson:

Re: State Board of Optometry Rules and Regulations

I am herewith enclosing, for your examination and approval, the following documents as they pertain to the adoption of additional rules and regulations for the State Board of Optometry:

A. Five copies of the Revisions as adopted.

B. The original and two copies of the Supplemental Statement of Need.

C. The original and two copies of the Supplemental Findings of Fact.

This final draft of the Revisions is in accordance with our meeting of January 25, 1974 and with complete agreement and approval of attorney William F. Brooks, Jr. on behalf of his client, the Minnesota Association of Optometrists and Opticians.

I am sending a copy of the final draft revision to Mr. Brooks for his perusal. He has already received an unsigned copy.

Thank you for your courtesies and the anticipated promptness of your attention to this matter.

Very truly yours,

HOWARD S. MARKER

cc Mr. William F. Brooks, Jr.
Board Members

OCT 3 1 1973

DR. J. BURKE, President
Professional Building
East Grand Forks, Minnesota 56721
773-0143 Area Code 218

DR. JOHN R. KENNEDY, Vice President
451 Lowry Medical Arts Building
St. Paul, Minnesota 55102
488-6771 Area Code 612

DR. LEO A. MEYER, Secretary
3069 Shorewood Lane
Roseville, Minnesota 55113
631-0447 Area Code 612

DR. B. J. DAVISON
Lincoln Arcade
Olivia, Minnesota 56277
523-1330 Area Code 612

DR. CORA BRABAZON RUHR
2555 E. County Road E
White Bear Lake, Minnesota 55110
770-2955 Area Code 612

MR. HOWARD S. MARKER, Legal Counsel
909 1st National Bank Building
Minneapolis, Minnesota 55402
336-4375 Area Code 612

STATE OF MINNESOTA

BOARD OF OPTOMETRY

October 30, 1973

Mr. Curtis D. Forslund
Chief Deputy
Office of the Attorney General
St. Paul, Minnesota 55155

Dear Curt:

Re: In the matter of the Proposed Adoption of Rules of the State Board of Optometry

Enclosed, as per your request, is a copy of the proposed rules as amended at the outset of the hearing on October 29, 1973.

Briefs and other written data are to be submitted to the board by November 19, 1973.

The board has scheduled a meeting for November 21, 1973, at which time it will act on the rules as proposed.

If you have any questions concerning this matter, please feel free to contact me.

Very truly yours,

HOWARD S. MARKER

HSM:sh

cc Board Members

PROPOSED AMENDMENTS TO THE OPTOMETRY RULES AND REGULATIONS

Opt 1 Advertising

. . .

(j) All optometrists affiliated with any person, firm or corporation shall ~~be responsible for~~ inform themselves of the contents of all advertising for optometric services disseminated by such person, firm or corporation. It shall be deemed unprofessional conduct for any optometrist knowingly to permit a person, firm or corporation with which he is affiliated to advertise in violation of the optometry statutes.

An optometrist shall be presumed to be "affiliated" with a person, firm or corporation if such person, firm or corporation:

(1) employs him to practice optometry, or

(2) guarantees him income in his optometric practice, or

(3) pays or repays expenses incurred in his optometric practice.

(k) The names of all optometrists shall be prominently displayed at any office or establishment where such persons examine eyes.

Opt 4 Required Continuing Education

All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs covering one or more of the subjects taught in those optometry schools or colleges approved by the board. In the event an optometrist becomes inelligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board may reinstate any such suspended license under such terms and conditions as it determines will insure that the licensee possesses sufficient knowledge of recent scientific and clinical advances.

(a) The optometric study compliance year shall extend from February 1 through January 31, during which period attendance at approved study sessions may be used as evidence of fulfillment of study requirements for the subsequent license renewal year beginning April 1 and expiring on March 31. Credit will be allowed only for the year in which the education course was actually attended. Example: Credit for 1975 must be obtained between February 1, 1974 and January 31, 1975 for license renewal on April 1, 1975.

(b) Approved programs. Educational programs which will be approved as meeting the required standards include the following (This approval is and shall be based on continued maintenance of high standards.):

(1) Courses on subjects relative to optometry at any board-approved school or college of optometry.

(2) Educational meetings of the North Central States Optometric Conference.

(3) Educational meetings of the Minnesota Optometric Association.

(4) Educational meetings of the American Optometric Association.

(5) Educational meetings of the American Academy of Optometry.

(6) Other educational programs approved by the board as meeting minimum standards after submission of a program, schedule, and outline to the board secretary not less than 60 days prior to the date of the program.

Educational programs will be judged by the board solely on whether or not they are likely to contribute to the improvement, advancement and extension of professional skill and knowledge in the practice of optometry. Speakers, lecturers and others participating in the presentation of any such program shall be recognized by the profession as being expert in their field.

The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, delete from approval for the ensuing study compliance year, one or more of the programs as set forth in paragraphs (2) through (5) above.

(c) Proof of attendance. Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board secretary at the time he applies for renewal of his license and shall contain the following information:

(1) The name of the sponsoring organization.

(2) The name, signature, and address of the licensee.

(3) The subject of the educational topic.

(4) Number of hours in attendance.

(5) The date of the lecture.

(6) The signature of the lecturer or person in charge of the program.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section (b)(6) herein. Such forms shall be made available by the board secretary upon request.

(d) Courses for which credit will not be given. Credit shall not be given for more than two hours attendance in courses of office management or administration. No credit shall be given for courses sponsored by individuals or institutions for primarily commercial purposes or programs the primary purpose of which is to advertise or urge the use of any particular ophthalmic product or appliance.

(e) Exemptions from required attendance. The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the 12 months immediately preceding the annual license renewal date.

(2) Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances.

(3) Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

(f) Board may require attendance ~~at~~ of specified ~~courses~~ subjects. The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, require all optometrists to attend specified ~~continuing~~ subjects of continuing education ~~courses~~ for credit toward the annual hourly requirement.

Opt 5 Release of Prescriptions and Specifications for Contact Lenses

The board interprets the laws of the State of Minnesota as requiring that the ~~fitting~~ adaptation to the eye of contact lenses be performed only by licensed optometrists or physicians. Prescriptions and specifications for contact lenses may be given out only upon written request of the patient and then only to a licensed optometrist or physician.

It shall be deemed unprofessional conduct for any optometrist to dispense a prescription for corrective lenses who knows or has reason to believe that the same will be utilized for the ~~fitting~~ adaptation of contact lenses in aid of the powers of vision by someone other than a licensed optometrist or physician.

Opt 6 Incorporating under the Professional Corporations Act

One or more licensed optometrists may form a corporation under the Professional Corporations Act as stated in Minnesota Statutes 1973, Chapter 319A. With reference to the formation and maintenance of such professional optometric corporations, the following rules shall apply:

(a) No professional optometric corporation shall begin to render professional service in this state until it has filed with the board secretary a copy of its articles of incorporation.

(b) Either the abbreviation "O.D." or the word "Optometry" or "Optometric" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O.D." shall not be used as a suffix.

(c) Where an optometrist is working as an employee of a professional optometric corporation, his name shall be prominently displayed at any establishment where such person is rendering professional services.

DR. J. BURKE, President
Professional Building
East Grand Forks, Minnesota 56721
773-0143 Area Code 218

DR. JOHN R. KENNEDY, Vice President
451 Lowry Medical Arts Building
St. Paul, Minnesota 55102
488-6771 Area Code 612

DR. LEO A. MEYER, Secretary
3069 Shorewood Lane
Roseville, Minnesota 55113
631-0447 Area Code 612

DR. B. J. DAVISON
Lincoln Arcade
Olivia, Minnesota 56277
523-1330 Area Code 612

DR. CORA BRABAZON RUHR
2555 E. County Road E
White Bear Lake, Minnesota 55110
770-2955 Area Code 612

MR. HOWARD S. MARKER, Legal Counsel
909 1st National Bank Building
Minneapolis, Minnesota 55402
336-4375 Area Code 612

STATE OF MINNESOTA

BOARD OF OPTOMETRY

December 10, 1973

RECEIVED
DEC 12 1973
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

Mr. Curtis Forslund
Chief Deputy Attorney General
Office of the Attorney General
State Capitol
St. Paul, Minnesota 55155

Dear Mr. Forslund:

Re: State Board of Optometry Rules and Regulations

I am herewith enclosing, for your examination and approval, the following documents as they pertain to the adoption of additional rules and regulations for the State Board of Optometry:

(a) Five copies of the regulations as adopted.

(b) The original and two copies of the regulations as proposed.

(c) The original and two copies of the Order of Hearing with attached Certificate and Resolution.

(d) The original and two copies of the Notice of Hearing.

(e) The original and two copies of the Secretary of State's list with attached Certificate and Affidavit.

(f) The original and two copies of the Affidavit of Mailing.

(g) The original and two copies of the Statement of Need.

(h) The original and two copies of the Findings of Fact.

(i) The original and two copies of the Order Adopting Rules with attached Certificate and resolution.

(j) The original and two copies of the Statement of Compliance with Manual of Rule Making Procedures.

(k) A transcript of the hearing of October 29, 1973, together with the briefs of attorney Joseph J. Dudley on behalf of the Minnesota Contact Lens Society, attorney Douglas L. Skor on behalf of the Minnesota Association of Ophthalmology, attorney William F. Brooks, Jr. on behalf of the Minnesota Association of Optometrists and Opticians, and the statement of Robert M. Shaw on behalf of the Minnesota Newspaper Association.

Should you have any question concerning the propriety of the rules as finally adopted, I would appreciate hearing from you so that we can schedule an appointment at your earliest convenience.

Very truly yours,

HOWARD S. MARKER

HSM:sh

Enclosures

Copy to Board Members

STATE OF MINNESOTA

COUNTY OF RAMSEY

- -

In the matter of the Proposed Adoption

of Rules of the State Board of Optometry

- -

TRANSCRIPT OF PROCEEDINGS

(October 29, 1973)

Reported By: DONALD G. HESSBURG

STATE OF MINNESOTA

COUNTY OF RAMSEY

- -

In the matter of the Proposed Adoption

of Rules of the State Board of Optometry

- -

The above-entitled matter came on for public hearing pursuant to M.S. 1967, Section 15.0412, Subdivision 4 in Room D, Fifth Floor of the Veterans Administration Building, St. Paul, Minnesota, on the 29th day of October, 1973, commencing at 9:00 o'clock a.m.

BOARD MEMBERS PRESENT: Dr. Leo A. Meyer, Presiding Officer
Dr. Jack Burke
Dr. Cora B. Ruhr
Dr. John Kennedy
Dr. B. J. Davison

ALSO PRESENT: Howard S. Marker, Esq., Legal Counsel

DR. BURKE: We will now call our Board meeting to order at 9:10.

At this time, we will have the roll call.

(Roll call taken with all members being present)

DR. MEYER: Roll call has been called, Mr. Chairman. I now move that the agenda be changed to take up the matter of the public hearing at this time and that the balance of the business meeting be conducted immediately after the hearing.

DR. BURKE: Fine. We will follow that procedure and at this time, I will call on Dr. Leo Meyer, who will be the presiding officer in the public hearing.

DR. MEYER: On behalf of the Board of Optometry, we want to welcome all of you here. You all know the purpose of the hearing is to hear the views of the public so that the Board can after due deliberation make a judgment as to the adoption of these rules. If you have anything to say in regard to any of the proposed rules, and we will take them as they are listed, we want you to identify yourself by your name, whom you may be affiliated with, and your address.

MR. DUDLEY: Mr. Chairman, my name is Joseph Dudley. I am an attorney at law. My offices are at West-1260 First National Bank Building, St. Paul. I am representing

the Minnesota Contact Lens Society. And I respectfully request the commission to permit me to put in a statement of their position within twenty days after the hearing.

DR. MEYER: This is correct. There is a twenty-day hearing in which written briefs may be submitted for consideration by the Board after that period. Thank you.

I would like at this time before we get ahead of ourselves to inform you of the changes or the amendments that the Board has decided upon and if you will refer to your copies, under Opt 1 Advertising, Item (j), in the second sentence strike "be responsible for" and in lieu thereof insert "inform themselves of."

A VOICE: Would you repeat that?

DR. MEYER: Line 2 under Item (j), strike "be responsible for," and insert "inform themselves of."

On Page 5, Paragraph (f), strike in that first sentence of Paragraph (f) the word "at" and in lieu thereof, insert "of". After specified or not after but strike "courses" and in lieu thereof, insert "subjects."

On Line 4 under (f), where it states "optometrist to attend specified continuing education courses," insert between "specified" and "continuing" the following two words: "subjects of continuing education" and strike "courses."

On Page 6 Opt 5, in the second sentence,

which reads at the present time "requiring that the fitting of contact lenses be performed only by," strike the word "fitting" and in lieu thereof, insert "adaptation to the eye."

In the next paragraph, the third sentence reads as follows: "reason to believe that the same will be utilized for the fitting of." Strike the word "fitting" and in lieu thereof, insert the word "adaptation."

On the next line, which at the present time reads "contact lenses by someone other than a licensed optometrist or," insert between the word "lenses" and "by" the following: "in aid of the powers of vision."

MR. DUDLEY: Can I have that again, sir?

DR. MEYER: "In aid of the powers of vision."

Now, in processing the hearing, we will hear proponents for the proposed rules and regulations first and the opponents second. If there is rebuttal, we will take the rebuttal after the proponents and opponents have been heard, and we will exhaust discussion on each item separately.

We will now take up Item (j) under "Advertising."

Yes?

MR. BROOKS: Dr. Meyer, I have a procedural question before we proceed to the presentations. I am

William Brooks, Jr., an attorney in Minneapolis representing the Minnesota Association of Optometrists & Opticians.

As I understood Mr. Dudley's question and the answer, we have a minimum of twenty days to file written material and that material will, according to the attorney general's rules, be made a part of the record; is that correct?

MR. MARKER: Maximum of twenty days.

DR. MEYER: That is correct, maximum of twenty days for the written brief to be submitted to the Board.

MR. BROOKS: The point that concerns me is I want to make sure that we all understand that what is submitted will become a part of the record.

DR. MEYER: Yes. Does anyone wish to speak in favor of Item (j)?

MR. MARKER: I am Howard Marker and I am the counsel for the Board. The Board has asked that I preface the discussion with reference to each of the proposals with a brief statement of need.

With reference to Optometry 1 (j), I would like to say this on behalf of the Board: instances of a non-licensed person, firm or company holding itself out as examining eyes are brought to the Board's attention several times each year. Advertisements for such personal services are prohibited by M.S.A. Section 148.56 and are misleading

to the public. They appear almost anywhere in the state and are usually transitory.

Since the unlicensed employer is not subject to the Board's jurisdiction, its violations cannot presently be dealt with in an expedient manner. The present necessity of having to commence judicial proceedings for injunctive relief is likely and costly. Professional responsibility is inimical to the public welfare. It requires affirmative action on the part of an optometrist who is affiliated with a firm, person, or company to make a reasonable effort to see to it that his non-licensed employer does not hold himself out to the public as practicing optometry.

This is the brief statement of the Board with reference to the need for the promulgation of proposed Optometry 1 Advertising, Subdivision (j).

DR. MEYER: Thank you, Mr. Marker. Does anyone wish to speak in favor of the proposed rule as submitted and amended?

DR. SCHAEFER: My name is John Schaefer. I am president of the Minnesota Optometric Assocation.

MR. MARKER: Dr. Schaefer, perhaps it would be better for you to step to the table, which we have set out as a rostrum.

DR. SCHAEFER: In concept, the association is well aware of the problems presented by what Mr. Howard Marker

has described.

I would, however, like our legal representative, Mr. Dick Keenan, who is a representative of the Minnesota Optometric Association, express our views on this particular rule.

DR. MEYER: The chair recognizes Mr. Keenan.

MR. KEENAN: Mr. Chairman, members of the Board, as Dr. Schaefer indicated, we have long been concerned with the problems that result where an employer is deemed by Minnesota law not to be subject to the optometry laws and the optometry regulations. We think that the concept of getting at that problem by making the optometrist employee responsible where he knows of advertising or other practices that are in violation of the optometry law is a good one. We have some concern for the status of Minnesota case law on that point, in particular the Williams versus Mack case and the Rayburn case in 1958.

We think that perhaps the Board would have some problems, as I am sure Mr. Marker is aware, in that regard and my only -- I guess my only comment would be that the association is very much in favor of the concept and the evil that is being remedied by this particular rule; however, we would express our concern that perhaps optometrists in Minnesota might have to go to the legislature to correct the situation and the Board might be ill

advised to promulgate this particular rule because of the problems that we would have in a judicial procedure later on.

Thank you.

MR. MARKER: Mr. Keenan, could I ask a question? You were formerly Board counsel; is that correct?

MR. KEENAN: Richard Johnson of our office was attorney for the Board. I did a lot of work as back up to him.

MR. MARKER: Do you have personal knowledge of the instances in the past where it has been brought to the Board's attention of various violations by individual firms holding themselves out as practicing optometry?

MR. KEENAN: This was a continuing problem. I think that perhaps the greatest volume of complaints that the Board counsel received were relative to advertisements made by various corporations who were doing business in the State and who were in the optical business. We would continually receive advertisements that or wherein people would complain that a corporation was advertising that it examined eyes or that it fitted contact lenses or that it would sell lenses for a given price. And we continually had a problem trying to differentiate between those kinds of advertisements as to when that corporation was in violation of the optometry laws and when it was not. Where it

was not, we continually had the problem of trying to determine whether or not any individual optometrist employed by or affiliated with that corporation had done anything themselves which the Board would then deem to be unprofessional conduct and thus call for some kind of further proceedings.

MR. MARKER: Did you make any determination as to the effectiveness of any remedies or means at your disposal to deal with these problems?

MR. KEENAN: We found that the Board was pretty well strapped in that regard because a lot of the violations seemed to be rather petty. They were petty, I guess, when we looked at it in terms of what it would cost the Board to initiate proceedings for injunctive relief against a corporation based on one particular advertising or pattern of advertising. I think it is very clear that the most effective relief for the Board, if it is available, is some kind of a disciplinary proceeding, the authority to have a disciplinary proceeding against the individual optometrist involved.

We did feel that we had some problems based on prior Minnesota case law that we felt that given the status of Minnesota law, we had a problem determining just when that optometrist had done something that we deemed to be unprofessional and when it was a situation where we could not hold him individually responsible for acts of his em-

ployer.

There were some instances where individual optometrists had incorporated themselves and effectively had not only a process but also a dispensing business. In those situations, we were very much concerned that this kind of pattern not become a thing that optometrists would try to use to evade the clear intent of legislature in making certain kinds of advertising illegal under Minnesota law.

MR. MARKER: Thank you.

DR. MEYER: Mr. Keenan, at this point, I would like to ask if there are any other questions from the members of the Board or its attorney, and we will do this after each speaker has had an opportunity to give his presentation. If there are any questions, feel free after the presentation to ask.

(No response)

DR. MEYER: Thank you.

MR. KEENAN: Thank you.

DR. MEYER: Any questions from the Board?

(No response)

DR. MEYER: Does anyone else wish to speak in behalf of the proposed Rule (j)?

MRS. BORSHEIM: Yes. May I? I am Wendy Borsheim, the director of consumer relations for the Minnesota Retail Federation.

DR. MEYER: Are you speaking in favor or in opposition?

MRS. BORSHEIM: Opposition.

DR. MEYER: Opposition. We will wait to hear all proponents first.

MRS. BORSHEIM: Okay, fine.

DR. MEYER: And then we will call on you. Are there any others that wish to speak in favor of the proposed rule?

(No response)

DR. MEYER: If not, you may now step to the podium.

MRS. BORSHEIM: My only comment today relates to the proposed rule on advertising. As an organization of retailers, we oppose any efforts to eliminate competition in the marketplace by limiting or preventing the advertising of consumer products. It can be clearly established that the elimination and restriction of price advertising would result in higher prices to the consumer and for this reason, higher prices to the consumer, the Minnesota Legislature has consistently rejected each and every effort to limit or prohibit the price of advertising of eyeglasses. Section (j) of the proposed rule on advertising is harmful to the consumer and we urge that you delete it from the proposed rule.

DR. MEYER: Any questions of the members of the Board?

MR. KEENAN: What was her last name?

MRS. BORSHEIM: Wendy Borsheim.

MR. MARKER: Would you spell your last name, please?

MRS. BORSHEIM: B-O-R-S-H-E-I-M.

MR. MARKER: And the organization?

MRS. BORSHEIM: Minnesota Retail Federation.

DR. MEYER: I have one question. Do you have any statistics relative to the fact that there is evidence that higher prices are charged where advertising is permitted or not permitted?

MRS. BORSHEIM: No, I am afraid I don't.

DR. KENNEDY: I have a question. Didn't you state in your presentation that it is clearly evidence or clearly shown that when prices are limited, that they go higher?

MRS. BORSHEIM: Well, we feel that that is a --

DR. KENNEDY: Would you read that again?

MRS. BORSHEIM: It can be clearly established that the elimination of price advertising would result in higher prices to the consumer.

DR. KENNEDY: Thank you.

MR. MARKER: Perhaps I could make this comment.

The intent, so far as I have been able to determine, in the minds of the various Board members and the reason for promulgation or proposed promulgation of (j) is not to eliminate advertising and not to eliminate price advertising.

MRS. BORSHEIM: It was felt that with the regulations, if the regulation passed, whereby an optometrist could be held responsible for his employer's advertising, that perhaps all price advertising would come to a halt and this could be detrimental.

MR. MARKER: Well, our understanding of the existing status of the law is that it is not unlawful for an optical company to advertise prices and it is not the intention of the Board to curtail that practice in any way, shape, or form through this rule.

MRS. BORSHEIM: Thank you.

DR. MEYER: Any other questions? Does anyone else wish to speak in opposition?

MR. SIEBEN: My name is Mike Sieben, S-I-E-B-E-N. I am a State Legislator, member of the State House of Representatives from District 51B, State House of Representatives.

I have no formal testimony prepared this morning. I first of all want to precede my remarks, though, with, I guess, a note of congratulations to the lady that just appeared before me. I am very impressed with the fact

that the retail association would come and testify against a bill such as this or against a regulation such as this. I have not thoroughly prepared myself as far as research into the background of Minnesota Statute 148.56. It is my understanding from your earlier comments that Minnesota currently has a statute which states that an optometrist cannot advertise, and it is my understanding further that this statute results in a situation where we have an individual professional who cannot advertise but a company or corporation that can, and that this is a disadvantageous position for one group as compared to the other. And I guess my first impression of that situation is that I think that the route that ought to be taken to remedy this problem is to abolish Minnesota Statute 148.56. I think this would make much more sense, to eliminate this competitive disadvantage that apparently has resulted.

I am opposed to this regulation -- I am talking here about Regulation (j) -- for one fundamental reason. It would clearly result in a further lessening of price competition and yet another field of consumer sales in the State of Minnesota. It seems to me that consumers have a right to know the price of the product they are buying, and this proposal would simply take us once again another step away from that principle, that fundamental theory. This is something that our country is founded

on, that is, the theory of free and open competition in the marketplace, the easy availability for the consumer to shop around and to make his or her choice based on their free choice, on the one hand. On the other hand, free and easy availability of a seller to shop around and to also have the availability to set the price they wish and make this clearly known to consumers.

This rule would result in anything but that in my opinion. I guess I finally would like to say that if this rule or regulation is adopted, you can be assured that there will be a strong movement in two other branches of our state government to do away with this rule. First of all, in the legislative branch of the government. I can only refer to our experience last legislative session where I was deeply involved with a bill which would do away with the regulation that was adopted and is law today by the State Pharmacy Board. It says that pharmacists cannot advertise their prices on prescription drugs.

It seems to me that legislatures are becoming increasingly aware of the disadvantageous situation that is created by regulations such as these, and I think you are going to find that the state legislature quite frankly is going to take a close look at a regulation such as this.

I think, like I said before, if we are going to go any route, we should go the route of abolishing this

current statute that says that it is unprofessional to advertise for an optometrist as an individual.

I think the other thing that is of note is the fact that the trend is really in the opposite direction, at least in the pharmacy industry. I am familiar with that industry because of my preparation for this bill. As a matter of fact, back in 1961, forty-nine states in our country prohibited pharmacists from advertising. Today, twenty-four states do. So we have twenty-six states that either by legislative enactment or judicial decision have struck down a regulation such as the regulation you are proposing this morning. I think it is completely contradictory to the trend of the country, at least in the area of pharmacy.

I haven't looked up and I haven't researched the area of optometrists but I think it is completely contradictory, certainly in the area of pharmacy.

I think the court decisions also are very interesting. I had occasion to research a number of court decisions in connection with my research on the pharmacy bill which would prohibit the advertising on prescription prices. In the course of this research, I discovered the courts in five different states, either the federal court or state courts, have struck down very similar prohibitions just on the basis that simply these prohibitions bore no

relationship to protecting the health, safety, and welfare of the citizens of the state.

Those are basically my comments, my remarks, and I would be happy to answer any questions.

DR. MEYER: I just have one question. Do you think it is inappropriate for the professional to know the contents of the advertising that is being prepared by a firm that is placing an ad in the paper?

MR. SIEBEN: No, I don't think that is inappropriate. I have no particular reservation about that. I think that may be appropriate. I guess I have one question, if you don't mind. Is this Board composed of all optometrists?

DR. MEYER: At the present time, there are a total of seven members that are to be appointed to the Board. There are two lay or public members that have not been appointed by the Governor's office as of this time. It is our understanding that they will be appointed within a short period of time. I don't know exactly when.

MR. MARKER: Representative Sieben, I would like to reiterate to you what I said to Miss Borsheim and that is that it is not the intent of this rule to eliminate price advertising. The intent is solely to make the professional, the optometrist, responsible for any unlawful acts of his employer in violation of the optometrist statutes.

MR. SIEBEN: What is your name again, sir?

MR. MARKER: Howard Marker.

MR. SIEBEN: Howard, I can only say to that I think this may not be your intent but it seems to me that the result of what you are doing this morning, the result of the adoption of this regulation, may be just that, that you are going to result in a situation where you don't have any price competition, advertising. Isn't that true?

MR. MARKER: No. The present status of the law until changed by the legislature is that an optical company can advertise its prices. The statute prohibits an optometrist from advertising prices. The intent here is to simply make the optometrist more concerned and aware on behalf of the public of the content of his employer's advertising.

MR. SIEBEN: Would you concede the fact, though, that the result of the adoption of this regulation this morning would be the prohibition of advertising in the optometry field?

MR. MARKER: Not at all. Not at all.

MR. SIEBEN: I see. Are you with the Attorney General's office?

MR. MARKER: I was appointed by the Attorney General's office but I am a practicing attorney.

DR. MEYER: Mr. Sieben, as secretary of the Board, this comes up quite frequently. We will receive a complaint in which the complainant is not aware of who the

professional is and they have to go back and try to find out. This is one of the problems that we find with the advertising that exists.

MR. SIEBEN: Well, I may be completely misinterpreted or misinformed as to the result of this regulation will be and if I am, I apologize to that extent. My information was that the result of the adoption of this regulation would be that there would be some restrictions, further restrictions on advertising in this area.

MR. MARKER: It would have nothing to do with prices. In the statement of need, I tried to point out that the problem is that or has been advertising for optometric services, for the performance of optometric services by persons or entities who are not licensed optometrists. And the only restriction which this proposed rule would impose would be to see to it that one who did not have a license to practice optometry would not advertise to the public for such services.

MR. SIEBEN: But if you have got a firm that is incorporated in the State of Minnesota and the corporation is doing the advertising, wouldn't the result of the adoption of this regulation be that they couldn't advertise any longer?

DR. KENNEDY: No.

MR. MARKER: A corporation cannot have a license

to practice optometry and a corporation could not, therefore, hold itself out as practicing optometry.

The statutes make it clear that anyone who holds himself out as practicing optometry is deemed to be an optometrist. This is what this rule is designed to prohibit. It has nothing whatsoever to do with price advertising. There is no prohibition against an optometrist advertising that he is an optometrist and he practices at such and such an address.

MR. SIEBEN: Let me ask this question: what is the theory behind the original statutes, 148.56, that prohibits an optometrist from advertising the prices? I guess maybe it is inappropriate and we maybe can discuss this later but it seems to me if anything, you should propose a regulation that should do away with this. I think this would be in the public interests.

MR. MARKER: It might be in the public interest but it might also be in the public interest to then permit doctors and lawyers to advertise prices and I presume that the same rationale that applies to those professions and which prohibits them from advertising would also apply here.

MR. SIEBEN: So you are answering for the Board as their attorney, is that right?

MR. MARKER: Since we have had this dialogue, I

am answering for myself but if any of the Board members have something they would like to add to that --

MR. SIEBEN: In other words, it is your thought because doctors and lawyers don't advertise, then optometrists shouldn't have to?

MR. MARKER: I am only suggesting that this is probably the same rationale.

MR. SIEBEN: I see.

DR. MEYER: Any other questions or comments?

DR. KENNEDY: Mike Sieben, my name is Kennedy and I think we agree with your remarks on consumer protection. We are all consumers. We are all interested in getting good products at fair prices.

My question to you is in your comments, are they confined to products or are you talking to professions, as well, when you speak of control of advertising?

MR. SIEBEN: I guess I am concerned primarily with the price which is what most consumers are concerned about. When they buy glasses, for example, they are concerned with a good pair of glasses but they are also concerned about the price they pay for them. They want to find out where they can get the cheapest price and any prohibition in advertising would diminish, of course, that availability.

DR. KENNEDY: But you extend those comments to professions as well as products?

MR. SIEBEN: Sure.

DR. KENNEDY: Okay.

DR. MEYER: Any other comments or questions? Do you have a comment?

DR. BURKE: I was just going to make a very simple statement. Our main concern as a Board in the service of the citizens of Minnesota is seeing that the citizens of Minnesota have proper eye care and actually, it is a means by which we can keep our own house clean, being sure that the optometrists within the state are providing this service for the citizens of Minnesota, and this basically is one of the reasons for the promulgation of this particular rule is to help us keep our own home clean, providing the best of service to the citizens of Minnesota.

MR. SIEBEN: I congratulate you to that extent. I would only say in addition, though, that I think you must be very concerned, as I am sure you are and I am sure most boards are today, they have to be increasingly concerned, because the public feels increasingly that many of the boards are created to protect the consumers of the State of Minnesota sometimes result in protecting the profession more than the consumers. And the best example that I thought of last session was -- once again, I am picking on them -- was the Pharmacy Board when they made a proposed regulation and they adopted it back in 1961 that resulted in a diminish-

ment of price competition, and I thought personally that that was an action where they were protecting themselves more than the consumers that they were appointed to protect.

DR. BURKE: What we are attempting to do is to promulgate a rule such as this really, which has been an outgrowth of the many, many complaints that we have had through the years in order to try to lessen that area from the consumer so that the proper service is rendered.

DR. MEYER: Thank you, Mr. Sieben.

MR. BROOKS: Gentlemen, my name is William Brooks. I introduced myself for the record earlier. The organization that I represent is the trade association composed of a number of the corporations who are engaged in the delivery of optometric and opticianary services in the state. I would like to preface my remarks with a couple of general comments.

First, I won't attempt to bore you with an oral presentation of our legal position on the rule. It is my intention to file as closely as possible a legal brief as I can on the minimum authority of the Board to promulgate this rule. It is our position that the rule exceeds your authority and goes beyond the case law of the state.

I have heard some discussion here this morning of complaints received by the Board. I would like to remind the Board that as counsel for the Minnesota As-

sociation of Optometrists & Opticians, I informed the Board in writing in 1967 that we were anxious to assist the Board in the investigation of any complaints. We would like to know of any complaints that related to advertising. And unless something has happened to the mail, gentlemen, I have received no communications from the Board since 1967 advising me that you had any such complaints.

I would think that if you are basing your case for the rule on the existence of complaints that have come before the Board, the record of those complaints, the advertisements that they concern should be made a part of the record. I would make that formal request of the Board.

There is no question in my mind, and I have been involved in the interpretation of similar rules and statutes throughout the United States, I have been involved in a number of legislative discussions on proposed bills that have affected this area, that this rule, if adopted, in the form you have offered it, would present the Board with an opportunity to attempt to end price advertising in the state. That may not be the intention of the present Board, but it is built into the language of the rule. If it is not your intention, then I suggest that the rule should be radically redrafted.

We also feel that the rule impinges on the employment relation between the optometrists, who are em-

ployed by my clients, and those corporations. There are statutes on the books that deal with fraudulent, misleading, and deceptive advertising which are available to the Board and the Attorney General in the event of any advertisement which you feel to be misleading or fraudulent in nature.

In this area, as I believe Dr. Kennedy suggested a few minutes ago, there is a distinction. We are talking both about services and about a product. The effort in the past has been to extend the original rationale, which I am sure went to the advertising of services, to cover products, and I must remind you, and I am sure you all know it, that we will resist in any way we can any rule which attempts to impede or inhibit the advertising of a product. We do not feel so strongly on the subject of services although, as a matter of fact, I think it would be our position, as it was Mr. Sieben's position, that from the standpoint of the public good, there is nothing inherently wrong or evil in price advertising of services. This is a discussion within all of the professional groups at the moment and this kind of discussion was at the root of the legislatures' action, as I understand that action, in adding lay members to all of the regulatory bodies.

I would suggest, gentlemen, that this particular rule which goes to a consumer issue and a public issue might well be set aside by your Board until those

public members are appointed and then the issue should again be taken up. I think that the other rules that you propose today are merely appropriate to discuss today because they go directly to the professional and technical standards that must be set and there is a deadline on that, as I am aware.

I think those are, gentlemen, my comments on Rule No. 1, and I will be filing a brief on our legal position with respect to those.

I will be glad to answer any questions now, if you wish.

DR. MEYER: Thank you, Mr. Brooks. Are there any questions or comments of the Board or its attorney?

MR. MARKER: Mr. Brooks, in what way do you consider the language of proposed Subdivision (j) to be potentially restrictive of price advertising?

MR. BROOKS: The use of the phrase "unprofessional conduct" in the rule which ties to the phrase in the statute and the past actions of the Board in interpreting the phrase in the statute.

MR. MARKER: Could you amplify that?

MR. BROOKS: The efforts have been made in the past, since the mid '50's, by various people to interpret the statutes to mean that it is unprofessional conduct to advertise price of product, and they have attempted to impute

that to the corporations. As Mr. Keenan pointed out, there have been several judicial decisions in the state touching on the subject. I don't have case citations or legislative references with me but they will be in my brief.

One other point, gentlemen, the representative of the retail federation made reference to the fact that it was their view that the elimination of price advertising raised prices. That is also our view. We do have some studies that have been made in other states and I will incorporate those in my written presentation to the Board, and those are studies that relate specifically to optometric goods.

DR. MEYER: Any other questions or comments?

DR. BURKE: You mentioned the fact that you are concerned about your product, not so much as the service. What control do you actually have as far as the service rendered, as far as within your affiliations and employees as to being able to produce a proper service rendered to clientele of the citizens of Minnesota?

MR. BROOKS: I don't understand your question.

DR. BURKE: You mentioned a product you were quite concerned with, as far as the advertisement, what have you, but not so much as to the control of the services.

MR. BROOKS: No, I said that our concern with the advertising of price went primarily to the advertising of

products, the glasses, the contact lenses, whatever they might be, rather than advertising the price of examination, although philosophically, we would argue that it is perfectly proper to and everyone ought to be able to advertise the price of an examination.

DR. BURKE: Let me just ask one further question. What care or direction do you take or do your firms take toward the promotion of the quality of service rendered to the patient?

MR. BROOKS: By employing the most highly skilled, best trained optometrists that we are able to employ, which are in turn licensed by your Board, which have responsibility for their professional standards. It is for that reason that we supported the continuing education requirements which passed in the last session. We think they are a good thing. We had some nitpicking objections about the way you proposed the rule that we can get into later, but we think that is a step forward.

DR. MEYER: Mr. Brooks, as an attorney, do you advertise your prices to your clientele in the newspaper?

MR. BROOKS: I do not but if I were permitted to do so without losing my license to practice, you may rest assured that I would.

DR. MEYER: Any other questions?

(No response)

DR. MEYER: Thank you, Mr. Brooks.

MR. SHAW: My name is Robert Shaw and I am manager of the Minnesota Newspaper Association. It is a group of every newspaper and legal newspaper in the state except one. I have a statement here. I don't think I will read it but I would like to file it with you after the hearing.

As I read the proposal (j), if the words mean what I think they mean, it says "it shall be deemed unprofessional conduct for any optometrist knowingly to permit a person, firm, or corporation with which he is affiliated to advertise in violation of the optometry statutes."

Now, one of those statutes, I recall reading it very clearly, says it is unprofessional conduct for an optometrist to advertise price. Now, if those English words mean what I think they do, the effect and one of the strong effects of this proposal were it to be adopted would be to eliminate the price advertising of glasses and frames.

Now, if I am mistaken on this, I wish that you would clarify it for me because these words seems to say that the price advertising of glasses and frames shall be eliminated.

DR. MEYER: Is that wording in the optometrists' section?

MR. SHAW: That is in the change.

DR. MEYER: No, I am talking about the optometry

statutes, does it say price of glasses?

MR. SHAW: Oh, yes, including price advertising. It is in the statute and has been in there for many years.

MR. MARKER: By optometrists, not by firms or corporations or other non-licensed entities.

MR. SHAW: Then, sir, what do you mean by optometry statutes? Which statutes are you talking about? We are confused.

MR. MARKER: We are attempting to refer to the Minnesota statutes, sections 158.52 through 149.62.

MR. SHAW: Mr. Marker, am I correct in my recollection that somewhere in those statutes it prohibits the optometrist, the licensed optometrist, from advertising price?

MR. MARKER: That is correct.

MR. SHAW: Then am I correct in saying that it is my understanding of this last sentence of (j) that it would be unprofessional conduct for an optometrist to permit his employer, let's say it is King or Plymouth, or Duling Optical, with whom he is affiliated, to advertise in violation of that statute?

MR. MARKER: Our Minnesota Supreme Court has held that the optometry statutes do not apply to the optical companies, so it is permissible for an optical company to advertise prices.

MR. SHAW: That's our main interest here; that is the main interest of the newspapers and has been for many years is to preserve the right of the employers of optometrists to advertise the price of glasses and frames.

Now, you raise another issue, though, Mr. Marker. You are saying in effect that there is a lot of misleading and you have a lot of complaints. You don't say how many complaints or what kind. I would like to know the volume and I would like to know the character of these complaints but you cite that in general terms the public of Minnesota is being deceived or misled about the true nature of optometric services and that people who really aren't licensed to practice optometry are in some way indicating that they are. I am sure you know of the fraudulent advertising statute, which is quite an operable statute with peace in it, and we would invite you and invite the Board or anyone else to take that violation, that fraud, to court and prove it. You not only are invited to do that, we have a Minnesota Press Council which we have set up through our association that would be very interested in knowing of such misleading statements, and there is also this advertising review board which Doug Head is the chairman, and they are set up specifically to go into misleading statements of all kinds.

MR. MARKER: Let me ask you this, Mr. Shaw: within

your own experience, are you aware of instances where optical companies have advertised by way of newspaper "eyes examined"?

MR. SHAW: To be honest with you, there is so little of this advertising going on in the newspapers, I just haven't noticed it.

MR. MARKER: So you have never noticed an ad in the paper by an optical company which says in effect "we examine eyes"?

MR. SHAW: Well, let's assume that that is true. Apparently, you have cases where such ads do exist. Let's assume that that is true.

MR. MARKER: These are the complaints of which I speak.

MR. SHAW: Is that a true statement or a false statement, "our firm examines eyes"? Is that true or false?

MR. MARKER: The question as to whether it is true or false is not relevant insofar as the statute is concerned. The statute says only a licensed optometrist can hold itself out as examining eyes.

MR. SHAW: I am not a lawyer and I have no intent of getting embroiled in all the legal technicalities of this. I am asking you if you would think that that statement could be a true statement, that we examine eyes, Mr. Marker, "our firm examines eyes"?

MR. MARKER: Well, I think that our discussion is

good because it focuses really on what the intent of the Board is, not to restrict price advertising or restrict any lawful advertising on the part of an optical company. It is only to make the professional more responsible to the optometry statutes of the state.

Now, if our legislature in its wisdom determines that there is to be an exception for optical companies employing optometrists who engage in professional services on their premises, then the change, it seems to me, should come from the legislature and the statute should except those companies which employ optometrists.

MR. SHAW: Mr. Chairman and Mr. Marker, I venture to say that you have the instruments right now, if you want to use them. If you want to take to court anybody that you think is misleading the public, you have the full legal armament to do it, if you want to do it, and you have informal groups as I pointed out that are very interested in knowing of anybody who is intentionally deceiving the public, so I would say that you have the recourse that -- all the recourse that you need without adopting such a confusing rule as what we have before us today. That really is -- I have a lot of other things I could say but I think that goes to the heart of our objections to this rule.

DR. MEYER: Any other questions of the Board?

(No response)

DR. MEYER: Thank you, Mr. Shaw.

MR. SHAW: Thank you, doctor.

DR. MEYER: Does anyone else wish to speak in opposition to Item (j) of the proposed rules?

MR. VAN WERT: I am not even sure who is having the meeting. My name -- are you Leo?

DR. MEYER: Yes.

MR. VAN WERT: My name is Oscar Van Wert, an employed optometrist. I am not even sure what section (j) is but I only knew about this meeting at eight-thirty this morning when I was finishing my coffee and I saw in the Minneapolis Tribune that there was such a meeting at nine o'clock. So I won't even to attempt to talk about what is being done here. I think I get the general intent of it but I think I am puzzled one, as a registered optometrist in the state for twenty-four years, why I wouldn't know about something this important this morning. Why every optometrist -- apparently some do -- I don't see anybody here that is in my circumstance. I don't know them all. I gather that generally the thrust of what is going on here this morning is somehow to accomplish what hasn't been accomplished for a number of years through the legislature.

I recall when I looked at my license when I got it years ago that there was an employed optometrist on it and I understood for years that this was kind of a custom.

I think the employed optometrist now is not in such an advantageous position because they are all self-employed. This is nothing to discredit any man on here. I know most of you. Some I don't recognize. You are very fine fellows but I do -- I have been on both sides of the fence, as some of you know. I have been back and forth a couple of times and the question of abuse to the public is one that I certainly challenge very strongly.

We, as anybody, occasionally have complaints. Someone with the Better Business Bureau ran a little thing in the Minneapolis column once and cited a complaint which we had but generally, we have a good record. Anybody that has that many people is going to have some. I can think of a few times -- I am sure that this happened to you men -- where patients have come to us and said I have got such an such a pair of contacts and glasses and I can't use this, and this type of thing results. But generally, my question is if this is something about to change the life of some of us, this drastically, I would think that we ought to have a little forewarning. We are not too well organized. We do have some representation but this is kind of puzzling to me and I would certainly want to enter an objection to something going through this rapidly.

DR. KENNEDY: May I speak? Oscar Van Wert?

MR. VAN WERT: That's right, John Kennedy.

DR. KENNEDY: I want to tell you it is nice to see you. It's been many years. I am sorry for the apparent anxiety that is shown. The purpose of this hearing is to let everybody express an opinion that wants to. We are gathering information to try to make a sound judgment as a Board to carry out the responsibility of seeing that the optometric care to the people of Minnesota is proper and correct and done according to the law. The meeting was not suddenly called.

MR. VAN WERT: It may not have been but I didn't know about it.

DR. KENNEDY: I think there was the adequate thirty-three days notice given and we have also offered another twenty days after this for anyone who wants to submit any material, and this is not a group of your colleagues sitting before you in judgment. We are just gathering information, so that everything is fair, and some of the considerations here are of tremendous importance to some of the optical companies and just the opposite of what some of the con positions have been given, but we want to hear both sides and we want each person to know what we are doing. So I think since there is time, if you want to look into this further and want to comment to us, we would really like to hear what you have to say.

MR. VAN WERT: I haven't seen a copy of it.

DR. KENNEDY: So that makes it kind of hard to know what the intent is.

MR. VAN WERT: I got here a half-hour late but I thought this was important and I wanted to comment.

MR. MARKER: Dr. Van Wert, let me say this to you: there is a procedure by which you can in the future obtain notice by mail of any hearing relating to any Board in the state, not just the Optometry Board, and that is by going to the Secretary of State's office and telling them that you want them to put you on their mailing list of those persons who receive notice of public hearings and you can even restrict that by saying you only want to receive notice of matters as they relate to the Optometry Board. In the Secretary of State's office, that procedure is available.

MR. VAN WERT: It isn't likely to happen too often, but thank you.

MR. MARKER: Sure.

DR. MEYER: Does anyone else wish to speak in opposition to Item (j)?

(No response)

DR. MEYER: If not, we will close the hearing on Item (j).

Any further discussions from the members of the Board, any comments you wish to make at this time?

(No response)

DR. MEYER: If not, we will proceed to Item (k). I will read it and then we will call on the Special Assistant Attorney General to give a rationale for this particular proposal.

Item (k): "The names of all optometrists shall be prominently displayed at any office or establishment where such persons examine eyes."

Mr. Marker, would you give the rationale for that?

MR. MARKER: The rationale of the proposed rule is this: optometric patients frequently complain to the Board of having allegedly received incorrect prescriptions for corrective lenses and other improper optometric services. The Board, of course, is duty bound to investigate all of these complaints to determine whether or not there is any basis in fact for this; however, oftentimes, the patient is unable to identify the particular optometrist involved because his name wasn't adequately displayed at the place of examination and the sole purpose of the proposed rule is to at least permit the consumer, the optometric patient, to know the name of the optometrist who is performing professional services.

That's the rationale.

DR. MEYER: We will now hear proponents regarding

this proposed rule.

MR. LUNDIN: Mr. Chairman, members of the Board, my name is Marvin Lundin. I am the administrator of the Minnesota Optometric Association, and we, too, like the Board, have periodically received complaints from patients who feel they have been mal-served and it is our process to try to straighten this out to see that the patient is taken care of.

In some instances, this may be a member of the association they call about and in other instances, they are non-members. We obviously do not have control with the non-member on a code of ethics as we do with those that are members. But in many instances, coming down to the point of who is the doctor, I am unable to find out the doctor's name because the patient does not know who was the one that actually practiced it. It may be questionable, in fact, if it were an optometrist.

And that being the instance, I would suggest the adoption and recommend, the State Association would recommend the adoption of Rule (k), which would require optometrists to post their name conspicuously to the advantage of the patient in determining who the doctor was or if in fact it was a doctor so that claims or complaints could be properly processed.

DR. MEYER: Any questions or comments from the

members of the Board or its attorney?

MR. MARKER: Mr. Lundin, over how long a period would you say you have been receiving complaints where the patient is unable to identify the particular optometrist?

MR. LUNDIN: Mr. Marker, I have been in this position for seven years and it has been throughout the seven years. I guess it isn't an every day occurrence nor does it fit any particular pattern but those are situations that take place from time to time.

It may be part of the consumer beware type of thing where it doesn't even seem reasonable sometimes that a person would seek health care and not know who performed the health care on them, what their name was. Maybe we all individually have that responsibility. If the name were posted, I think the consumer would have a better chance of understanding who they are dealing with. It is just a simple thing. I think it would be a great aid.

DR. KENNEDY: Mr. Lundin, do you think if the name were posted, it would reduce the complaints that you receive or would this make it easier for you to help resolve those complaints?

MR. LUNDIN: It would make it easier for us. I don't know if it would reduce it. Maybe you could make a case where if the doctor is more conspicuous, he may be more prone to exercise professional judgment on behalf of the

patient. That is not why -- I am looking at it from the standpoint of helping the patient-consumer to understand what the problem is.

DR. MEYER: Any other questions or comments?

(No response)

DR. MEYER: Thank you, Mr. Lundin. Does anyone else wish to speak in favor of the proposed rule?

MR. MARKER: Mr. Keenan, do you think that you might be able to add anything to that by virtue of your experience as Board counsel?

MR. KEENAN: I would merely indicate, Mr. Marker, that I think that this is perhaps a good rule, that it clarifies the specific language already in the statute which requires that a licensed optometrist post his certificate of registration at his place of practice.

I can think of a number of situations that I can recall where a complaint would come into the office and where the individual complaining really did not know the name of the attending optometrist and therefore, it caused problems. We would then have to check back with the location or with the employer or with the office to find out the individual person. I think that perhaps making the practicing optometrist that much more aware of their responsibility, to conspicuously post their certificate, is a good thing.

MR. MARKER: Thank you.

DR. MEYER: Does anyone else wish to speak in favor of the proposed rule?

(No response)

DR. MEYER: If not, we will call on the opponents for the proposed rule.

MR. MARKER: Perhaps, Dr. Meyer, in your own position as Board secretary you could relate briefly and for the record your own experiences in processing complaints where you have had similar experiences to Mr. Keenan's and Mr. Lundin's.

DR. MEYER: It is true a goodly number of complaints received by the secretary of the Board indicate the patient went to X optical company, had their eyes examined and they did not know who examined their eyes. Inasmuch as the Board can only take action regarding the optometrist and a possible violation of the optometry act, it is then necessary to contact the patient, if the complaint is received by mail, to determine who the examining doctor was. This tends to delay response and investigation.

Does anyone wish to speak in opposition to Item (k)?

(No response)

DR. MEYER: Does anyone wish to speak in opposition to Item (k)?

(No response)

DR. MEYER: If not, the hearing on Item (k) is now closed.

We will move on to Opt 4, "Required Continuing Education." This is a long three-page, four-page -- four pages, I believe, rule and I will call on the counsel for the Board to give the rationale for this particular provision.

MR. MARKER: The provisions pertaining to continuing education are the result of enabling legislation as contained in Minnesota Statute 1973, Section 148.59. Briefly, the Board feels that continuing education requirements are essential to ensure that the public will continue to receive optometric services at the highest level.

DR. MEYER: Thank you, Mr. Marker.

Does anyone wish to speak in favor of the proposed rules and regulations regarding continuing education?

DR. BOOTZ: I am Milt Bootz, practicing optometrist from Le Sueur, Minnesota and also president elect of the Minnesota Optometric Association.

The continuing education requirement, of course, is something that we have always been in favor of, simply because it not only helps the particular practitioner but it also protects the public in that he is upgrading his knowledge. We do have one question as far as the certifica-

tion on Page 4, "The use of the Board certificate form is recommended for all educational programs approved by the Board," and so on and so forth. And I think I would like to have Marv Lundin speak to that at this time, if I may.

DR. MEYER: Mr. Lundin?

MR. LUNDIN: Mr. Chairman, members of the Board, in addition to managing the Minnesota Optometric Association, I also function with the North Central States Optometric Conference, which you cite in here as one of the approved educational availabilities and this is just quickly a sixty conglomerate of optometrists providing high level, very significant education annually, and I know in instances of the states of Nebraska, Iowa, and Wisconsin, it is a major source for attainment of the necessary educational requirements in those states.

I bring only to your attention, I guess maybe even a question of interpretation, if you would, over the method of certification of attendance. I think, as I read this, I see a rather horrendous method of certification. First of all, I think we all want to take every step necessary to insure that people who do attend these courses or say that they do actually did attend and provide some kind of proof of attendance. That is a must.

We have worked out a system at the North Central Conference -- it is a roster form of certification --

where each attendee from each state signs the appropriate roster in that particular lecture room during the lecture time and that is certified to by the lecturer or the person who is in charge of the program. Sometimes, that is myself.

In taking the situation of, let's say, approximately one hundred people in a lecture room, having five minutes available to turn that room over for the next lecture, if all one hundred of those people have to have an individual certificate form to be signed by the lecturer, it could create havoc in trying to get the program to move on a schedule, and I see what you have promulgated or suggest promulgating here as being kind of a method, an individual certification at each lecture hour, rather than the roster system, which we now utilize and at the satisfaction of the other surrounding states.

So, again, I would like to have you correct me if I am wrong or I would suggest that as an amendment here that some simplified form that guarantees you that that person did attend, that that type of thing be available for us to the expediency of these courses as they come along.

MR. MARKER: Are you suggesting that perhaps the signature of the optometrist, himself, subscribing to the certificate of attendance as being correct would suffice?

MR. LUNDIN: Coupled with the attendance roster form that we use would give the secretary of the Board an

opportunity to check back and see if in fact he did attend that course, yes.

In other words, for the twelve hours he submitted a form attested to by himself that he did in fact attend the twelve hours of education, and then the secretary had it in his possession, that is the way we do it, the roster form of all of those courses.

DR. MEYER: Mr. Lundin, do you see this as a form that is necessary for signature by the individual optometrist attending the meeting or is this approval of the educational program which would have to be done prior to the attendance?

MR. LUNDIN: No, I think -- I am not questioning the mechanics that you have set up in approving which types of courses the sixty-day notice and what have you, the types of courses are acceptable to you. I think -- I am not questioning that. I am talking about the certification of attendance. How do we prove that Dr. Joe Blow was actually in a room at a certain hour and that that course took place at that time. I am now suggesting a more simplified form, a roster form rather than an individualized certification form, which requires the information you ask here. That information is available on the roster form but more than one name -- all doctors from Minnesota who attended that course at that hour would sign that roster from our office and would be made available to the secretary properly at-

tested to.

We would give you the same information. Instead of one name, we would have all those from Minnesota on one form.

DR. BURKE: What you are saying, you are recommending that it be changed from rather entirely individual to individual or roster certification?

MR. LUNDIN: Yes. I am sure that if you were to amend this and say that certification be utilized along with the approval of a course, when somebody requests approval of a particular course, that if they were to submit to you their method of certification, that you could find it acceptable or not acceptable in addition to this kind of thing that you have here.

DR. MEYER: Mr. Brooks?

MR. BROOKS: Just on the point that Mr. Lundin is raising, I couldn't agree with him more. This has been a problem in some annual conferences around the country but I would suggest for purposes of rule making, all that is necessary for the Board to adopt is the rule that requires satisfactory proof of attendance. Then you are not strapped to any particular system. You can in granting approval, prior approval of a course, determine what they propose to use for attendance records, which is adequate, because somebody may think of a better way next year than

the one discussed here, which is pretty good, and you are in a posture of having to amend your rule, which is an expensive and time consuming manner.

Since it is a fact question, I think all the rule needs to do is spell out the fact that you have a right to demand adequate proof of attendance, and it is within the purview of the Board on any individual cases to decide whether the evidence is satisfactory.

MR. LUNDIN: Not to get into a lot of detail but we are toying around with a computerized method at North Central that a person would have to properly check the form card and it would run through the computer and have to come out that way.

DR. KENNEDY: The Board just wants to avoid the fishing license technique where you have to send game wardens around.

MR. LUNDIN: Absolutely. And let me tell you that I vow to you that as far as the North Central Conference is concerned, we are very jealous about attendance, that each room is monitored, and it is highly unlikely that somebody could sign a roster form without having been in attendance at that course.

That is my only point, gentlemen.

MR. BOOTZ: My further comment would refer to Page 5 under (f) and I would just like to say that we agree with

the intent and purpose of this; however, we would like to perhaps in my own mind like it spelled out a little more. Could this be for a specific optometrist who you might feel has a specific need and feels that he is delinquent in a certain area, then you could require that specific optometrist to go to Podunc and take a specific course, as well as all optometrists?

DR. KENNEDY: I doubt if we could do that, Milt. I don't think it could be discriminatory. We can require all optometrists to take a minimum of two hours in ocular pathology, for example, but I doubt if we could say "Charlie, you haven't been back to school" -- I will say Joe Blow, he keeps coming up -- "Joe, you haven't been back to school for five years. You take five courses." I don't think we can do that.

DR. BURKE: We want to eliminate the idea of twelve hours of practice management.

MR. BOOTZ: Yes, I understand that.

DR. MEYER: As a matter of fact, the rule states, the last portion, "require all optometrists to attend specified subjects of continuing education for credit toward the annual hourly requirement."

We have always taken the position we wouldn't be in a position to dictate to an individual optometrist what he should or should not take.

MR. BOOTZ: No, we did have the question as to whether or not you knew that somebody was practicing in a certain area where they really didn't have a background to practice and then say that he should do such and such, and I am not arguing that this wouldn't be right but I am wondering, we just wanted it spelled out.

DR. KENNEDY: There is another recourse there. If there is evidence that an optometrist is incompetent in an area, that would be a basis of a complaint to the Board and as rectifying that, the Board may decide that he needs some training.

DR. MEYER: That would be a disciplinary thing which would not necessarily be in this particular area.

MR. BOOTZ: I think this answers my question. Did you have anything further on this, Dick?

MR. KEENAN: No, I didn't.

MR. BOOTZ: Thank you.

DR. MEYER: Any questions of the Board or its counsel?

MR. KEENAN: Just one further point on that last section. I think even with the amendment, there is a possibility of some problems in enforcing that. For example, what if the Board decided that it would be appropriate for all licensed optometrists to take additional training in the subjects Dr. Kennedy mentioned, ocular pathology. What

if it were not available in the State of Minnesota? I can see some problems, some practical problems the Board might have in trying to implement this particular kind of a section.

DR. KENNEDY: I think that would be a pretty indiscreet Board to recommend a course that wasn't available.

MR. KEENAN: I wouldn't suggest that this Board would do that.

(Laughter)

DR. MEYER: Does anyone else wish to speak in favor of the proposed rule?

(No response)

DR. MEYER: Does anyone else wish to speak in favor of the proposed rule?

MR. BROOKS: Dr. Meyer, I have some comments about the structure of the rule, the way it is drawn. We don't have any objection in principle to the rule.

(MAOO Exhibits No. 1 and 2 were marked for identification)

MR. BROOKS: I have had the reporter mark two exhibits that I wish to refer to briefly. As I stated earlier, our organization supports the continuing education provision in the statute but there are some comments we wish to make about the form in which you have cast the proposed rule.

I will try to make brief remarks, because,

again, I intend to offer written presentation possibly with some proposed amendments to the Board within the next twenty-day period.

I don't think we have any objection to the assessment as to the requirement that is twelve hours per year. I would point out, however, that in certain other areas and in other jurisdictions, they have adopted what we think may be a better rule, which would be in terms of twelve a year to, say, that each professional must complete twenty-four hours within a two-year period. I think this gives a little more flexibility to some individuals in terms of scheduling their time. They may wish to go to a program which is an approved program by this Board which is out of the state, and we think also with the initiation of the program setting your requirements within a two-year framework might very well ease the problem of moving into the educational picture.

We are prepared to live under either proposal but we strongly urge the Board consider putting your requirements for education over a somewhat longer period of time.

I have offered for your considerations proposed rules which have not yet been heard by the State Board of Pharmacy as promulgated with respect to continuing education of the pharmacists, and there are two approaches to making this kind of rule. You, I think, have taken one and

the Board of Pharmacy has taken another one, in effect, because rather than blanketing into the rule certain programs which of your own knowledge now meet the requirements which you have set in your mind, the Board of Pharmacy has attempted to set some criteria for the subject matter and then to require approval, prior approval, of each program that is going to be attended.

If that were the case, for instance, and we think it is the better way to handle the matter legally, you would strike your specific references to groups on Page 3 and those groups as any other group would present you with their programs and their proposed agenda and receive a letter by annual approval of their programs. And we have some concerns because if you are going to blanket in certain organizations, then there are probably others that ought to be blanketed in. We don't think any organization should be blanketed in. We think the Board should establish the criteria. You have gone somewhat to that by saying you are reserving the right to require specific subject matter in the future and that is probably a good provision but that also can be dealt with with your approval of the program.

The one thing that the pharmacy rules provide that yours do not, which we think is a wise rule, is a procedure for a professional who has attended a course not

approved to come in after the fact and present evidence about the course and request that he receive training credit for having attended it. This may not come up very often, but, again, there are, as we all know, a number of new programs throughout the United States, and the tax rules being what they are, some people would like to go to an out-of-state program occasionally.

Rather than burden the Board with trying to produce a laundry list of every group in the United States, we think that a permissive rule that would permit you to approve a course after the fact would take care of the occasional instance where that was a wise and sound procedure.

Now, I have also given to you a sheet of paper headed "PROPOSED RULE TO ASSURE NON-DISCRIMINATION" and there was some discussion of this among the various groups when the present bill was adopted last spring. We are concerned with our employed optometrists who in many cases are not members of a professional organization, who may not be, at least I don't know, even eligible for membership. They are charged a different and higher fee for attending a course than someone else. The statute is clear that any course that is approved must be open to all. We think that there should be a non-discriminatory fee. We do not take the position that the fee must be exact because the sponsoring organization and its members may have paid

a portion of the costs in the membership fees.

We think it is incumbent upon this Board to police this particular potential problem area to make sure of fees that are proposed and charged are one, reasonable for the course to begin with and two, do not discriminate against any groups.

I have no pride of authorship in the language. Let's say the language I have submitted to you is contained in the Georgia rules and that is where I plagiarized the language. If Mr. Marker has a better approach, I would be happy to accept it but I am concerned that you deal with the potential problem. Let's say that this problem is a problem that they have had in other parts of the country and we would like to see a rule adopted that would prevent its arising here.

The other thing that I think this Board might consider in terms of approval of courses would be to give at least prima facie approval to courses which have been approved by state boards in other states. Now, I recognize that boards in other states may have different and lesser criteria but if you were to accept my original proposal that you provide a post course approval mechanism, I think we can eliminate a substantial amount of paperwork, if you had a rule which gave prima facie recognition of courses approved by other states because I think that you

and other people knowledgeable in the area know which states are doing a good job and which states are doing kind of a sloppy job.

If a state that has a good regulatory procedure and a good board has approved a course, I think it should be built into the rule so that you could accept that also and approve the course for anyone attending it. You would, of course, reserve the right to reject a course that did not meet your own criteria but that goes back to the original thrust of the rules.

I do not see in the rules that we have before us any specific criteria for the type of education that must be obtained. I think that may be constitutionally vague. I am not prepared to argue that in a court of law because we are prepared to operate under these rules. But we think you should take another look at the way you cast the entire set of regulations. I think we will be better in the long run not to deal with a rule again which requires another notice of hearing, and a hearing, and I think it is bad law to pick some organizations and not others. I think that it would be much better if we had a rule which established the criteria and promulgated annually with your license renewals a list of courses approved or anticipated to be approved for the coming period of time.

If you have any questions, I would be glad

to answer them.

DR. MEYER: Just one comment on the part of the chairman and that is inasmuch as I serve as secretary of the Board, I can see some problems of logistics in your suggestion and recommendation in extending the period of time over two, three, a five-year period.

We know from experience that the Dental Board, which has a rule regarding or a law regarding the continuing education, they have a problem with that particular provision. I don't know whether or not this is applicable or not but inasmuch as a licensee must relicense every year, it would seem logical that provision regarding the continuing education be conducted in that same area and also, there is a provision in this rule for good cause they can be excused.

MR. BROOKS: It would seem to me, sir, that the excuse rule is one that you would hope to limit to cases of illness or disability, just to keep down the amount of paperwork, rather than catering to the convenience of the individual practitioner. I appreciate the problem that you suggest but I guess I would say that if someone is going to be burdened, I would rather have the Board burdened, at least up to a point, rather than a practitioner who is trying to figure out when and where he is going to find a course that is convenient for him to attend.

I can see no reason why you could not, since we are starting from scratch, establish an initial two-year period so if anyone gets in their time, gets in twelve hours in the first year, you could issue them a license. You could, if you chose, issue a provisional license to someone who got through the first of the two years with no training. These things could be handled, I think, without rule making on a common sense basis. I can't see that it would be a great burden on the Board. I could see where it would generate a little more paperwork for you but I think it would be a service to the profession.

DR. MEYER: Any other questions from members of the Board or its counsel?

MR. MARKER: Bill, do you concede that if an association puts on a course, that there ought to be some discrepancy between the fee charged for attending the course to its members as opposed to its non-members?

MR. BROOKS: NO, I say there ought not to be any difference in the fee unless they can substantiate that an economic case for that distinction was made. If they have a budget which specifically specified a certain amount of money out of each member's dues for that meeting, then I think members probably should be entitled to some reduction but -- I am not saying that it's happened here and I am not saying that any of the present people in charge of

the state association or on the Board would permit it but all I can tell you, it has been a distinct problem in other parts of the country. It is a problem that concerns us. The adoption of some preparatory language would go a long way toward allaying our concern and if in fact there is no discrimination here, then it will have no practical effect on the groups that are operating.

DR. MEYER: Any questions or comments?

(No response)

DR. MEYER: Thank you, Mr. Brooks.

Is there anyone that wishes to speak in opposition of the proposed rules and regulations?

DR. PLUTO: I am Dr. Pluto from Austin, Minnesota.

MR. MARKER: Would you state your full name?

DR. PLUTO: John L. Pluto, Austin, Minnesota.

DR. MEYER: You are here representing yourself?

DR. PLUTO: That's correct. I was wondering as far as educational purposes, is it permissible not according to this to go to foreign countries to receive your education?

DR. MEYER: I would say that this probably would be approved with prior approval of the course that the individual wishes to take. In other words, if you plan on going to Europe and taking a course in Europe someplace, that you have the program submitted for approval by the Board and then the Board would act on it at that time.

DR. PLUTO: It would take prior approval on all cases?

DR. MEYER: That's right.

DR. PLUTO: Why is it considered that an optometrist must have further education by law versus taking it on his own hand?

MR. MARKER: The legislature has determined that this would be the case. There was a legislative enactment this summer which permitted a Board to adopt rules regarding continuing education and there was testimony taken at the time of the legislative enactment that pointed out the need for maintaining high level quality eye care.

DR. PLUTO: This is true, but why can't a man do it on his own without having --

MR. MARKER: The Board's function here is to promulgate rules which it considers to be in the best interest of the public and in the light of what appears to be a legislative mandate that these rules be promulgated.

DR. PLUTO: Wouldn't it be possible for the State Board to let everybody know when the meetings are going to be held in various states, such as the Heart of America Contact Lens Conference down in Kansas?

DR. MEYER: I believe many of these are published in the professional journals.

DR. PLUTO: Would there be prior approval given

for all these?

DR. MEYER: Sir, if you request it, the Board may give approval of the course. It may not approve all courses that are given.

MR. MARKER: The criteria for determining what courses would be approved are set out in the proposed rule.

DR. PLUTO: I am saying why can't the State Board give a blanket clause to these well-recognized places before instead of just the five areas?

DR. MEYER: I believe it was the opinion of the Board when they decided on this provision that these particular five have shown past excellence in this particular area.

DR. PLUTO: Yes, I will give you that. That is true.

DR. MEYER: Pardon?

DR. PLUTO: That's true, but you go to Kansas to take theirs or in another state, why is it not just as good, or am I getting off the record?

DR. BURKE: Dr. Pluto, let me just elaborate on something you said so that you are aware of the fact that it is very easy for you to take in a conference in the mountain states, Great Lakes Conference, whichever you take in. It would be no problem because you normally get adequate notice of when it comes up. It is just a matter of writing

in to the Board, getting approval ahead of time, and depending on the courses which are to be taken, which should be no problem. We are concerned more with the expertise of the lecture, itself, as to the courses, content, itself, and to approve it rather than someone producing or promoting a product that he is selling which really is no relationship to professional optometry, as such.

But you have plenty of time to plan, to simply write in for authorization to get approval. It doesn't necessarily have to be these, but it can be within the state and out of state as well.

DR. PLUTO: That's all I wanted to know. Thank you.

DR. BURKE: Yes?

DR. MEYER: Yes?

MR. LUNDIN: May I make one further comment, please? At North Central States, we consider it our obligation to advise the respective state boards what the program content is and seek it as a carte blanche approval for the doctors in the states represented. I would rather suspect that that may hold true for such vehicles as the Heart of America Conference Lens program in Kansas City. If they wish to induce people from Minnesota to attend that program, it would be incumbent on them to advise you, too, and approval may be sought through that source, too, may it not?

DR. MEYER: Yes.

MR. LUNDIN: Yes.

DR. MEYER: Does anyone else wish to speak in opposition to the proposed rule?

(No response)

DR. MEYER: Does anyone else wish to speak in opposition to the proposed rule?

(No response)

DR. MEYER: If not, the hearing will now be closed on the proposed rule on continuing education. I will now recess for a period of ten minutes before we take up the next one.

(Recess taken)

DR. MEYER: We will reconvene the meeting. We don't have a gavel. The Board is not able to afford a gavel so we use the clickers to keep things in order.

We have two remaining proposed rules and regulations to be acted upon.

Inasmuch as the hour is now 11:15, to get some approximation of time for the balance of the rules, I would like a show of hands of proponents and opponents that wish to speak on the next two rules.

(Show of hands.)

DR. MEYER: Very good. We will now move to Opt 5, "Release of Prescriptions and Specifications for Contact Lenses."

I will now call on the Special Assistant Attorney General for a rationale for this particular proposal.

MR. MARKER: The law restricts the adaptation to the eye of contact lenses to licensed optometrists and opticians. The obvious purpose of this is to protect the health and welfare of the public. The Board believes that unlicensed lay persons are unlawfully and dangerously engaged in the employment or various means of adapting contact lenses to the eye in aid of the powers of vision. The explicit language of a proposed rule will serve as an affirmation that the Board will not permit an optometrist

to abdicate his professional responsibility to his patients and to the public.

The need is to protect the public by inhibiting the ability of the unlicensed and unqualified to continue to jeopardize the public health by practicing optometry in violation of law.

DR. MEYER: Thank you, Mr. Marker. I will now call on the proponents of this particular provision.

DR. SLATON: My name is Paul Slaton, S-L-A-T-O-N, no Y. I practice optometry in Hopkins, and I represent the Minnesota Optometric Association. The accoustics in this room are rather poor so if I am not talking loudly enough, please bring this to my attention.

I speak in favor of the regulation although I feel perhaps the word "adaptation" may have to be elaborated slightly upon to indicate that this would in no way prevent the physician from teaching the patient how to apply and remove the contact lenses and the proper hygiene of these contact lenses.

The problem covered by this rule is perhaps caused by the fact that the contact lens prescription is not like a prescription for eye glasses. It is not enough to simply specify the spectacle correction and follow it with a remark for contact lenses. A great many other deliberations and diagnostic procedures are necessary.

Even when the measurement of the corneal curvature is added to the spectacle correction, this is not enough. A great deal of professional judgment is required to arrive at the final formula.

It is true that a number of optical companies have published tables to arrive at this formula; however, a prescription sent to one company may result in an entirely different contact lens than the same prescription sent to two or three other companies. Even when all the criteria have been determined and this contact lens has been adapted to the patient, it then becomes necessary to reexamine the patient at further intervals to determine that this contact lens is not only giving the best possible visual correction but also that it does not interfere with the normal metabolism of the cornea. At such time when this may be found, a change in the contact lens specification may have to be made. This may simply be a change of the present lens or it may require an entirely different lens. And, again, only professional judgment can determine whether this lens is the correct one and what may be correct for one patient may not be correct for another patient.

Consequently, I feel that the prescribing doctor who has the ultimate responsibility for the welfare of his patient, that he cannot abdicate this

responsibility to someone who is not licensed.

Because of the great mobility of our population, many of us find that our patients move to a different locality and can no longer obtain our services. It then becomes necessary to see that this patient obtain the best possible care wherever he or she may be located. It is not enough to give this patient a copy of the contact lens specifications because the person who may be taking care of this patient in the future cannot determine from this prescription alone if the contact lenses are correct for the patient. It is necessary to acquaint the new doctor with the original state of the eye so that he can determine if a deleterious change may have taken place.

Just as an example, the patient may appear to become more nearsighted and while this may be a true change in the refractive state of the eye, this can also be due to a swelling of the cornea caused by a lens which no longer fits properly. Although this patient may obtain good vision through a contact lens or through a change of contact lenses, it is necessary for the doctor to find out whether some undesirable changes have occurred in the eye.

Consequently, I feel it is necessary that the full data on this patient, not just the contact lens

specifications but the whole background and history of this patient, be forwarded to another professional who can continue to make professional judgment as to the health and welfare of that patient.

Quite often, a patient may lose a lens and perhaps ask for the specifications of that lens to be filled elsewhere. If this is done, I believe the original prescriber is abdicating his responsibility because the prescription for contact lenses can be filled in a number of different ways and unfortunately, there is no way in which it is possible to determine if a contact lens has been made exactly to specifications.

I am referring here to the peripheral curves, which are ground on contact lenses, and once a contact lens has been blended, it is not possible any longer to tell the curvature of these peripheral curves. Consequently, if the peripheral curves have been ground inaccurately, the patient may have undesirable symptoms and the prescribing optometrist has no way of ascertaining the cause of these symptoms. It could be due to the faulty manufacture of the lens or it could be due to a number of other circumstances which may have occurred.

So, again, to sum up, I feel that a contact lens prescription by itself is not really a prescription. It is part of a whole number of other data

which should be supplied only to another professional who then takes upon himself the responsibility for this patient and relieves the original prescriber of that responsibility.

Thank you.

DR. MEYER: Are there questions or comments from members of the Board or its legal counsel?

DR. KENNEDY: Dr. Slaton, do you fit contact lenses in your practice?

DR. SLATON: Yes, I do.

DR. KENNEDY: Have you done this for some time?

DR. SLATON: Yes.

DR. KENNEDY: Do you wear contact lenses?

DR. SLATON: I do.

DR. KENNEDY: You are somewhat or perhaps very much familiar with the requirement to properly fit contact lenses?

DR. SLATON: You mention my own contact lenses. I am a fairly high myoptic, probably somewhat sensitive, my eyelids are very sensitive, and I can personally feel the difference between contact lenses made by two different laboratories.

DR. KENNEDY: Yes, it is a common experience.

MR. MARKER: Dr. Slaton, let me ask you this: do you have knowledge of the fact that there are persons

who are actually adapting to the eye contact lenses in aid of the powers of vision without being licensed to do so?

DR. SLATON: I could not give you any written evidence but yes, I have heard of it and I have had experience with patients who have come to me having previously received contact lenses elsewhere, but I could not put my finger on any particular one and give you the data.

DR. MEYER: Any further questions?

(No response.)

DR. MEYER: Thank you, Dr. Slaton.

Does anyone else wish to speak in favor of the proposed rule and regulation?

(No response.)

DR. MEYER: Does anyone else wish to speak in favor of the proposed rule and regulation?

(No response.)

DR. MEYER: If not, we will call upon those who wish to speak in opposition to the rule.

MR. SKOR: Mr. Chairman, members of the Board, Mr. Marker, my name is Douglas Skor, S-K-O-R. My address is 2200 First National Bank Building in St. Paul. I am an attorney and I am appearing on behalf of the Minnesota Association of Ophthalmology. At the outset, I would like

to ask of the Board if there has been a date set at which final action on these proposals will be taken?

DR. KENNEDY: Could I interrupt, please?

MR. SKOR: Yes.

DR. KENNEDY: Is that the exact title of the organization that you represent? Is it the Minnesota Association of Ophthalmology or is it the Minnesota Ophthalmologic Association?

MR. SKOR: To my knowledge, it is the Minnesota Association of Ophthalmology.

DR. KENNEDY: Thank you.

MR. SKOR: Dr. Robert Monahan being the president.

DR. MEYER: In answer to your question regarding --

MR. SKOR: Yes.

DR. MEYER: -- the next date which will be set by the Board at its business meeting, it will be at sometime after the maximum number of twenty days, as soon thereafter as is practical. An exact date has not been set. It will be, as I stated, at the business meeting.

MR. SKOR: I wonder if I might request of the Board that I and perhaps everyone who has spoken today be informed either of the date at which action will be taken or immediately after the fact what action has been taken and the language of the rules as adopted.

MR. MARKER: We will do our best.

DR. MEYER: We will do our best to determine who appeared and who spoke. You are talking specifically about this --

MR. SKOR: This is the only rule with which I am concerned.

DR. MEYER: Those that are speaking for and in opposition to?

DR. KENNEDY: No, he means at the time we make a decision.

DR. MEYER: You are talking about notifying thos e who are speaking in regard to this particular rule?

MR. SKOR: That is my concern, yes. Now, you might find it appropriate to do that for everyone who is here today.

MR. MARKER: It may be that everyone who wishes to receive notification of the next Board meeting in consideration of these proposed rules should leave his name and address with Dr. Meyer so that we can correspond with you and keep you posted.

MR. SKOR: Thank you. At the outset, I think although Mr. Marker did not speak of it in these specific terms, I think in all candor it should be said that there has been disagreement throughout the entire country for some period of time between optometrists and physicians concerning the proper rule of ophthalmic technicians,

assistants, whatever you might call them, medical technicians in ophthalmology. Although the rule does not specifically state that this is a concern, it is our feeling from the rather general language of it that this is the area or an area in which the regulation is directed.

Along that line, in terms of understanding what the regulation was intended to do, I originally had a question concerning the definition of the words "fitting contact lenses." Am I to understand that you have now changed that to adaptation to the eye and that is your proposed language?

DR. MEYER: Yes.

MR. SKOR: I would suggest, as Dr. Slaton did, that perhaps that term could stand some definition or interpretation. I am not personally familiar with all the aspects involved in the process of prescribing and fitting contact lenses but I think there are various stages and I think there are perhaps some stages in the process at which purely technical functions are performed.

Our main concern in this regulation is that the Board states that it interprets the laws of the State of Minnesota as requiring what it states to be the content of its regulation here. We have examined thoroughly all of the statutes in Minnesota relating to both optometrists and physicians and we find no reference whatsoever to the

question of whether either or both of those professions can or should utilize the services of technical assistants. We know that this issue has been debated around the country and legislatures in many states have taken action to clarify their statutes or to amend them in this area. This matter was brought before the state legislature in a general way as a proposed amendment, I believe, to the general statutes relating to physicians. No changes were adopted by the legislature.

It is our feeling that this is a substantive area of lawmaking which should be left to the legislature of this state or the courts in interpreting what the present law is. We find no basis for the Board's position that the present law contains this requirement, that it prohibits the use by either optometrists or physicians of technical assistants with various qualifications.

Furthermore, we find no reference in the statutes to contact lenses as opposed to regular glasses, and we believe that the same rationale that might apply to restrictions on technical assistants in fitting contact lenses has to apply, if there is any statutory basis for this reasoning, to glasses of all kinds, and it would apply by this reasoning to the fitting of frames by an optician. There is no distinction in the statute on which we believe you can base this kind of conclusion. We have

not heard this morning any specific instances or kinds of harm that have been or are threatened to the public in this area in contact lenses as opposed to other lenses and, again, this is a matter of substantive lawmaking which we feel involves a policy decision which should be left to the legislature of this state.

The Board of Optometry, we feel, is expanding the optometry law rather than administering it and that is beyond the competence and authority of any administrative agency to do that.

Furthermore, the language of the proposed rule mentions physicians as well as optometrists, and while I am sure you realize that it is not within your jurisdiction to regulate the medical profession, I think that you have taken it upon yourself with this present language to state in effect that licensed medical doctors do not have the authority under state law to utilize technical assistants, ophthalmic technicians or whatever the appropriate term might be. I think this goes beyond the area of your concern and it would be more appropriate for you, if you are going to proceed in this area, to restrict your interpretations and rules to the optometric profession and not attempt to expand it beyond that.

Again, if there is some feeling on the part of the Board that the present optometric statutes do

prohibit even licensed physicians from utilizing ophthalmic technical people as assistants, this is a problem of significant magnitude, I believe, if it is not resolved in the legislature, to be determined by our courts. And I realize that litigation, injunctive proceedings, any part of court proceedings, are time-consuming and are bound to be rather expensive, but I believe this is an area in which the judicial system of our government should be utilized in resolving what amounts to be a dispute between people as to what the statutes of the law or the statutes of the state require.

I would call to your attention Chapter 709 of the laws of 1973, which was enacted by the state legislature this year, relating to allied health manpower, I believe is the term of the statute, placing these matters under the jurisdiction of the State Board of Health. The State Board of Health is directed under that statute to evaluate various technical and other non-licensed non-regulated activities and all aspects of the medical profession and determine whether some kind of supervision, examination, licensing, and whatever may be appropriate. I do not know whether you have consulted with the State Board of Health as to their functions under that statute, whether they have considered this area as part of their jurisdiction. In any event, without having done so,

I think the legislature has indicated perhaps an intent to let the State Board of Health resolve these matters, if any administrative agency is to resolve them.

Aside from the legality of the proposed rule, we believe that the policy behind it is not a good one and does not promote the public interest. As far as ophthalmologists are concerned, they, as you know, have been utilizing in this state as in other states the use of ophthalmic technicians for assistance of all kinds, in their medical practice, including the adaptation or fitting of contact lenses. As far as I know, these assistants have technical training by licensed medical doctors or other suitably qualified people. There are various courses offered through universities throughout the country, including the Extension Division of the University of Minnesota, designed to educate and train people to perform these tasks and to perform them faithfully and efficiently and in the best interests of the public.

Such technicians, when they are utilized, are under the supervision of medical doctors or optometrists for whom they work. The person employing them is responsible for their actions and it must be emphasized that medical doctors who do utilize such help are concerned only with the safe, efficient, thorough care for the patient and members of the public and the State of Minnesota.

They see this as a way to best perform those functions. They maintain supervision of these people. They insist that they are trained for the functions which they are performing, and I believe as is the practice of most doctors, if not all of them, when contact lenses have been fitted, to see the patient after the lenses have been manufactured and fitted to determine that they are appropriate for the patient.

I believe that costs, medical costs, would rise if the logical extension of this policy were to be implemented, and I believe that indirectly, if not directly, the livlihood of many people already in business in this area throughout the State of Minnesota would be put in jeopardy and I think it puts a very strong burden on any governmental unit, whether it be the courts, legislature, or this Board, to undertake a policy with those possible effects.

I would like to mention briefly the issue of soft lenses, soft contact lenses. It is my understanding that while you might not characterize these as experimental, the United States Food and Drug Administration has only authorized placing on the market of one brand of these lenses. Is it two now? I stand corrected. And that they are not given the same green light for prescription and use as the standard lenses, that is, I believe they

are permitted only for therapeutic and not cosmetic purposes.

I do not at this time have any specific citations of FDA rulings on that question although I will attempt to provide them to you. I do intend filing an additional statement within a twenty day period as has been indicated.

Finally, I think that because of the nature of this issue, it would be appropriate for this Board to defer action on these regulations until such time as the governor has appointed two lay people to serve on the Board. This statute requiring such appointment has been in effect for several months and I realize practicalities and mechanics of making those appointments has slowed down the procedure somewhat. Especially if this is imminent, I think the Board should, however, have the advantage of the input, opinions of lay people on the Board since that is obviously what the legislature has intended to take place from this point forward.

That's all I have.

DR. MEYER: Thank you. Any questions or comments from the Board or its counsel?

MR. MARKER: Mr. Skor, is it your position that the adaptation to the eye of contact lenses in aid of the powers of vision does not call for professional judgment?

MR. SKOR: Well, professional judgment is involved in the entire process, it would seem to me. Now, if you define professional judgment as that of a licensed person, I suppose it does involve even their judgment in prescribing lenses originally and in seeing that the patient is properly treated, but they are responsible for the actions of any one they have assisted them in those matters, and, again, adaptation to the eye -- I am not sure if you mean by that the final examination of the lens to see if it fits or if that means the initial computations of curvature, angles, and so on.

MR. MARKER: The word "fitting" was deleted and the word "adaptation" substituted because the statute 148.56, uses the word "adaptation," and we have simply tried to incorporate the language of the statute.

Is it your position that you are speaking only for ophthalmological technicians insofar as their right to adapt contact lenses to the eye is concerned?

MR. SKOR: Well, that is indirectly the group on whose behalf I am here. I do believe that the same questions apply to virtually all kinds of technicians and if even indirectly this has an effect on the ability of physicians to utilize these people, then I think it is a step in the wrong direction. And your mention of the words in the statute, if all you are doing is repeating the

words of the statute, which are admittably general, then in a sense the regulation is superflous. If your purpose is to get at ophthalmic technicians or technical assistants or whatever labels they may have, then I think you should specifically state that as an interpretation of the general language and law.

MR. MARKER: The Board doesn't have the jurisdiction to deal with ophthalmic technicians or other unlicensed technicians who fit contact lenses, and when we use the expression "fit contact lenses," we are talking about the situation that excludes giving instructions to a patient with regard to wearing and with regard to hygiene. We are talking about the actual adaptation of the lens to the eye.

The Board is not attempting to regulate the conduct of persons who are not optometrists. We haven't the power to do that. We are only attempting to spell out for those optometrists who are licensed the procedure by which they shall or shall not dispense a prescription for corrective lenses as it pertains to contact lenses.

MR. SKOR: I agree, your jurisdiction is limited in that respect. I think you are, however, by this regulation stating as a matter of principle that we consider it to be a violation of the optometric statutes for an ophthalmic technician, who is not licensed as a medical doctor,

to assist a medical doctor and conceivably use that as a foundation for prosecuting, seeking civil remedies against the use of such people because they are not licensed as optometrists.

MR. MARKER: I don't see how a rule that is limited to optometrists can be used as a vehicle by which a non-optometrist can be prosecuted.

MR. SKOR: Well, it is a gross misdemeanor, is it not, for any unlicensed person to practice optometry unless he is a physician?

MR. MARKER: Right, or optometrist.

MR. SKOR: Or optometrist.

MR. MARKER: Is it your contention, Mr. Skor, that there is legal authority to permit an ophthalmic technician to practice what M.S.A. 148.56 defines as the practice of optometry?

MR. SKOR: Well, you know, that is phrased in terms of conclusions. Obviously not. The statute says you have to be licensed to practice optometry unless you are a physician. The question is whether having somebody under your constant supervision and control performing certain aspects of the procedure does constitute violation, and I guess it is a conclusionary question.

DR. KENNEDY: Mr. Skor.

MR. SKOR: Yes?

DR. KENNEDY: I would like to as you, are you speaking only for the M.A.O.?

MR. SKOR: Well, yes.

DR. KENNEDY: You are not representing the medical profession?

MR. SKOR: No, and I believe there is a separate statement that has been provided to you or will be from the State Medical Association.

DR. KENNEDY: How many ophthalmologists belong to the organization that you are representing?

MR. SKOR: I am not sure of the exact number. I believe it is approximately fifty at this time.

DR. KENNEDY: It does not constitute all of the ophthalmologists in the state nor all of the ophthalmologists who use technicians to assist in their office; is that true?

MR. SKOR: I suspect that. I would imagine there are more than fifty ophthalmologists in the state, although I can't speak from personal knowledge of that fact.

DR. KENNEDY: Do you think there are any ophthalmologists who see this rule differently from the way you do? For example, that they may see it the way we do?

MR. SKOR: The mere mathematical probabilities suggest that there may be.

DR. KENNEDY: We are gathering data to clarify our

thinking on this, but you commented that there was no difference between glasses and contact lenses, essentially, and that there apparently was no evidence of contact lenses harming anyone. I think you said something to that effect. Am I correct in that?

MR. SKOR: Number one, I said the laws of Minnesota make no distinction between contact lenses and regular glasses and number two, we do not feel there is sufficient evidence of a need for this kind of a rule relating to contact lenses.

DR. KENNEDY: I don't recall your exact words but I think you said there is no evidence of anyone being harmed by the fitting of contact lenses as presently done. Anyway, it is on the tape.

MR. SKOR: That is what is I said. What I meant at this hearing we haven't heard in my estimation sufficient evidence of a need for this particular rule.

DR. KENNEDY: Then it might be appropriate for me to mention this, just so we have all the information, that there is evidence of people being harmed by the fitting of contact lenses.

MR. SKOR: I would almost take judicial notice, if you will, of that fact, and there is probably evidence of people being harmed by lenses that were fitted, adapted, and entirely done by licensed people, whether optometrists

or physicians. It just happens in any medical procedure, it would seem to me.

MR. MARKER: Dr. Kennedy, I don't want to put you in the role of an advocate but I would appreciate it, and I think the record should show, any information you can bring to this hearing of the nature such as that which you have just referred to. That is, can you tell us any instances of your own personal knowledge where there has been a bad result by an unlicensed person in adapting lenses, contact lenses, to the eye which may not have occurred had that person had the sufficient skill and training as was necessary to exercise the professional judgments involved in the procedure?

DR. KENNEDY: I can tell of such cases, Mr. Marker, but I think I would prefer if we could hear the remainder of the con arguments and presentations and then if the information has not been presented, we could return to this question.

MR. MARKER: Fine.

MR. SKOR: Thank you.

DR. MEYER: Thank you, Mr. Skor.

MR. SKOR: Here is my card. If you would send me that information, I would appreciate it.

MR. DIESSNER: My name is Karl Diessner, D-I-E-S-S-N-E-R, and I am an attorney for Benson Optical Co., Inc.

Mr. Chairman and members of the Board, I appear here on behalf of Benson Optical Company, who are clients of mine. Someone today says that we were very excited about this proposed rule. No, concerned, I think is a more proper definition. It will affect us if it goes into effect, if I heard Mr. Marker's comments and the previous speaker, but we are concerned about first of all fitting and I still wouldn't know how to interpret adaptation to the eye. Mr. Marker indicated there are some restrictions on what a lay person could do. Someone said you weren't going to regulate non-licensed personnel. By your opening statement, where you interpret the laws of the State of Minnesota as requiring that the either be an optometrist or physician to do this work, you do affect our personnel. Our trained technicians are not optometrists. Our trained technicians have helped optometrists, assisted them, have fit contact lenses for them, both optometrists and the physicians, and I don't think there is any secret about it. We have had a very friendly relationship with the optometrists in the state and have no argument with them, but what can we do if we adopt this rule, hold ourselves to a gross misdemeanor where a rule is not intended to affect us, but it will affect us. If you say it is practicing optometry, we are practicing optometry and we leave our technicians open to a criminal prosecution.

Secondly, and I am sure you have gone into this very thoroughly with your counsel -- I am not presupposing that he doesn't understand the statute; he probably knows it from A to Z and probably doesn't have to carry his book around like I do -- but nevertheless, the statute clearly gives a purpose to this Board and gives you the powers, I believe, as part of the executive function to pass rules and regulations for enforcement.

Again, I am sure you are familiar with the opinion of the Attorney General back in 1934, 329-A, which says that your power is to make rules and regulations as a method of enforcing the provisions and is not to be construed as giving the Board authority to make law. This is what you are doing in this instance. Unless Mr. Marker knows of some statute, some court decision that I am not familiar with, when you state the Board interprets the laws of the State of Minnesota as requiring the adaptation of the eye of contact lenses be performed only by licensed optometrists or physicians, you are taking over a judicial function.

It is basic in our society that the legislature passes the law, the executive branch enforces the law, the judiciary interprets the law. You have taken upon yourselves to interpret the law and based on that interpretation, it affects more people than the ones who

have the power to enforce the statute who become involved.

Again, in your second proposal, "Prescriptions and specifications for contact lenses may be given out only," I don't know and I am not going to be fatious what is meant by "given out." Is that meant to mean when you first issue a prescription to your patient? Does it mean companies like Benson's could not deliver a prescription to a patient that demanded it? Would we have to tell him to give us the name of an optometrist or physician to send it to? What is meant by "given out"? It bothers me and I really don't know the answer to it.

We also have another question here that I think is legal but is basic. 148.56 sets out certain things that constitute the practice of optometry and excludes two definite classes of people that the act does not apply to. First, the sales upon prescription from persons legally authorized to examine eyes and prescribe glasses, those are your optometrists and physicians and surgeons, and sales upon prescriptions from these persons are exempted from the statute. They don't come under your province. And, of course, the second category is physicians and surgeons, so by this statute, if not directly, at least indirectly, you are affecting what the statute says you could not affect in any way.

If you tell your optometrist you cannot send

a contact lens prescription out to a company regardless of how well trained their personnel might be in fitting contact lenses, you are affecting that company, and I say you do not have that power.

I heard Dr. Slaton's remarks. I am certainly not taking any issue with him. Maybe there is a need that only persons with certain training and certain background and certain knowledge can fit a contact lens, but I respectfully submit that that is a matter for our legislature and I don't think it is within the province of this Board.

Dr. Kennedy indicated there are some problems of fitting contact lenses. I don't know of any litigation that has come up against any technician. There may be complaints. I don't know. Again, like Mr. Skor pointed out, the problem of taking a percentage is probably true but I don't think there is a big hue and cry in our society today about the terrible fitting that is going on in contact lenses.

Again, it is my understanding on the hydrophilic lens or the soft lens, that one has been approved for cosmetic purposes, which is the Bausch & Lomb product -- I don't know of any other -- and the Griffin which has been approved for a medical purpose. That is the present status of the art, and that will make a difference

as to whether we have the soft lens or the hard lens as far as some of the other problems, I have been led to believe. I am not a specialist in fitting contact lenses. I have not been personally involved in that, but I do think when you pass these rules, you are going beyond the power granted by the legislature. You affect more persons than just the members that are licensed optometrists and you are making law rather than enforcing the law, as it is today, and I say we are concerned because if you say there is a danger to the patient from having a contact lens fit by a trained technician, then what is to prevent you from saying there is a danger to the patient if glasses are fit by a person other than a trained technician, and that will constitute the practice of optometry and we, for all intents and purposes, are out of the retail business. We are out of the business of wholesaling to many, many doctors. We can't fit lenses and we can't fit the glasses, and I see no differentiation in our laws whatsoever between -- I know -- obviously, I am not saying there is no difference but I am talking about this law. There is no differentiation. If that differentiation should be there, it should be done by the legislative branch and not by your Board, which is really part, as I see it, of the executive branch.

So I do believe number one that it is not

within your power to pass this regulation; number two, it is a judicial rule rather than an enforcement rule; and third, it affects a lot of people that are not licensed optometrists.

And that in substance is our position. If there is any questions, I would be glad to answer them.

DR. MEYER: Thank you. Any questions or comments from either the Board or its attorney?

DR. KENNEDY: I have some questions.

DR. MEYER: The chair recognizes Dr. Kennedy.

DR. KENNEDY: You mentioned, Mr. Diessner, that many people's livlihood would be affected by this rule.

MR. DIESSNER: No, sir, I don't believe I said that, sir.

MR. MARKER: I think that was the previous speaker.

DR. KENNEDY: Excuse me. It was Mr. Skor.

MR. DIESSNER: Excuse me. I do think -- you say "many." I don't know how many, but obviously, if our trained technicians cannot do it, they are not going to be in business, that's true.

DR. KENNEDY: Your last comment that we repeated for the secretary here referred to people being affected and your company being affected by this rule. Is the fitting of contact lenses a big part of Benson's operation?

MR. DIESSNER: Are you referring to dollar-wise

or the relationship we have with optometrists and medical people where we do their work?

DR. KENNEDY: I am not interested in dollar-wise. In the amount of manhours spent on that.

MR. DIESSNER: Dollar-wise, it is a small amount of our business. Generally, it is an important adjunct, though, as far as our relationship with doctors of medicine and doctors of optometry.

DR. KENNEDY: We don't want to get concerned here with your relationship to doctors of medicine because we have no jurisdiction or concern with them.

MR. DIESSNER: All right.

DR. KENNEDY: So we will just talk about optometrists and would you say that there are many optometrists that send contact lens patients to Benson's?

MR. DIESSNER: Dr. Kennedy, I am really not in a position to really make an intelligent comment on that. As I say, I am their attorney. I am not acquainted with their day-to-day operations.

DR. KENNEDY: Do you have anyone here from that company that could comment on that?

MR. DIESSNER: I doubt it very much. We have a man here who has just recently returned from Florida more or less as an observer.

Do you know, Mr. Borg?

MR. BORG: No idea.

MR. DIESSNER: If you would want that information, I could --

DR. KENNEDY: I think it is of some importance. If there are a lot of optometrists sending patients to Benson --

MR. DIESSNER: No. I am sorry if I have created that impression but I have no statistics and I can't give you any numbers. I know there are optometrists in this room who have referred work to Benson. Now, whether that is an exception, the rule, what percentage, I have no idea, Dr. Kennedy.

DR. KENNEDY: Now, there are other optical companies similar to Benson's that receive prescriptions for glasses and have these fabricated and fit them to patients and do not fit contact lenses, and so we might be speaking of a specialized operation here, not a general one in the field of dispensing opticians, so we want to keep that in mind, too, when we are evaluating what part of the public is being affected by this rule.

It is interesting to me, having many years in the ophthalmic field, to note something that I think is important to our considerations here. Years ago, there were a number of successful dispensing businesses in St. Paul. Today, there are a fewer number and it is possible

that the dispensing opticians are not doing as well economically as they used to. Now, this is not due to professional optometry. Part of this is due to the fact that more ophthalmologists are providing dispensing services, themselves. Optometrists classically have never written prescriptions for dispensing opticians and since they gave them nothing, they have taken nothing away by not doing that.

However, recently, three optometrists turned their dispensing over to Benson's. Are you aware of that?

MR. DIESSNER: I know of one group. I don't know of three.

DR. KENNEDY: One group of three.

MR. DIESSNER: I thought there were two men in the group.

DR. KENNEDY: So while a company may lose in one area, if they gain in another, their business can survive very well. And so I don't see a great threat to Benson -- I don't see any threat to Benson from this rule.

MR. DIESSNER: Well, if you have the power to say that no one can fit contact lenses or adapt to the eye other than optometrists, what is to prevent you from taking the next step and saying no one has the right to

fit glasses of any kind except optometrists?

DR. KENNEDY: Well, you are implying that glasses are an essential part of optometry.

MR. DIESSNER: Dr. Kennedy, I think you and I are getting into a discussion as to whether there should or should not be some regulation as far as the people that do the work in connection with adapting to the eye of a contact lens.

DR. KENNEDY: That is what we want to talk about.

MR. DIESSNER: But my premise is this, that this is not the form of that discussion. Even though for the sake of no argument, let's say you and I are in complete accord, no matter what you are dealing with, let's say we are in complete accord, does that mean that this Board has the power beyond that which the legislature gave them? Isn't it then up to us to go to the legislature and get the proper limitations for the personnel that are going to perform this function rather than this Board saying well, the optometrists will do this work, we feel that they are the only ones qualified, and I say that is a legislative function and not an executive function and I feel that you are part of the executive branch. I think that's where our differences are, doctor.

DR. MEYER: Any further questions?

DR. DAVISON: I have one question. Mr. Diessner, you do say that Benson has trained technicians fitting lenses for optometrists. Even if it is only one, I don't care. I would like to know where the fitting is being done. Is it being done in Benson's offices or is it in the optometrist's office?

MR. DIESSNER: We fit both places. Now, you are talking about optometrists.

DR. DAVISON: Strictly optometrists, right.

MR. DIESSNER: Let's say -- again, I am not trying to be evasive. I can't sit here as though I were under oath and say this number of people were fitted in an optometrist's office. I know of instances where they have assisted them in optometrists' offices. You say to me do you know of a single instance and can you give me the date and time and which office ever filled a contact lens prescription and fit the patient for a lens. I can't. It is my understanding it is assisting in their office, the optometrist's office and in the Benson office. That is my understanding, sir.

I am not in the day-to-day operations of Benson, which I trust you can appreciate that. I am a member of their board. I know a little bit more about it than being an outside attorney. This can certainly be furnished to you by the people who do know.

MR. MARKER: Mr. Diessner.

MR. DIESSNER: Yes?

MR. MARKER: I am sorry. Are you through?

MR. DIESSNER: Yes.

MR. MARKER: I am curious, on the question of the technicians that are employed by Benson's, can you tell us what the training requirements are for those technicians?

MR. DIESSNER: What their schooling is and so forth?

MR. MARKER: Right.

MR. DIESSNER: No, I can't in detail, Mr. Marker, but our technicians generally are not qualified and will not be allowed to fit a contact lens. I mean you take an office -- of ten of our opticians, there will probably be one man, two at the most that will have this additional training and expertise that would be allowed to fit the contact lenses. You don't ever just come in with a contact lens prescription and everybody at the counter takes care of that person, no. They have additional training.

MR. MARKER: Who makes the determination as to the extent of training required before a particular technician will be required or permitted to engage in the fitting of contact lenses?

MR. DIESSNER: I believe that decision is made by the executives of Benson.

MR. MARKER: Do you know how they go about hiring such a technician?

MR. DIESSNER: Some of them have been trained elsewhere, others are our own personnel that have been sent to the training centers for this purpose.

MR. MARKER: Where would they be sent, for example?

MR. DIESSNER: I believe one was at the University, I believe another one was down at the Mayo Clinic, as I recall. There was other -- not as a student at the University, I mean for training.

MR. MARKER: Do you know how long these various training programs would take?

MR. DIESSNER: No, sir, and I don't know in what fields they take their training. I am sorry.

MR. MARKER: Can we make a distinction for purposes of rule-making between what may very well be an ethically-selected technician who the ethical optical company believes does have the training and skill to exercise whatever professional judgment is required in the fitting of a contact lens and the non-ethical optical company who takes an unlicensed technician who may not have adequate training and skill, background and experience and turns him loose on the public? Can you make a distinction by rule?

MR. DIESSNER: I think you have to do that by a legislative act and set up the very minimums of what a

person would have to be and have in the way of training, just like you have to do in a lot of other fields. Chapter 148 has a lot of those regulations, as you know. We can't even in our profession ensure they still won't be an ethical after we give them all that training but at least it will be an attempt to reach that plateau.

MR. MARKER: I am not so concerned necessarily about the unethical technician as I am about whoever may place that technician in a responsible position where that technician is responsible for good eye care and proper exercise of judgment so far as the public is concerned. You are suggesting, I gather, that the only way that you can fully safeguard the public interest, health, and welfare, is to require a license with a minimum of skill and background demonstrated before a license can be obtained; is that correct?

MR. DIESSNER: Not necessarily a license. I don't have that in mind. I don't know what the legislature would decide would be the proper way of doing it but certainly, I wouldn't insult any members of the Board by saying there is no more complication in fitting a pair of glasses than fitting a contact lens. They would laugh me out of the room. There is no question there is a world of difference between the two.

I am sure that any one of these men that have

fit contact lenses knows that is true, and there may be some regulations necessary but, Mr. Marker, what I say, I don't believe that you can say to an industry or whatever it might be you no longer can do this. We are going to bring this into account where the legislature did not bring this into optometry when they passed the laws.

DR. KENNEDY: Excuse me, Mr. Diessner. You are referring to the fact that a contact lens was not in the original optometric law? Is that what you just said?

MR. DIESSNER: What I meant, Dr. Kennedy, is this: there is no place in the optometric law that I know of that says only an optometrist can fit a contact lens.

DR. KENNEDY: When the law was written, the contact lens per se was not conceived.

MR. DIESSNER: Oh, I think, Dr. Kennedy, if you will check back into the history of contact lenses, you will find out that they have been used far beyond the time this law was passed, far beyond that.

DR. KENNEDY: Mr. Diessner, I am well aware of the history of contact lenses and I am well aware of who has fit contact lenses in the state and for how long and the date that the first corneal lens came into this state and the first soft lens and the first scleral lens and when the first scleral lens was developed, but when this law was

developed, the term "lenses" was used which then meant all lenses pertaining to the human eye, and because it may not specifically say contact lenses, you may like to interpret that it didn't mean contact lenses and I may like to interpret that it did mean contact lenses. That maybe has not been resolved but I think I would like to have you challenge the law on that issue because we have different viewpoints on it.

MR. DIESSNER: On what, Dr. Kennedy?

DR. KENNEDY: As to whether it meant contact lenses or not.

MR. DIESSNER: Let's suppose it did mean contact lenses or didn't. I don't think I passed on that. I don't think I made any comment on that, Dr. Kennedy, but I say contact lenses have been in existence -- there is a recent Pennsylvania decision that goes way back before the time Minnesota was a state talking about the use of contact lenses, which surprised me to no end. So I say that some have been in existence a long time. Certainly not in the usage that is being used to day but if it did include contact lenses or was intended to, you may know this to be true, I don't know, but if it was, it still says if it is subject to prescription, it is not within the purvue of the sections. Am I correct?

DR. KENNEDY: I think so.

MR. DIESSNER: This is my point; not whether it did or did not intend to include contact lenses. If I made any comment about that, I didn't intend to because I have not researched that question. I have not looked at the legislative history to know whether it is true or not but I do happen to know about the length of contact lenses that have been used because this decision came down within the last few weeks.

DR. MEYER: Any further questions or comments from the members of the Board or its counsel?

(No response.)

MR. DIESSNER: Thank you, gentlemen.

MR. BROOKS: Gentlemen, insofar as the comments of the two previous witnesses have gone to the legal authority of the Board to promulgate Rule No. 5, I would associate myself with those comments. I will incorporate my views ---

DR. MEYER: For the purposes of the record, would you, again, identify yourself?

MR. BROOKS: William Brooks, Jr., the attorney representing the Minnesota Association of Optometrists & Opticians.

I have a point that I would like clarified with the chairman, if I may. As I understand it, the record stands open for twenty days; is that correct?

DR. MEYER: To submit briefs.

MR. MARKER: Insofar as written data is concerned.

MR. BROOKS: What about objections to the hearing, itself? I have a question as to the adequacy and sufficiency of the notice. If you would require me to register an objection at this time, I will object to the adequacy of the notice.

DR. MEYER: Proceed with your objection.

MR. BROOKS: I need some additional information to determine whether I have grounds for that objection or not. That was the reason I asked whether the entire record was open. It may be that I have no objection.

DR. MEYER: This is a legal point and I will call on legal counsel.

MR. MARKER: If I can supply you with any information, fire away.

MR. BROOKS: To put it another way, if it is agreeable with the Board, I will raise the issue with counsel, and if they feel there is an issue, I will express the objection in writing.

MR. MARKER: Would you anticipate that there will require on one side or the other some oral testimony?

MR. BROOKS: No, I just simply want to examine your -- since you have not put it into the record yet and I have to leave, I haven't examined your affidavit of

service. I don't know who was served.

The second point I would like to raise is that in the State of Need with respect to Rule 5, as I understood those comments, it appears to be the feeling of the Board that there is a need for the rule and that that feeling is based upon some knowledge of some procedures which may or may not be performed by someone in the past. I would like to make the point for the record that this rule, if adopted, will affect the relationship of the optician with his clients and with those prescriptions that are referred to him.

I would take the view that any such evidence would constitute a contested case, and that it is the obligation of this Board to put into the record through procedures set forth by the Attorney General for the hearing of contested cases any instances in which the Board feels that there has been some damage to the public that would justify the rule. I don't think that we can adopt a rule that goes as far and affects the relationships of so many people based upon extra record information that may be in the Board's hands. I think it should be placed in the record, and if there is a violation of law or if there is something that affects the public interest, it should be dealt with as a contested case, because you are dealing with substantial property rights, if nothing

else.

Those would be all the remarks that I would like to make at this time, Mr. Chairman.

DR. MEYER: Are there any questions or comments from the members of the Board or its counsel?

MR. MARKER: Bill, let me ask you this: you made the point that you haven't been apprised of any specific instances of harm so as to justify what seems to be such a radical rule. Is it your position that there has to be a showing of harm to the public before a rule which is designed to avoid and restrict the unauthorized practice of optometry can be promulgated?

MR. BROOKS: I think that before an administrative agency can promulgate a rule, it has to demonstrate a need for the rule. The need could be based upon something that had occurred in the past or upon some reasonable showing that it was apt to occur in the future. I don't see in this record so far either type of evidence.

MR. MARKER: Suppose that a lay person determined that he had a particular approach to a medical problem which would be of benefit to the patients and so he sets himself up limiting the scope of his practice to the healing of a particular type of malady but one which clearly fell within the medical practices act as constituting the practice of medicine, is it your position that the State Board of

Medical Examiners would have to show that this person actually harmed his patients before it could promulgate a rule which tended to inhibit or restrict this person from continuing the practice of medicine?

MR. BROOKS: I would assume as a matter of law that if it did fall within the definition of the practice of medicine, the individual would be in violation of the law and subject to whatever sanctions the law imposes. I would assume that the adoption of the statute in the first instance had some legislative basis.

We are talking now about a situation in which there either may be in your view a violation of the optometric law, in which case I think you should proceed as though there were a violation, or you are postulating a rule for the future based upon your view of what may occur if the rule is not adopted, and I think that you may to make a positive, affirmative, substantive showing that there is grounds for that viewpoint. That is my legal position.

MR. MARKER: It appeared to us even through the discussion of Mr. Diessner that there are unlicensed persons, namely technicians, who are engaged in the adaptation of contact lenses in aid of the powers of vision. Now, the Board has taken the position, as you know, that this constitutes the practice of optometry. I think that

Mr. Diessner has provided the Board with sufficient reason to be concerned about the potential unlawful and unauthorized practice of optometry.

MR. BROOKS: Well, one may find sufficient reason. I am not sure that the judge who will ultimately decide the question will agree on the basis of what is before us at the present time.

DR. MEYER: Does anyone else wish to question or comment?

DR. KENNEDY: You mean we should, Mr. Brooks, have evidence like the FDA probably had when they took Hexachlorophene out of soap and even though I personally had no harm done to me that I know of from using that Dial soap, you feel that the Board has to have that kind of research data before we can avoid possible harm to others?

MR. BROOKS: Well, you are taking me beyond my initial point, which was rather a restricted one. As I conceive the law of Minnesota, for an administrative agency to adopt a rule, they have to have an affirmative showing for the need for the rule. A judicial test for an affirmative showing is not a particularly burdensome one, as a matter of fact, but on the basis of the record at this point, I see no showing whatsoever but my further point was that in order to make the showing that I think you are required to make, you will put yourself in the

area of a contested case in the instances that you are speaking of.

DR. MEYER: Any further comments?

(No response.)

DR. MEYER: All right. Thank you, Mr. Brooks.

Does anyone else wish to speak in opposition to the proposed rule? You may proceed.

MR. QUICK: My name is Richard Quick. I am with the Arthur Williams Optical Company in St. Paul, in the Lowry Medical Arts Building.

Our company is fifty-nine years old and always has been in the public interest. I have fit contact lenses over fifteen years and I do it exclusively. We only work on prescription from ophthalmology. Ophthalmology is responsible. My background in contact lenses is I am a member of the Contact Lens Association of America, I am a Fellow in this organization and it is an organization of continued education.

The ophthalmologist is responsible for the patient, his patient, my customer. His patient is his patient and is always sent back to him.

Speaking of opticians, Mr. Kennedy over here, there are more opticians in St. Paul than there ever has been. And speaking of litigation, there was a suit against me by not your Board but by the Board of Optometry of the

State of Minnesota, Attorney General, which was dropped because it was unfounded.

Any questions you have?

MR. MARKER: Mr. Quick, did you indicate that your entire practice involves referrals exclusively from ophthalmologists?

MR. QUICK: I am not in a practice. We are in a retail store and it is exclusive from ophthalmologists.

MR. MARKER: So you understand that the rule as proposed would have no effect on your own operation?

MR. QUICK: It certainly would, on this adaptation to the eye.

MR. MARKER: But the rule as proposed relates to the conduct of optometrists.

MR. QUICK: And physicians -- or physicians.

MR. MARKER: No, this Board does not have the power to regulate the conduct of physicians and it is not attempting to do so by this proposed rule.

MR. QUICK: Why does it have adaptations in it?

MR. MARKER: The first paragraph is simply a definitive paragraph which sets forth the Board's philosophy. It is the second paragraph which actually imposes definitions on practicing optometrists.

MR. QUICK: May I ask a question? In the optometry law, on their education, there isn't one hour that

is specified to contact lenses.

MR. MARKER: Are you talking --

MR. QUICK: About optometry law.

MR. MARKER: In the statute?

MR. QUICK: Whatever it is right here.

MR. MARKER: The statute is amended. I don't believe that there is a curriculum spelled out insofar as what courses and number of hours.

DR. MEYER: Previously, it has. Under the revised or --

MR. QUICK: But I don't have the revised one.

DR. MEYER: Wasn't there a sheet in the front stapled together?

MR. QUICK: Yes, but has this been passed?

DR. MEYER: Yes, that's right. Thatamends that portion which deals with a number of hours. There is no delineation of the course hours in the new law; however, the curriculum of the various colleges now do include that among other curriculum subjects.

DR. KENNEDY: Could I comment?

DR. MEYER: Yes, Dr. Kennedy.

DR. KENNEDY: Dick, the optometry colleges all teach contact lenses and the state boards all examine on this subject. I see some misunderstanding from what you said in the first sentence of this proposed ruling that I would

like to clarify that.

The Board interprets the laws of the State of Minnesota as requiring that the adaptation to the eye of contact lenses be performed only by a licensed optometrist. Now, I will stop right there. And then we say "or physicians" because the physicians by our statutes -- when this was adopted, the optometrists said okay, this is not going to include physicians. They are exempted from it and further, the physician may do anything he wants. If he wants to write ten prescriptions and send them to ten different technicians, he can do that. We have nothing to say about it, providing the technician is not practicing optometry.

Now, if a technician is part of that physician or number of physicians referral procedure or is in their office, that's his responsibility and he takes care of that under the medical law and his own codes of ethics. So this does not apply to you or to a technician in any doctor's office and we are not talking here about physicians' assistants.

MR. QUICK: Then why was the lawsuit brought against me?

DR. KENNEDY: That I don't know, Dick. I never heard about that lawsuit. This is the first I knew about it, and I am glad it was dropped but I don't know.

MR. QUICK: Okay.

DR. MEYER: Any other questions or comments?

(No response.)

DR. MEYER: If not -- is there anyone else that wishes to speak in opposition to the proposed rule?

MR. DIESSNER: Mr. Chairman, might I ask one question as to what Dr. Kennedy stated?

DR. MEYER: Yes.

MR. DIESSNER: Did I understand you to say -- again, we will use Benson's, that one of our technicians that have been trained can keep right on even though you pass this rule which says that the adaptation of a contact lens to an eye is the practice of optometry or the practice of medicine, aren't we subject to the criminal provisions of your optometric law? How can we avoid it?

MR. MARKER: No any more so than you would otherwise without the passage of it. The rule doesn't expand or enlarge the liabilities under the optometry statutes. It only defines in this case a particular course of conduct which the Board considers to be unprofessional conduct on the part of an optometrist.

MR. DIESSNER: But do you agree, as counsel, that what Dr. Kennedy said, that our people can keep right on fitting contact lenses either in a doctor's office or in Benson's office without any interference from the Board

of Optometry?

DR. KENNEDY: You added a sentence to my words.

MR. DIESSNER: You said it was perfectly all right to do it.

DR. KENNEDY: I said in a doctor's office. I didn't say in Benson's office and I didn't say down the street beyond the supervision of an optometrist or a physician.

MR. DIESSNER: Does this mean that they have to be under the direct supervision and control ---

DR. KENNEDY: That is a different issue which I am in a position to answer.

MR. DIESSNER: But you are passing a rule which other people have to abide by and I think we are entitled to know what the intent of the rule is. This is our big objection to it. It is so wide open, we don't know.

DR. KENNEDY: Well, I would be happy to talk about it. Does anyone else --

MR. MARKER: The philosophy behind the proposed rule is set out in the first paragraph of the rule, the prohibitions of the rule is set out in the second paragraph, and we out of necessity have to confine our discussion this morning to the language of the proposed rule. The proposed rule purports to regulate the dispensation of a prescription for corrective lenses by an optometrist who

has reason to believe that that prescription will be used by someone other a licensed optometrist for adapting contact lenses in aid of the powers of vision.

MR. DIESSNER: Then the first sentence is merely a preamble?

MR. MARKER: That is correct.

MR. DIESSNER: It has nothing to do with people's right to treat or not treat contact lenses?

MR. MARKER: The first sentence is merely to explain the reason why or the first paragraph merely explains the reason why the Board has proposed the promulgation of the second paragraph.

MR. DIESSNER: But if your first sentence is correct, anybody that violates that is subject to the criminal penalties, if your first sentence is right; am I right there? If the only persons that can adapt a contact lens to an eye is an optometrist or physician-surgeon, then anybody else who does it is subject to criminal penalties of the optometric law?

MR. MARKER: If our interpretation of the optometry statute 148.56 is correct, it is the statute which prohibits the adaptation of contact lenses by someone other than a licensed optometrist or physician. The prohibition is in the language of the statute and it is the statute --

MR. DIESSNER: Would you point out where in the

statute there is that provision, Mr. Marker, that it doesn't come within the exception of the provisions?

MR. MARKER: The statute, and I am paraphrasing it, but using the exact language of the statute, in part it states that "any person shall be deemed to be practicing optometry who shall employ any means" -- excuse me one second -- "of adapting contact lenses to the eye in aid of the powers of vision." The language is taken directly out of 148.56.

MR. DIESSNER: But doesn't that same section then go on and eliminate situations where there are prescriptions issued?

MR. MARKER: No, because if you are talking about dispensing spectacles, that is specifically excluded.

MR. DIESSNER: It doesn't talk about dispensing spectacles, I don't believe, Mr. Marker.

MR. MARKER: Well, it talks about --

MR. DIESSNER: Sales upon prescription.

MR. MARKER: Well, sales upon prescription, as I understand it, refers to the sale of spectacles.

MR. DIESSNER: But there is also a prescription in connection with a contact lens so if that is so, that is sale upon prescription, too, isn't it?

MR. MARKER: The sale of spectacles does not involve adapting a lens to the human eye.

MR. DIESSNER: Well, there have been decisions both ways by various courts, and as you know, on that question as to what constitutes an adaptation to the eye. There is no sense of you and I getting into that.

MR. MARKER: I suppose it all boils down to whether or not there is any professional judgment involved in adapting contact lenses to the human eye.

MR. DIESSNER: But your rule-making, as far as I can see, as far as regulating optometrists, is one that affects certain persons. The rule is not clear enough.

MR. MARKER: We are not attempting to correctly regulate third persons. If incidentally and secondarily there is an effect upon third persons, the concern and the interest of this Board still has to be that of the public welfare.

MR. DIESSNER: Thank you.

DR. MEYER: Does anyone else wish to speak in opposition to the proposed rule?

DR. SLATON: Mr. Chairman, may I just ask, before the opposition argument and testimony, you did mention that you might wish to have more testimony relating to the possible dangers involved in the adaptation of contact lenses by unlicensed persons. While I am perfectly willing to supply such evidence, you might perhaps prefer me to do this by letter?

DR. MEYER: Correct. You have twenty days in which to submit a brief in support of your contentions.

MR. MARKER: If you would care to make any statement on that now for this record, it would be perfectly permissible.

DR. SLATON: If you wish.

DR. MEYER: As rebuttal.

MR. MARKER: Well, this Board is concerned with the fact that there must be a full hearing of all facts upon which it can make a decision and if anyone has any facts which it feels will assist the Board in arriving at a determination here, I think that the Board would welcome such facts at this time without foreclosing yourself to submitting additional written data within the twenty day period.

DR. SLATON: This is not in the form of rebuttal but merely to further the remarks which I made previously and simply to refer to some personal experiences of patients who have come to me after having received contact lenses elsewhere. Now, I cannot always state with certainty whether these people received their contact lenses from a licensed person or not, simply because of what was brought up regarding another rule. These people received their lenses from X optical company and whether this involved a licensed person or not, I cannot say.

In most cases, these people did not know who it was that prescribed and adapted the contact lenses to them. But there have been several cases where the patient has come to me with instances in which the lenses were carelessly fitted, where the patient was surprised at the number of diagnostic tests which I took because such tests had never been performed upon that person, where people were instructed or rather the lack of instruction as to the proper use of the lenses was evident, cases where this person had reverted to the use of eyeglasses simply because there had been no follow-up procedure. They had never been told to come back to the original place to be further checked.

And while none of these patients have lost an eye, they have been subjected to a great deal of discomfort and in a number of cases, these people had decided to revert back to the use of eyeglasses, which became a financial burden upon them, and where I felt or have found out that by using professional judgment and prescribing the proper lens, the same person would be able to wear the contact lenses with comfort.

It does not mean to say that every person can or cannot wear contact lenses but simply that professional judgment is necessary to make this decision and that professional follow-up is necessary to avoid pain

and discomfort and financial burden to the patient.

The other fact perhaps that should be brought out is that the patient who obtains a contact lens prescription is then at liberty to go out and have it filled in any particular place without any further check by his doctor as to whether this prescription was properly filled. And, again, because of the nature of the contact lens prescription, this can be a harm.

Again, when some of the witnesses have brought up the matter of spectacle prescriptions, the difference between these two is a great one insofar as really there is no such thing as a final contact lens prescription. It is only a guide by which one may start to adapt the contact lens to a patient's eye which then has to be modified further until such a point that the prescribing doctor has assured himself that the patient has obtained benefit from this lens and that no interference has been created which might do harm to the patient's eye.

DR. MEYER: Thank you, doctor.

Any questions or comments from the members of the Board or its counsel?

DR. KENNEDY: Mr. Secretary, do you have any evidence that we are going to have a pro or a con comment from the medical profession? Has any letter been received?

DR. MEYER: We have a letter from the executive

secretary of the medical board and it was addressed to -- perhaps this should also be included as evidence.

Yes, we have a letter dated October 26, 1973 addressed to the State Board of Optometry in which the attorneys for the Minnesota State Medical Association have pointed out several facets of this and I believe they indicated they would be submitting a brief subsequent to the hearing.

Is there anyone here from the medical association?

(No response.)

DR. KENNEDY: I mentioned earlier that I would comment on a case which is typical of what we have considered in discussing this law and I would like to do that at this time. A patient obtained a glasses prescription plus a Keratometer reading on a glass prescription form from a licensed doctor, and he presumed she was going to take this to a competent contact lens practitioner. Instead, she gave it to a relative who worked for a contact lens manufacturer and he had contacts made for her which he gave to her and she wore.

In time, she developed a corneal abrasion and she returned to the original doctor, who was amazed at the procedure that was used to obtain these contact lenses. And the problem from his standpoint was that he was

responsible, he had written and signed that prescription, and the incompetency of the fitter who, in this case, was no fitter at all, was evident of the need for some tightening of our control on who is doing the fitting.

The problem from the Board's standpoint, from optometry standpoint, is that the doctor, whether it be O.D. or M.D., can never get rid of his responsibility. He has to maintain that. And if he wishes to have a technician do the work, as Mr. Quick has stated, he is still responsible. If the lenses are made right or wrong, the patient gets in trouble or not, the doctor is involved.

And so not wanting the public to have problems in this area, we feel it is advisable that the patient not wander around with a formula for contact lenses, because, and I may say I have talked to a number of competent physicians who do contact lens work and it is my feeling that they also see it this way. It is not possible to give a patient a prescription for contact lenses. What would you give them? Those of you who are knowledgeable, I would ask you, what would be on that formula, base curve, secondary curve, diameter, thickness, optical zone, quality and kind of plastic, tint or no tint? All of that at least has to be on there and then somebody would have to see that those lenses were made according to that prescription. And in most offices, the contact lens is

not an entity for the patient until some professional judgment has been used to see that it conforms to the original intention of fitting that patient correctly, and Dr. Slaton said for vision and safety and for performance. And many times, a competent contact lens fitter will have to modify the lens after it has been made to the best of the laboratory's ability. In fact, Benson sells modification equipment for that very purpose and we have been told that we can have this in our office and after they make the lenses for us or Precision Cosmet, and after they make the lenses for us, we may modify their lenses on the equipment we obtain from them in order for the lens to finally fit that patient as the doctor intended.

Now, it happens enough times and this can be thoroughly documented that the contact lens as received from the laboratory cannot safely be given to the patient. That's one reason why the technician has it checked by the ophthalmologist. If it could be given to the patient as a final and a total entity, there would be no need to return to the ophthalmologist. The technician could complete the procedure at that time. But the physician looks at this and he evaluates primarily vision; number two, patient comfort; number three, freedom from harm to the eye. He may use flourescein, microscopic techniques to do this.

Now, when the lens is modified, then it is different from what it was when it came from the laboratory. If the patient has a prescription, do we now add this modification to that prescription and what about the dynamics of the human eye?

The person now goes away for two years and now they are not in a capital city of Denver or Chicago or New York, they are north of Ely, Minnesota, and they are having trouble with their contact lenses and so they go into an optical company. They say I am really having trouble with my contacts. My wearing time has dropped to five hours. The sun is really driving me wild. My eyes are red and I think I need them polished. I think I got them scratched. I wasn't very careful.

And so this man may polish those lenses or he may even take the prescription and make a new pair or take the contact lenses and duplicate them. Now, he is assuming that the patient is correct, that the problem is due to scratches on the lenses.

I have cases where this has been done, the lenses have been polished or duplicated, and that wasn't the problem at all. The problem was, as every contact lens practitioner knows, the eye is dynamic. It can change. Intentionally, we can change it or unintentionally, it can change, and at that time it is necessary to not

duplicate the contact lens, not to fill some previous formula, but to develop a new one and to make that contact lens fit the eye as it is supposed to by known procedures, technique, and criteria at the present time.

Now, I will give you a corollary to this because I feel that this law, as apparently unmisunderstood here, has very direct and important value to the public. Independent of the Board and independent of optometry, I would like to see the public get properly fit contact lenses no matter what the cost or who does them. That should be the criteria and there is the problem. What is a properly fit contact lens? Is it something that is handed to a person with a book of instructions which has been done by some optical company?

We bring in a whole new field now with the soft contact lens. Do we now add to the prescription this formula we give to the patient? This is a formula for hard lenses or soft lenses, and do we write another one, and how will the changes in the dyanamics of time affect that patient's eye or validate or invalidate that prescription? So here is the corollary:

A dentist prepares a tooth for an inlay. He uses mechanical skill and professional judgment. He has a laboratory make the gold inlay and he knows certain things. He knows that he better make it a little higher

than he may want it rather than a little low because if it is low, it is not going to function and it will have to be remade. The patient uses some temporary device until the inlay is fabricated. He comes to the dentist and the first thing he does is to test it in the preparation to see if it is correct and when he is satisfied that it is, then he makes it a permanent part of that tooth. But in most cases he has to grind off a little and he determines this by putting a little carbon paper in the mouth and he finds out where it is high and he readjusts the bite. And so, too, the contact lens practitioner often has to grind off a little to make it fit the human eye.

This is professional judgment. This is where the laboratory leaves off, the manufacturer is finished, and the professional comes in, and that is the point that we are after. Now, do you suppose that a dentist would like to give a prescription to the patient for his inlay in case it drops out when he is skiing at Aspen? And if it does drop out, could the same inlay be used or did it drop out because the side of the tooth cracked and released the tension and released the inlay? Is the laboratory going to decide that or is the professional going to decide that?

Well, that is how generally I look at it and I would hope that if any of you have any more information

that would help in making the decision, which is intended to make contact lenses even a better thing for the public, then we would very much welcome that information.

DR. MEYER: Yes?

MR. SKOR: Mr. Chairman, may I make a brief response in light of Dr. Kennedy's comments?

I get the impression, Dr. Kennedy, from your various remarks, that you are not particularly concerned or as much concerned about the technician who may assist a doctor in his own office under his supervision and control. That's sort of a different question from the guy who is just doing it, himself, with no real supervision or no control, no real medical supervision.

The problem with the proposed rule is that it treats all those people the same way and I don't think it is unreasonable to suggest that the rule could be drafted so as to say an ophthalmic technician is not violating the optometry law if he is acting under the supervision or control of either an optometrist or a physician, or if after making the lens or performing certain functions, the patient is referred back to the physician or the optometrist.

I think you can recognize the safety factors and allow for efficiency in any doctor or optometric office and still prevent the kind of abuses your most

recent comments were directed at.

MR. MARKER: Let me ask you this: how could the Board by rule require that a technician, whether he be an independent technician or one who is employed by an ophthalmologist, will in fact refer back a patient to either the optometrist or the ophthalmologist for verification of the accuracy and correctness of the adaptation of the lens?

A VOICE: Well, that is not as easy a problem to resolve as just having a technician under your constant supervision and control. I think in terms of defining unprofessional conduct, it would be feasible to say with direction that the patient return before beginning to wear the lens or something like that.

The first one, I think, is much easier, though. If the technician is right there under the constant supervision of the doctor, there should be no -- that should not be interpreted to be a violation of the law by that technician or his supervisor.

DR. MEYER: Any further comments or recommendations?

(No response.)

DR. MEYER: Does anyone else wish to be heard?

(No response.)

DR. MEYER: If not, the chair will close the hearing on Opt 5, "Release of Prescriptions and Specifications

for Contact Lenses."

Now, to move to Opt 6, "Incorporating under the Professional Corporation Act." I will call on legal counsel for the Board for clarification.

MR. MARKER: The provisions --

DR. MEYER: At this point, I might also ask a raise of hands of those who wish to speak for and against the next proposal.

(No response.)

DR. MEYER: Is there anyone that wishes to speak for or against this proposal?

You may proceed.

MR. MARKER: All right. The provisions pertaining to professional corporations are the results of enabling legislation as contained in Minnesota Statutes 1973, Section 317a.18. Subdivision A of the proposed rule is simply a restatement of the statute. Subdivision B is intended to protect the public from being misled by the corporate name. Subdivision C is designed to avoid the problem as set out with reference to the proposed rule as previously discussed under Optometry 1, Paragraph(k).

DR. MEYER: Would those that wish to speak in favor of the proposed rule step forward?

MR. LUNDIN: Again, the name is Marvin Lundin, Administrative Director of the Minnesota Optometric

Association.

One question, I guess if you wanted me to have some questions. It is not the intent of the professional corporate laws or these rules to license professional corporations to practice optometry. Am I right in that?

DR. MEYER: Right. What is the terms that is used -- only a --

MR. MARKER: You are correct, Mr. Lundin, yes.

DR. MEYER: Only a natural person, I think.

MR. LUNDIN: I just asked that as a point of clarification, because of the use of the word "optometry" or whatever in the title, the question might be implied that the corporation could be licensed. Theremight be some question, just to get the intent straight, that a professional corporation being compelled to use the word "optometry" or "optometric" in its title might imply that the corporation was being licensed to practice optometry and in fact, it is not. I just thought I would make that a matter of record.

Concerning the Professional Corporation Act, it is something we need and we would encourage the adoption of Opt 6.

MR. MARKER: Perhaps for the record, Mr. Lundin, you could state what the function of the Minnesota Optometric

Association is and how many actual licensed and practicing optometrists are members of the Minnesota Optometric Association. In other words, are you speaking for a majority of the licensed optometrists in this state?

MR. LUNDIN: Yes. The Minnesota Optometric Association is a non-profit corporation in the State of Minnesota representing the professional optometrists and operates under a code of ethics that is different from the code of ethics of the State Board or the state statutes, and we currently have about two hundred and fifty members, which represents something in the neighborhood of seventy-eight to eighty percent of the practitioners in the state. The few points that we have here have come officially from that body. Our function is to develop the expertise of optometry through continuing education, to negotiate and to confer with legislative bodies and administrative agencies on behalf of the citizenry in this state in terms of availability of high quality vision care.

I think that would be about as short a statement as I could make at this time.

DR. MEYER: Thank you, Mr. Lundin. Are there any questions or comments from any members of the Board or its legal counsel?

DR. KENNEDY: I would like to ask you, Mr. Lundin,

how long have you been associated with this kind of work?

MR. LUNDIN: Seven years in this capacity. The first of October, seven years and one month.

DR. KENNEDY: And one month.

DR. MEYER: Is there anyone else that wishes to speak in favor of the proposed rule?

(No response.)

DR. MEYER: Is there anyone else that wishes to speak in favor of the proposed rule?

(No response.)

DR. MEYER: If not, is there anyone who wishes to speak in opposition to the proposed rule?

(No response.)

DR. MEYER: Is there anyone who wishes to speak in opposition?

(No response.)

DR. MEYER: Is there anyone who wishes to speak in opposition?

(No response.)

DR. MEYER: Hearing none, I will close the hearing relative to Opt 6, "Incorporating under the Professional Corporation Act."

This then completes the hearing relative to the proposed rules and regulations as submitted by the Board of Optometry. The hearing is now closed at 1:07.

Mr. MARKER: Perhaps on the record, the Board ought to set a date for further consideration of these rules.

DR. MEYER: Twenty days from now is what?

(Whereupon discussion was held off the record.)

DR. MEYER: Wednesday, the twenty-first of November, at 1:00 o'clock p.m. All in favor?

(Chorus of ayes.)

DR. MEYER: Opposed?

(No response.)

DR. MEYER: It is carried and so ordered.

The meeting is adjourned relative to the portion related to the public hearing on the Proposed Amendments to the Optometry Rules and Regulations.

* * * *

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules of the State Board of Optometry

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M.S. 1967, Section 15.0412, Subdivision 4, in the above-entitled matter in Room D, Fifth Floor of the Veterans Administration Building, St. Paul, Minnesota, on October 29, 1973, commencing at 9:00 A. M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

A copy of the proposed rules is attached hereto.

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By L. A. Meyer O.D.
Leo A. Meyer, O.D.
Board Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules of the State Board of Optometry

ORDER FOR HEARING

To effectively implement M.S.A. §§148.52-148.62, the State Board of Optometry deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in it by M.S.A. §148.53. NOW, THEREFORE, IT IS ORDERED this 12th day of August, 1973 that a public hearing on the proposed rules captioned above be held in Room D, Fifth Floor of the Veterans Administration Building, St. Paul, Minnesota, on October 29, 1973, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose.

Dated: August 12, 1973

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By L. A. Meyer O.D.
Leo A. Meyer, O.D.
Board Secretary

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Leo A. Meyer, O.D., do hereby certify that I am Secretary of the Board of Optometry, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board of Optometry duly and properly called and held on the 12th day of August, 1973, that a quorum was present at said meeting, that all of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Leo A. Meyer, O.D., one of the members of the Board of Optometry, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Optometry pertaining to continuing education, incorporation under the Professional Corporations Act, and further defining "unprofessional conduct" as the same relates to advertising and dispensing of prescriptions for corrective lenses. He shall further perform any and all acts incidental thereto, including but without being limited thereto, signing an Order for Hearing and Notice of Hearing as well as acting as presiding officer at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 3rd day of September, 1973.

L. A. Meyer, O.D.
Secretary

Attest:
John R. Kennedy O.D.
John R. Kennedy, Vice President

RESOLUTION OF
STATE BOARD OF OPTOMETRY

RESOLVED, that Leo A. Meyer, **O.D.**, one of the members of the Board of Optometry, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Optometry pertaining to continuing education, incorporation under the Professional Corporations Act, and further defining "unprofessional conduct" as the same relates to advertising and the dispensing of prescriptions for corrective lenses. He shall further perform any and all acts incidental thereto, including but without being limited thereto, signing an Order for Hearing and Notice of Hearing as well as acting as presiding officer at all hearings.

Dated: August 12, 1973

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By J. Burke O.D.
Dr. J. Burke, President

By John R. Kennedy O.D.
Dr. John R. Kennedy, Vice President

By Dr. Leo A. Meyer Secretary
Dr. Leo A. Meyer, Secretary

By B. J. Davison, O.D.
Dr. B. J. Davison

By Cora Brabazon Ruhr
Dr. Cora Brabazon Ruhr

By Howard S. Marker
Howard S. Marker, Legal Counsel

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption
of Rules of the State Board of Optometry CERTIFICATE

I hereby certify that the attached 13 sheets constitute the complete list of persons, associations, and other interested groups who as of 4:00 o'clock P.M., this 24th day of September, 1973, have requested pursuant to M.S. 1957, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

By Arlen I. Erdahl
Quil Dion

AFFIDAVIT

State of Minnesota)
)
County of Hennepin)

HOWARD S. MARKER, being duly sworn on oath, deposes and says:

1. That he is the legal counsel of the State Board of Optometry.

2. That on the 24th day of September, 1973, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. §15.0412.

3. That on the 24th day of September, 1973, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Howard S. Marker

Subscribed and sworn to before me
this 26th day of September, 1973.

Sheryl S. Hippee, Notary Public
Hennepin County, Minnesota

SHERYL S. HIPPEE
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 16, 1979

ALLEN CLAUDE H
1200 N W BK BLDG
ST PAUL MN
55101

ALTMAN MILTON H
707 DEGREE OF HONOR BLD
ST PAUL MN
55101

ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ARVER JOHN A
2467 COHANCY
ST PAUL MN
55113

ASMUSSEN, DENNIS, MPIRG
3036 UNIV AVE SE
MPLS MN
55414

AUTOMOBILE MFRS ASSN INC
55 SHERBURNE AVE
ST PAUL MN
55103

BARTHOLOW HAROLD E FIRE CHF
1327 COON RAPIDS BLVD
COON RAPIDS MN
55433

BECKLIN ROBERT C
447 N W 4TH
CAMBRIDGE MN
55008

BENSONI PETER USW OF AM.
609 PROVIDENCE BLDG.
DULUTH MN

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BREHL JAMES W
332 HAMM BLDG
ST PAUL MN
55102

BROEKER JOHN M
2850 METRO DR SUITE 513
BLOOMINGTON MN
55420

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN
55101

BRUNING C.R.DEPT.CLINIC.E
BURTON HALL
MPLS. MN
55455

BUR NATL AFFAIRS INC
1231 25TH ST NW
WASHINGTON DC
20037

CENTRAL BUSINESS DATA
BENSON RADIO ARCADE BLD
BENSON MN
56215

CHAMBER OF COMMERCE
30 SO 1ST AVE EAST
ELY MN
55731

CHERCHES CHRIS CITY MGR
5005 MTKA BLVD
ST.LOUIS PARK MN
55416

CHRISTIAN SCI COMM ON PUB
1821 UNIV AVE SUITE 271
ST PAUL MN
55104

COLEMAN NICHOLAS D
700 LINWOOD AVE
ST PAUL MN
55105

COLLIN LAURENCE
RT 2
ISANTI MN
55040

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
56401

CUSHMAN J S DAYTON HUDSON
700 NICOLLET MALL
MPLS MN
55402

DANKERS, KENNETH
1200 WEST FOURTH STREET
RED WING MN
55066

DANIELSON RODNEY L
418 AUDITORIUM
ST PAUL MN
55102

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DORSEY MARQUART
2400 1ST NATL BANK BLDG
MPLS MN
55402

DUDLEY E H
RT 7 BOX 122
EXCELSIOR MN
55331

DUNN OLIVER PLUMBERS LOC
708 SO 10TH ST
MPLS MN
55404

EDINA FIRE D JAMES MCNELLIS
4801 W 50TH ST
EDINA MN
55424

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

EMP HANDICAPPED PERSONS COMM
527 JACKSON RM 227
ST PAUL MN
55101

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

EVERETT JERRY NW PETRO ASSN
512 NICOLLET MALL RM917
MPLS MN
55402

EWALD DOUGLAS MINN HOSP A
2333 UNIV AVE SE
MPLS MN
55414

FAEGRE & BENSON ATTN LIBR
1260 NW BANK BLDG
MPLS MN
55402

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FRANKLIN ROBERT B MPLS TRIB
426 PORTLAND
MPLS MN
55415

FURLONG DR JOHN
RT 1
BOVEY MN
55709

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST. PAUL MN
55101

GAS HUT INC
4940 VIKING DR
MINNEAPOLIS MN
55435

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN
55409

HESS DONALD MIDWEST PLANNING
2101 HENN BLDG
MPLS MN
55405

HARTFELDT WILL
415 HAMM BLDG 6TH ST
ST PAUL MN
55102

HILL JIM ASSOC.MILK PROD.
7850 METRO PARKWAY
MINNEAPOLIS MN
55420

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HOUSE ED STANDING SUB COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HULSTRAND ANDERSON & LARS
PO BOX 130
WILLMAR MN
56201

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
55303

INGVALSON VERN MN.FARM BUR.
3110 WOODDALE DR PO 337
OST PAUL MN
55165

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

KING, TIMOTHY
3333 OAKLAND AVE S
MPLS MN
55407

KNOWLES, LARRY D
8025 33RD AVE N
CRYSTAL MN
55427

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KLUZ, Steven J.
1910 1st. Natl BK Bldg
Mpls. Mn. 55402

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SE
717 DELAWARE ST S
MPLS MN
55440

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANTHEY T J PICKANDS MATH
2000 UNION COMM BLDG
CLEVELAND OH
44115

MECCA R.F. NELSON
26 E EXCHANGE ST
ST PAUL MN
55101

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MINN AFL-CIO, L O LA SHOMB
414 AUDITORIUM ST
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN BD PODIATRY EXAM & R
1111 W 2ND ST.
CROOKSTON MN
56716

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HOUSING INST N T CARTER
7801 METRO PKWY
MPLS MN
55420

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN PETROLEUM COUNCIL
446 BUILDERS EXCH BLDG
MPLS MN
55402

MINN POULTRY & HATCHERY A
BOX 158
MADELIA MN
56062

MINN RETAIL FEDERATION
7600 PARKLAWN STE 457
MPLS MN
55435

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BL 313
MPLS MN
55416

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE OPTOMETRIC ASS
333 E HENNEPIN AVE
MPLS MN
55414

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MOFFITT R.C. DIR.ENV.CONT
MPLS.CITY HALL RM 301M
MPLS MN
55415

Minn. WATER RESOURCES BD
Rm. 206, 555 WABASHA ST
ST PAUL, MN 55102

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON DONALD E NSP CO
414 NICOLLET AVE
MPLS MN
55401

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NOBLES COUNTY FARM BUR AS
710 10TH ST
WORTHINGTON MN
56187

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

OCONNELL THOMAS
941 LAUREL
ST PAUL MN
55104

OCONNOR GREEN THOMAS ET A
845 NW BANK BLDG
MPLS MN
55402

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE COL ALVIN

DEGRAFF MN
56233

PETERSEN JOHN W
525 OSBORN BLDG
ST PAUL MN
55102

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER LYLE O

TRACY MN
56175

PULSCHER RBT SPRINGSTED INC
813 OSBORN BLDG
ST. PAUL MN
55102

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROCHE T E
5007 FREMONT AVE S
MPLS MN
55419

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SATHRE, HARVEY
77 SHERBURNE
ST PAUL MN
55103

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHWINN ROBT.P.
1400 SOO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SENATE COUN OFF J ST MARIE
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SHINER JOHN T.
297 GOODRICH AVE
ST PAUL MN
55102

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

STATE BD VETERINARY EXAMI
C/O DR A C SPANNAUS DVM
WACONIA MN

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SUMMIT NATL BANK D L MORR
205 AURORA AVE
ST PAUL MN
55103

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VILLAGE OF WOODBURY-F.STR
561 TOWER DRIVE
NEWPORT MN
55055

WELLS G W INS FED OF MINN
RT 4 BOX 194
WAYZATA MN
55391

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LI
2100 SUMMIT AVE.
ST.PAUL MN
55105

WOZNIAK D D
828 MINN BLDG
ST PAUL MN
55101

WYANT CLINTON W ATTY

ATKIN MN
56431

ALBERT, A. CALDER CORP
366 JACKSON ST
ST PAUL MN
55101

AM CAMPING ASSN MRS LEACOCK
1235 BRIGHTON SQ
NEW BRIGHTON MN
55112

AM INST PROF GEOLOGISTS
2201 PRINCETON AVE
ST PAUL MN
55105

ANTHONY R.S. E.L.M.
1222 FOURTH ST. S.E.
MINNEAPOLIS MN
55414

ARMOUR AND COMPANY
UNION STOCK YARDS
SO ST PAUL MN
55075

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BEECHER EVERETT
10 10 1ST ST SC
HOPKINS MN

BEMIDJI STATE COLLEGE
PLACEMENT BUR.J.C.BRADY
BEMIDJI MN
56601

BEST FLANAGAN ET AL
1ST NATL BANK BLDG
MPLS MN
55402

BEUTEL ROBERT
BOX 1205
ST CLOUD MN
56301

BROOKS WILLIAM F JR
854 MIDLAND BK BLDG
MPLS MN
55401

BROWN D M GOODRIDGE PUB SCH
IND DIST #561
GOODRIDGE MN
56725

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

BUR.ENGR.IND.DIV. MR.KIBIGER
219 N. 2ND ST.
MPLS. MN

CARPENTER MRS MARY LEE
DOW CHEMICAL 47 BLDG
MIDLAND MICH.
48640

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

CHAMBERLAIN JOHN L
PO BOX 241
MPLS MN
55440

CHAMBERLAIN WARREN D
887 SW 4TH AVE
FARIBAULT MN
55021

CITY CLERK
386 CITY HALL
ST PAUL MN
55102

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
230 STATE OFF BLDG
ST PAUL MN
55101

DANFORTH & ALLEN
731 NW BANK BLDG
MPLS MN
55402

DAVIS HENRY
6301 SHINGLE CREEK
BROOKLYN CTR MN
55429

DAYTON CHAS. SIERRA CLUB
555 WABASHA
ST PAUL MN
55102

DOUGLASS BELL
525 OSBORN BLDG
ST PAUL MN
55102

DOYTON MAURICE, MET SEWER BD
350 METRO SQ BLDG
ST PAUL MN
55101

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

EMERICK RICHARD A
1908 IDS CENTER
MPLS MN
55402

ESSE KENNETH
4801 W 50TH ST
EDINA MN
55424

EVANS CHAS.L. PRENTICE-HALL
ENGELWOOD CLIFFS
NEW JERSEY

EWING MRS WM
42 ASTAR RD
BABBITT MN
55706

FINLEY JAMES F
920 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FORBES GORDON MINN RRS ASSN
207 UNION DEPOT
ST PAUL MN
55101

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

F W WOOLWORTH CO
3316 W 66TH ST
EDINA MN
55424

GIEL DAVID
RM.B-28 STATE CAPITAL
ST PAUL MN
55155

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GUSTAFSON MRS D MINN VET MED
24 S 6TH ST
MPLS MN
55402

GUSTAFSON WALLACE
BOX 567
WILLMAR MN
56201

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN
55417

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HENN CO WELFARE BRD RM 26
COURT HOUSE
MPLS MN
55415

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUMAN RIGHTS DEPT
60 STATE OFF BLDG
ST PAUL MN
55101

HUNT MRS CHAS L MECCA
26 E EXCH CENTRAL MANOR
ST PAUL MN
55101

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

KABLE RICHARD W

BETHEL MN
55006

KANE ANTHONY
LAW DEPT BUR RWY CO
ST PAUL MN
55101

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LAUNDERERS&DRY CLEANERS ASSN
W 1ST NATL BK BLDG
ST PAUL MN
55101

LEAGUE MINN MUNICIPALITIES
314 SOC SCIENCES BLDG
MPLS MN
55455

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MASTOR MATTSON HART ET AL
414 ROANOKE BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MERRITT GRANT POLLUTION CONT
OAK & DELAWARE
MPLS MN
55440

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV
ST PAUL MN
55104

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN ENV CONTROL CITIZEN ASN
CENTRAL MANOR 26 E EXCH
ST PAUL MN
55101

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN HWYS MANAGEMENT SERVICE
410 HWY BLDG
ST PAUL MN
55101

MINNESOTA MASONRY ASSOC.
8053 BLOOMINGTONFREEWAY
MPLS MN
55420

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN PUB INT RES DAYTON
2418 UNIV AVE SE
MPLS MN
55414

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN SCH BUS OPERATORS ASSN

FARIBAULT MN
55021

MINN SOCIETY ARCHITECTS AIA
NW NATL BK BLDG
ST PAUL MN
55101

MINN ST BD PHAR P G GRUSSING
1965 FORD PKWY
ST PAUL MN
55116

MINN STATE CAPITOL EMP UNION
PO BOX 3215
ST PAUL MN
55165

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
~~55104~~ 55114

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN
56321

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLD
MPLS MN

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXAMRS
277 W UNIV AVE
ST PAUL MN
55103

NASS, GEO. V.
HENN Co GEN. HOSP.
5th & Portland Ave
Mpls, Mn. 55415

O'BRIEN J.DENNIS
1200 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OHMAN W C NATL ELEC CONTRS
608 AM NATL BK
ST PAUL MN
55101

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST N W
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
113 W UNIV AVE
ST PAUL MN
55103

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

RACHNER MARY JANE
1917 PINEHURST AVE
ST PAUL MN
55116

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ST PAUL ASSN PLBG HTG MECH
614 AM NATL BK
ST PAUL MN

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEWS
50 S 9TH ST
MPLS MN
55402

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SEARS ROEBUCK & CO
2929 ELLIOT AVE D 703MW
MPLS MN
55401

56560

ST PAUL MN
55101

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHAW ROBER[redacted]M
616 MOBIL OIL BLDG
MPLS MN
55402

SKELLY OIL CO R R WELLINGTON
PO BOX 436
KANSAS CITY MO

SMERIKA WM.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STENSLAND M.E. PRES. MVMA
203 NW 22ND ST.
AUSTIN MN
55912

SUSSEL CO.ATTN:TED SCHWENKER
1850 COMO AVE.
ST PAUL MN
55108

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

TWIN CITY RETAIL DRUGGIST AS
2388 UNIV AVE
ST PAUL MN
55104

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VOGEL HOWARD G
814 FLOUR EXCH BLDG
MPLS MN
55415

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WEST & GOWAN
ATTORNEYS AT LAW
PINE ISLAND MN
55963

WEST MIDWAY-SO.ST ANTH.PK.AS
898 RAYMOND AVE.
ST PAUL MN
55114

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

ZATARGA A E CPA
1800 MIDWEST PLAZA BLDG
MPLS MN
55402

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption
of Rules of the State Board of Optometry

CERTIFICATE

I hereby certify that the attached 13 sheets constitute the complete list of persons, associations, and other interested groups who as of 4:00 o'clock P.M., this 24th day of September, 1973, have requested pursuant to M.S. 1957, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

By Arlen I. Erdahl
Neil Dunn

AFFIDAVIT

State of Minnesota)
)
County of Hennepin)

HOWARD S. MARKER, being duly sworn on oath, deposes and says:

1. That he is the legal counsel of the State Board of Optometry.

2. That on the 24th day of September, 1973, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. §15.0412.

3. That on the 24th day of September, 1973, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

H. S. Marker

Howard S. Marker

Subscribed and sworn to before me
this 26th day of September, 1973.

Sheryl S. Hippee

Sheryl S. Hippee, Notary Public
Hennepin County, Minnesota

SHERYL S. HIPPEE
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 16, 1979

ALBERT, AA CALDER CORP
366 JACKSON ST
ST PAUL MN
55101

AM CAMPING ASSN MRS LEACOCK
1235 BRIGHTON SQ
NEW BRIGHTON MN
55112

AM INST PROF GEOLOGISTS
2201 PRINCETON AVE
ST PAUL MN
55105

ANTHONY R.S. E.L.M.
1222 FOURTH ST. S.E.
MINNEAPOLIS MN
55414

ARMOUR AND COMPANY
UNION STOCK YARDS
SO ST PAUL MN
55075

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BEECHER EVERETT
10 10 1ST ST SC
HOPKINS MN

BEMIDJI STATE COLLEGE
PLACEMENT BUR.J.C.BRADY
BEMIDJI MN
56601

BEST FLANAGAN ET AL
1ST NATL BANK BLDG
MPLS MN
55402

BEUTEL ROBERT
BOX 1205
ST CLOUD MN
56301

BROOKS WILLIAM F JR
854 MIDLAND BK BLDG
MPLS MN
55401

BROWN D M GOODRIDGE PUB SCH
IND DIST #561
GOODRIDGE MN
56725

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

BUR.ENGR.IND.DIV. MR.KIBIGER
219 N. 2ND ST.
MPLS. MN

CARPENTER MRS MARY LEE
DOW CHEMICAL 47 BLDG
MIDLAND MICH.
48640

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

CHAMBERLAIN JOHN L
PO BOX 241
MPLS MN
55440

CHAMBERLAIN WARREN D
887 SW 4TH AVE
FARIBAULT MN
55021

CITY CLERK
386 CITY HALL
ST PAUL MN
55102

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
230 STATE OFF BLDG
ST PAUL MN
55101

DANFORTH & ALLEN
731 NW BANK BLDG
MPLS MN
55402

DAVIS HENRY
6301 SHINGLE CREEK
BROOKLYN CTR MN
55429

DAYTON CHAS. SIERRA CLUB
555 WABASHA
ST PAUL MN
55102

DOUGLASS BELL
525 OSBORN BLDG
ST PAUL MN
55102

DOYTON MAURICE, MET SEWER BD
350 METRO SQ BLDG
ST PAUL MN
55101

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

EMERICK RICHARD A
1908 IDS CENTER
MPLS MN
55402

ESSE KENNETH
4801 W 50TH ST
EDINA MN
55424

EVANS CHAS.L. PRENTICE-HALL
ENGELWOOD CLIFFS
NEW JERSEY

EWING MRS WM
42 ASTAR RD
BABBITT MN
55706

FINLEY JAMES F
920 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FORBES GORDON MINN RRS ASSN
207 UNION DEPOT
ST PAUL MN
55101

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

F W WOOLWORTH CO.
3316 W 66TH ST
EDINA MN
55424

GIEL DAVID
RM.B-28 STATE CAPITAL
ST PAUL MN
55155

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GUSTAFSON MRS D MINN VET MED
24 S 6TH ST
MPLS MN
55402

GUSTAFSON WALLACE
BOX 567
WILLMAR MN
56201

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN
55417

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HENN CO WELFARE BRD RM 26
COURT HOUSE
MPLS MN
55415

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUMAN RIGHTS DEPT
60 STATE OFF BLDG
ST PAUL MN
55101

HUNT MRS CHAS L MECCA
26 E EXCH CENTRAL MANOR
ST PAUL MN
55101

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

KABLE RICHARD W

BETHEL MN
55006

KANE ANTHONY
LAW DEPT BUR RWY CO
ST PAUL MN
55101

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LAUNDERERS&DRY CLEANERS ASSN
W 1ST NATL BK BLDG
ST PAUL MN
55101

LEAGUE MINN MUNICIPALITIES
314 SOC SCIENCES BLDG
MPLS MN
55455

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MASTOR MATTSON HART ET AL
414 ROANOKE BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MERRITT GRANT POLLUTION CONT
OAK & DELAWARE
MPLS MN
55440

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV A
ST PAUL MN
55104

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN ENV CONTROL CITIZEN ASN
CENTRAL MANOR 26 E EXCH
ST PAUL MN
55101

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN HWYS MANAGEMENT SERVICE
410 HWY BLDG
ST PAUL MN
55101

MINNESOTA MASONRY ASSOC.
8053 BLOOMINGTONFREEWAY
MPLS MN
55420

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN PUB INT RES DAYTON
2418 UNIV AVE SE
MPLS MN
55414

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN SCH BUS OPERATORS ASSN

FARIBAULT MN
55021

MINN SOCIETY ARCHITECTS AIA
NW NATL BK BLDG
ST PAUL MN
55101

MINN ST BD PHAR P G GRUSSING
1965 FORD PKWY
ST PAUL MN
55116

MINN STATE CAPITOL EMP UNION
PO BOX 3215
ST PAUL MN
55165

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
~~55104~~ 55114

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN
56321

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BL[redacted]
MPLS MN

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXAMRS
277 W UNIV AVE
ST PAUL MN
55103

NASS, GEO. V.
HENN Co GEN. HOSP.
5th & Portland Ave
Mpls, Mn. 55415

O'BRIEN J.DENNIS
1200 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OHMAN W C NATL ELEC CONTRS
608 AM NATL BK
ST PAUL MN
55101

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST N W
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
113 W UNIV AVE
ST PAUL MN
55103

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

RACHNER MARY JANE
1917 PINEHURST AVE
ST PAUL MN
55116

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ST PAUL ASSN PLBG HTG MECH
614 AM NATL BK
ST PAUL MN

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEWS
50 S 9TH ST
MPLS MN
55402

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SEARS ROEBUCK & CO
2929 ELLIOT AVE D 703MW
MPLS MN
55401

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHAW ROBERT
616 MOBIL OIL BLDG
MPLS MN
55402

SKELLY OIL CO R R WELLINGTON
PO BOX 436
KANSAS CITY MO

SMERIKA WN.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STENSLAND M.E. PRES. MVMA
203 NW 22ND ST.
AUSTIN MN
55912

SUSSEL CO.ATTN:TED SCHWENKER
1850 COMO AVE.
ST PAUL MN
55108

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

TWIN CITY RETAIL DRUGGIST AS
2388 UNIV AVE
ST PAUL MN
55104

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VOGEL HOWARD G
814 FLOUR EXCH BLDG
MPLS MN
55415

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WEST & GOWAN
ATTORNEYS AT LAW
PINE ISLAND MN
55963

WEST MIDWAY-SO.ST ANTH.PK.AS
898 RAYMOND AVE.
ST PAUL MN
55114

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

ZATARGA A E CPA
1800 MIDWEST PLAZA BLDG
MPLS MN
55402

ALLEN CLAUDE H
1200 N W BK BLDG
ST PAUL MN
55101

ALTMAN MILTON H
707 DEGREE OF HONOR BLD
ST PAUL MN
55101

ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ARVER JOHN A
2467 COHANCY
ST PAUL MN
55113

ASMUSSEN,DENNIS,MPIRG
3036 UNIV AVE SE
MPLS MN
55414

AUTOMOBILE MFRS ASSN INC
55 SHERBURNE AVE
ST PAUL MN
55103

BARTHOLOW HAROLD E FIRE CHF
1327 COON RAPIDS BLVD
COON RAPIDS MN
55433

BECKLIN ROBERT C
447 N W 4TH
CAMBRIDGE MN
55008

BENSONI PETER USW OF AM.
609 PROVIDENCE BLDG.
DULUTH MN

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BREHL JAMES W
332 HAMM BLDG
ST PAUL MN
55102

BROEKER JOHN M
2850 METRO DR SUITE 513
BLOOMINGTON MN
55420

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN
55101

BRUNING C.R.DEPT.CLINIC.E
BURTON HALL
MPLS. MN
55455

BUR NATL AFFAIRS INC
1231 25TH ST NW
WASHINGTON DC
20037

CENTRAL BUSINESS DATA
BENSON RADIO ARCADE BLD
BENSON MN
56215

CHAMBER OF COMMERCE
30 SO 1ST AVE EAST
ELY MN
55731

CHERCHES CHRIS CITY MGR
5005 MTKA BLVD
ST LOUIS PARK MN
55416

CHRISTIAN SCI COMM ON PUB
1821 UNIV AVE SUIT 271
ST PAUL MN
55104

COLEMAN NICHOLAS D
700 LINWOOD AVE
ST PAUL MN
55105

COLLIN LAURENCE
RT 2
ISANTI MN
55040

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
56401

CUSHMAN J S DAYTON HUDSON
700 NICOLLET MALL
MPLS MN
55402

DANKERS, KENNETH
1200 WEST FOURTH STREET
RED WING MN
55066

DANIELSON RODNEY L
418 AUDITORIUM
ST PAUL MN
55102

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DORSEY MARQUART
2400 1ST NATL BANK BLDG
MPLS MN
55402

DUDLEY E H
RT 7 BOX 122
EXCELSIOR MN
55331

DUNN OLIVER PLUMBERS LOC
708 SO 10TH ST
MPLS MN
55404

EDINA FIRE D JAMES MCNELLIS
4801 W 50TH ST
EDINA MN
55424

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

EMP HANDICAPPED PERSONS COMM
527 JACKSON RM 227
ST PAUL MN
55101

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

EVERETT JERRY NW PETRO ASSN
512 NICOLLET MALL RM917
MPLS MN
55402

EWALD DOUGLAS MINN HOSP A
2333 UNIV AVE SE
MPLS MN
55414

FAEGRE & BENSON ATTN LIBR
1260 NW BANK BLDG
MPLS MN
55402

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FRANKLIN ROBERT B MPLS TRIB
426 PORTLAND
MPLS MN
55415

FURLONG DR JOHN
RT 1
BOVEY MN
55709

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST PAUL MN
55101

GAS HUT INC
4940 VIKING DR
MINNEAPOLIS MN
55435

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN
55409

HESS DONALD MIDWEST PLANNING
2101 HENN BLDG
MPLS MN
55405

HARTFELDT WILL
415 HAMM BLDG 6TH ST
ST PAUL MN
55102

HILL JIM ASSOC.MILK PROD.
7850 METRO PARKWAY
MINNEAPOLIS MN
55420

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HOUSE ED STANDING SUB COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HULSTRAND ANDERSON & LARS
PO BOX 130
WILLMAR MN
56201

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
55303

INGVALSON VERN MN.FARM BUR.
3110 WOODDALE DR PO 337
OST PAUL MN
55165

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

KING, TIMOTHY
3333 OAKLAND AVE S
MPLS MN
55407

KNOWLES, LARRY D
8025 33RD AVE N
CRYSTAL MN
55427

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KLUZ, Steven J.
1910 1st. Natl BK Bldg
Mpls, Mn. 55402

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SE
717 DELAWARE ST S
MPLS MN
55440

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANTHEY T J PICKANDS MATH
2000 UNION COMM BLDG
CLEVELAND OH
44115

MECCA R.F. NELSON
26 E EXCHANGE ST
ST PAUL MN
55101

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MINN AFL-CIO, L O LA SHOMB
414 AUDITORIUM ST
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN BD PODIATRY EXAM & R
1111 W 2ND ST.
CROOKSTON MN
56716

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HOUSING INST N T CARTER
7801 METRO PKWY
MPLS MN
55420

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN PETROLEUM COUNCIL
446 BUILDERS EXCH BLDG
MPLS MN
55402

MINN POULTRY & HATCHERY A
BOX 158
MADELIA MN
56062

MINN RETAIL FEDERATION
7600 PARKLAWN STE 457
MPLS MN
55435

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BL 313
MPLS MN
55416

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE OPTOMETRIC ASS
333 E HENNEPIN AVE
MPLS MN
55414

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MOFFITT R.C. DIR.ENV.CONT
MPLS.CITY HALL RM 301M
MPLS MN
55415

Minn. WATER RESOURCES BD
Rm. 206, 655 WABASHA ST
ST PAUL, MN 55102

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON DONALD E NSP CO
414 NICOLLET AVE
MPLS MN
55401

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NOBLES COUNTY FARM BUR AS
710 10TH ST
WORTHINGTON MN
56187

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

OCONNELL THOMAS
941 LAUREL
ST PAUL MN
55104

OCONNOR GREEN THOMAS ET A
845 NW BANK BLDG
MPLS MN
55402

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE COL ALVIN

DEGRAFF MN
56233

PETERSEN JOHN W
525 OSBORN BLDG
ST PAUL MN
55102

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER LYLE O

TRACY MN
56175

PULSCHER RBT SPRINGSTED INC
813 OSBORN BLDG
ST PAUL MN
55102

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROCHE T E
5007 FREMONT AVE S
MPLS MN
55419

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SATHRE, HARVEY
77 SHERBURNE
ST PAUL MN
55103

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHWINN ROBT.P.
1400 SOO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SENATE COUN OFF J ST MARIE
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SHINER JOHN T.
297 GOODRICH AVE
ST PAUL MN
55102

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

STATE BD VETERINARY EXAMI
C/O DR A C SPANNAUS DVM
WACONIA MN

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SUMMIT NATL BANK D L MORR
205 AURORA AVE
ST PAUL MN
55103

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VERRILL JOHN E
DEPT.SECONDARY ED UOF M
DULUTH MN
55812

VILLAGE OF WOODBURY-F.STR
561 TOWER DRIVE
NEWPORT MN
55055

WELLS G W INS FED OF MINN
RT 4 BOX 194
WAYZATA MN
55391

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LI
2100 SUMMIT AVE.
ST.PAUL MN
55105

WOZNIAK D D
828 MINN BLDG
ST PAUL MN
55101

WYANT CLINTON W ATTY

ATKIN MN
56431

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption
of Rules of the State Board of Optometry

CERTIFICATE

I hereby certify that the attached 13 sheets constitute the complete list of persons, associations, and other interested groups who as of 4:00 o'clock P.M., this 24th day of September, 1973, have requested pursuant to M.S. 1957, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

By Arlen D. Erdahl
Quil Dunn

AFFIDAVIT

State of Minnesota)
)
County of Hennepin)

HOWARD S. MARKER, being duly sworn on oath, deposes and says:

1. That he is the legal counsel of the State Board of Optometry.

2. That on the 24th day of September, 1973, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. §15.0412.

3. That on the 24th day of September, 1973, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Howard S. Marker

Howard S. Marker

Subscribed and sworn to before me
this 26th day of September, 1973.

Sheryl S. Hippee, Notary Public
Hennepin County, Minnesota

SHERYL S. HIPPEE
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 16, 1979

ALLEN CLAUDE H
1200 N W BK BLDG
ST PAUL MN
55101

ALTMAN MILTON H
707 DEGREE OF HONOR BLD
ST PAUL MN
55101

ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
55435

ARVER JOHN A
2467 COHANCY
ST PAUL MN
55113

ASMUSSEN, DENNIS, MPIRG
3036 UNIV AVE SE
MPLS MN
55414

AUTOMOBILE MFRS ASSN INC
55 SHERBURNE AVE
ST PAUL MN
55103

BARTHOLOW HAROLD E FIRE CHF
1327 COON RAPIDS BLVD
COON RAPIDS MN
55433

BECKLIN ROBERT C
447 N W 4TH
CAMBRIDGE MN
55008

BENSONI PETER USW OF AM.
609 PROVIDENCE BLDG.
DULUTH MN

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BREHL JAMES W
332 HAMM BLDG
ST PAUL MN
55102

BROEKER JOHN M
2850 METRO DR SUITE 513
BLOOMINGTON MN
55420

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN
55101

BRUNING C.R.DEPT.CLINIC.E
BURTON HALL
MPLS. MN
55455

BUR NATL AFFAIRS INC
1231 25TH ST NW
WASHINGTON DC
20037

CENTRAL BUSINESS DATA
BENSON RADIO ARCADE BLD
BENSON MN
56215

CHAMBER OF COMMERCE
30 SO 1ST AVE EAST
ELY MN
55731

CHERCHES CHRIS CITY MGR
5005 MTKA BLVD
ST LOUIS PARK MN
55416

CHRISTIAN SCI COMM ON PUB
1821 UNIV AVE SUITE 271
ST PAUL MN
55104

COLEMAN NICHOLAS D
700 LINWOOD AVE
ST PAUL MN
55105

COLLIN LAURENCE
RT 2
ISANTI MN
55040

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
56401

CUSHMAN J S DAYTON HUDSON
700 NICOLLET MALL
MPLS MN
55402

DANKERS, KENNETH
1200 WEST FOURTH STREET
RED WING MN
55066

DANIELSON RODNEY L
418 AUDITORIUM
ST PAUL MN
55102

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DORSEY MARQUART
2400 1ST NATL BANK BLDG
MPLS MN
55402

DUDLEY E H
RT 7 BOX 122
EXCELSIOR MN
55331

DUNN OLIVER PLUMBERS LOC
708 SO 10TH ST
MPLS MN
55404

EDINA FIRE D JAMES MCNELLIS
4801 W 50TH ST
EDINA MN
55424

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

EMP HANDICAPPED PERSONS COMM
527 JACKSON RM 227
ST PAUL MN
55101

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

EVERETT JERRY NW PETRO ASSN
512 NICOLLET MALL RM917
MPLS MN
55402

EWALD DOUGLAS MINN HOSP A
2333 UNIV AVE SE
MPLS MN
55414

FAEGRE & BENSON ATTN LIBR
1260 NW BANK BLDG
MPLS MN
55402

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FRANKLIN ROBERT B MPLS TRIB
426 PORTLAND
MPLS MN
55415

FURLONG DR JOHN
RT 1
BOVEY MN
55709

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST PAUL MN
55101

GAS HUT INC
4940 VIKING DR
MINNEAPOLIS MN
55435

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN
55409

HESS DONALD MIDWEST PLANNING
2101 HENN BLDG
MPLS MN
55405

HARTFELDT WILL
415 HAMM BLDG 6TH ST
ST PAUL MN
55102

HILL JIM ASSOC.MILK PROD.
7850 METRO PARKWAY
MINNEAPOLIS MN
55420

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HOUSE ED STANDING SUB COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HULSTRAND ANDERSON & LARS
PO BOX 130
WILLMAR MN
56201

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

HUTCHISON R.M. ANOKA CO.C
COURT HOUSE
ANOKA MN
55303

INGVALSON VERN MN.FARM BUR.
3110 WOODDALE DR PO 337
OST PAUL MN
55165

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

KING, TIMOTHY
3333 OAKLAND AVE S
MPLS MN
55407

KNOWLES, LARRY D
8025 33RD AVE N
CRYSTAL MN
55427

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KLUZ, Steven J.
1910 1st. Natl BK Bldg
Mpls, Mn. 55402

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SE
717 DELAWARE ST S
MPLS MN
55440

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANTHEY T J PICKANDS MATH
2000 UNION COMM BLDG
CLEVELAND OH
44115

MECCA R.F. NELSON
26 E EXCHANGE ST
ST PAUL MN
55101

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MINN AFL-CIO, L O LA SHOMB
414 AUDITORIUM ST
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN BD PODIATRY EXAM & R
1111 W 2ND ST.
CROOKSTON MN
56716

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HOUSING INST N T CARTER
7801 METRO PKWY
MPLS MN
55420

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN PETROLEUM COUNCIL
446 BUILDERS EXCH BLDG
MPLS MN
55402

MINN POULTRY & HATCHERY A
BOX 158
MADELIA MN
56062

MINN RETAIL FEDERATION
7600 PARKLAWN STE 457
MPLS MN
55435

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BL 313
MPLS MN
55416

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE OPTOMETRIC ASS
333 E HENNEPIN AVE
MPLS MN
55414

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MOFFITT R.C. DIR.ENV.CONT
MPLS.CITY HALL RM 301M
MPLS MN
55415

Minn WATER RESOURCES BD
Rm. 206, 555 WABASHA ST
ST PAUL, MN 55102

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON DONALD E NSP CO
414 NICOLLET AVE
MPLS MN
55401

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NOBLES COUNTY FARM BUR AS
710 10TH ST
WORTHINGTON MN
56187

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

OCONNELL THOMAS
941 LAUREL
ST PAUL MN
55104

OCONNOR GREEN THOMAS ET A
845 NW BANK BLDG
MPLS MN
55402

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE COL ALVIN

DEGRAFF MN
56233

PETERSEN JOHN W
525 OSBORN BLDG
ST PAUL MN
55102

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER LYLE O

TRACY MN
56175

PULSCHER RBT SPRINGSTED INC
813 OSBORN BLDG
ST PAUL MN
55102

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROCHE T E
5007 FREMONT AVE S
MPLS MN
55419

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SATHRE, HARVEY
77 SHERBURNE
ST PAUL MN
55103

ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHWINN ROBT.P.
1400 SOO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SENATE COUN OFF J ST MARIE
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SHINER JOHN T.
297 GOODRICH AVE
ST PAUL MN
55102

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

STATE BD VETERINARY EXAMI
C/O DR A C SPANNAUS DVM
WACONIA MN

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SUMMIT NATL BANK O L MORR
205 AURORA AVE
ST PAUL MN
55103

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VILLAGE OF WOODBURY-F.STR
561 TOWER DRIVE
NEWPORT MN
55055

WELLS G W INS FED OF MINN
RT 4 BOX 194
WAYZATA MN
55391

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WM.MITCHEL COLLEGE LAW LI
2100 SUMMIT AVE.
ST.PAUL MN
55105

WOZNIAK D D
828 MINN BLDG
ST PAUL MN
55101

WYANT CLINTON W ATTY

ATKIN MN
56431

ALBERT, A. CALDER CORP
366 JACKSON ST
ST PAUL MN
55101

AM CAMPING ASSN MRS LEACOCK
1235 BRIGHTON SQ
NEW BRIGHTON MN
55112

AM INST PROF GEOLOGISTS
2201 PRINCETON AVE
ST PAUL MN
55105

ANTHONY R.S. E.L.M.
1222 FOURTH ST. S.E.
MINNEAPOLIS MN
55414

ARMOUR AND COMPANY
UNION STOCK YARDS
SO ST PAUL MN
55075

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BEECHER EVERETT
10 10 1ST ST SC
HOPKINS MN

BEMIDJI STATE COLLEGE
PLACEMENT BUR.J.C.BRADY
BEMIDJI MN
56601

BEST FLANAGAN ET AL
1ST NATL BANK BLDG
MPLS MN
55402

BEUTEL ROBERT
BOX 1205
ST CLOUD MN
56301

BROOKS WILLIAM F JR
854 MIDLAND BK BLDG
MPLS MN
55401

BROWN D M GOODRIDGE PUB SCH
IND DIST #561
GOODRIDGE MN
56725

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

BUR.ENGR.IND.DIV. MR.KIBIGER
219 N. 2ND ST.
MPLS. MN

CARPENTER MRS MARY LEE
DOW CHEMICAL 47 BLDG
MIDLAND MICH.
48640

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
56001

CHAMBERLAIN JOHN L
PO BOX 241
MPLS MN
55440

CHAMBERLAIN WARREN D
887 SW 4TH AVE
FARIBAULT MN
55021

CITY CLERK
386 CITY HALL
ST PAUL MN
55102

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
230 STATE OFF BLDG
ST PAUL MN
55101

DANFORTH & ALLEN
731 NW BANK BLDG
MPLS MN
55402

DAVIS HENRY
6301 SHINGLE CREEK
BROOKLYN CTR MN
55429

DAYTON CHAS. SIERRA CLUB
555 WABASHA
ST PAUL MN
55102

DOUGLASS BELL
525 OSBORN BLDG
ST PAUL MN
55102

DOYTON MAURICE, MET SEWER BD
350 METRO SQ BLDG
ST PAUL MN
55101

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

EMERICK RICHARD A
1908 IDS CENTER
MPLS MN
55402

ESSE KENNETH
4801 W 50TH ST
EDINA MN
55424

EVANS CHAS.L. PRENTICE-HALL
ENGELWOOD CLIFFS
NEW JERSEY

EWING MRS WM
42 ASTAR RD
BABBITT MN
55706

FINLEY JAMES F
920 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FORBES GORDON MINN RRS ASSN
207 UNION DEPOT
ST PAUL MN
55101

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

F W WOOLWORTH CO
3316 W 66TH ST
EDINA MN
55424

GIEL DAVID
RM.B-28 STATE CAPITAL
ST PAUL MN
55155

GLEN. HILLS HOSP.R.VAN HAUER
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GUSTAFSON MRS D MINN VET MED
24 S 6TH ST
MPLS MN
55402

GUSTAFSON WALLACE
BOX 567
WILLMAR MN
56201

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN
55417

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HEAD & TRUHN
1007 SOO LINE BLD
MPLS MN
55402

HENN CO WELFARE BRD RM 26
COURT HOU
MPLS MN
55415

HOULE MELVIN
891 W HWY 96
SHOREVIEW MN
55112

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUMAN RIGHTS DEPT
60 STATE OFF BLDG
ST PAUL MN
55101

HUNT MRS CHAS L MECCA
26 E EXCH CENTRAL MANOR
ST PAUL MN
55101

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

KABLE RICHARD W

BETHEL MN
55006

KANE ANTHONY
LAW DEPT BUR RWY CO
ST PAUL MN
55101

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LAUNDERERS&DRY CLEANERS ASSN
W 1ST NATL BK BLDG
ST PAUL MN
55101

LEAGUE MINN MUNICIPALITIES
314 SOC SCIENCES BLDG
MPLS MN
55455

LOOS CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MASTOR MATTSON HART ET AL
414 ROANOKE BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MERRITT GRANT POLLUTION CONT
OAK & DELAWARE
MPLS MN
55440

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV
ST PAUL MN
55104

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MN. ASN.C&IND H.D.PETERSON
480 CEDAR ST.
ST.PAUL MN
55101

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN ENV CONTROL CITIZEN ASN
CENTRAL MANOR 26 E EXCH
ST PAUL MN
55101

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN HWYS MANAGEMENT SERVICE
410 HWY BLDG
ST PAUL MN
55101

MINNESOTA MASONRY ASSOC.
8053 BLOOMINGTONFREEWAY
MPLS MN
55420

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN PUB INT RES DAYTON
2418 UNIV AVE SE
MPLS MN
55414

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN SCH BUS OPERATORS ASSN

FARIBAULT MN
55021

MINN SOCIETY ARCHITECTS AIA
NW NATL BK BLDG
ST PAUL MN
55101

MINN ST BD PHAR P G GRUSSING
1965 FORD PKWY
ST PAUL MN
55116

MINN STATE CAPITOL EMP UNION
PO BOX 3215
ST PAUL MN
55165

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
~~55104~~ 55114

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN
56321

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NEUMAN RALPH W
RT 2 BOX 129
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXAMRS
277 W UNIV AVE
ST PAUL MN
55103

NASS, GEO. V.
HENN Co GEN. HOSP.
5th & Portland Ave
Mpls, Mn. 55415

O'BRIEN J.DENNIS
1200 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OHMAN W C NATL ELEC CONTRS
608 AM NATL BK
ST PAUL MN
55101

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST N W
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
113 W UNIV AVE
ST PAUL MN
55103

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

RACHNER MARY JANE
1917 PINEHURST AVE
ST PAUL MN
55116

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

ST PAUL ASSN PLBG HTG MECH
614 AM NATL BK
ST PAUL MN

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

SCHMIDT H W TCHRS RETIREMENT
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEWS
50 S 9TH ST
MPLS MN
55402

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SEARS ROEBUCK & CO
2929 ELLIOT AVE D 703MW
MPLS MN
55401

ST PAUL MN
55101

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHAW ROBERT
616 MOBIL OIL BLDG
MPLS MN
55402

SKELLY OIL CO R R WELLINGTON
PO BOX 436
KANSAS CITY MO

SMERIKA WM.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STENSLAND M.E. PRES. MVMA
203 NW 22ND ST.
AUSTIN MN
55912

SUSSEL CO.ATTN:TED SCHWENKER
1850 COMO AVE.
ST PAUL MN
55108

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

TWIN CITY RETAIL DRUGGIST AS
2388 UNIV AVE
ST PAUL MN
55104

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VOGEL HOWARD G
814 FLOUR EXCH BLDG
MPLS MN
55415

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

WEST & GOWAN
ATTORNEYS AT LAW
PINE ISLAND MN
55963

WEST MIDWAY-SO.ST ANTH.PK.AS
898 RAYMOND AVE.
ST PAUL MN
55114

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

ZATARGA A E CPA
1800 MIDWEST PLAZA BLDG
MPLS MN
55402

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules of the State Board of Optometry

AFFIDAVIT OF MAILING

State of Minnesota)
) ss
County of Hennepin)

LEO A. MEYER, being first duly sworn, deposes and says:

That on the 26th day of September, 1973, in the City of Roseville, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Roseville a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached certificate of the Secretary of State.

Leo A. Meyer, O.D.

Leo A. Meyer, O.D.

Subscribed and sworn to before me this 28th day of September, 1973.

Howard S. Marker, Notary Public

HOWARD S. MARKER
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Sept. 25, 1975

PROPOSED AMENDMENTS TO THE OPTOMETRY RULES AND REGULATIONS

Opt 1 Advertising

. . .

(j) All optometrists affiliated with any person, firm or corporation shall ~~be responsible for~~ inform themselves of the contents of all advertising for optometric services disseminated by such person, firm or corporation. It shall be deemed unprofessional conduct for any optometrist knowingly to permit a person, firm or corporation with which he is affiliated to advertise in violation of the optometry statutes.

An optometrist shall be presumed to be "affiliated" with a person, firm or corporation if such person, firm or corporation:

(1) employs him to practice optometry, or

(2) guarantees him income in his optometric practice, or

(3) pays or repays expenses incurred in his optometric practice.

(k) The names of all optometrists shall be prominently displayed at any office or establishment where such persons examine eyes.

Opt 4 Required Continuing Education

All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs covering one or more of the subjects taught in those optometry schools or colleges approved by the board. In the event an optometrist becomes inelligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board may reinstate any such suspended license under such terms and conditions as it determines will insure that the licensee possesses sufficient knowledge of recent scientific and clinical advances.

(a) The optometric study compliance year shall extend from February 1 through January 31, during which period attendance at approved study sessions may be used as evidence of fulfillment of study requirements for the subsequent license renewal year beginning April 1 and expiring on March 31. Credit will be allowed only for the year in which the education course was actually attended. Example: Credit for 1975 must be obtained between February 1, 1974 and January 31, 1975 for license renewal on April 1, 1975.

(b) Approved programs. Educational programs which will be approved as meeting the required standards include the following (This approval is and shall be based on continued maintenance of high standards.):

(1) Courses on subjects relative to optometry at any board-approved school or college of optometry.

(2) Educational meetings of the North Central States Optometric Conference.

(3) Educational meetings of the Minnesota Optometric Association.

(4) Educational meetings of the American Optometric Association.

(5) Educational meetings of the American Academy of Optometry.

(6) Other educational programs approved by the board as meeting minimum standards after submission of a program, schedule, and outline to the board secretary not less than 60 days prior to the date of the program.

Educational programs will be judged by the board solely on whether or not they are likely to contribute to the improvement, advancement and extension of professional skill and knowledge in the practice of optometry. Speakers, lecturers and others participating in the presentation of any such program shall be recognized by the profession as being expert in their field.

The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, delete from approval for the ensuing study compliance year, one or more of the programs as set forth in paragraphs (2) through (5) above.

(c) Proof of attendance. Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board secretary at the time he applies for renewal of his license and shall contain the following information:

(1) The name of the sponsoring organization.

(2) The name, signature, and address of the licensee.

(3) The subject of the educational topic.

(4) Number of hours in attendance.

(5) The date of the lecture.

(6) The signature of the lecturer or person in charge of the program.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section (b)(6) herein. Such forms shall be made available by the board secretary upon request.

(d) Courses for which credit will not be given. Credit shall not be given for more than two hours attendance in courses of office management or administration. No credit shall be given for courses sponsored by individuals or institutions for primarily commercial purposes or programs the primary purpose of which is to advertise or urge the use of any particular ophthalmic product or appliance.

(e) Exemptions from required attendance. The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the 12 months immediately preceding the annual license renewal date.

(2) Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances.

(3) Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

(f) Board may require attendance ~~at~~ of specified ~~courses~~ subjects. The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, require all optometrists to attend specified continuing education subjects of ~~courses~~ for credit toward the annual hourly requirement.

Opt 5 Release of Prescriptions and Specifications for Contact Lenses

The board interprets the laws of the State of Minnesota as requiring that the ~~fitting~~ adaptation to the eye of contact lenses be performed only by licensed optometrists or physicians. Prescriptions and specifications for contact lenses may be given out only upon written request of the patient and then only to a licensed optometrist or physician.

It shall be deemed unprofessional conduct for any optometrist to dispense a prescription for corrective lenses who knows or has reason to believe that the same will be utilized for the ~~fitting~~ adaptation of contact lenses in aid of the powers of vision by someone other than a licensed optometrist or physician.

Opt 6 Incorporating under the Professional Corporations Act

One or more licensed optometrists may form a corporation under the Professional Corporations Act as stated in Minnesota Statutes 1973, Chapter 319A. With reference to the formation and maintenance of such professional optometric corporations, the following rules shall apply:

(a) No professional optometric corporation shall begin to render professional service in this state until it has filed with the board secretary a copy of its articles of incorporation.

(b) Either the abbreviation "O.D." or the word "Optometry" or "Optometric" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O.D." shall not be used as a suffix.

(c) Where an optometrist is working as an employee of a professional optometric corporation, his name shall be prominently displayed at any establishment where such person is rendering professional services.

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

ADDITIONS TO MINNESOTA ADMINISTRATIVE RULES AND REGULATIONS RELATING TO THE STATE OF MINNESOTA BOARD OF OPTOMETRY

Opt 4 Required Continuing Education

All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs covering one or more of the subjects taught in those optometry schools or colleges approved by the board. In the event an optometrist becomes inelligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board may reinstate any such suspended license under such terms and conditions as it determines will insure that the licensee possesses sufficient knowledge of recent scientific and clinical advances.

(a) The optometric study compliance year shall extend from February 1 through January 31, during which period attendance at approved study sessions may be used as evidence of fulfillment of study requirements for the subsequent license renewal year beginning April 1 and expiring on March 31. Credit will be allowed only for the year in which the education course was actually attended. Example: Credit for 1975 must be obtained between February 1, 1974 and January 31, 1975 for license renewal on April 1, 1975.

(b) Approved programs. Educational programs which will be approved as meeting the required standards include the following

(This approval is and shall be based on continued maintenance of high standards.):

(1) Courses on subjects relative to optometry at any board-approved school or college of optometry.

(2) Educational meetings of the North Central States Optometric Conference.

(3) Educational meetings of the Minnesota Optometric Association.

(4) Educational meetings of the American Optometric Association.

(5) Educational meetings of the American Academy of Optometry.

(6) Other educational programs approved by the board as meeting minimum standards after submission of a program, schedule, and outline to the board secretary not less than 60 days prior to the date of the program.

Educational programs will be judged by the board solely on whether or not they are likely to contribute to the improvement, advancement and extension of professional skill and knowledge in the practice of optometry. Speakers, lecturers and others participating in the presentation of any such program shall be recognized by the profession as being expert in their field. As a condition of the approval of an educational program hereunder, the board may require that the program director furnish it with satisfactory evidence of attendance of all Minnesota licensees.

The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, delete from approval for the ensuing study compliance year, one or more of the programs as set forth in paragraghs (2) through (5) above.

(c) Proof of attendance. Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board secretary at the time he applies for renewal of his license and shall contain the following information:

(1) The name of the sponsoring organization.

(2) The name, signature, and address of the licensee.

(3) The subject of the educational topic.

(4) Number of hours in attendance.

(5) The date of the lecture.

(6) Such other evidence of attendance as the board may deem necessary.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section (b)(6) herein. Such forms shall be made available by the board secretary upon request.

(d) Courses for which credit will not be given. Credit shall not be given for more than two hours attendance in courses of office management or administration. No credit shall be given for courses sponsored by individuals or institutions for primarily commerical purposes or programs the primary purpose of which is to advertise or urge the use of any particular ophthalmic product or appliance.

(e) Exemptions from required attendance. The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the 12 months immediately preceding the annual license renewal date.

(2) Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing

education courses because of illness, incapacity, or other unavoidable circumstances.

(3) Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

(f) Board may require attendance of specified subjects. The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, require all optometrists to attend specified subjects of continuing education for credit toward the annual hourly requirement.

Opt 5 Release of Prescriptions and Specifications for Contact Lenses

Prescriptions and specifications for contact lenses may be given out by an optometrist only upon written request of the patient and only to a licensed optometrist or physician.

It shall be deemed unprofessional conduct for any optometrist to dispense a prescription for corrective lenses who knows or has reason to believe that the same will be utilized for the adaptation of contact lenses in aid of the power of vision by someone other than a licensed optometrist or physician.

Opt 6 Incorporating under the Professional Corporations Act

One or more licensed optometrists may form a corporation under the Professional Corporations Act as stated in Minnesota Statutes 1973, Chapter 319A. With reference to the formation and maintenance of such professional optometric corporations, the following rules shall apply:

(a) No professional optometric corporation shall begin to render professional service in this state until it has filed with the board secretary a copy of its articles of incorporation.

(b) Either the abbreviation "O.D." or the word "Optometry" or "Optometric" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O.D." shall not be used as a suffix.

(c) Where an optometrist is working as an employee of a professional optometric corporation, his name shall be prominently displayed at any establishment where such person is rendering professional services.

Opt 7 Display and Disclosure of Name

The name of the optometrist shall be prominently displayed at any office or establishment where such person examines eyes. All receipts relating to payment for eye examinations and all prescriptions for correction furnished to the patient shall indicate the name of the examining optometrist.

Adopted November 21, 1973.

STATE OF MINNESOTA
BOARD OF OPTOMETRY

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Howard S. Marker, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Dated: November 26, 1973

Howard S. Marker,
Special Assistant Attorney General

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

SUPPLEMENTAL STATEMENT OF NEED

Opt 4 - Required Continuing Education

The provisions pertaining to continuing education are the result of enabling legislation as contained in M.S. 1973, Section 148.59. Continuing education requirements are essential in order to insure that the public will continue to receive optometric services at the highest level.

A. Necessity for 45-day period within which to consider approval of non-specified educational programs. The board believes that it will need 45 days in order to fully and fairly evaluate a request for approval, particularly if further information and/or course revisions are required.

Dated: January 27, 1974.

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By J. Burke O.D.
Dr. J. Burke, President

By John R. Kennedy O.D.
Dr. John R. Kennedy, Vice President

By L. A. Meyer, O.D., Secy.
Dr. Leo A. Meyer, Secretary

By B. J. Davison, O.D.
Dr. B. J. Davison

By Cora B. Ruhr O.D.
Dr. Cora Brabazon Ruhr

By Barbara Street
Ms. Barbara Street

By Robert E. Moran
Mr. Robert E. Moran

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the proposed Adoption of the Rules of the State Board of Optometry

SUPPLEMENTAL FINDINGS OF FACT

After further review and discussion, we, the undersigned members of the State Board of Optometry, in addition to the Findings of Fact dated November 21, 1973, find the following:

Opt 4 Required Continuing Education

The provisions pertaining to continuing education are the result of enabling legislation as contained in M.S. 1973, Section 148.59. Continuing education requirements will ensure that the public will continue to receive optometric services at the highest level. The board has painstakingly drafted this section after reviewing the rules of all of the various state boards of optometry as they pertain to continuing education. The provisions as stated in this section are common to most of the continuing education rules of the state board of optometry throughout the country. The board will need 45 days prior to the date of a proposed educational program in order to fully and fairly evaluate a request for approval, particularly if further information and/or course revisions are required.

Dated: January 27, 1974

By B. J. Davison, O.D.
Dr. B. J. Davison

By Cora Brabazon Ruhr O.D.
Dr. Cora Brabazon Ruhr

By Barbara S. Street
Ms. Barbara Street

By Robert E. Moran
Mr. Robert E. Moran

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By J. Burke O.D.
Dr. J. Burke, President

By John R. Kennedy O.D.
Dr. John R. Kennedy, Vice President

By Leo A. Meyer O.D. Secry
Dr. Leo A. Meyer, Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

STATEMENT OF NEED

The above-captioned rules are additions to the existing rules of the State Board of Optometry. The last time the above-captioned rules were amended was 1967.

The need to adopt each of the proposed rules is as follows:

Opt. 1 - Advertising

(j) Instances of a non-licensed person, firm or company holding itself out as examining eyes are brought to the board's attention several times each year. Advertisements for such personal services are prohibited by M.S.A. Section 148.56 and are misleading to the public. They appear almost anywhere in the state and are usually transitory.

Since the unlicensed employer is not subject to the board's jurisdiction, its violations cannot presently be dealt with in an expedient manner. The present necessity of having to commence judicial proceedings for injunctive relief is lengthy and costly.

Professional responsibility is inimicable to the public welfare. It requires affirmative action on the part of an optometrist who is affiliated with a person, firm or company to make a reasonable effort to see to it that his non-licensed employer does not hold itself out to the public as practicing optometry.

(k) Optometric patients frequently complain to the board of having allegedly received incorrect prescriptions for corrective

lenses and other improper optometric services. Often times the patient is unable to identify the particular optometrist involved because his name was not adequately displayed at the place of examination.

Opt. 4 - Required Continuing Education

The provisions pertaining to continuing education are the result of enabling legislation as contained in M.S. 1973, Section 148.59. Continuing education requirements are essential in order to insure that the public will continue to receive optometric services at the highest level.

Opt. 5 - Release of Prescriptions and Specifications for Contact Lenses

The law restricts the adaptation tothe eye of contact lenses to licensed optometrists and physicians. The obvious purpose of this is the protection of the health and welfare of the public.

The board believes that unlicensed lay persons are unlawfully and dangerously engaged in the employment of various means of adapting contact lenses to the eye in aid of the powers of vision.

The explicit language of the proposed rule will serve as an affirmation that the board will not permit an optometrist to abdicate his professional responsibility to his patients and to the public.

The need is to protect the public by inhibiting the ability of the unlicensed and unqualified to continue to jeopardize the public health by practicing optometry in violation of law.

Opt. 6 - Incorporating Under the Professional Corporations Act

The provisions pertaining to professional corporations are the result of enabling legislation as contained in M.S. 1973, Section 319A.18.

Subdivision (a) is simply a restatement of the statute.

Subdivision (b) is intended to protect the public from being misled by the corporate name.

Subdivision (c) is designed to avoid the problem as set out with respect to Opt. 1 (k) above.

Dated: September 26, 1973

STATE BOARD OF OPTOMETRY

By Leo A. Meyer, O.D.
Leo A. Meyer, O.D.,
Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

FINDINGS OF FACT

The above-entitled matter came on for hearing before the State of Minnesota Board of Optometry on the 29th day of October, 1973, at 9:00 A.M., in Room D, of the Fifth Floor of the Veterans Administration Building, St. Paul, Minnesota, after proper notice required by M.S. 1957, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, we, the undersigned members of the State Board of Optometry, find the following:

Opt 1 Advertising Section (j)

It has been claimed that this section would have the effect of eliminating price advertising by optical companies. It was not the board's intent to accomplish such a result. The demonstrated need for the adoption of this section is outweighed by the misunderstanding it is claimed to have caused. Accordingly, this section, as proposed, is rejected.

Opt 4 Required Continuing Education

The provisions pertaining to continuing education are the result of enabling legislation as contained in M.S. 1973, Section

148.59. Continuing education requirements will ensure that the public will continue to receive optometric services at the highest level. The board has painstakingly drafted this section after reviewing the rules of all of the various state boards of optometry as they pertain to continuing education. The provisions as stated in this section are common to most of the continuing education rules of the state boards of optometry throughout the country.

Opt 5 Release of Prescriptions and Specifications for Contact Lenses

Unlicensed lay persons are unlawfully and dangerously engaged in the employment of various means of adapting contact lenses to the eye in aid of the powers of vision. In so doing they are exercising professional judgment without having first demonstrated that they possess the requisite education, training and skills.

The law, in the interest of public health, has restricted the adaptation to the eye of contact lenses to licensed optometrists and physicians.

The adoption of this rule will assist the board, in the exercise of its jurisdiction over optometrists, in protecting the public by inhibiting the ability of the unlicensed and unqualified to practice optometry in violation of law.

Opt 6 Incorporating under the Professional Corporations Act

The provisions pertaining to professional corporations are the result of enabling legislation as contained in M.S. 1973, Section 319A.18.

Subdivision (a) is simply a restatement of the statute.

Subdivision (b) will protect the public from being misled by the corporate name.

Subdivision (c) will require that the patient have ample opportunity to know the names of all optometrists performing eye care services on the premises.

Opt 7 Display and Disclosure of Name

The substance of this rule was originally labeled Opt 1 (k).

Optometric patients frequently complain to the board of having allegedly received incorrect prescriptions for corrective lenses and other improper optometric services. This rule will enable the patient to identify the optometrist who performed the eye examination.

Dated: November 21, 1973

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By _____
Dr. J. Burke, President

By _____
Dr. John R. Kennedy,
Vice President

By _____
Dr. Leo A. Meyer, Secretary

By _____
Dr. B. J. Davison

By _____
Dr. Cora Brabazon Ruhr

By _____
Howard S. Marker,
Legal Counsel

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

RESOLUTION AUTHORIZING EXECUTION OF ORDER

RESOLVED, that the rules relating to the State Board of Optometry be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. 1929, Section 148.53, and that Leo A. Meyer, one of the members of the Board of Optometry, be and hereby is authorized to sign an order adopting those rules.

Dated: November 21, 1973

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By J. Burke
Dr. J. Burke, President

By John R. Kennedy O.D.
Dr. John R. Kennedy,
Vice President

By Leo A. Meyer O.D.
Dr. Leo A. Meyer, Secretary

By B. J. Davison, O.D.
Dr. B. J. Davison

By Cora Brabazon Ruhr
Dr. Cora Brabazon Ruhr

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the State Board of Optometry on the 29th day of October, 1973, at 9:00 A.M. in Room D, of the Fifth Floor of the Veterans Administration Building, St. Paul, Minnesota, after proper notice required by M.S. 1957, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and the applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Additions to Minnesota Administrative Rules and Regulations Relating to the State of Minnesota Board of Optometry are adopted this 21st day of November, 1973, pursuant to authority vested in me by the board's resolution of November 21, 1973.

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By Leo A. Meyer
Leo A. Meyer, O.D.,
Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

CERTIFICATE OF BOARD'S ADOPTION OF RULES RESOLUTION

I, Leo A. Meyer, do hereby certify that I am Secretary of the Board of Optometry, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete and correct copy of a resolution adopted at a meeting of the Board of Optometry duly and properly called and held on the 21st day of November, 1973; that a quorum was present at said meeting; that the board unanimously voted to adopt the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to the State Board of Optometry be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. 1929, Section 148.53, and that Leo A. Meyer, one of the members of the Board of Optometry, be and hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of November, 1973.

Leo A. Meyer, O.D.
Secretary

Attest:

J. Burke O.D.

Opt 4 Reserved for Future Use

Opt 5 Reserved for Future Use

Opt 6 Incorporating under the Professional Corporations Act

One or more licensed optometrists may form a corporation under the Professional Corporations Act as stated in Minnesota Statutes 1973, Chapter 319A. With reference to the formation and maintenance of such professional optometric corporations, the following rules shall apply:

(a) No professional optometric corporation shall begin to render professional service in this state until it has filed with the board secretary a copy of its articles of incorporation.

(b) Either the abbreviation "O.D." or the word "Optometry" or "Optometric" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O.D." shall not be used as a suffix.

(c) Where an optometrist is working as an employee of a professional optometric corporation, his name shall be prominently displayed at any establishment where such person is rendering professional services.

APPROVED AS TO FORM AND LEGALITY
Dec. 28 1973
WARREN SPANNAUS, ATTORNEY GENERAL
BY Thomas L. Mattson
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
JAN 4 1974
BY Ida Strandemo
AUTH. SIGNATURE
3:32 P.M.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 4 - 1974 - 3:00 pm
Arlen I. Erdahl
Secretary of State

Opt 7 Display and Disclosure of Name

The name of the optometrist shall be prominently displayed at any office or establishment where such person examines eyes. All receipts relating to payment for eye examinations and all prescriptions for correction furnished to the patient shall indicate the name of the examining optometrist.

APPROVED AS TO FORM AND LEGALITY
Dec. 28 1973
WARREN SPANNAUS, ATTORNEY GENERAL
BY Thomas J. Mattson
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
JAN 4 1974
BY Ella Studenmund
AUTH. SIGNATURE
3:32 P.M.

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

REVISION OF ADDITIONS TO MINNESOTA ADMINISTRATIVE RULES AND REGULATIONS RELATING TO THE STATE OF MINNESOTA BOARD OF OPTOMETRY

Opt 4 Required Continuing Education

All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs as may be approved by the board under the provisions of this rule. In the event an optometrist becomes inelligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board shall reinstate any such suspended license upon receipt of satisfactory proof that the licensee has made up the deficient hours of study.

(a) Study compliance year. Except as provided below, the optometric study compliance year shall extend from February 1 through January 31, during which period attendance at approved study sessions may be used as evidence of fulfillment of study requirements for the subsequent license renewal year beginning April 1 and expiring on March 31. Credit will be allowed only for the year in which the education course was actually attended. Example: Credit for 1976 must be obtained between February 1, 1975 and January 31, 1976 for license renewal on April 1, 1976. For the

year 1975, however, credit shall additionally be given for educational programs attended from January 1, 1974, so long as an educational program for which credit is requested is either specifically approved herein or has complied with the criteria as set forth in paragraph (c) herein. A licensee shall not be required to submit an educational program to the board for prior approval for those programs not specifically approved herein and which are attended between January 1, 1974 and March 15, 1974. No credit for such attendance shall be given, however, unless the board determines that such educational program complied with the criteria as set forth in paragraph (c) herein.

(b) Approved programs. Educational programs which are approved as meeting the required standards include the following (this approval is and shall be based on continued maintenance of high standards):

(1) Courses on subjects relative to optometry at any board-approved school or college of optometry.

(2) Educational meetings of the North Central States Optometric Conference.

(3) Educational meetings of the Minnesota Optometric Association.

(4) Educational meetings of the American Optometric Association.

(5) Educational meetings of the American Academy of Optometry.

(6) Other educational programs approved by the board as meeting the criteria as set forth in paragraph (c) herein,

after submission of a program, schedule, and outline to the board secretary not less than 45 days prior to the date of the program. The board may, upon application of any licensee and for good cause shown, waive the requirement for the submission of advance information and request for prior approval. Nothing herein shall permit the board to approve of an educational program which has not complied with the criteria as set forth in paragraph (c) herein.

(c) Criteria for judging and approving educational programs. Board approval of continuing education programs will be determined on the following basis:

(1) Whether or not the program is likely to contribute to the advancement and extension of professional skill and knowledge in the practice of optometry.

(2) Whether or not the speakers, lecturers and others participating in the presentation of any such program are recognized by the board as being highly qualified in their field.

(3) Whether or not the proposed course, if it is to be conducted within the State of Minnesota, is open to all optometrists licensed in this State.

(4) Whether or not the tuition fee charged for courses conducted within the State of Minnesota is the same for non-members of the course sponsoring organization as it is for members. Any difference in tuition charged to non-members as opposed to members of the sponsoring organization shall be reasonably and directly related to the sponsoring organization's expense in operating the course.

(5) As a condition of approval of an educational program hereunder, the board may require that the program director furnish it with satisfactory evidence of attendance of all Minnesota licensees.

(d) Notice of addition or deletion of approved courses. The board may, after due consideration and by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, either add additional programs to the list of approved programs for the ensuing study compliance year, or delete from approval for such study compliance year one or more of the programs as set forth in paragraph (b) herein.

(e) Proof of attendance. Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board secretary at the time he applies for renewal of his license and shall contain the following information:

(1) The name of the sponsoring organization.

(2) The name, signature, and address of the licensee.

(3) The subject of the educational topic.

(4) Number of hours in attendance.

(5) The date of the educational program.

(6) Such other evidence of attendance as the board may deem necessary.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section (b)(6) herein. Such forms shall be made available by the board secretary upon request.

(f) Limitation on credit to be given for certain courses. Credit shall not be given for more than two hours attendance in courses of office management or administration.

(g) Exemptions from required attendance. The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the 12 months, immediately preceding the annual license renewal date.

(2) Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances.

(3) Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

(h) Board may require attendance of specified subjects. The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, require all optometrists to attend specified subjects of continuing education for credit toward the annual hourly requirement.

Opt 5 Release of Prescriptions and Specifications for Contact Lenses

This section was disapproved by the Attorney General.

Opt 5 Incorporating under the Professional Corporations Act

This section was formerly numbered Opt 6 and has been approved by the Attorney General.

Opt 6 Display and Disclosure of Name

This section was formerly numbered Opt 7 and has been approved by the Attorney General.

Adopted as revised January 27, 1974.

STATE OF MINNESOTA
BOARD OF OPTOMETRY

By _____ O.D.
Dr. [illegible] Burke, President

By John R. Kennedy O.D.
Dr. John R. Kennedy,
Vice President

By Leo A. Meyer, O.D., Secy.
Dr. Leo A. Meyer, Secretary

By B. J. Davison, O.D.
Dr. B. J. Dayison

By Cora Brabazon Ruhr O.D.
Dr. Cora Brabazon Ruhr

By Barbara Street
Ms. Barbara Street

By Robert E. Moran
Mr. Robert E. Moran

APPROVED AS TO FORM AND LEGALITY
February 8 1974
WARREN SPANNAUS, ATTORNEY GENERAL
BY Thomas A. Mattson
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB - 8 1974 - 1:30 pm
Arlen I. Erdahl
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
FEB 8 1974 2:35 PM
BY Edna Stendenmann
AUTH. SIGNATURE

DEC 26 1973

LAW OFFICE

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

2200 FIRST NATIONAL BANK BUILDING

SAINT PAUL, MINNESOTA 55101

227-8021

AREA CODE 612

CHARLES W. BRIGGS
J. NEIL MORTON
RICHARD E. KYLE
SAMUEL H. MORGAN
FRANK N. GRAHAM
COLE OEHLER
A. LAURENCE DAVIS
FRANK HAMMOND
LEONARD J. KEYES
B. G. HART
JOHN M. SULLIVAN
BERNARD P. FRIEL
BURT E. SWANSON
M. J. GALVIN, JR.
DAVID C. FORSBERG
JOHN J. McNEELY
McNEIL V. SEYMOUR, JR.
EDWARD C. STRINGER
TERENCE N. DOYLE
RICHARD H. KYLE
JOHN L. DEVNEY
R. L. SORENSON

PETER H. SEED
PHILIP L. BRUNER
SAMUEL L. HANSON
RONALD E. ORCHARD
JOHN R. KENEFICK
JOHN R. FRIEDMAN
JAMES W. BOWERS
ANDRE J. ZDRAZIL
DAVID J. SPENCER
DOUGLAS L. SKOR
DANIEL J. COLE, JR.
BRUCE C. ECKHOLM
DOUGLAS R. HADDOCK
RICHARD D. HOLPER
GERALD L. SVOBODA
MARVIN T. FABYANSKE
THADDEUS S. FIGUS
DAVID L. MITCHELL
BONNIE L. BEREZOVSKY
STEVE A. BRAND

COUNSEL
ROBERT O. SULLIVAN
HAROLD J. KINNEY

December 26, 1973

BY MESSENGER

Mr. Curtis Forslund
Chief Deputy, Attorney General
State Capitol Building
Saint Paul, Minnesota 55155

Re: Proposed Rules of Minnesota
Board of Optometry

Dear Curt:

I have been informed that the proposed rules of the Board of Optometry which were the subject of its public hearing on October 29, 1973, have been submitted to the Attorney General for his approval. We represent the Minnesota Association of Ophthalmology and through this letter would like to express to you our objections to proposed rule Opt. 5, concerning contact lenses.

Enclosed is a copy of the letter which we submitted to the Board of Optometry after the public hearing, for inclusion in the record pursuant to the Administrative Procedure Act. This sets forth our objections to the rule as it had been proposed at the public hearing. We also made a series of comments at the hearing which are included in the transcript of the hearing.

At its subsequent meeting, the Board of Optometry adopted proposed Opt. 5 with two changes. It deleted the entire first sentence of the first paragraph and added the words "by an optometrist" in the second sentence of the first paragraph. Despite these changes, we believe that the objections outlined in our letter of November 19 are still valid. Furthermore, in light of these changes we have the following additional observations:

1. Even under the revised rule, the Board is attempting to regulate persons not within the purview of the optometry

statute. It is in effect regulating opticians, contact lens technicians, medical assistants and physicians by controlling the use which may be made of prescriptions for contact lenses. This is analogous to the Board of Medical Examiners regulating pharmacists by prohibiting doctors from prescribing medicines unless certain persons are to fill the prescriptions. Long ago the legislature decided that the public interest required the regulation of the filling of prescriptions for drugs, and therefore we have a statute regulating the activities and credentials of pharmacists. No such policy decision has ever been made with respect to opticians, contact lens technicians, or medical assistants, and this is not a decision which the Board of Optometry has authority to make.

2. We believe the patient has a right to receive a prescription from an optometrist and use it as he wishes. Again, if it is to be determined that the patient must be protected by regulating the manner in which that prescription may be filled, that is a determination for the legislature to make. Under the proposed rule, an optometrist would not be permitted to give a prescription to a patient who intended to have the prescription filled by any optical house, even if that optical house utilizes the services of contact lens technicians. Similarly, the patient would not be able to have the prescription filled by a physician if that physician were assisted by a contact lens technician.

3. If a person who wears contact lenses develops medical problems with his eyes, he must go to a physician rather than to an optometrist to have his problem diagnosed and treated. The proposed Opt. 5 would restrict the ability of a physician in such a situation to adequately serve his contact lens patients. The patient, if he has had lenses prescribed and fitted by an optometrist, does not have the prescription in his possession and is not able to communicate in any way to the physician what the nature of that prescription was. Without this prescription, and without the optometrist voluntarily making it available to the patient or his physician, more time is necessary to diagnose and treat the condition and to determine whether the original lenses were properly prescribed or fitted. It is therefore in the interest of the public to have their contact lens prescriptions readily available to them. Indeed, the rule may be used as a device to prevent the examination of an optometrist's prescription by anyone other than the prescribing optometrist. In this manner optometrists may be acting to prevent the evaluation of the prescriptions which they give, even when medical

reasons require it.

4. Similarly, the rule would seem completely to prohibit the release by an optometrist to a physician of the prescription when the patient has sought medical treatment from the physician, if that physician utilizes the services of a contact lens technician or a medical assistant in ophthalmology. The purpose of the patient's visit to the physician is to find out what the problem is with the contact lenses and possibly to obtain a new prescription or a new fitting of the prescription. Paragraph 2 of the proposed rule would prohibit the release of the prescription to the physician in such circumstances.

Again, I would like to emphasize that all of the comments which we made in our letter of November 19 are still applicable to the proposed rule Opt. 5, even with its subsequent changes. There is no question that the Board of Optometry is exceeding its authority in attempting to promulgate this rule. As discussed more thoroughly in our earlier letter, the Board is ignoring the policy enunciated by the legislature in Laws 1973, Chapter 709; the Board is attempting to regulate the medical profession and other persons outside the scope of the optometry statute; the Board's interpretation of the optometry statute is clearly incorrect; there has not been and cannot be any showing of a need for the rule sufficient to justify its adoption; and it is apparent that the purpose of the rule is to promote the interests of optometrists rather than to fulfill any public interest.

The proposed rule falls within all of the prohibitions in Atty. Gen. 305(b)(2), the criteria for disapproval of rules, and should therefore be disapproved by the Attorney General.

Very truly yours,

Douglas L. Skor

DLS:jc
Enc.

cc: Dr. Richard O. Levinworth,
President, Minnesota Association of Ophthalmology
Thomas Mattson, Assistant Attorney General
William Brooks
Joseph Dudley
John Cushman

November 19, 1973

State of Minnesota
Board of Optometry

Re: Proposed Rule Opt. 5; Public
Hearing Held on October 29, 1973

Dear Members of the Board:

This statement is submitted on behalf of the Minnesota Association of Ophthalmology, to be included as a part of the record with respect to the hearing on the proposed new rule Opt. 5, and to supplement the observations which we made at the hearing on October 29.

Minnesota Statutes Section 148.53 gives to the State Board of Optometry the power to make rules and regulations and to take other actions "which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 145.62 or for the full and efficient performance of its duties thereunder." These sections provide for the licensing of optometrists and the enforcement of the licensing provisions. The Board's authority is therefore limited.

The proposed rule exceeds the authority of the Board of Optometry and is contrary to statutory provisions enacted by the Minnesota Legislature. It would be incumbent upon the Attorney General to refuse to approve the rule for these reasons, and the courts would similarly invalidate the rule in any proceedings brought before them.

It is a fundamental principle of law that an administrative agency may take only those actions which implement statutes passed by the legislature and may exercise only those powers delegated to it by the legislature. An agency may not make new law or expand existing law beyond the expressed intentions

of the legislature. Accordingly, the Board of Optometry has no authority to declare by rules and regulations what shall be and what shall not be a violation of the optometry law. Op. Atty. Gen. 329-A, September 1, 1934.

Proposed rule Opt. 5 does, however, in effect purport to declare that opticians, contact lens technicians, and medical assistants, in performing their services, are in violation of the optometry law. This declaration is clearly in excess of the Board's authority, as is the proposed second paragraph, which would unlawfully prohibit optometrists from allowing patients to utilize the services of opticians and technicians.

Opticians and contact lens technicians have been providing their services for many years. It has also long been the practice of the medical profession to utilize the services of technical assistants. These persons help in a very significant way to maximize the efficiency of health services in that technical tasks are performed by those who are best trained to perform them. The state legislature is aware of the activities of these persons and indeed has had before it proposals designed to deal with them. However, the legislature has taken no action to restrict their activities and has found it unnecessary to amend the current statutes to authorize the services which they perform. Despite this being an extremely significant policy question, neither the legislature nor the courts have given any indication whatsoever that these persons are acting illegally, that the Board of Optometry has jurisdiction over them, or that the Board has any authority to promulgate a rule such as proposed Opt. 5.

In fact, the contrary is true. The legislature has recognized that certain allied health professions are not regulated by any of the existing state licensing boards. It therefore enacted Laws 1973, Chapter 709 to place under the jurisdiction of the State Board of Health the credentialing of allied health manpower. Section 1 of this Act provides in part as follows:

> "It is the intention of the legislature to promote the establishment of such allied health manpower as may be useful in the health care delivery system and to coordinate the development of credentialing

> policy with the existing licensing boards. To this end the State Board of Health is encouraged to establish reasonable procedures for the identification and credentialing of categories of allied health manpower as such are determined by the Board of Health to constitute a useful new category of health care responsibility and important to regulate in the public interest."

The legislature obviously intends that allied health manpower not currently licensed or regulated by existing boards be under the initial jurisdiction of the State Board of Health. The Board of Health is directed by Chapter 709, first to determine whether the public interest requires regulation of one or more groups of allied health manpower, and second, to establish and coordinate credentialing procedures to regulate such activity. To accomplish this end, the Board of Health is authorized to establish an advisory committee to assist it in formulating policies under the Act. Steps have already been taken by the Board of Health to establish such a committee. The statute requires that the committee include representatives from each of the existing state health licensing boards (including the Board of Optometry), members broadly representative of health care services which are not presently licensed, and lay members of the public.

The legislature has therefore made it clear that if there is to be any regulation of the activity of allied health personnel, it is to be done under the credentialing provisions of Chapter 709. The Board of Optometry must recognize that by legislative mandate the Board of Health's advisory committee is the appropriate forum in which to resolve the question whether opticians, contact lens technicians and medical assistants should be regulated in some way. Chapter 709 specifically contravenes any proposed interpretation of the optometry law that would permit the Board of Optometry to regulate directly or indirectly the activities of these technical personnel. The legislature could not have been more clear in expressing its intention to promote rather than to restrict the activities of allied health manpower, and to attain some coordinated treatment of such groups rather than to allow each licensing board to legislate on its own.

Another indication of the Board's attempt to exceed its authority is that the proposed rule purports to regulate the medi-

cal profession. In response to statements made at the public hearing, the Board insisted that it has no intention to regulate the activities of medical doctors. The Board, of course, has no such authority, and should limit the scope of its rules accordingly. It is nevertheless attempting to regulate the medical profession by declaring in effect that the activities of medical assistants violate the provisions of the optometry law. The next step would be to initiate prosecutions of medical assistants who aid medical doctors in the performance of their duties, for alleged gross misdemeanors. If less is intended by the proposed rule, as indeed by law it must, then an appropriate redrafting of the rule should be undertaken.

Aside from the fact that proposed Opt. 5 is an improper exercise of the Board's authority, it is also clear that the Board's interpretation of existing law is incorrect. There is no reference in either the optometry or the medical profession statutes to opticians, technicians, or medical assistants. Furthermore, the Board is attempting to single out the contact lens as a subject of regulation more restrictive than that which is imposed on ordinary lenses. There is no mention in the statute of contact lenses as opposed to lenses in general. If there is some basis in law for declaring that opticians and other non-licensed personnel may not assist in the fitting of contact lenses, the same reasoning must apply to all other glasses and lenses. The rationale of the proposed rule would also require that opticians and medical assistants be prohibited from the fitting of frames and ordinary glasses. The contact lens receives no special treatment under the statute and there is no legislative policy anywhere in the statutes to support the conclusion reached by the Board.

Minnesota Statutes Section 15.0412 requires that the Board of Optometry demonstrate the need for any proposed rule or regulation. Such need has not been and indeed cannot be demonstrated. There has been no showing that opticians, contact lens technicians or medical assistants are in any way unqualified to perform the services which they have been performing. They are in fact very qualified, and in some cases undoubtedly more qualified than doctors or optometrists because they are involved in a highly technical process for which they have received highly technical training. As discussed above, there can further be no showing that such activity has been or is in violation of the optometry

statute. Any purported showing of need for such a rule in fact flies in the face of the legislative policy contained in Chapter 709, the purpose of which is to promote, not to restrict, the use of allied health manpower and to centralize decisions regarding state regulation of such persons.

In the final analysis, it is apparent that the Board of Optometry through this proposed rule is attempting to promote its own interests by improperly restricting the activities of others. The Minnesota Supreme Court has recognized that such attempts by the Board to promote its own interests are improper and in violation of the statute. The primary purpose of the optometry statute is to protect the public health and not to further the personal interests of optometrists. Williams v. Mack, 202 Minn. 402, 278 N.W. 585 (1938).

Because of the legal defects in proposed Opt. 5, the Board of Optometry should decline to approve it. If any action at all is to be taken by the Board in this area, it must await guidance from the legislature and the State Board of Health. The Board of Optometry must accept the fact that its functions and its authority are limited by law, and that it may not usurp for itself those powers which our Constitution has reserved for the legislature.

Very truly yours,

Douglas L. Skor

DLS:jc

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

DONALD WEST
WALDO F. MARQUART
JOHN W. WINDHORST
HENRY HALLADAY
JULE M. HANNAFORD
ARTHUR B. WHITNEY
RUSSELL W. LINDQUIST
DAVID R. BRINK
HORACE HITCH
VIRGIL H. HILL
ROBERT V. TARBOX
DeFOREST SPENCER
ROBERT J. JOHNSON
M. B. HASSELQUIST
PETER DORSEY
GEORGE P. FLANNERY
CURTIS L. ROY
ARTHUR E. WEISBERG
DUANE E. JOSEPH
FREDERICK E. LANGE
JAMES B. VESSEY
WILLIAM A. WHITLOCK
E. J. SCHWARTZBAUER
THOMAS M. BROWN
CORNELIUS D. MAHONEY
THOMAS S. ERICKSON
WILLIAM C. BABCOCK

MICHAEL E. BRESS
RAYMOND A. REISTER
JOHN J. TAYLOR
BERNARD G. HEINZEN
WILLIAM J. HEMPEL
JOHN S. HIBBS
ROBERT O. FLOTTEN
JOHN D. LEVINE
ROBERT J. STRUYK
MICHAEL A. OLSON
LARRY W. JOHNSON
THOMAS S. HAY
G. LARRY GRIFFITH
CRAIG A. BECK
DAVID L. McCUSKEY
THOMAS O. MOE
JAMES H. OHAGAN
JOHN M. MASON
MICHAEL W. WRIGHT
LARRY L. VICKREY
LOREN R. KNOTT
PHILLIP H. MARTIN
REESE C. JOHNSON
CHARLES J. HAUENSTEIN
CHARLES A. GEER
JOHN C. ZWAKMAN
JOHN R. WICKS

2400 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

(612) 340-2600
CABLE: DOROW
TELEX: 29-0605
TELECOPIER: (612) 340-2868

1468 W-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
(612) 227-8017

JONATHAN VILLAGE CENTER
CHASKA, MINNESOTA 55318
(612) 448-4012

115 THIRD STREET SOUTHWEST
ROCHESTER, MINNESOTA 55901
(507) 288-3156

EUGENE L. JOHNSON
JOHN W. WINDHORST, JR.
MICHAEL PRICHARD
WILLIAM R. SOTH
THOMAS R. MANTHEY
RICHARD G. SWANSON
FAITH L. OHMAN
DAVID A. RANHEIM
ROBERT J. SILVERMAN
JAMES M. KLEBBA
WILLIAM R. HIBBS
JOHN D. KIRBY
PHILIP F. BOELTER
WILLIAM B. PAYNE
JAN STUURMANS
R. A. SCHWARTZBAUER
DAVID N. FRONEK
THOMAS W. TINKHAM
JON F. TUTTLE
ROBERT A. HEIBERG
EMERY W. BARTLE
MICHAEL J. RADMER
CURTIS L. STINE
MICHAEL TRUCANO
WILLIAM J. KEPPEL
JAMES A. FLADER
WILLIAM A. JOHNSTONE

WILLIAM E. BOWEN
WILLIAM P. LUTHER
DOUGLAS D. McFARLAND
DAVID L. BOEHNEN
CRAIG L. WILLIAMS
VINCENT S. WALKOWIAK
ALAN D. GILLILAND
LAWRENCE R. OLIVER
FRANK H. VOIGT
WILLIAM E. MARTIN
WILLIAM H. HIPPEE, JR.
STEPHEN G. SHANK
ROBERT A. BURNS
TONI A. BEITZ
MICHEL A. LaFOND
BRADFORD L. FERGUSON
ROGER J. MAGNUSON
J. ROBERT HIBBS

OF COUNSEL
DAVID E. BRONSON
LEAVITT R. BARKER
GEORGE E. ANDERSON
ROBERT L. VANFOSSEN

October 26, 1973



The Honorable Warren Spannaus
Attorney General
State of Minnesota
102 State Capitol
St. Paul, Minnesota
55155

Dear Mr. Attorney General:

In view of the provisions of Subdivision 4 of Section 15.0412 of Minnesota Statutes, I am enclosing herewith a copy of a statement we have today mailed to the Minnesota State Board of Optometry commenting on proposed rules with respect to which there will be a hearing on October 29, 1973.

Yours very truly,

Jule M. Hannaford

JMH:MD
Enclosure

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

DONALD WEST
WALDO F. MARQUART
JOHN W. WINDHORST
HENRY HALLADAY
JULE M. HANNAFORD
ARTHUR B. WHITNEY
RUSSELL W. LINDQUIST
DAVID R. BRINK
HORACE HITCH
VIRGIL H. HILL
ROBERT V. TARBOX
DeFOREST SPENCER
ROBERT J. JOHNSON
M. B. HASSELQUIST
PETER DORSEY
GEORGE P. FLANNERY
CURTIS L. ROY
ARTHUR E. WEISBERG
DUANE E. JOSEPH
FREDERICK E. LANGE
JAMES B. VESSEY
WILLIAM A. WHITLOCK
E. J. SCHWARTZBAUER
THOMAS M. BROWN
CORNELIUS D. MAHONEY
THOMAS S. ERICKSON
WILLIAM C. BABCOCK

MICHAEL E. BRESS
RAYMOND A. REISTER
JOHN J. TAYLOR
BERNARD G. HEINZEN
WILLIAM J. HEMPEL
JOHN S. HIBBS
ROBERT O. FLOTTEN
JOHN D. LEVINE
ROBERT J. STRUYK
MICHAEL A. OLSON
LARRY W. JOHNSON
THOMAS S. HAY
G. LARRY GRIFFITH
CRAIG A. BECK
DAVID L. McCUSKEY
THOMAS O. MOE
JAMES H. O'HAGAN
JOHN M. MASON
MICHAEL W. WRIGHT
LARRY L. VICKREY
LOREN R. KNOTT
PHILLIP H. MARTIN
REESE C. JOHNSON
CHARLES J. HAUENSTEIN
CHARLES A. GEER
JOHN C. ZWAKMAN
JOHN R. WICKS

2400 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

(612) 340-2600
CABLE: DOROW
TELEX: 29-0605
TELECOPIER: (612) 340-2868

1468 W-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
(612) 227-8017

JONATHAN VILLAGE CENTER
CHASKA, MINNESOTA 55318
(612) 448-4012

115 THIRD STREET SOUTHWEST
ROCHESTER, MINNESOTA 55901
(507) 288-3156

EUGENE L. JOHNSON
JOHN W. WINDHORST, JR.
MICHAEL PRICHARD
WILLIAM R. SOTH
THOMAS R. MANTHEY
RICHARD G. SWANSON
FAITH L. OHMAN
DAVID A. RANHEIM
ROBERT J. SILVERMAN
JAMES M. KLEBBA
WILLIAM R. HIBBS
JOHN D. KIRBY
PHILIP F. BOELTER
WILLIAM B. PAYNE
JAN STUURMANS
R. A. SCHWARTZBAUER
DAVID N. FRONEK
THOMAS W. TINKHAM
JON F. TUTTLE
ROBERT A. HEIBERG
EMERY W. BARTLE
MICHAEL J. RADMER
CURTIS L. STINE
MICHAEL TRUCANO
WILLIAM J. KEPPEL
JAMES A. FLADER
WILLIAM A. JOHNSTONE

WILLIAM E. BOWEN
WILLIAM P. LUTHER
DOUGLAS D. McFARLAND
DAVID L. BOEHNEN
CRAIG L. WILLIAMS
VINCENT S. WALKOWIAK
ALAN D. GILLILAND
LAWRENCE R. OLIVER
FRANK H. VOIGT
WILLIAM E. MARTIN
WILLIAM H. HIPPEE, JR.
STEPHEN G. SHANK
ROBERT A. BURNS
TONI A. BEITZ
MICHEL A. LaFOND
BRADFORD L. FERGUSON
ROGER J. MAGNUSON
J. ROBERT HIBBS

OF COUNSEL
DAVID E. BRONSON
LEAVITT R. BARKER
GEORGE E. ANDERSON
ROBERT L. VANFOSSEN

October 26, 1973

State Board of Optometry
3069 Shorewood Lane
Roseville, Minnesota
55113

Dear Sirs:

This letter is submitted in response to the Notice of Hearing issued in the matter of the proposed adoption of rules by the State Board of Optometry.

The Council of the Minnesota State Medical Association has directed us to send this written statement expressing the views of that Association. The Minnesota Association of Ophthalmology concurs in this statement.

In making this statement, we are confining our attention to proposed Rule No. 5, entitled "Release of Prescriptions and Specifications for Contact Lenses". Specifically, we limit our attention to the first paragraph of that proposed rule.

Incorrect Statement of Law

The first sentence of proposed Rule 5 recites an interpretation of the laws of the State of Minnesota which is incorrect. The first sentence states that the fitting of contact lenses can be performed only by optometrists and physicians.

We, of course, agree that the fitting of contact lenses is within the licenses of optometrists and physicians. But the laws relating to the practice of medicine are not so limited as to require the physician personally to perform all of the acts constituting the practice of medicine. A physician may properly delegate certain tasks to a person whom the physician believes has adequate training and knowledge to perform the tasks. This is true even

though the person to whom such tasks are delegated does not possess any independent license to perform such acts. Therefore, it is entirely appropriate in Minnesota for a physician, who has examined a patient and prescribed contact lenses, to delegate the actual fitting of such lenses to another person whether he be an optician or a technician.

We offer no comment as to whether it would be lawful for an optometrist similarly to delegate the fitting of contact lenses to another.

State Board of Optometry May Not Regulate the Practice of Medicine

The proposed Rule recites that the fitting of contact lenses can be performed only by an optometrist or a physician. We do not object to any efforts by the State Board of Optometry to limit the right of optometrists to delegate the fitting of contact lenses. However, such a purpose is accomplished by the second paragraph of the proposed Rule 5; the first paragraph (or at least the first sentence thereof) is quite unnecessary to that purpose.

But the scope of the first paragraph of proposed Rule 5 is not limited to optometrists. By clear implication the State Board of Optometry asserts that a physician may not delegate the fitting of contact lenses. On this basis the State Board of Optometry seeks to regulate the practice of medicine. As noted previously, it is customary and entirely proper for physicians to delegate the fitting of contact lenses to other persons in whom they have confidence. Such delegation is an important aspect of the practice of medicine. As such, it is subject to regulation by the State Board of Medical Examiners, and not by any other board.

In our opinion, the State Board of Optometry would clearly exceed its jurisdiction if it sought directly or indirectly to regulate the manner in which physicians engage in the practice of medicine. Specifically, it is not within the powers of the State Board of Optometry to determine whether a physician may delegate the fitting of contact lenses.

Public Interest

We do not believe that it is in the public interest to impose severe licensure requirements on persons fitting contact lenses. The fitting of contact lenses requires a certain degree of skill and knowledge. However, it is not a task which can only be performed by an optometrist or a physician. Persons can be trained

to fit contact lenses, even though they do not possess a wide range of professional knowledge. Any rule or statement which would prevent such person from fitting contact lenses, under a proper delegation from a physician, would unduly restrict the availability of contact lenses, and would be contrary to the public interest.

Respectfully submitted,

DORSEY, MARQUART, WINDHORST,
WEST & HALLADAY

By _____
Jule M. Hannaford

Attorneys for the Minnesota State
Medical Association

JMH:MD

cc: Mr. Warren Spannaus
Attorney General
State of Minnesota

DUDLEY, SMITH & BELISLE
ATTORNEYS AND COUNSELORS AT LAW
W. 1260 FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
224-4871

JOSEPH J. DUDLEY
G. WILLIAM SMITH
WAYNE T. BELISLE
DAVID W. LARSON
JAMES E. SPECKMANN

WESLEY A. ANDERSON,
OF COUNSEL

December 27, 1973

Mr. Curtis Forslund, Chief Deputy
Attorney General
State Capitol Building
St. Paul, Minnesota 55155

Re: Proposed Rules of Minnesota Board of Cptometry

Dear Mr. Forslund:

This office represents Minnesota Contact Lens Society which opposes proposed Rule Cpt. 5 by the Minnesota Board of Cptometry.

We submitted a Brief following the hearing of Cctober 29, 1973 which sets forth the position of the Minnesota Contact Lens Society in opposition to this Rule.

The amended Rule as adopted by the Board of Cptometry still is very objectionable to our clients. The Board deleted the entire first sentence in the proposed rule and also made an addition of the words "by an optometrist" in the second sentence. These changes in no way remove the objections of the Minnesota Contact Lens Society to the rule as adopted.

It is obvious to us that the Board is attempting to regulate contact lens technicians. Contact Lens Technicians perform their services under the supervision and control of physicians and optometrists and have been performing these services for many years. There was no evidence submitted whatever at the hearing which could be a basis to prohibit or restrict contact lens technicians from rendering their services to physicians and optometrists.

Cur clients feel that it is against the public interest and against the interest of patients to restrict what the patient can do with the prescription for contact lenses. We interpret the proposed rule to prohibit optometrists from giving even the patient the prescription. We believe there is no authority in the Board of Cptometry to promulgate such a rule. It seems

to us that this is a legislative matter and should be determined by that body.

It would also appear that this rule would prohibit the release by an optometrist to a physician of the prescription when the patient has sought medical treatment from a physician who utilizes the services of a contact lens technician. It would seem obvious to us that such restrictions, if adopted, would certainly be detrimental to the public interest.

The contact lens technicians are Allied Health Manpower as defined in Chapter 709 Minnesota Session Laws 1973. These technicians are pursuing credentialing under the provisions of this law. It is clear from the reading of this act that the Minnesota State Legislature had recognized the great need in Minnesota for more health care personnel and has provided the machinery to credential and regulate such health care personnel. It appears clear that Chapter 709 takes away from all Boards the right to regulate Allied Health Manpower and vests this right in the State Board of Health and the Boards provided for under the act.

We enclose a copy of the memorandum submitted by the Contact Lens Society to the Board of Optometry for your convenience.

We respectfully request that revised Rule Cpt. 5 be disapproved by the Attorney General. Best regards.

Yours very truly,

DUDLEY, SMITH & BELISLE

Joseph J. Dudley

JJD:pec

TC: THE STATE BCARD CF CPTCMETRY

STATE CF MINNESCTA

CCUNTY CF RAMSEY

IN RE: The Matter of the Proposed Adoption of Rules of the State Board of Cptometry.

STATEMENT CF THE MINNESCTA CCNTACT LENS SCCIETY IN CPPCSITICN TC RULE NC. 5, ENTITLED, "RELEASE CF PRESCRIPTICNS AND SPECIFICATICNS FCR CCNTACT LENSES."

THE MINNESCTA CCNTACT LENS SCCIETY opposes the proposed Rule No. 5 for the reasons set forth herein:

1. The Minnesota Contact Lens Society is composed of highly trained contact lens technicians who work under the supervision, direction and authority of medical doctors and occasionally of optometrists. These technicians perform their services only upon the written prescription from a physician and then perform services exercising skill and art in connection with the dispensing of contact lenses. The physician has full and complete professional responsibility for all of the services of the contact lens technicians performed under their direction and control. The patient always remains the physician's sole responsibility.

2. The Board has misinterpreted the Laws of the State of Minnesota in the Adoption of the proposed rule.

Contact lens technicians have been performing similar services for physicians for many years under the physicians direction, control and authority with the patient at all times the responsibility of the physician. Never before has the optometry law been construed by any of the many Boards of Cptometry that have existed in Minnesota, to prohibit or restrict contact lens technicians from rendering their services to physicians and optometrists. As a matter of fact it appears clear that MSA 148.56 does provide that services of technicians can be utilized under the supervision, direction and authority of licensed optometrists.

Our courts have consistently held as they did in the case of the City of Saint Paul vs. Hall (239 Minn. 378 50 NW 2d 761), "Long acquiescence in the practical construction placed upon a statute by an administrative official is entitled to great weight in the construction thereof."

The Board has no authority to make judicial interpretations of the Law of Minnesota. "The Board of Optometry cannot by rules and regulations declare what shall be and what shall not be a violation of the optometry laws." Opinion of the Attorney General (Minn.) 329A September 1, 1934.

The practical effect of the interpretation of the law by the Board of Optometry is to deny to the public the services of trained medical personnel and to the medical profession the right to utilize contact lens technicians. The Board's action would further do damage and harm to contact lens technicians by denying them a livelihood without due process.

3. There is no need shown for Rule No. 5.

The Board of Optometry must show that there is a need for a rule before they can adopt it.

The Board of Optometry in proposing Rule No. 5 failed to provide any facts, circumstances or proof that the public has suffered any harm or is threatened with any harm which could give rise to the proposing of this rule.

4. Public Interest and Welfare Demands the Rejection of Rule No. 5.

If Rule No. 5 is adopted, the public will be deprived of the services of presently utilized competent contact lens fitters working under the direction, control and authority of medical doctors. This team of physicians and assistants is presently available and employed throughout the entire United States either under the medical acts or by direct licensing of ophthalmic dispensers and/or contact lens fitters.

The denial to physicians of the use of these technicians would have the

effect of denying many of the public the use of professional services of these skilled technicians. Physicians are now having a difficult time taking care of all of the patients that need their services. If they are unable to use these technicians it would obviously diminish the number of the public that they could serve. It would increase the cost of contact lenses to the State of Minnesota consumers as medical doctors would be required to spend their expensive and valuable time on purely mechanical matters, the increased cost of which would be passed on to the public.

The effect of this rule would be to deprive the public of the services of trained technical assistants only for the economic gain of the optometrists.

MSA 645.17 (5) provides that in ascertaining the intention of the Legislature in the construction of statutes, the courts may be guided among other things as follows: "The Legislature intends to favor the public interest as against any private interest." We believe that this rule, if adopted, would not favor the public interest.

5. The 1973 Session of the Minnesota Legislature in adopting Chapter 709 entitled, "Allied Health Manpower - Credentialing", placed the regulation of Contact Lens Technicians under the State Board of Health.

The first paragraph of Chapter 709 provides that it is the intention of the Legislature to promote the establishment of such Allied Health Manpower as may be useful in the Health Care Delivery System in Minnesota. It further provides that the State Board of Health shall be responsible for carrying out the intention of the Legislature in matters of Allied Health Manpower.

It is clear that the Legislature has recognized the great need in Minnesota for more health care to be dispensed by competent technicians. Proposed Rule No. 5 would seem to be in direct conflict with the Legislative intent as expressed in Chapter 709 denying to the public the use of these competent

technicians and reducing the medical care available to the public at a time of greatly increased need for para professional in the health field. The action of the Board of Cptometry would take a step backward to the detriment of the public.

It seems clear to the undersigned that Chapter 709, 1973 Session laws takes away from all Boards the right to regulate Allied Health Manpower and vests the sole right to regulate such manpower in the State Board of Health. It is an established fact that there is a shortage of physicians in the State of Minnesota and that those physicians who are practicing in this state find their time taxed to the very limit in order to perform the services needed by the public. In view of this fact, it appears clearly against the public interest to adopt a rule the effect of which would deny to highly skilled technicians the right to render their service under the supervision and control of medical doctors.

c. The State Board of Cptometry has no authority to regulate the practice of medicine.

The Minnesota Contact Lens society joins with the Minnesota State Medical Association in its view as expressed in the letter to the State Board of Cptometry dated Cctober 26, 1973, a copy of which is attached hereto. If the position of the State Medical Society is correct, those technicians who do their work under the supervision of and control of medical doctors would not be affected. The State Board of Cptometry cannot regulate how a medical doctor can perform his services to the public. Cnly the Legislature can enact law. Even the Judiciary is limited to interpretation of Legislation and may not by decision, legislate or create new statutes.

The long history of the Minnesota State Medical Association and the

physicians who are members of that Association demonstrate their dedication to the public interest in the State of Minnesota. The contact lens technicians work under the supervision and control of medical doctors who have full responsibility to the public and to their patients as well as medical liability for these technical assistants. Again we emphasize that to deny these physicians the right to the services of these technicians would clearly have an adverse affect upon the public.

7. Rule No. 5 in its present form is ambiguous and open to many and various interpretations. In its present form, uniform enforcement of the rule would be practically impossible and there is neither the funds or personnel to investigate and supervise such enforcement. If adopted, the rule would encourage litigation and would create a long period of uncertainty in a very important field of medicine with increased cost to the State and to the public.

Respectfully submitted,

MINNESOTA CONTACT LENS SOCIETY

By_____
Joseph J. Dudley
Attorney for Appellant
W 1260 First National Bank Bldg.
St. Paul, Minnesota 55101
224-4871

DUDLEY, SMITH & BELISLE
ATTORNEYS AND COUNSELORS AT LAW
W 1290 FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
224-4871

JOSEPH J. DUDLEY
J. WILLIAM SMITH
WAYNE T. BELISLE
DAVID W. LARSON
JAMES E. SPECKMANN

WESLEY A. ANDERSON,
OF COUNSEL

November 16, 1973

RECEIVED
NOV 19 1973

Dr. Leo A. Meyer
3069 Shorewood Lane
Roseville, Minnesota 55113

Re: Proposed Adoption of Rules of the State Board of Cptometry

Dear Dr. Meyer:

Enclosed please find a Brief on behalf of the Minnesota Contact Lens Society in opposition to the proposed Rule No. 5 of your recent proposed rules.

Best regards.

Yours very truly,

DUDLEY, SMITH & BELISLE

Joseph J. Dudley

JJD:pec

BEFORE THE STATE BOARD OF OPTOMETRY

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN RE: The Matter of the Proposed Adoption of Rules of the State Board of Optometry.

STATEMENT OF THE MINNESOTA CONTACT LENS SOCIETY IN OPPOSITION TO RULE NO. 5, ENTITLED, "RELEASE OF PRESCRIPTIONS AND SPECIFICATIONS FOR CONTACT LENSES."

THE MINNESOTA CONTACT LENS SOCIETY opposes the proposed Rule No. 5 for the reasons set forth herein:

1. The Minnesota Contact Lens Society is composed of highly trained contact lens technicians who work under the supervision, direction and authority of medical doctors and occasionally of optometrists. These technicians perform their services only upon the written prescription from a physician and then perform services exercising skill and art in connection with the dispensing of contact lenses. The physician has full and complete professional responsibility for all of the services of the contact lens technicians performed under their direction and control. The patient always remains the physician's sole responsibility.

2. The Board has misinterpreted the Laws of the State of Minnesota in the Adoption of the proposed rule.

Contact lens technicians have been performing similar services for physicians for many years under the physicians direction, control and authority with the patient at all times the responsibility of the physician. Never before has the optometry law been construed by any of the many Boards of Optometry that have existed in Minnesota, to prohibit or restrict contact lens technicians from rendering their services to physicians and optometrists. As a matter of fact it appears clear that MSA 148.56 does provide that services of technicians can be utilized under the supervision, direction and authority of licensed optometrists.

Our courts have consistently held as they did in the case of the City of Saint Paul vs. Hall (239 Minn. 378 59 NW 2d 761), "Long acquiescence in the practical construction placed upon a statute by an administrative official is entitled to great weight in the construction thereof."

The Board has no authority to make judicial interpretations of the Law of Minnesota. "The Board of Optometry cannot by rules and regulations declare what shall be and what shall not be a violation of the optometry laws." Opinion of the Attorney General (Minn.) 329A September 1, 1934.

The practical effect of the interpretation of the law by the Board of Optometry is to deny to the public the services of trained medical personnel and to the medical profession the right to utilize contact lens technicians. The Board's action would further do damage and harm to contact lens technicians by denying them a livelihood without due process.

3. There is no need shown for Rule No. 5.

The Board of Optometry must show that there is a need for a rule before they can adopt it.

The Board of Optometry in proposing Rule No. 5 failed to provide any facts, circumstances or proof that the public has suffered any harm or is threatened with any harm which could give rise to the proposing of this rule.

4. Public Interest and Welfare Demands the Rejection of Rule No. 5.

If Rule No. 5 is adopted, the public will be deprived of the services of presently utilized competent contact lens fitters working under the direction, control and authority of medical doctors. This team of physicians and assistants is presently available and employed throughout the entire United States either under the medical acts or by direct licensing of ophthalmic dispensers and/or contact lens fitters.

The denial to physicians of the use of these technicians would have the

effect of denying many of the public the use of professional services of these skilled technicians. Physicians are now having a difficult time taking care of all of the patients that need their services. If they are unable to use these technicians it would obviously diminish the number of the public that they could serve. It would increase the cost of contact lenses to the State of Minnesota consumers as medical doctors would be required to spend their expensive and valuable time on purely mechanical matters, the increased cost of which would be passed on to the public.

The effect of this rule would be to deprive the public of the services of trained technical assistants only for the economic gain of the optometrists.

MSA 645.17 (5) provides that in ascertaining the intention of the Legislature in the construction of statutes, the courts may be guided among other things as follows: "The Legislature intends to favor the public interest as against any private interest." We believe that this rule, if adopted, would not favor the public interest.

5. The 1973 Session of the Minnesota Legislature in adopting Chapter 709 entitled, "Allied Health Manpower - Credentialing", placed the regulation of Contact Lens Technicians under the State Board of Health.

The first paragraph of Chapter 709 provides that it is the intention of the Legislature to promote the establishment of such Allied Health Manpower as may be useful in the Health Care Delivery System in Minnesota. It further provides that the State Board of Health shall be responsible for carrying out the intention of the Legislature in matters of Allied Health Manpower.

It is clear that the Legislature has recognized the great need in Minnesota for more health care to be dispensed by competent technicians. Proposed Rule No. 5 would seem to be in direct conflict with the Legislative intent as expressed in Chapter 709 denying to the public the use of these competent

technicians and reducing the medical care available to the public at a time of greatly increased need for para professional in the health field. The action of the Board of Optometry would take a step backward to the detriment of the public.

It seems clear to the undersigned that Chapter 709, 1973 Session laws takes away from all Boards the right to regulate Allied Health Manpower and vests the sole right to regulate such manpower in the State Board of Health. It is an established fact that there is a shortage of physicians in the State of Minnesota and that those physicians who are practicing in this state find their time taxed to the very limit in order to perform the services needed by the public. In view of this fact, it appears clearly against the public interest to adopt a rule the effect of which would deny to highly skilled technicians the right to render their service under the supervision and control of medical doctors.

6. The State Board of Optometry has no authority to regulate the practice of medicine.

The Minnesota Contact Lens society joins with the Minnesota State Medical Association in its view as expressed in the letter to the State Board of Optometry dated October 26, 1973, a copy of which is attached hereto. If the position of the State Medical Society is correct, those technicians who do their work under the supervision of and control of medical doctors would not be affected. The State Board of Optometry cannot regulate how a medical doctor can perform his services to the public. Only the Legislature can enact law. Even the Judiciary is limited to interpretation of Legislation and may not by decision, legislate or create new statutes.

The long history of the Minnesota State Medical Association and the

physicians who are members of that Association demonstrate their dedication to the public interest in the State of Minnesota. The contact lens technicians work under the supervision and control of medical doctors who have full responsibility to the public and to their patients as well as medical liability for these technical assistants. Again we emphasize that to deny these physicians the right to the services of these technicians would clearly have an adverse affect upon the public.

7. Rule No. 5 in its present form is ambiguous and open to many and various interpretations. In its present form, uniform enforcement of the rule would be practically impossible and there is neither the funds or personnel to investigate and supervise such enforcement. If adopted, the rule would encourage litigation and would create a long period of uncertainty in a very important field of medicine with increased cost to the State and to the public.

Respectfully submitted,

MINNESOTA CONTACT LENS SOCIETY

By _____
Joseph J. Dudley, Attorney

DUDLEY, SMITH & BELISLE
ATTORNEYS AND COUNSELORS AT LAW
W 1260 FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
224-4871

JOSEPH J DUDLEY
G WILLIAM SMITH
WAYNE T BELISLE
DAVID W LARSON
JAMES E SPECKMANN

WESLEY A ANDERSON,
OF COUNSEL

November 16, 1973

Dr. Leo A. Meyer
3059 Shorewood Lane
Roseville, Minnesota 55113

Dear Dr. Meyer:

Today I sent you the Brief for Minnesota Contact Lens Society in opposition to Rule No. 5 of the Rules of the State Board of Optometry.

I am now enclosing the position of the Minnesota State Medical Association which we refer to in our Brief as an attachment. I would appreciate your attaching it to the Brief for the record.

Best regards.

Yours very truly,

DUDLEY, SMITH & BELISLE

Joseph J. Dudley

JJD:pec

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

2300 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

(612) 340-2600
CABLE: DOROW
TELEX: 29-0605
TELECOPIER (612) 340-2868

1468 W-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
(612) 227-8017

JONATHAN VILLAGE CENTER
CHASKA, MINNESOTA 55318
(612) 448-4012

115 THIRD STREET SOUTHWEST
ROCHESTER, MINNESOTA 55901
(507) 288-3156

October 26, 1973

State Board of Optometry
3069 Shorewood Lane
Roseville, Minnesota
55113

Dear Sirs:

This letter is submitted in response to the Notice of Hearing issued in the matter of the proposed adoption of rules by the State Board of Optometry.

The Council of the Minnesota State Medical Association has directed us to send this written statement expressing the views of that Association. The Minnesota Association of Ophthalmology concurs in this statement.

In making this statement, we are confining our attention to proposed Rule No. 5, entitled "Release of Prescriptions and Specifications for Contact Lenses". Specifically, we limit our attention to the first paragraph of that proposed rule.

Incorrect Statement of Law

The first sentence of proposed Rule 5 recites an interpretation of the laws of the State of Minnesota which is incorrect. The first sentence states that the fitting of contact lenses can be performed only by optometrists and physicians.

We, of course, agree that the fitting of contact lenses is within the licenses of optometrists and physicians. But the laws relating to the practice of medicine are not so limited as to require the physician personally to perform all of the acts constituting the practice of medicine. A physician may properly delegate certain tasks to a person whom the physician believes has adequate training and knowledge to perform the tasks. This is true even

though the person to whom such tasks are delegated does not possess any independent license to perform such acts. Therefore, it is entirely appropriate in Minnesota for a physician, who has examined a patient and prescribed contact lenses, to delegate the actual fitting of such lenses to another person whether he be an optician or a technician.

We offer no comment as to whether it would be lawful for an optometrist similarly to delegate the fitting of contact lenses to another.

State Board of Optometry May Not Regulate the Practice of Medicine

The proposed Rule recites that the fitting of contact lenses can be performed only by an optometrist or a physician. We do not object to any efforts by the State Board of Optometry to limit the right of optometrists to delegate the fitting of contact lenses. However, such a purpose is accomplished by the second paragraph of the proposed Rule 5; the first paragraph (or at least the first sentence thereof) is quite unnecessary to that purpose.

But the scope of the first paragraph of proposed Rule 5 is not limited to optometrists. By clear implication the State Board of Optometry asserts that a physician may not delegate the fitting of contact lenses. On this basis the State Board of Optometry seeks to regulate the practice of medicine. As noted previously, it is customary and entirely proper for physicians to delegate the fitting of contact lenses to other persons in whom they have confidence. Such delegation is an important aspect of the practice of medicine. As such, it is subject to regulation by the State Board of Medical Examiners, and not by any other board.

In our opinion, the State Board of Optometry would clearly exceed its jurisdiction if it sought directly or indirectly to regulate the manner in which physicians engage in the practice of medicine. Specifically, it is not within the powers of the State Board of Optometry to determine whether a physician may delegate the fitting of contact lenses.

Public Interest

We do not believe that it is in the public interest to impose severe licensure requirements on persons fitting contact lenses. The fitting of contact lenses requires a certain degree of skill and knowledge. However, it is not a task which can only be performed by an optometrist or a physician. Persons can be trained

to fit contact lenses, even though they do not possess a wide range of professional knowledge. Any rule or statement which would prevent such person from fitting contact lenses, under a proper delegation from a physician, would unduly restrict the availability of contact lenses, and would be contrary to the public interest.

Respectfully submitted,

DORSEY, MARQUART, WINDHORST,
WEST & HALLADAY

By _____
Jule M. Hannaford

Attorneys for the Minnesota State
Medical Association

JMH:MD

cc: Mr. Warren Spannaus
Attorney General
State of Minnesota

MINNESOTA NEWSPAPER ASSOCIATION

84 South Sixth Street, Minneapolis, Minnesota 55402
Telephone: (612) 335-8844

Robert M. Shaw,
Ellen M. Olson,

November 1, 1973

Dr. Leo Meyer, Executive Secretary
State Board of Optometry
3069 Shorewood Lane
Roseville, Minnesota 55113

Dear Dr. Meyer:

Here's a statement I'd like to file with your board in regard to Proposal (j).

Sincerely,

Robert M. Shaw
Manager

RMS:gb
Enc. 1

JOHN R. PEUND, Norman County Index, Ada; HARRY DAVEY, International Falls Daily Journal; JOHN MEYER, Detroit Lakes Tribune and Becker County Record, Detroit Lakes; JAMES P. McDONNELL JR., Wright County Journal-Press, Buffalo; EUGENE D. JOHNSON, White Bear Press, White Bear Lake; ROBERT M. MACK, Plainview News; JARED HOW, Mankato Free Press; CHARLES H. WARNER, Brownton Bulletin; JOHN D. WEBER, Murray County Herald, Slayton.

October 29, 1973

Statement by Robert M. Shaw, manager of the Minnesota Newspaper Association, parts of which were made orally at a hearing of the State Board of Optometry Oct. 29, 1973, and all of which is being filed with the board.

Dr. Meyer and members of the State Board of Optometry:

I am happy to be here today to make a statement with respect to the adopting of proposed Regulation (j). My name is Robert M. Shaw, manager of the Minnesota Newspaper Association. This is a trade association of every legal newspaper in the state, except one.

I bring you opposition from our association to proposal (j) which would prevent licensed optometrists from working for anybody who price advertises. The words of this regulation make clear that such would the effect of adopting this proposal. The words say: "It shall be deemed unprofessional conduct for any optometrist ... to permit a person, firm or corporation with which he is affiliated to advertise in violation of the optometry statutes." One of these "optometry statutes," as you know, already prevents optometrists from price advertising. Therefore, this proposal is another attempt by optometrists to reach out and impose their own ethical restrictions on other people, in this case, employers who are dispensing opticians. The legislature many times has had this exact issue before it and has many times turned it down. The words are slightly different, but the tune is the same old tune.

Our position is simple, direct and easily understood: If the information is accurate and the merchandise or the service in no way damaging to the public's health or safety, then why *shouldn't* the public have easy access to price information? If, for example, there is an advertisement published in a newspaper which says that glasses and frames may be bought for as little as $17.80, and this is a *true* statement; and if there is no evidence to show that these low-priced glasses and frames do not damage eyesight, then why not let the public in on what they are paying for? In a nutshell, what is wrong--from the public's point of view--with honest price advertising?

I believe that the actual work which optometrists do falls into two basic parts: They examine the curvature of eyeballs, making notes of various refractions, then they fill their own prescriptions by ordering glasses and frames from an optician. When the eyeglasses and frames come back from the optical factory, the optometrist calls in the customer, fits the glasses on him, and gives him a bill. He--the optometrist--tends to regard this whole mixed operation, mixed because it includes both a professional service and a retailing operation, as one professional service.

We, as newspapermen and women, do not have much interest in inducing professional people to compete against one another in advertising as to their skill. I know of nobody who welcomes advertising which would boast that Optometrist A measures eyeballs better than Optometrist B down the street. But when it comes to the retailing part of an optometrist's work, the buying of glasses and frames at wholesale and selling them at retail, we say that there should be no difference between you and anybody else. The same economic rules should apply. The basic rule of all, to which we all give much lip service but try to avoid it when it affects us personally, is the rule of competition. Ours is *supposed* to be a system of economic competition, in which the man who sells the better mousetrap gets the most business.

It's supposed to work that way, and in many areas it actually does. But you know, and we know, and everybody knows that when professionalism comes in, price advertising goes out the window. When it comes to retailing--when professionals get involved in providing merchandise to the public as they clearly do in selling pharmaceuticals, dental prosthetics, caskets or, as in your case, glasses and frames--then we say there are strong public reasons why full price information should be freely available to all.

Private optometrists are in sharp economic competition with dispensing opticians. Both perform, as far as I can see, exactly the same work. I can either go to a private optometrist to get my eyeballs examined, glasses and frames ordered and fitted, or I can go to a dispensing optician. There's probably a rug on the floor at one place, no rug at the other. But a licensed optometrist examines my eyeballs at both places.

Dispensing opticians advertise glasses and frames for sale, using words such as "as low as $17.80. I am sure this bugs private optometrists primarily not because it is unethical but because it is *competitive*. Consumers aren't quite sure, ahead of time, what they're going to end up paying a private optometrist. But they know for *sure*--because they have read the ads and signs--that they can buy glasses and frames at certain places for less than $20. So they tend to *go* to these places, and they don't go to the private optometrists' offices. This competition bothers the private optometrists, and I suppose it would bother me if I were in that line of work. But unless private optometrists are able to show that dispensing opticians are putting out shoddy glasses and frames that damage eyesight, or are in some unexplained way forcing licensed optometrists in their employment to perform superficial eyeball examinations, then we see no possible basis for making advertising illegal. In fact, from the consuming public's point of view, there are some pretty sound reasons why such price advertising should be specifically protected.

Over the years in fighting this issue in the legislature, I have heard allegations that dispensing opticians' work doesn't measure up to the same high standards used by private optometrists. Yet, I have never heard any sort of showing that such allegations are true. I am not sure what standards (standards for careful eye exams, for example, or physical standards with respect to glasses and frames) actually exist; or whether such standards, if they exist, are actually being enforced. Eyesight is indeed a precious thing. If high standards do not exist, or if they exist and are not being rigidly enforced, it seems to me that the Board of Optometry is derelict in its public duty.

I have also heard repeated allegations that certain newspaper ads by dispensing opticians are false and misleading. One such allegation is that the use of the phrase "eyes examined" by a dispensing optician is *prima facie* misleading. The only question I can see is: "Is the statement true? Does this statement mean that the dispensing optician himself examines the eyes? Or does it mean that the *firm* employs a licensed optometrist who does the examining?" I would like to see such a question put before a court. We have a fraudulent advertising statute which, as you know, makes illegal the advertising of deliberate falsehoods or misleading statements. We have the new Minnesota Advertising Review Board. There is plenty of recourse available in this state, both public and private, for any person who wishes to challenge the truth of advertising statements. There is no need for a regulation as confusing and self-serving as your Regulation (j).

The effect of adopting this regulation would be to allow one group of people to use the power of the state to injure people with whom they are in sharp economic competition. I do not believe the power of the state of Minnesota should be used to damage competitors.

This regulation would force dispensing opticians to stop price advertising. I do not believe the power of the state should be used for that purpose, either.

I am not here to defend any great advertising plums. What ads for glasses and frames I have noticed have been over TV or on signboards. I *am* here to speak up for the integrity of honest advertising which, after all, is our main product for sale and for which I make no apologies.

This exact issue has been before the legislature many times. Every time the legislature has turned it down. I believe that under these circumstances it would be wrong and irresponsible for you to pass this regulation. If you get the message, the legislature has told you firmly that such fencing-in proposals are not in the public interest.

To sum it up, we say: Why NOT continue to bring price advertising of glasses and frames to the consuming public? Why NOT tell them how much they're going to pay, and where, in advance, through advertising? What exactly is there which is against the consumer's interest in allowing people to make price comparisons in their own homes, instead of waiting until they are in the professional man's office, or get the bill when it's too late?

Of course, we'd like to see more price advertising of all sorts, in our newspapers. But from the consumer's point of view, it doesn't make much difference *where* the information comes from--from TV or radio, direct mail, signboards, skywriting--just so they GET the information ahead of the purchase. There are good and sufficient reasons why the state's power should never be used not to block such channels of commercial information, but to challenge all those who seek to block those channels.

Therefore this time, as many times in the past, we urge you to reject this proposal.

Thank you.

Robert H. Shaw

LAW OFFICE

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

2200 FIRST NATIONAL BANK BUILDING

SAINT PAUL, MINNESOTA 55101

227-8021

AREA CODE 612

CHARLES W. BRIGGS
J. NEIL MORTON
RICHARD E. KYLE
SAMUEL H. MORGAN
FRANK N. GRAHAM
COLE OEHLER
A. LAURENCE DAVIS
FRANK HAMMOND
LEONARD J. KEYES
B. C. HART
JOHN M. SULLIVAN
BERNARD P. FRIEL
BURT E. SWANSON
M. J. GALVIN, JR.
DAVID C. FORSBERG
JOHN J. McNEELY
McNEIL V. SEYMOUR, JR.
EDWARD C. STRINGER
TERENCE N. DOYLE
RICHARD H. KYLE
JOHN L. DEVNEY
R. L. SORENSON

PETER H. SEED
PHILIP L. BRUNER
SAMUEL L. HANSON
RONALD E. ORCHARD
JOHN R. KENEFICK
JOHN R. FRIEDMAN
JAMES W. BOWERS
ANDRE J. ZDRAZIL
DAVID J. SPENCER
DOUGLAS L. SKOR
DANIEL J. COLE, JR.
BRUCE C. ECKHOLM
DOUGLAS R. HADDOCK
RICHARD D. HOLPER
GERALD L. SVOBODA
MARVIN T. FABYANSKE
THADDEUS S. FIOUS
DAVID L. MITCHELL
BONNIE L. BEREZOVSKY
STEVE A. BRAND

COUNSEL
ROBERT O. SULLIVAN
HAROLD J. KINNEY

RECEIVED
NOV 20 1973
SIMON, SCHNEIDER & MARKER

November 19, 1973

State of Minnesota
Board of Optometry

Re: Proposed Rule Opt. 5; Public Hearing Held on October 29, 1973

Dear Members of the Board:

This statement is submitted on behalf of the Minnesota Association of Ophthalmology, to be included as a part of the record with respect to the hearing on the proposed new rule Opt. 5, and to supplement the observations which we made at the hearing on October 29.

Minnesota Statutes Section 148.53 gives to the State Board of Optometry the power to make rules and regulations and to take other actions "which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 145.62 or for the full and efficient performance of its duties thereunder." These sections provide for the licensing of optometrists and the enforcement of the licensing provisions. The Board's authority is therefore limited.

The proposed rule exceeds the authority of the Board of Optometry and is contrary to statutory provisions enacted by the Minnesota Legislature. It would be incumbent upon the Attorney General to refuse to approve the rule for these reasons, and the courts would similarly invalidate the rule in any proceedings brought before them.

It is a fundamental principle of law that an administrative agency may take only those actions which implement statutes passed by the legislature and may exercise only those powers delegated to it by the legislature. An agency may not make new law or expand existing law beyond the expressed intentions

of the legislature. Accordingly, the Board of Optometry has no authority to declare by rules and regulations what shall be and what shall not be a violation of the optometry law. Op. Atty. Gen. 329-A, September 1, 1934.

Proposed rule Opt. 5 does, however, in effect purport to declare that opticians, contact lens technicians, and medical assistants, in performing their services, are in violation of the optometry law. This declaration is clearly in excess of the Board's authority, as is the proposed second paragraph, which would unlawfully prohibit optometrists from allowing patients to utilize the services of opticians and technicians.

Opticians and contact lens technicians have been providing their services for many years. It has also long been the practice of the medical profession to utilize the services of technical assistants. These persons help in a very significant way to maximize the efficiency of health services in that technical tasks are performed by those who are best trained to perform them. The state legislature is aware of the activities of these persons and indeed has had before it proposals designed to deal with them. However, the legislature has taken no action to restrict their activities and has found it unnecessary to amend the current statutes to authorize the services which they perform. Despite this being an extremely significant policy question, neither the legislature nor the courts have given any indication whatsoever that these persons are acting illegally, that the Board of Optometry has jurisdiction over them, or that the Board has any authority to promulgate a rule such as proposed Opt. 5.

In fact, the contrary is true. The legislature has recognized that certain allied health professions are not regulated by any of the existing state licensing boards. It therefore enacted Laws 1973, Chapter 709 to place under the jurisdiction of the State Board of Health the credentialing of allied health manpower. Section 1 of this Act provides in part as follows:

> "It is the intention of the legislature to promote the establishment of such allied health manpower as may be useful in the health care delivery system and to coordinate the development of credentialing

policy with the existing licensing boards. To this end the State Board of Health is encouraged to establish reasonable procedures for the identification and credentialing of categories of allied health manpower as such are determined by the Board of Health to constitute a useful new category of health care responsibility and important to regulate in the public interest."

The legislature obviously intends that allied health manpower not currently licensed or regulated by existing boards be under the initial jurisdiction of the State Board of Health. The Board of Health is directed by Chapter 709, first to determine whether the public interest requires regulation of one or more groups of allied health manpower, and second, to establish and coordinate credentialing procedures to regulate such activity. To accomplish this end, the Board of Health is authorized to establish an advisory committee to assist it in formulating policies under the Act. Steps have already been taken by the Board of Health to establish such a committee. The statute requires that the committee include representatives from each of the existing state health licensing boards (including the Board of Optometry), members broadly representative of health care services which are not presently licensed, and lay members of the public.

The legislature has therefore made it clear that if there is to be any regulation of the activity of allied health personnel, it is to be done under the credentialing provisions of Chapter 709. The Board of Optometry must recognize that by legislative mandate the Board of Health's advisory committee is the appropriate forum in which to resolve the question whether opticians, contact lens technicians and medical assistants should be regulated in some way. Chapter 709 specifically contravenes any proposed interpretation of the optometry law that would permit the Board of Optometry to regulate directly or indirectly the activities of these technical personnel. The legislature could not have been more clear in expressing its intention to promote rather than to restrict the activities of allied health manpower, and to attain some coordinated treatment of such groups rather than to allow each licensing board to legislate on its own.

Another indication of the Board's attempt to exceed its authority is that the proposed rule purports to regulate the medi-

cal profession. In response to statements made at the public hearing, the Board insisted that it has no intention to regulate the activities of medical doctors. The Board, of course, has no such authority, and should limit the scope of its rules accordingly. It is nevertheless attempting to regulate the medical profession by declaring in effect that the activities of medical assistants violate the provisions of the optometry law. The next step would be to initiate prosecutions of medical assistants who aid medical doctors in the performance of their duties, for alleged gross misdemeanors. If less is intended by the proposed rule, as indeed by law it must, then an appropriate redrafting of the rule should be undertaken.

Aside from the fact that proposed Opt. 5 is an improper exercise of the Board's authority, it is also clear that the Board's interpretation of existing law is incorrect. There is no reference in either the optometry or the medical profession statutes to opticians, technicians, or medical assistants. Furthermore, the Board is attempting to single out the contact lens as a subject of regulation more restrictive than that which is imposed on ordinary lenses. There is no mention in the statute of contact lenses as opposed to lenses in general. If there is some basis in law for declaring that opticians and other non-licensed personnel may not assist in the fitting of contact lenses, the same reasoning must apply to all other glasses and lenses. The rationale of the proposed rule would also require that opticians and medical assistants be prohibited from the fitting of frames and ordinary glasses. The contact lens receives no special treatment under the statute and there is no legislative policy anywhere in the statutes to support the conclusion reached by the Board.

Minnesota Statutes Section 15.0412 requires that the Board of Optometry demonstrate the need for any proposed rule or regulation. Such need has not been and indeed cannot be demonstrated. There has been no showing that opticians, contact lens technicians or medical assistants are in any way unqualified to perform the services which they have been performing. They are in fact very qualified, and in some cases undoubtedly more qualified than doctors or optometrists because they are involved in a highly technical process for which they have received highly technical training. As discussed above, there can further be no showing that such activity has been or is in violation of the optometry

statute. Any purported showing of need for such a rule in fact flies in the face of the legislative policy contained in Chapter 709, the purpose of which is to promote, not to restrict, the use of allied health manpower and to centralize decisions regarding state regulation of such persons.

In the final analysis, it is apparent that the Board of Optometry through this proposed rule is attempting to promote its own interests by improperly restricting the activities of others. The Minnesota Supreme Court has recognized that such attempts by the Board to promote its own interests are improper and in violation of the statute. The primary purpose of the optometry statute is to protect the public health and not to further the personal interests of optometrists. Williams v. Mack, 202 Minn. 402, 278 N.W. 585 (1938).

Because of the legal defects in proposed Opt. 5, the Board of Optometry should decline to approve it. If any action at all is to be taken by the Board in this area, it must await guidance from the legislature and the State Board of Health. The Board of Optometry must accept the fact that its functions and its authority are limited by law, and that it may not usurp for itself those powers which our Constitution has reserved for the legislature.

Very truly yours,

Douglas L. Skor

Douglas L. Skor

DLS:jc

BRIEF OF THE

MINNESOTA ASSOCIATION OF OPTOMETRISTS AND OPTICIANS

SUBMITTED TO THE STATE BOARD OF OPTOMETRY

IN CONNECTION WITH THE HEARING CONDUCTED

OCTOBER 29, 1973 ON PROPOSED OPTOMETRY

RULES AND REGULATIONS.

PREPARED AND SUBMITTED BY:

CHESTNUT, BROOKS & BURKARD
A Professional Association

By William F. Brooks Jr.
William F. Brooks, Jr.
Attorneys for Minnesota Association of
Optometrists and Opticians
854 Midland Bank Building
Minneapolis, Minnesota 55401

THE HEARING BEFORE THE STATE BOARD OF OPTOMETRY ON OCTOBER 29, 1973 FOR THE PURPOSE OF CONSIDERING PROPOSED AMENDMENTS TO THE OPTOMETRY RULES AND REGULATIONS WAS CONDUCTED IN AN ILLEGAL MANNER BEFORE AN ILLEGALLY CONSTITUTED ADMINISTRATIVE BOARD

The Minnesota State Board of Optometry, allegedly proceeding pursuant to Minn. Stats. §15.0412, held a public hearing on October 29, 1973 on proposed amendments to the optometry rules and regulations. The State Board is so composed and the hearing was so held that any action on those proposed rules and regulations by that Board would be clearly illegal.

The Minnesota State Board of Optometry is composed of five doctors of optometry, all of whom are engaged in private practice. Optometry in Minnesota is practiced by two distinct groups. Besides those who practice privately or in the context of professional corporations, a large segment of the optometry practice is conducted by optometrists employed by corporations. These employed optometrists comprise between 20% and 25% of the total number of optometrists practicing within the State of Minnesota. No employed optometrist is a member of the State Board of Optometry. The proposed rules, however, as will be demonstrated infra, seriously disadvantage employed optometrists. It is clear that elimination of employed optometrists or severe restriction of their practice will work to the pecuniary benefit of the private practitioner. In such circumstances, a State Board composed entirely of one segment of the industry cannot act to create rules and regulations that adversely affect

another segment of the industry. The United States Supreme Court recently held in Gibson vs. Berryhill, ____ U.S. _____ 93 S.Ct. 1689, _____ L.Ed. _____ (1973), that in a case where a Board of Optometry is composed solely of private practitioners, the Federal District Court was warranted in concluding that the Board members' possible personal interest would preclude that Board from acting on the licenses of those members. The Minnesota State Board of Optometry similarly would be affecting the licenses of employed optometrists if they were to pass the proposed rules. That action works to the benefit of the private practitioner. The courts of the United States have consistently held that persons with a substantial pecuniary interest in legal proceedings cannot adjudicate those disputes. Tumey vs. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927), Ward vs. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed. 2d 267 (1972). The prevailing view is that "most of the law concerning disqualification because of interest applies with equal force to . . .administrative adjudicators." Davis, Administrative Law Text, 1972, Section 12.04, page 250.

Additionally, an action on the part of the State Board of Optometry at this point in time contradicts the clear legislative intent expressed in Laws 1973, Chap. 638, Sect. 20, which provides for two public members to sit on the State Board of Optometry. The legislature clearly intends that the public should have some input into the activities of the various state boards. The public members have not yet been appointed to the State Board of Optometry. Those appointments will soon be made. The present action on the part of

the State Board of Optometry is a clear effort to circumvent the intent of the legislature and to enact rules before the public members become a part of the State Board.

Minn. Stats. §15.0412 requires that any state board demonstrate the need for any proposed rule or regulation. The record of the proceedings in this matter is totally devoid of any such showing. While there are indefinite allusions to a "number of complaints", no specific complaints are cited, no specific numbers of complaints are given, and the sources of such complaints are not identified. The transcript on pages 5 and 6 indicates an effort on the part of Mr. Howard Marker, Esq., attorney for the State Board of Optometry, to demonstrate a need for proposed Opt. 1. Nowhere in that statement does Mr. Marker demonstrate a need for the proposed rule. At page 64 of the transcript Mr. Marker again attempts to show a need, this time for proposed Opt. 5. That need is stated as "to protect the public by inhibiting the ability of the unlicensed and unqualified to continue to jeopardize the public health by practicing optometry in violation of the law." This is clearly not the statement of need that is intended by the requirement of Section 15.0412. Adjudicative facts are to be distinquished from legislative facts. It is adjudicative facts that must be shown in the statement of need. Professor Kenneth Culp Davis, defines these two types of facts:

> "Adjudicative facts are the facts about the parties and their activities, businesses, and properties. Adjudicative facts usually answer the questions of who did what, where, when, how, why, and with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law

and policy and discretion."

Davis, Administrative Law Treatise, 1958, section 7.02, page 413.

In showing a need for the enactment of rules and regulations by a state agency, it is adjudicative facts, not legislative facts, that must be demonstrated. Legislative facts, such as those reflected in the record, are properly before the state legislature for purposes of creating new legislation. Nowhere in the record of the hearing conducted by the State Board of Optometry is reference made to any particular facts that indicate a need for any of the proposed rules. There is no demonstration that the present operation of the business in any way requires the enactment of the proposed regulations. The showing of need required by Minnesota law is clearly lacking.

Minnesota law defines a "contested case" as a "proceeding before an agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional rights to be determined after an agency hearing." M.S.A. 15.0411. The proposed rules in this case affect the property rights of an industry and its individual members. Employed optometrists and dispensing opticians are adversely affected by proposed Opt. 1, 4 and 5. To enact such regulations without a full and adequate hearing affects the business and property rights of these people without due process of law. Under these criteria this is a "contested case". The rules of the Attorney General provide the requirements for the hearing of a contested case. The contested case must be heard by an impartial hearing officer who is not employed by the agency that is proposing

the regulation. The presiding officer was Dr. Leo A. Meyer, a member of the State Board of Optometry. In a contested case there must be adequate notice to all interested persons. Clearly the Board of Optometry is aware of the interest in these proceedings of certain optometrists and of dispensing opticians. Dr. Oscar VanWert testified that he had not received notice of the hearing. He was informed of the hearing only on the morning that the hearing was held when he read about it in an article in the Minneapolis Tribune. (T. page 34) An examination of the affidavit of service of notice of the hearing demonstrates clearly that the Board omitted to notify licensed optometrists in the state, although it has particular knowledge as to who they are and where they reside.

Third, there must be an opportunity to consult with the agency informally to attempt to resolve conflicts on the various issues. To this end the rules of the Attorney General provide for pre-hearing conferences. No such conference was held or is scheduled in the instant case.

I.

PROPOSED OPT. 1 WOULD LIMIT ADVERTISING IN A MANNER THAT IS CONTRARY TO MINNESOTA LAW

Proposed Opt. 1 states in part:

> "All optometrists affiliated with any person, firm or corporation shall be responsible for the contents of all advertising for optometric services disseminated by such person, firm or corporation. It shall be deemed unprofessional conduct for any optometrist knowingly to permit a person, firm or corporation with which he is affiliated to advertise in violation of the optometry statutes. . . ."

This proposed rule is ambiguous. The State Board of Optometry

apparently reads the rule to say that no employing firm or corporation may advertise the price of services of an optometrist. (T. page 13) Such a firm or corporation could continue to advertise the price of other optometric services. This reading is clearly strained. It does not accurately interpret the clear meaning of the proposed regulation. The second sentence quoted above clearly is an effort to make the employing firm, person or corporation subject to the optometry statutes. It can be given no other reasonable reading.

The State Board submits through its attorney, Howard Marker, Esq. (at page 13 of the hearing transcript, as well as at other points during the hearing), that the intent of proposed Opt. 1 is not to eliminate advertising. This position asserts that an employed optometrist somehow must prevent his employer from advertising any things that may presently be illegal for the employer to advertise. This is a strained reading of the proposed regulation. In 1936 the State Board of Optometry adopted Optometry Rule #6 which reads as follows:

> "Licensed optometrists employed by any person, firm or corporation for a salary or commission or both for the purpose of supervising and personally attending the sale of glasses as merchandised under the provisions of the optometry law of the State of Minnesota are presumed to at all times have full knowledge of and consent to every advertisement or announcement of their employer involving the sale of glasses or leading the public into the belief that such person, firm or corporation is authorized to render optometrical services and such optometrist will be held responsible for all such advertisements on the grounds and for the reasons that such advertisements constitute unprofessional conduct on the part of the such optometrist."

The Minnesota Supreme Court, in Williams vs. Mack, 202 Minn. 402,

278 N.W. 585 (1938), held specifically that:

> "We think the board in rule #6 exceeded the power granted it. . .Rule #6 itself recognizes that it is lawful for a licensed optometrist to accept employment by another in the business of retailing eyeglasses. The employment being lawful under the optometry law as it now stands, it seems to us that it is contrary to the letter and spirit of the law to make the employee responsible for the employer's violation of the law and to impute knowledge of such violations to the employee. If the employer violates the optometry act in any manner he may be enjoined or prosecuted." 202 Minn. at pages 405-406.

The wording of the proposed 1936 optometry rule #6 so closely parallels that of proposed Opt. 1 that the holding in Williams vs. Mack is controlling. State law which specifically allows employment of an optometrist cannot at the same time require that the employee be responsible for the advertising of his employer. Thus, even under the interpretation that the State Board of Optometry now puts forth, the proposed rule is clearly illegal.

The truth is that a plain reading of the proposed rule restricts a person, firm or corporation who employs an optometrist in the same way that an optometrist is presently restricted. That firm or corporation could not advertise price. If a firm or corporation did advertise price, which is clearly "in violation of the optometry statute" for an individual licensed optometrist, it would be deemed unprofessional conduct on the part of the employed optometrist. As a result, to avoid losing his license, the employed optometrist would be forced to terminate a lawful employment. This illegal result and interpretation cannot be permitted.

The Minnesota Optometry Act is contained in Minn. Stats. §148.52 - §148.62. One provision in §148.56 reads as follows:

"Nothing in §148.52 - 148.62 shall be construed to apply to. . .the sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor. . ."

This clearly indicates that the types of "unprofessional conduct" including price advertising, that are enumerated in Minn. Stats. §148.57(3) do not apply to those functions which are carried out by dispensing opticians under the direction of an optometrist. The Minnesota Supreme Court in Williams v. Mack, supra, State v. Goodman, 206 Minn. 202, 288 N.W. 157 (1939), and most recently State v. Ritholz, 263 Minn. 36, 15 N.W. 2d 743 (1962), has specifically held that the provisions of the Optometry Act do not apply to the activities of a corporation or firm that employs an optometrist. These firms do not practice optometry. In State v. Ritholz, supra, the Court stated:

"Obviously §148.52 - 148.62 were intended to regulate the practice of optometry. They prescribe the qualifications and requirements for licensing optometrists and direct the Board of Optometry to supervise their professional conduct. The 'unprofessional conduct' referred to in §148.57, subd. 3, including that of price advertising, has reference solely to the practice of optometry. Had the legislature intended thereby to prohibit the dispensing optician from price advertising surely it would have expressed such intent in definite language." 263 Minn. at page 44.

Minnesota law thus provides a distinction that allows a dispensing optician or a firm employing an optometrist to advertise prices, but forbids the same advertising by an optometrist. In this regard the Court in Ritholz further stated:

"We cannot escape the conclusion that it is for the legislature rather than the courts to eliminate the distinction noted. For this court to do so would constitute the usurpation of legislative power through judicial fiat." 263 Minn. at p. 44.

Certainly, if it is not proper for the Court to eliminate this

distinction, the Board of Optometry exceeds its power in attempting so to do.

It is relevant to consider the activity of the Minnesota state legislature with regard to this section of the statute. As early as 1953, the Minnesota state legislature considered the question of dual treatment of optometrists and dispensing opticians. In that year, H.F. 671 and its companion S.F. 635 would have changed this provision to make unlawful price advertising by both optometrists and dispensing opticians. Those bills were not passed by our legislature. The mere existence of the bill indicates that the legislature recognized the existence of but did not act upon this dichotomy of treatment.

Again in 1959, H.F. 1497 and its companion S.F. 1418 would have brought dispensing opticians under the terms of the Optometry Act. These bills prohibited price advertising by dispensing opticians. Neither bill passed its respective legislative body. In 1961, H.F. 908 and S.F. 923 were introduced. These bills, which would have restricted advertising, were defeated. In 1963, S.F. 555 and its House companion H.F. 488 would have restricted the employment of optometrists, and among other things, brought the employing firm or corporation under the terms of the Optometry Act. Also that year, H.F. 1865 specifically provided that advertising by dispensing opticians would be forbidden. Both of these bills were defeated. In 1965, H.F. 578 and its companion S.F. 479 attempted to regulate the practice of optometry by prohibiting corporate employment. This bill was defeated. In 1967, S.F. 2205 and

its companion H.F. 2430 would have brought dispensing opticians under the State Board of Optometry and would have provided that the activities of those opticians would be governed by the Optometry Act. That bill was defeated. In 1969, S.F. 1073 would have forbidden advertising by opticians and again, the bill failed to pass. In 1971, S.F. 1181 and its companion H.F. 1360 again provided for the licensing of optometrists and the placing of opticians under the terms of the Optometry Act. It did not pass.

Thus, nearly every session of our legislature in the past 20 years has considered whether dispensing opticians should be allowed to advertise. In every single instance, the legislature has determined by its failure to act that dispensing opticians and firms and corporations that employ optometrists do not engage in the practice of optometry and as such are not bound by the Optometry Act. Clearly, for the State Board of Optometry to attempt now to do by rule or regulation what the legislature has refused to do over the past 20 years exceeds the proper powers of that State Board.

Attached hereto and made a part hereof is a study financed by the Public Health Service which demonstrates that bans on advertising cause increased costs for eyewear. That study alone is sufficient cause to estop adoption of the proposed rule.

The Minnesota Association of Optometrists and Opticians urges that the State Board refuse to enact proposed optometry regulation #1. Under any possible reading, that proposed regulation violates Minnesota law and is contrary to public policy. If the State Board

of Optometry were to adopt the proposed regulation, it must certainly be invalidated either upon initial review by the State Attorney General, or in the course of later litigation.

II.

PROPOSED OPTOMETRY RULE #4 CONCERNING CONTINUING EDUCATION DOES NOT IMPLEMENT THE CLEAR LEGISLATIVE REQUIREMENTS OF LAWS 1973, CHAPTER 62

Laws 1973, Chap. 62, states in part:

> "The Board may, after promulgation of rules relating thereto and the issuance of an initial list of approved courses, require that optometrists satisfactorily complete appropriate educational requirements as a condition precedent to annual license renewal. Courses conducted within the State of Minnesota to be eligible for approval by the Board must be open to all optometrists licensed in this state. The Board shall consider both curriculum and fees in approving courses." (Emphasis added)

It is pursuant to this statute that the State Board of Optometry now proposes optometry regulation #4.

The Minnesota Association of Optometrists and Opticians strongly supports required continuing education for optometrists. Our only concern is that the proposed rule does not adequately provide fair availability of courses at equal fees to all optometrists within the state. This non-discriminatory requirement is clearly indicated in the statute. See underlined portions above. Attached hereto and identified as Exhibit B are changes to the proposed regulation which would be far preferable. The Minnesota Association of Optometrists and Opticians also has previously provided the State Board of Optometry with two proposals, both of which are incorporated in Exhibit B. The first was a true copy of the proposed rules of the State Board of Pharmacy concerning continuing education, sub-

mitted at the hearing as M.A.O.O. Exhibit 1. Those proposed rules for pharmacists implement in a better way similar requirements for continuing education and represent a better approach which the Minnesota Association of Optometrists and Opticians wishes to advocate for optometry. The second proposal to the State Board was a proposed rule to assure non-discrimination (M.A.O.O. Exhibit 2.) That reads:

> "The Board shall approve only such programs as are available to all persons practicing optometry in the state on a reasonable non-discriminatory fee basis."

More specific proposed changes are contained in the attached Exhibits B. In summary, we make the following suggestions:

The Board proposal would certify only subjects that are presently taught in optometry schools or colleges. Certainly, there are other courses being taught at medical schools or other institutions relating to the care, treatment and diagnosis of problems of the eye that would be valuable as continuing education. This restriction in proposed optometry regulation #4 to only courses presently taught in optometry schools or colleges is unreasonable and arbitrary.

The compliance period should extend over a period of more than one year. It is suggested that 24 hours of continuing education be required bi-annually. This would allow an optometrist to attend a concentrated seminar once every two years for purposes of fulfilling his required education. It would eliminate hardships for licensed optometrists in scheduling attendance at such meetings.

The proposed list of approved programs is much too restrictive. There are various other optometric programs offered, for example those of the National Eye Research Foundation, the Contact Lens

Society, and the Optometric Extension Program, which should be given approval, as they are by other states. Courses relative to optometric education conducted by any recognized institution should be accepted.

The requirement that educational programs can only be approved 60 days prior to the date of the program is unreasonable. Approval after attendance should be provided.

A rule setting forth specific criteria for approval is clearly preferable to one listing a few selected programs that meet the approval of the present Board, which lacks two public members in its present membership.

Courses sponsored for commercial purposes should not be automatically excluded. It is clearly within the proper realm of continuing education to learn about new equipment and to become familiar with its proper operation.

In sum, continuing education, while a valuable and perhaps necessary requirement, should not be so limited in its scope as to make difficult the attainment of the required course hours. Courses should be open to all optometrists and there should be enough courses available so that every optometrist can fulfill his requirement with reasonable ease and convenience.

Specific suggestions are included in the attached exhibit B.

III.

THE PROPOSED OPTOMETRY RULE CONCERNING CONTACT LENSES CLEARLY VIOLATES MINNESOTA LAW

Minn. Stats. §148.56 reads in pertinent part:

"Nothing in §148.52 to 148.62 shall be construed to apply to. . .the sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor. . ."

The proposed Opt. 5 attempts to regulate the adaptation to the eye of contact lenses in a manner that would regulate both opthalmologists and opticians. The use by the State Board of Optometry of the phrase "adaptation to the eye" makes uncertain the intent of the Board concerning what parts of the process of providing contact lenses to a customer could be accomplished by a paramedical person. Clearly the State Board does not have the power to regulate technicians but only optometrists -- and certainly not doctors of medicine. It is also clear under Minn. Stats. §148.56 that the Board has no power to regulate dispensing opticians. The proposed rule attempts to regulate both such groups.

Additionally, Laws 1973, Chap. 709, is clear that the State Board of Health is the proper state agency to act in this area if action is required. Under the terms of that law, the State Board of Health is given power to investigate the use of technicians and aids by the various medical professions. Upon finding a need for regulation, the State Board of Health has the power to license or otherwise regulate these paraprofessionals. The legislature in enacting Chapter 709 stated its clear intent to have any and all such regulation conducted by the State Board of Health. The present attempt by the State Board of Optometry to pre-empt regulation in one such field clearly exceeds its authority and ignores legislative intent as expressed in Chapter 709.

Exhibit A

(42)

Reprinted for private circulation from THE JOURNAL OF LAW AND ECONOMICS, Volume XV (2), October, 1972. Copyright 1972, The University of Chicago.

THE EFFECT OF ADVERTISING ON THE PRICE OF EYEGLASSES*

LEE BENHAM
University of Chicago

I. INTRODUCTION

THE impact of advertising on prices has long been a matter of dispute. It has been argued that the persuasive aspects and the product differentiation effects of advertising tend to raise the prices of products to consumers. On the other hand, by providing consumers with information about products and alternatives in the market, allowing them to economize on search and to locate low-priced sellers more readily, advertising may tend to lower prices to consumers. It may also lower prices by allowing sellers or producers to economize on other merchandising costs and to take advantage of economies of scale. On purely theoretical grounds, therefore, no reliable prediction can be made as to the overall effect of advertising on prices.[1]

While there has been much discussion of this question, relatively little has been done to estimate empirically the relationship between advertising and prices. Some studies have compared prices for different brands of "homogeneous" items, some of which were advertised and some of which were not. In general, the advertised brands were found to sell at higher prices.[2] While such comparisons have frequently neglected such characteristics as quality control, service provided with the sale, location of sales outlets, waiting time to purchase, and inventory and range of stock available, it is not my purpose here to further refine measures of homogeneous commodities. It is rather to propose an alternative approach to this question.

One way to understand better the full impact of advertising on prices is

* I would like to thank Ronald Andersen for generously making available the data used in this study, Sara Paretsky for assistance in editing the data, and Harold Pashner for computer programming. Helpful comments by Gary Becker, Alexandra Benham, Harold Demsetz, Reuben Kessel, Willard Mueller, and Melvin Reder are gratefully acknowledged. This investigation was supported by PHS Grant Number HS00080 from the National Center for Health Services Research and Development.

1 See The Economist Advisory Group, The Economics of Advertising: A Study (1967).

2 For example, Borden compared the prices of private and manufacturers brands of several items. An extreme case was that of Bayer aspirin: in 1938 the wholesale price for the generic equivalent was only 17% of the wholesale price for Bayer. See Neil H. Borden, The Economic Effects of Advertising 576 (1944).

to examine markets for a product in which advertising is prohibited and markets for the same product in which advertising is allowed, comparing the price structures of the two types of markets. Market organization and price structure may be significantly affected by the presence in a market of even one seller who advertises or who potentially can do so. The full impact on prices of the existence of advertising may be much greater than the price differences we observe when some producers of an item choose to advertise it and others do not.

For a variety of goods and services, especially in the service sector, advertising is frequently prohibited by cities or states. Examples are most services of physicians and dentists, prescription drugs, and eyeglasses. Unfortunately, for most such items there is little if any variation in the restrictions imposed across states. A major exception is eyeglasses: some states prohibit advertising related to eyeglasses and eye examinations while others do not. By examining the prices paid for these items by a sample of individuals in each category of states, we may gain more insight into the impact of advertising on prices.

II. Advertising and Information

The full cost of purchase (C_f) of a good to a consumer includes not only the cost of the item itself (C_g) but the cost of knowledge (C_k) concerning the location of sales outlets and prices and the cost of time and transportation (C_t) required to purchase the item:

$$C_f = C_g + C_k + C_t$$

These components of full cost are in part jointly determined. For a given frequency distribution of retail prices offered in the market, the distribution of prices paid (C_g) will depend upon the extent of consumers' knowledge of the alternative prices available and the cost of time and transportation. Past studies have shown that both the mean and the dispersion of prices paid generally decrease as the extent of search (knowledge) increases.[3]

Insofar as advertising increases consumers' knowledge of alternative prices in the market, it will tend to decrease the mean and dispersion of prices paid. If there are economies of scale in retailing the good, then the effect of advertising in lowering mean prices should be intensified.[4] In general, large-volume

[3] See the work of Stigler and others on the economics of information: George J. Stigler, The Economics of Information, 69 J. Pol. Econ. 213 (1961); Roger E. Alcaly, Information and the Distribution of Prices, Sept. 1970 (Dep't of Econ., Columbia Univ., unpublished paper presented at 2nd World Congress of Econometric Society, Cambridge, Eng.).

[4] However, the consequences for price dispersion are less clear-cut. When economies of scale exist, the size distribution of firms will be changed by advertising. Consequently, the

low-price sellers are dependent upon drawing consumers from a wide area and consequently need to inform their potential customers of the advantages of coming to them. If advertising is prohibited, they may not be able to generate the necessary sales to maintain the low prices. In such a situation, the cost of disseminating information to consumers will more than offset the other economies of scale. At the same time, the likelihood that small-volume high-priced retailers survive in the market will increase. Consequently, the distribution of retail prices offered will shift upward. The question under consideration here is the extent to which economies resulting from the information provided through advertising are offset by the costs of advertising and by product differentiation.

III. Advertising Restrictions in the Market for Eyeglasses

The advertising of eyeglasses and eye examinations is controlled in many states by various state agencies. From a predominantly laissez-faire situation in the first decades of this century, the trend has been toward increased regulation and restriction of advertising. In 1963, the year for which data on prices were available for this study, approximately three-quarters of the states had some regulations against advertising. Some states prohibited only price advertising while others allowed virtually no information concerning eye examinations or eyeglasses to be published, broadcast, or in any way distributed.[5] Since 1963, several additional states have introduced restrictions. The following excerpts are taken from 1963 laws.

Arkansas: The following Acts are hereby declared to be unlawful Acts: . . . For any optometrist, physician, surgeon, individual, firm, partnership, corporation, wholesaler, jobber or retailer to solicit the sale of spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or any other optical appliances or devices, eye examinations or visual services including vision training or orthoptics by radio, window display, television, telephone directory display advertisement, newspaper advertisement, hand bills, circulars, prospectus, posters, motion pictures, stereopticon slides or any other printed publication or medium or by any other means of

average cost of time and transportation to purchase the given item may increase, even as costs of information fall. In this situation, the dispersion of prices paid will depend upon several factors including the cost of time and transportation to consumers and the functional relationship between prices and volume of sales.

[5] Because sellers are prevented from advertising through normal channels, they are not necessarily prevented from providing information through other methods. The selling effort within a store is in part a substitute for general advertising. Joint sales arrangements may be developed (where permitted) to take advantage of consumer knowledge concerning low prices for other items which can be advertised. Insofar as these other ways of offering information are close substitutes for regular advertising, then the prohibition will not have much effect.

advertisement; or to use any method or means of baiting, persuading, or enticing the public into buying spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or other optical appliances or devices for visual correction or relief of the visual system or to train the visual system. . . .

Nothing in this Act except as expressly provided otherwise herein shall apply to physicians and surgeons, nor to persons who sell eyeglasses, spectacles, lenses, frames, mountings, or prisms at wholesale on individual prescriptions to optometrists, physicians, and surgeons. . . .[6]

Florida: Any certificate of registration granted by the Florida state board of optometry . . . may be revoked by said board, if the person . . . is found guilty of unprofessional conduct. . . . 'Unprofessional conduct' . . . is defined to mean any conduct of a character likely to deceive or defraud the public, including among other things free examination advertising, price advertising, billboard advertising, use of any advertising either directly or indirectly, whether printed, radio, display, or of any nature which seeks to solicit practice on any installment payment or price plan. . . .

It is unlawful for any person, firm or corporation to . . . advertise either directly or indirectly by any means whatsoever any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses or any optometric sevice; to advertise in any manner that will tend to mislead or deceive the public; to solicit optometric patronage by advertising that he or some other person or group of persons possess better qualifications or are best trained to perform the service or to render any optometric service pursuant to such advertising. This section is passed in the interest of public health, safety and welfare, and its provisions shall be liberally construed to carry out its objects and purposes.[7]

A survey was made of several state boards of optometry concerning the sanctions used to enforce these regulations. Injunctions and suspensions of license for periods up to a year were the most common sanctions mentioned by the respondents. In some cases they said that fines were levied and licenses revoked. There appears to be careful policing and enforcement of these regulations in most states.

IV. Price Differentials Associated with Advertising Restrictions

The data on eyeglass and eye examination prices used in this study were obtained from a 1963 survey of a national sample of individuals. The survey examined use of and expenditures on medical services.[8] The present study

[6] The Blue Book of Optometrists 87-88 (1964).

[7] *Id.* at 146-47.

[8] See Ronald Andersen & Odin W. Andersen, A Decade of Health Services: Social Survey Trends in Use and Expenditure (1967).

uses a subsample of 634 individuals who each underwent an eye examination and/or obtained a pair of eyeglasses in 1963. In addition to the amount spent by individuals for eye examinations and eyeglasses, detailed demographic information on each individual was included in the survey. With this information, the prices paid for eye examinations and eyeglasses could be associated with the state of purchase.

The analysis below deals principally with eyeglasses and not with eye examinations; very few states permitted advertising of eye examinations in 1963. However, 291 individuals in the survey quoted only the combined price of the examination and glasses. Since relatively little variation in the cost of eye examinations was found across states and since prices of examinations and eyeglasses were not highly correlated across states,[9] the systematic variation in total cost examined here is assumed to reflect variation in the cost of eyeglasses.

To estimate the differential in prices associated with prohibition of advertising, two comparisons were made. First, the mean price paid for eyeglasses and the mean price paid for eyeglasses and eye examination together were calculated for individuals living in states with and without restrictions on advertising. Next, since the demographic characteristics of individuals in the sample were not uniform across the states, the following simple model was used to estimate price differentials.

$$P_i = \alpha + \beta_1 X_{1i} + \sum_{j=2}^{5} \beta_j X_{ji} + \mu_i$$

where P_i is the price paid by individual i for his eyeglasses;

X_{1i} is a dummy variable which equals 1 if individual i purchased his eyeglasses in a state with complete prohibition of advertising, and equals 0 otherwise;

$X_{2i}, \ldots, X_{5i}$ are total family income, age, sex, and family size.[10]

Thus β_1 estimates the average difference in dollars paid for eyeglasses between states with complete prohibition of advertising and states without such prohibition.

[9] States with low prices for eyeglasses had a higher proportion of combined price quotes. This might disguise lower mean prices for examination in those states.

[10] These variables might account for the differences in prices paid across states. In addition, various other combinations of variables not shown here were examined, including education of individual, race of individual, size of city of residence, and mean level of education and income in county of residence. The coefficient of the advertising variable was basically unchanged when these latter variables were included in the estimating equation.

TABLE 1

MEAN COST OF EYEGLASSES AND MEAN COMBINED COST OF EYE EXAMINATION PLUS EYEGLASSES IN 1963 AS A FUNCTION OF RESTRICTIONS ON ADVERTISING IN STATES (in Dollars)

Population Group	States with Complete Advertising Restrictions $\bar{X}_1$	N	States with No Advertising Restrictions $\bar{X}_2$	N	$\bar{X}_1 - \bar{X}_2$
	Eyeglasses Alone				
1) All individuals	33.04	50	26.34	127	6.70
2) All individuals in Texas, North Carolina, and the District of Columbia	37.48	21	17.98	27	19.50
	Eyeglasses and Eye Examinations Combined				
3) All individuals	40.96	121	37.10	261	3.86
4) All individuals in Texas, North Carolina, and the District of Columbia	50.73	37	29.97	72	20.76

There appears to be no single most satisfactory way to categorize states by the extent to which they restrict advertising, so two sets of estimates are presented to indicate the likely range of impact. The first set of estimates (Table 1, line 1 and Table 2, equation 1) is based on all individuals purchasing eyeglasses in 1963 in states either with no restrictions on advertising or in states with complete prohibition of it.[11]

To estimate the probable upper bound of the effects of advertising restrictions, the second set of estimates (Table 1, line 2 and Table 2, equation 2) is based only on individuals living in states at the extremes: Texas and the District of Columbia, extreme laissez-faire states, versus North Carolina, a state with extensive restrictions in force for a number of years prior to 1963 (hence

[11] Several sources of information were used to determine states' restrictions on advertising. State laws were canvassed, a survey of state optometry board members was made, 1963 newspapers from several states were sampled to search for eyeglass advertisements, and optometrists in several states were contacted. The problem was to ascertain not only the restraints against advertising by optometrists but also the restraints against advertising by other sellers. In some states optometrists were prohibited from advertising but opticians or commercial firms were permitted to advertise. States were classified as allowing advertising if any sellers were permitted to advertise. Despite the aforementioned search, it was not possible to classify several states satisfactorily. Furthermore, Ohio was excluded because cities apparently had regulatory authority over advertising; New Jersey was excluded because the individuals sampled lived predominantly near New York City, creating substantial classification problems. In addition, the original survey did not include respondents from some states. In the estimates here, states classified as having no restrictions on advertising in 1963 are: Alabama, the District of Columbia, Georgia, Illinois, Indiana, Kansas, Maryland, Michigan, Minnesota, Missouri, Texas and Utah. States classified as having total prohibition of advertising are Arkansas, Massachusetts, North Carolina, North Dakota, Oklahoma, and South Carolina.

TABLE 2

REGRESSION ESTIMATES FOR COST OF EYEGLASSES AND COMBINED COST OF EYE EXAMINATION PLUS EYEGLASSES FOR VARIOUS POPULATION GROUPS IN 1963 AS A FUNCTION OF RESTRICTIONS ON ADVERTISING IN STATES AND OTHER VARIABLES
(t statistic in parentheses)

Population Group	Complete Advertising Restrictions 0 = No, 1 = Yes	Total Family Income	Age	Sex Female = 0 Male = 1	Family Size	Constant	R^2	$\bar{R}^2$	N
				EYEGLASSES ALONE					
1) All individuals in states with complete restrictions or with no restrictions	7.482 (2.5)	.03981 (1.4)	.01246 (.17)	−3.192 (−1.1)	.1256 (.11)	23.27 (3.5)	.046	.018	177
2) All individuals in Texas, North Carolina and District of Columbia	18.89 (4.1)	−.02422 (−.5)	.1572 (1.1)	−8.298 (−1.6)	.1599 (.07)	18.06 (1.54)	.34	.26	48
				EYEGLASSES AND EYE EXAMINATION COMBINED					
3) All individuals in states with complete restrictions or with no restrictions	4.33 (1.96)	.04560 (2.03)	.05615 (.96)	−.2998 (−.15)	−1.528 (−1.92)	36.72 (7.5)	.038	.025	382
4) All individuals in Texas, North Carolina and District of Columbia	21.07 (5.6)	.001651 (.04)	.06701 (.63)	−3.437 (.94)	−2.54 (−1.6)	37.30 (4.5)	.28	.25	109

likely to have the long-run effects of these restrictions in evidence). This latter set of estimates is likely to overstate the impact of advertising restrictions, since North Carolina had other laws which would tend to raise prices independent of advertising regulations, and the proportion of the total price difference which can be attributed to advertising restrictions cannot be determined at this stage.

In the first set of estimates, the difference in mean prices of eyeglasses between the two categories of states is $6.70, with the lower mean price found in states having no advertising restrictions (Table 1, line 1).[12] The regression estimate of the difference is similar, $7.48 (Table 2, equation 1). The difference in price between the most and least restrictive states is much larger, $19.50 as measured by means (Table 1, line 2) and $18.89 as measured by the regression coefficient (Table 2, equation 2). Estimates using combined cost of eyeglasses and eye examinations yield the same results, although the absolute difference is somewhat smaller in one case (Table 2, equation 3).

Despite the shortcomings of these estimates,[13] they serve to indicate the direction and magnitude of effect. The estimates of eyeglass prices alone suggest that advertising restrictions in this market increase the prices paid by 25 per cent to more than 100 per cent.[14] Furthermore, these estimates are

[12] The coefficient of variation in prices (σ/X) is also smaller in states which allow advertising (.56) as compared with states which prohibit advertising (.73).

[13] The coefficient of determination is low in these estimates. In terms of predicting the prices paid by individuals for eyeglasses, the model is obviously incomplete. A higher R^2 would be desirable, but results of this order are common in estimates of economic models which use individual data. One of the likely reasons for the low R^2 in this case is the unmeasured variation in type and quality of eyeglasses purchased. In the survey used, individuals were not asked about the specification or quality of frames and eyeglasses purchased. However, provided that quality is uncorrelated with the advertising variable X_1, the coefficient β_1 is an unbiased estimate of the systematic effects of advertising on prices. This issue is discussed *infra* at 345-48.

It has also been suggested that the difference in prices between states with advertising and states without is due to systematic variation in types of service provided: where physicians are the more frequent source of eye care, that is, in the restrictive states (see Table 4), fees for non-routine services may have been more frequently included with fees for eye examinations and eyeglasses. Although all the original questionnaires were examined for any indication that services other than eye examination and eyeglasses were provided, and these cases were excluded from the estimates of this paper, the possibility remains that a few non-routine items may have been included in the sample. To see if a few expensive cases affected the overall results, *median* prices for eyeglasses were calculated. The difference in median prices between states with advertising and states without is $4.00, and between North Carolina and Texas and the District of Columbia is $14.00, with the higher prices in the states restricting advertising.

[14] A further comparison was made by sampling, through personal visits, the prices of eyeglasses at nineteen opticians, optometrists, and commercial firms in Texas and New Mexico in July, 1971. A price quote was requested for eyeglasses with a given lens and frame specification without an examination. The mean price sampled in New Mexico, a

likely to understate the total savings to consumers occasioned by advertising, since the search process itself is less expensive when information is more readily and cheaply available.[15]

V. Alternative Explanations of Observed Price Differentials

Some have argued that in this model advertising restrictions serve only as a proxy for other restraints on competition.[16] If this is so, then the higher prices observed in states with restrictions on advertising may be improperly attributed to the advertising restrictions. For example, interstate barriers to mobility for optometrists and opticians might account for the observed price differentials. If there are effective barriers to entry in some states, there will be an artificially low number of optometrists and opticians per capita there,[17] and this in turn will be reflected in higher prices. If states restricting advertising also keep the number of optometrists and opticians artificially low by restrictions on entry, then the higher prices might be inappropriately attributed to advertising restrictions.

To examine this question, the equations in Table 1 were re-estimated including as additional variables the number of optometrists and opticians per capita. To the extent that barriers to entry are systematically associated with the restrictions on advertising, the coefficient of the advertising variable should be reduced in absolute value when these two variables are added to the equation. However, the coefficient of X_1 was essentially unchanged when these two variables were added.

Many other types of regulations, if vigorously or selectively enforced, could

---

state with restrictions on advertising, was \$31.70 ($n = 10$) and in Texas, a state without restrictions, \$25.90 ($n = 9$). The difference in mean prices paid by consumers would be larger than those figures indicate, since the volume of sales in the low-priced firms in Texas is much larger than the average volume of the other outlets.

Consumers in New Mexico are apparently not completely unaware of the lower prices in Texas. A newspaper editor from Alburquerque, New Mexico told Professor Yale Brozen of the University of Chicago that some families had in the past driven from Albuquerque to Amarillo, Texas to purchase glasses, a distance of 288 miles.

[15] Other associated costs of purchase such as transportation and time costs required to purchase items may increase with advertising. If so, the savings in search would be partially offset.

[16] A related argument suggests that advertising restrictions serve as a proxy for collusive behavior by sellers. Since there are a large number of establishments in the states included here, effective collusion appears unlikely without some method of enforcement. The most likely method would appear to be state laws or regulations. If prohibition of advertising is the only method used to reduce competition, then the argument presented earlier holds. If other restrictive legislation is involved, then the issue is that discussed in this section.

[17] For discussion of this issue, see L. Benham, A. Maurizi & M. Reder, Migration, Location and Remuneration of Medical Personnel: Physicians and Dentists, 50 Rev. Econ. & Stat. 332 (1968).

reduce competition and raise prices. These range from restrictions on employment of optometrists to extra-legal harassment. Unfortunately, they cannot be investigated as easily as barriers to entry because of the difficulties in classifying states according to the severity of these other regulations. *A priori* judgments concerning the effects of each regulations are quite arbitrary, and data limitations prevent the development of a model at this time to estimate the separate effects of each such regulation on prices.

In an attempt to deal with these problems, representatives of several optometric associations and commercial firms were contacted to obtain assistance in classifying states according to the extent of these other types of regulations. There was general agreement that certain states were generally restrictive (for example, North Carolina) and that others were generally unrestrictive (for example, Texas), but otherwise opinion diverged. There appeared to be considerable variation in these other types of regulations across states in both groups: advertising and non-advertising. An attempt was made to match states which allowed advertising with states which did not by the severity of their other regulations. The price patterns obtained were similar to those reported in Tables 1 and 2, but the comparisons were crude at best.

The representatives of commercial firms were also asked to give their assessments of the impact of advertising restrictions. All stated that the presence or absence of advertising restrictions affected their decision to move into new market areas. Several said that they would not enter a new market unless advertising were permitted, no matter what the other restrictions.[18] Furthermore, the representatives of two large commercial firms stated that the retail prices of their own firms varied across states, with the higher prices in the states with advertising restrictions.

Data limitations prevent a fuller treatment of this question. The qualitative evidence presented hardly eliminates the possibility that the advertising variable serves as a proxy for other restrictions.[19] Nevertheless, the available evi-

[18] The data used in this study suggest that commercial firms have a larger share of the market in the states with lower prices (Table 4). Another recent study of prices charged for frames and lenses by optometrists and by retail stores in New York showed substantially lower prices in the retail stores. The study also found that prices charged by optometrists were lower in an area with a high concentration of commercial firms (New York City) than in areas with a lower concentration of commercial firms. See A Retail Shopping Study of Optometrists and Retail Opticians, submitted by Marketing Research Dep't, Dale System, Inc., to N.Y. St. Optical Retailers Ass'n, January, 1968.

[19] An examination of the changes in prices over time as a function of changes in advertising laws would provide a better test of this question. For example, the actions being currently taken in some areas to reduce restrictions on prescription drug advertising should provide extremely useful evidence on this question.

dence is consistent with the hypothesis that restrictions on advertising reduce competition and raise prices and that the estimates in Tables 1 and 2 reflect the effects of advertising restrictions.

Another type of argument often given by the professionals (optometrists and ophthalmologists) is that the quality of service and product supplied by the "commercial" establishments is lower than that supplied by "professionals." By implication, the average quality of eyeglasses would be lower in states where commercial establishments were more strongly represented,[20] the states in which advertising was permitted. During the course of this study, several professionals referred to their own personal experience with low quality commercial work. Commercial representatives responded to these charges with allegations of low quality work by certain professionals. Although standards do not appear to be uniform across establishments, either commercial or professional,[21] the issue here is not that of establishing how many of these specific allegations are valid. It is rather one of determining any systematic differences in quality of products between states which allowed and states which prohibited advertising.[22] Several attempts were made to investigate this question.

The issue was first examined by investigating the source of eyeglasses by type of retail establishment. Some commercial firms produce their own eyeglasses; however, many purchase from the same sources as the professionals.[23] The professionals also purchase from the commercial firms. In 1971, one of the largest commercial firms sold only 50 per cent of its eyeglass output through its own retail outlets. The remainder was sold through professional establishments.[24] To the extent that commercial and professional firms both

[20] See Table 4, *infra*.

[21] For example, a reporter for the CBS Television Network traveled around the country having his eyes examined in 1969. He had excellent vision and did not wear glasses. He read all the charts and answered all questions honestly. Out of the 28 eye examinations which he took he was given three prescriptions, one each from an optical firm, an optometrist, and an opthalmologist. CBS Television Network, 60 Minutes, Tuesday, October 28, 1969.

[22] Even if the commercial firms sold eyeglasses which were unambiguously lower in quality, the case for eliminating these firms through legislative action is not obviously strengthened. For many individuals, the choice may be between the low quality, low price product and no product at all. The quality issue arises in this study because of the need to compare reasonably homogeneous items across states. For a discussion of the costs and benefits of eliminating "low quality" products from the market, see Milton Friedman, Capitalism and Freedom, ch. 9 (1962).

[23] Approximately 90% of eyeglasses worn in the U.S. are made by three companies: American Optical, Bausch and Lomb, and Shuron Continental.

[24] In the small survey of eyeglass prices in Texas and New Mexico, one of the highest

have the same source of eyeglasses, possibilities for quality variation are obviously reduced.

The quality issue was then raised with representatives of several large retail chains. They argued that the commercial firms were generally under more careful scrutiny by state regulatory authorities and state optometric association than the typical professional establishments and consequently had to be more concerned about quality control. They also argued that evidence on systematic quality differences would long since have been used against them in political and legal disputes, if any such evidence could be found, and that none had been so presented.

In following up this point, a search was made attempting to locate references to quality differences. No specific evidence was found to support the claim of systematic quality differences as a function of type of firm or of advertising regulations. The headquarters of the American Optometric Association, the Illinois State Optometric Association, and local optometrists were also unable to give any specific references to support these allegations. This lack of evidence does not establish the absence of a systematic difference in quality. However, it is consistent with this position particularly since the professional associations have a strong incentive to generate and use such information in their disputes with the commercial firms.

Some direct evidence on the prices of standardized products is available from two other sources. In a personal survey of retail outlets in Texas and New Mexico in which specification of frames and lenses was uniform, prices were found to be higher in New Mexico, a state with strict advertising laws.[25] The Bureau of Labor Statistics also collects price estimates of eye examinations and eyeglasses across cities for the consumer price index. The specifications used in pricing eyeglasses are quite detailed and leave little room for variation in type or quality of lenses or frames. The published data do not permit a comparison across states, and the Bureau would not release its detailed price estimates by cities. However, a representative at the Bureau who was familiar with its price estimates of eyeglasses stated that the price patterns were similar to the ones found here: cities in states with advertising restrictions tended to have higher prices than cities in states without restrictions.

The findings discussed in this section, although far from conclusive, suggest that variations in quality were not responsible for the results presented in Tables 1 and 2.

---

prices quoted was by an optometrist in New Mexico who was selling frames and lenses produced by Texas State Optical, one of the large and low priced commercial firms in Texas (see *supra* note 14).

[25] See *supra* note 14.

VI. Content of Advertising

The results presented above are consistent with the hypothesis that, in the market examined, advertising improves consumers' knowledge and that the benefits derived from this knowledge outweigh the price-increasing effects of advertising. However, some individuals have argued that eyeglass advertising contains substantially more information than other types of advertising and that consequently these findings cannot be generalized to most other goods and services.[26] It is true that there has been little if any advertising of eyeglasses on national television, a medium which some feel provides a less information-intensive form of advertising. However, there has been considerable local and statewide television advertising in those states which allow advertising. One large commercial firm spends 80 per cent of its advertising budget on television.

As one means of investigating this question further, newspapers of several cities in Illinois, a state with no advertising restrictions on eyeglasses in 1963, were examined for 1963 advertisements. During a week's search, few advertisements were found which contained any reference to price, and fewer still quoted specific prices. The proportion of eyeglass advertisements which contained price information was smaller than for most other items advertised in the newspapers, in particular clothing and furniture. This is obviously fragmentary but suggestive evidence that eyeglass advertising is not markedly more information intensive than other advertising.

Note that the relative infrequency of price advertising of eyeglasses is not necessarily inconsistent with the argument that restrictions on advertising have a significant impact on price. Only a few price advertisements may be required to inform a sufficient number of consumers so that the average purchase price is reduced substantially. Non-price advertising may also be a close substitute for price advertising.

To examine the effect of non-price advertising on prices, I re-estimated Table 2, equation 1 with the addition of individuals in the sample who purchased eyeglasses in states which in 1963 prohibited price advertising but allowed other types of advertising.[27] A dummy variable X_6 was added, where X_6 equals 1 if the individual purchased eyeglasses in a state which prohibited only price advertising, and equals 0 otherwise. The results are shown in Table 3. The coefficient of X_6 suggests that in states prohibiting only price advertising prices are slightly higher than in states with no restrictions, and

[26] For an interesting discussion of advertising as information, see Phillip Nelson, Information and Consumer Behavior, 78 J. Pol. Econ. 311-29 (1970); and Phillip Nelson, Advertising as Information, (unpublished manuscript at St. Univ. of N.Y. at Binghampton).

[27] These states were California, Florida, New York, Oregon, and Virginia.

are considerably lower than in states prohibiting all advertising.[28] This estimate suggests that even "non-price" advertising may lower prices.

TABLE 3

REGRESSION ESTIMATES FOR COST OF EYEGLASSES FOR VARIOUS POPULATION GROUPS IN 1963 AS A FUNCTION OF RESTRICTIONS ON ADVERTISING IN STATES AND OTHER VARIABLES
(t statistic in parentheses)

Population Group	Complete Advertising Restrictions 0 = No, 1 = Yes	Restrictions on Price Only 0 = No, 1 = Yes	Total Family Income	Age	Sex Female = 0 Male = 1	Family Size	Constant	R^2	N
				EYEGLASSES ALONE					
All individuals	7.369 (2.4)	1.320 (.55)	.03154 (1.3)	−.0003 (.00)	−2.645 (−1.2)	−.01409 (−.02)	24.73 (4.7)	.028	287

VII. WHO BENEFITS?

The discussion thus far has been concerned with the costs of advertising restrictions to consumers. The extent to which various groups supplying eyeglasses benefit from these restrictions depends upon a number of factors including the elasticity of demand for eye examinations and eyeglasses, the effect of advertising restrictions on firm size, the level of specialization within firms of differing sizes, and restrictions on entry into the state.

A crude estimate of the elasticity of demand can be obtained by comparing per capita expenditures on eyeglasses and eye examinations for the total sample population in states which restricted advertising and in those which did not. Two comparisons were made, one for the sample as a whole and one for the subset of Texas, the District of Columbia, and North Carolina. Both results suggest that the industry faces an inelastic demand, since per capita expenditures were higher in states which had higher prices (and which had restrictions on advertising).

There is in addition some evidence which suggests that the share of the market held by the large commercial firms declines when advertising is prohibited (Table 4). The individuals in the sample were asked about the source of their eye examinations and eyeglasses, and responses were classified into four categories: physicians, optometrists, firms (or clinics), and unknown. The first two categories are more likely to indicate individual or small firm operations, while the third category is more likely to represent larger com-

[28] This estimate should be viewed with caution, because without the observations from New York the coefficient of X_0 would be approximately the same as the coefficient of X_1.

TABLE 4
SOURCE OF EYE EXAMINATION AND EYEGLASSES FOR INDIVIDUALS IN STATES WITH AND WITHOUT ADVERTISING RESTRICTIONS, IN 1963
(percentage)

Population Group	Physicians	Optometrists	Clinic or Firm	Source Unknown
Individuals living in states with advertising permitted	22.1	31.1	36.4	10.3
Individuals living in states with all advertising prohibited	39.7	43.7	15.0	1.6
Individuals living in Texas and the District of Columbia (advertising allowed)	13.6	16.4	52.0	1.6
Individuals living in North Carolina (advertising prohibited)	55.3	39.5	5.3	0.0

mercial firms. Although these figures should not be interpreted as accurate measures of the distribution of sales by firm size, the results do suggest that a larger fraction of purchases are made from "large" firms in states which allow advertising. The frequency with which the large chains were specifically named as the source also follows the same pattern. Since larger firms tend to employ fewer optometrists per volume of sale,[29] a decline in the large firms' share of the market would appear to benefit optometrists and physicians.

Finally, advertising restrictions make it more difficult for new firms to become established, and they increase the opportunities for price discrimination.

Taken together, this evidence suggests that established optometrists and other professionals within a state are likely to benefit if advertising is prohibited, not a surprising conclusion given the enthusiasm with which they support these restrictions.[30]

VIII. CONCLUSION

Several professors in economics and marketing at the University of Chicago were asked whether they thought the price of eyeglasses would increase or decrease if advertising were prohibited. Of those individuals polled, approxi-

[29] Higher costs of production are often alleged to be evidence of higher quality, particularly when the higher costs are associated with the use of a larger proportion of professional inputs. This argument essentially defines the quality of output in terms of the quality (costs) of inputs and denies benefits to specialization in production.

[30] When questioned about restrictions on advertising in the District of Columbia, an optometrist there informed me that there were none but that such restrictions would be the first item on the agenda if the optometrists ever obtained professional control.

mately 40 per cent of the economists and 100 per cent of those in marketing expected prices to be the same or lower where advertising was prohibited. It is, I think, the most common view to emphasize the costs of advertising,[31] the demand inducing and product differentiating aspects and to put relatively less emphasis on the information provided and the effects of this information on organization and efficiency in the market. These results suggest that, at least for the item considered, the emphasis has been misplaced. Prices were found to be substantially lower in states which allowed advertising.

The extent to which these results can be generalized to other goods will have to await further study. Eyeglasses may of course be a special case. Nevertheless, on a question which has in the past been overwhelmingly judged on *a priori* grounds, it has been possible to obtain a range of estimates of the impact of advertising on prices.

[31] Several large commercial firms were questioned about their advertising costs per pair of eyeglasses sold. Such a figure is often used to estimate the cost to consumers of advertising. Only one firm, a large firm operating in many states, was willing to provide this information: its average expenditure on advertising per pair of glasses sold is approximately $2.00.

EXHIBIT B

PROPOSED SUBSTITUTE FOR OPTOMETRY #4,

REQUIRED CONTINUING EDUCATION

A. Commencing January 1, 1976, no annual license renewal shall be issued to any optometrist until such optometrist shall have submitted to the State Board of Optometry satisfactory evidence that he has completed an accredited program of continuing education during the previous two-year period. Thereafter, each optometrist shall submit such evidence every two years, except as modified by Section F herein. In the event an optometrist becomes ineligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice until such requirements are satisfied. The Board may reinstate any such suspended license upon a showing that the requirements have been satisfied.

B. Definitions

1. Continuing optometric education shall include any courses bearing upon the scientific and clinical aspects of the practice of optometry that shall meet the standards set forth in this regulation.

2. Approved program sponsor means any association, corporation, educational institution, organization or person which has been approved by the State Board of Optometry to conduct continuing optometric education programs.

3. Accredited program of continuing optometric education means at least 24 hours of credit in approved programs conducted

by an approved program sponsor and which are approved by the State Board of Optometry.

4. Approved programs means those classes, conferences, correspondence, study courses, institutes, lectures, professional meetings, programmed learning courses, journal readings, seminars, study groups or comparable educational activities in continuing optometric education conducted by an approved program sponsor and which are approved by the State Board of Optometry.

C. Approval of Program Sponsors

Any association, corporation, educational institution, organization or person may apply to the State Board of Optometry for initial approval as a program sponsor. The Board shall accept or reject applications by written notice to the applicant within 30 days after receipt of the application. Approved program sponsors shall apply for renewal of their approval biennially 30 days before the biennial anniversary date of their initial approval notice, and shall be required to maintain records of attendance at programs for a period of at least three years.

D. Approval of Programs

Approved program sponsors may obtain approval of particular programs by submitting an application to the Board of Optometry setting forth thereon the following information:

1. Program title
2. Description of the program
3. Objectives of the program
4. Description of plans for evaluating the achievement of the objectives.

5. Resources

6. Manner of presentation

7. Program faculty and its qualifications

8. The average number of clock hours required to participants to complete the program

9. Such other information as the Board may request

Any such application shall be submitted to the Board not less than 60 days prior to the proposed date for commencement of the program. The Board shall assign a number of credit hours to each program and shall accept or deny any such application by written notice to the applicant within 30 days after receipt of the application. The Board shall judge the educational program solely upon whether or not it is likely to contribute to the improvement, advancement, or extension of professional skill and knowledge in the practice of optometry.

E. The Board shall approve only such programs as are available to all persons practicing optometry in the state on a reasonable, non-discriminatory fee basis.

F. Revocation or Suspension of Approval

The Board may deny, refuse to renew, revoke or suspend authorization or approval previously furnished to program sponsor or approved programs if the sponsor or program fails to conform to its application approved by the Board, fails to furnish program content as advertised or if the sponsor or program is in any other way to satisfy the provisions of this rule.

G. Proof of Attendance

Certificates of attendance at continuing education courses

shall be submitted by each optometrist to the State Board of Optometry at the time he applies for renewal of his license. Each approved program shall have submitted to the State Board of Optometry an explanation of its method of certifying attendance. Any reasonable method, including individual certification, roster certification, computer certification, or any other method, shall be accepted.

H. Exemptions from Required Attendance

The following licensees shall be exempt from the requirements of this section:

1. Any licensee serving in the regular Armed Forces of the United States during any part of the 24 months immediately preceding the annual license renewal date.

2. Those licensees whom the Board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, disability, family hardship, or other unavoidable circumstance.

3. Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

I. Non-Approved Programs

Optometrists may apply for credit for programs not previously approved by the Board, provided that the name and address of the program sponsor and all other information required by the Board to comply initially with section D is submitted to the Board within 45 days after completing the program. Such programs shall be subject to all of the standards herein provided.

CHESTNUT, BROOKS & BURKARD
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
SUITE 854 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

JACK L. CHESTNUT
RICHARD C. JONES (1969)
WILLIAM F. BROOKS, JR.
JOSEPH T. BURKARD
W. ROY JOHNSON
FLOYD E. BOLINE
JAMES C. BECKSTROM
WILLIAM L. ORR
TERRY R. FARMER
THOMAS M. STRINGER
DAVID G. KUDUK

AREA CODE 612
333-6513

October 25, 1973

Mr. Curt Forsland
Deputy Attorney General
Office of the Attorney General
State Office Building
St. Paul, Minnesota 55101

Dear Curt:

Enclosed is a rough memorandum that our office has put together for use at the meeting of the State Board of Optometry this coming Monday. We are in the process of preparing a formal legal brief. Unfortunately, that brief is not ready at this time.

I hope that this will be of some use to you. If you have any questions, please call me or Dave Kuduk of this office.

Very truly yours,

Bill

William F. Brooks, Jr.

WFB:tlu
Enclosure

MEMORANDUM

CHESTNUT, BROOKS & BURKARD
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
SUITE 854, MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

AREA CODE 612
333-6513

TO: Bill Brooks

FROM: Dave Kuduk

DATE: October 24, 1973

RE: Proposed Rules of the State Board of Optometry

BACKGROUND

In order to understand the position of the Minnesota Association of Optometrists and Opticians with regard to the proposed rules of the Minnesota State Board of Optometry it is necessary to define the terms "optician", "dispensing optician", "optometrist", and "ophthalmologist". An "optician" or "optical supplier" is a skilled artisan qualified to grind lenses and perform other tasks which a dispensing optician may not be equipped to perform. Oftentimes he is also a dispensing optician. A "dispensing optician" is a craftsman and a merchant. He may grind lenses and he usually maintains a stock of frames from which his customers may make selections. Under Minnesota law, in dispensing glasses to the public he works under the direction of an optometrist and pursuant to his prescription or the prescription of other persons authorized to examine eyes. Minnesota does not require that either an optician or a dispensing optician be licensed. An "optometrist" is required to be licensed and qualified under the statutes and may examine eyes for refractive errors and prescribe corrective lenses. He may also act as a dispensing optician in filling prescriptions for and dispensing glasses to the public. In Minnesota an optometrist often serves as a supervisor over dispensing opticians.

An "ophthalmologist" is a duly licensed doctor of medicine who specializes in the care of eyes.

In Minnesota, as in most other states, the practice of optometry is divided into two separate facets. Some licensed optometrists, usually members of the Minnesota Optometric Association, examine eyes, fit frames, and dispense glasses. They thus perform all of the functions of an optometrist, and a dispensing optician. Another segment of the industry, members of the Minnesota Association of Optometrists and Opticians, engage in what is often called the retail practice of optometry. Dispensing opticians employed by a corporation or other large retail optometry outlet prepare and dispense optical glasses to the public. These opticians work from prescriptions created by either ophthalmologists or optometrists. In Minnesota these opticians are under the supervision and direction of an optometrist. It is within this industry make-up that the regulations that are now proposed must be viewed.

ADVERTISING

The proposed rule concerning advertising would require that:

> "All optometrists affiliated with any person, firm or corporation shall be responsible for the contents of all advertising for optometric services disseminated by such person, firm or corporation. It shall be deemed unprofessional conduct for any optometrist knowingly to permit a person, firm or corporation with which he is affiliated to advertise in violation of the optometry statutes."

This proposed rule is either grossly unfair, totally unnecessary, or patently illegal. The rule can be read to do one of two things. First, it might require that an optometrist be responsible for any advertising by his employing corporation that would presently be in contravention of the optometry statutes.

Under this reading it would not be "unprofessional conduct" for an optometrist to allow a corporation to advertise the price of optometric services not directly associated with the examination by the optometrist. Thus, an employing firm or corporation could continue to advertise any of the functions carried on by dispensing opticians. This type of rule is totally unfair to the employed optometrist. Certainly he cannot control the policies of the corporation for which he works. He is an employee who neither sets nor influences advertising policy. If a firm or corporation advertises in a manner that is illegal, then the proper course of action is to approach and punish the corporation. It makes no sense to punish one of its employees. This approach interferes with the employment relationship and makes nearly impossible the practice of optometry by the large segment of the industry that would be directly affected.

The Minnesota Supreme Court in Williams v. Mack, 202 Minn. 402, 278 N.W. 585 (1938), held that it was not the letter or the spirit of state law to make an employee optometrist responsible for his employer's alleged violations of law. There is no right or justice in punishing the servant for the misdeeds of the master. If the employer in any respect violates the optometry statutes, the Board should proceed against the offending employer rather than the employee.

A second interpretation of this rule is possible. Under that interpretation a firm or corporation would be restricted in its advertising in the same way that an optometrist is, and if that firm or corporation advertised in a manner that would be illegal if the advertising were done by an optometrist, than an optometrist employed by the firm would be guilty of

"unprofessional conduct". This clearly contravenes both Minnesota Statute and case law.

The Minnesota Optometry Act is contained in Minn. Stats. §148.52 through §148.62. A sentence in §148.56 reads as follows:

> "Nothing in §148.52 - §148.62 shall be construed to apply to . . . sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses thereof. . ."

This section clearly indicates that the types of "unprofessional conduct", including price advertising and free examination advertising, that are enumerated in Minn. Stats. §148.57 (3) do not apply to those functions which are carried out by dispensing opticians under the direction of an optometrist. This ruling has specifically been made in State vs. Benjamin D. Ritholz, 263 Minn. 36, 115 N.W. 2d 743 (1962). In that decision the Court stated:

> "Obviously §148.52 - §148.62 were intended to regulate the practice of optometry. They prescribe the qualifications and requirements for licensing optometrists and direct the Board of Optometry to supervise their professional conduct. The 'unprofessional conduct' referred to in §148.57, subd. 3, including that of price advertising, has reference solely to the practice of optometry. Had the legislature intended thereby to prohibit a dispensing optician from 'price advertising' surely it would have expressed such intent in definite language." 263 Minn. at page 44.

The Court in Ritholz further discussed the distinction in the law concerning price advertising which forbids an optometrist and allows a dispensing optician to advertise. In this regard the Court stated:

> "We cannot escape the conclusion that it is for the legislature rather than the courts to eliminate the distinction noted. For this court to do so would constitute the usurpation of legislative power through judicial fiat."

Certainly it is not proper for the Board of Optometry to eliminate this distinction.

It is relevant to this discussion to consider what the legislature has done with regard to this distinction. As early as 1953 the Minnesota state legislature considered the dichotomy that is raised in this particular section of the statute. In that year House File 671 and its companion Senate File 635 would have changed this provision to make unlawful price advertising by both optometrists and dispensing opticians. Those bills were not passed by our legislature. That legislature recognized that Minn. Stats. §148.57, subd. 3, did not apply to price advertising of eyeglasses by dispensing opticians and chose not to change the law. Again in 1959 House File 1497 and its companion Senate File 1418 would have set up companion procedures for dispensing opticians similar to the Optometry Act. These bills prohibited price advertising by dispensing opticians. Neither bill passed its respective legislative body. In 1961 House File 908 and Senate File 923 were introduced. These bills again would have restricted advertising by dispensing opticians. Again, these bills were defeated. In 1967, 1969, 1971 and again in 1973 bills were introduced that would have restricted advertising by dispensing opticians. In every single legislative session the Minnesota state legislature has declined to enact these bills. The legislative intent to preserve this distinction is clear. For the State Board of Optometry to attempt by rule to eliminate that distinction clearly transcends the power of the Board and violates the legislative intent. Such an effort would be clearly illegal.

Thus, under either of two possible readings of the proposed rule, that rule violates Minnesota law. The rule either attempts to violate a clear legislative intent and existing Minnesota law or it attempt to hold an

employee responsible for the acts of his employer. In either event, the rule should not be allowed.

REQUIRED CONTINUING EDUCATION

Several comments can be made concerning the proposed rule that would require continuing education by optometrists. Basically, that rule is too restrictive. The restrictive nature of the rule clearly discriminates against members of Minnesota Association of Optometrists and Opticians.

There are many subjects other than those that are taught in optometry schools or colleges that are certainly related to the practice of optometry and would be valuable to an optometrist. The proposed rule would allow only the teaching of subjects that are presently taught in optometry schools or colleges. Certainly courses at a medical school relating to the care and treatment and diagnosis of problems in the eye would be relevant. There are other courses of study that are available that should be included. The optometric extension programs offered from Duncan Oklahoma are clearly valuable and have been approved for continuing education in many states. The National Eye Research Foundation of Chicago, Illinois and the Contact Lense Society of America both offer seminars and programs that should be approved. Courses relative to optometric education conducted by any recognized educational institution should be accepted. If more of these programs were included in the list of approved courses, the present discriminatory nature of the regulation would be eliminated. At present, four of the six approved programs are for all practical purposes open only to members of the MOA and not to members of the Minnesota Association of Optometrists and Opticians.

These four are the educational meetings of the North Central States Optometric Conference, the Minnesota Optometric Association, the American Optometric Association, and the American Academy of Optometry. Other educational programs should be approved by the Board after the fact as well as within sixty days prior to the date of the program. An optometrist should be able to attend an educational meeting or seminar and then apply for approval. The regulation should specifically state the standards that will be used in approving such programs. The necessary content and thrust of the program should be specifically outlined.

It would seem unadvisable to adopt Part D of the regulation that would automatically exclude from credit any course sponsored for commercial purposes. It is clearly within the proper realm of continuing education to learn about new pieces of equipment and to become familiar with their proper operation.

Part F of the regulation should also be excluded. The State Board should not have the power to require any particular course of study.

Finally, it makes much more sense to require 24 hours of continuing education every two years, rather than 12 hours every year. This might allow an optometrist to attend a concentrated seminar once every two years for purposes of fulfilling his required education. It might also be advisable during the first year of this program to require only six hours of continuing education because of the necessary time to put such a program into effect.

The State of Georgia has a rule on continuing education that perhaps should be incorporated into the Minnesota rule. That rule states:

> "The Board shall approve only such programs as are available to all persons practicing optometry in the state on a reasonable non-discriminatory fee basis."

Such a rule would eliminate any problems of discrimination in the conduct of this program.

RELEASE OF PRESCRIPTIONS OR SPECIFICATIONS FOR CONTACT LENSES

This proposed rule is clearly violative of Minnesota law. Minnesota Statutes as previously mentioned presently exempt from the Optometry Act "sales upon prescription from persons legally authorized by the laws of the state to examine eyes and prescribe glasses therefor." As a practical matter it is impossible to determine that an optometrist would have knowledge, either actual or implied, of who was going to fill a prescription.

INCORPORATING UNDER THE PROFESSIONAL CORPORATIONS ACT

Although this proposed rule does not affect the Minnesota Association of Optometrists and Opticians, it would seem first that the Board of Optometry has no jurisdiction to adopt such a rule, and secondly that such a rule would clearly contravene the requirements of the new Professional Corporations Act. That act states:

> "The corporate name of any corporation organized under §319A.01 - §319A.22 shall not be used to imply superiority and shall end with the word 'chartered', or the word 'limited', or the abbreviation 'LTD.' or the word 'professional association' or the abbreviation 'P.A.'." Laws 1973, chapter 40.

Clearly for the Optometry Board to require a professional corporation of optometrists to use in their corporate name either the abbreviation "O.D." or the word "optometry" is in contravention of this law.

BRIEF OF THE

MINNESOTA ASSOCIATION OF OPTOMETRISTS AND OPTICIANS

SUBMITTED TO THE STATE BOARD OF OPTOMETRY

IN CONNECTION WITH THE HEARING CONDUCTED

OCTOBER 29, 1973 ON PROPOSED OPTOMETRY

RULES AND REGULATIONS.

PREPARED AND SUBMITTED BY:

CHESTNUT, BROOKS & BURKARD
A Professional Association

By William F. Brooks Jr.
William F. Brooks, Jr.
Attorneys for Minnesota Association of
Optometrists and Opticians
854 Midland Bank Building
Minneapolis, Minnesota 55401

THE HEARING BEFORE THE STATE BOARD OF OPTOMETRY ON OCTOBER 29, 1973 FOR THE PURPOSE OF CONSIDERING PROPOSED AMENDMENTS TO THE OPTOMETRY RULES AND REGULATIONS WAS CONDUCTED IN AN ILLEGAL MANNER BEFORE AN ILLEGALLY CONSTITUTED ADMINISTRATIVE BOARD

The Minnesota State Board of Optometry, allegedly proceeding pursuant to Minn. Stats. §15.0412, held a public hearing on October 29, 1973 on proposed amendments to the optometry rules and regulations. The State Board is so composed and the hearing was so held that any action on those proposed rules and regulations by that Board would be clearly illegal.

The Minnesota State Board of Optometry is composed of five doctors of optometry, all of whom are engaged in private practice. Optometry in Minnesota is practiced by two distinct groups. Besides those who practice privately or in the context of professional corporations, a large segment of the optometry practice is conducted by optometrists employed by corporations. These employed optometrists comprise between 20% and 25% of the total number of optometrists practicing within the State of Minnesota. No employed optometrist is a member of the State Board of Optometry. The proposed rules, however, as will be demonstrated infra, seriously disadvantage employed optometrists. It is clear that elimination of employed optometrists or severe restriction of their practice will work to the pecuniary benefit of the private practitioner. In such circumstances, a State Board composed entirely of one segment of the industry cannot act to create rules and regulations that adversely affect

another segment of the industry. The United States Supreme Court recently held in Gibson vs. Berryhill, ____ U.S. _____ 93 S.Ct. 1689, _____ L.Ed. _____ (1973), that in a case where a Board of Optometry is composed solely of private practitioners, the Federal District Court was warranted in concluding that the Board members' possible personal interest would preclude that Board from acting on the licenses of those members. The Minnesota State Board of Optometry similarly would be affecting the licenses of employed optometrists if they were to pass the proposed rules. That action works to the benefit of the private practitioner. The courts of the United States have consistently held that persons with a substantial pecuniary interest in legal proceedings cannot adjudicate those disputes. Tumey vs. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927), Ward vs. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed. 2d 267 (1972). The prevailing view is that "most of the law concerning disqualification because of interest applies with equal force to . . .administrative adjudicators." Davis, Administrative Law Text, 1972, Section 12.04, page 250.

Additionally, an action on the part of the State Board of Optometry at this point in time contradicts the clear legislative intent expressed in Laws 1973, Chap. 638, Sect. 20, which provides for two public members to sit on the State Board of Optometry. The legislature clearly intends that the public should have some input into the activities of the various state boards. The public members have not yet been appointed to the State Board of Optometry. Those appointments will soon be made. The present action on the part of

the State Board of Optometry is a clear effort to circumvent the intent of the legislature and to enact rules before the public members become a part of the State Board.

Minn. Stats. §15.0412 requires that any state board demonstrate the need for any proposed rule or regulation. The record of the proceedings in this matter is totally devoid of any such showing. While there are indefinite allusions to a "number of complaints", no specific complaints are cited, no specific numbers of complaints are given, and the sources of such complaints are not identified. The transcript on pages 5 and 6 indicates an effort on the part of Mr. Howard Marker, Esq., attorney for the State Board of Optometry, to demonstrate a need for proposed Opt. 1. Nowhere in that statement does Mr. Marker demonstrate a need for the proposed rule. At page 64 of the transcript Mr. Marker again attempts to show a need, this time for proposed Opt. 5. That need is stated as "to protect the public by inhibiting the ability of the unlicensed and unqualified to continue to jeopardize the public health by practicing optometry in violation of the law." This is clearly not the statement of need that is intended by the requirement of Section 15.0412. Adjudicative facts are to be distinguished from legislative facts. It is adjudicative facts that must be shown in the statement of need. Professor Kenneth Culp Davis, defines these two types of facts:

> "Adjudicative facts are the facts about the parties and their activities, businesses, and properties. Adjudicative facts usually answer the questions of who did what, where, when, how, why, and with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law

and policy and discretion."

Davis, Administrative Law Treatise, 1958, section 7.02, page 413.

In showing a need for the enactment of rules and regulations by a state agency, it is adjudicative facts, not legislative facts, that must be demonstrated. Legislative facts, such as those reflected in the record, are properly before the state legislature for purposes of creating new legislation. Nowhere in the record of the hearing conducted by the State Board of Optometry is reference made to any particular facts that indicate a need for any of the proposed rules. There is no demonstration that the present operation of the business in any way requires the enactment of the proposed regulations. The showing of need required by Minnesota law is clearly lacking.

Minnesota law defines a "contested case" as a "proceeding before an agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional rights to be determined after an agency hearing." M.S.A. §15.0411. The proposed rules in this case affect the property rights of an industry and its individual members. Employed optometrists and dispensing opticians are adversely affected by proposed Opt. 1, 4 and 5. To enact such regulations without a full and adequate hearing affects the business and property rights of these people without due process of law. Under these criteria this is a "contested case". The rules of the Attorney General provide the requirements for the hearing of a contested case. The contested case must be heard by an impartial hearing officer who is not employed by the agency that is proposing

the regulation. The presiding officer was Dr. Leo A. Meyer, a member of the State Board of Optometry. In a contested case there must be adequate notice to all interested persons. Clearly the Board of Optometry is aware of the interest in these proceedings of certain optometrists and of dispensing opticians. Dr. Oscar VanWert testified that he had not received notice of the hearing. He was informed of the hearing only on the morning that the hearing was held when he read about it in an article in the Minneapolis Tribune. (T. page 34) An examination of the affidavit of service of notice of the hearing demonstrates clearly that the Board omitted to notify licensed optometrists in the state, although it has particular knowledge as to who they are and where they reside.

Third, there must be an opportunity to consult with the agency informally to attempt to resolve conflicts on the various issues. To this end the rules of the Attorney General provide for pre-hearing conferences. No such conference was held or is scheduled in the instant case.

I.

PROPOSED OPT. 1 WOULD LIMIT ADVERTISING IN A MANNER THAT IS CONTRARY TO MINNESOTA LAW

Proposed Opt. 1 states in part:

> "All optometrists affiliated with any person, firm or corporation shall be responsible for the contents of all advertising for optometric services disseminated by such person, firm or corporation. It shall be deemed unprofessional conduct for any optometrist knowingly to permit a person, firm or corporation with which he is affiliated to advertise in violation of the optometry statutes. . . ."

This proposed rule is ambiguous. The State Board of Optometry

apparently reads the rule to say that no employing firm or corporation may advertise the price of services of an optometrist. (T. page 13) Such a firm or corporation could continue to advertise the price of other optometric services. This reading is clearly strained. It does not accurately interpret the clear meaning of the proposed regulation. The second sentence quoted above clearly is an effort to make the employing firm, person or corporation subject to the optometry statutes. It can be given no other reasonable reading.

The State Board submits through its attorney, Howard Marker, Esq. (at page 13 of the hearing transcript, as well as at other points during the hearing), that the intent of proposed Opt. 1 is not to eliminate advertising. This position asserts that an employed optometrist somehow must prevent his employer from advertising any things that may presently be illegal for the employer to advertise. This is a strained reading of the proposed regulation. In 1936 the State Board of Optometry adopted Optometry Rule #6 which reads as follows:

> "Licensed optometrists employed by any person, firm or corporation for a salary or commission or both for the purpose of supervising and personally attending the sale of glasses as merchandised under the provisions of the optometry law of the State of Minnesota are presumed to at all times have full knowledge of and consent to every advertisement or announcement of their employer involving the sale of glasses or leading the public into the belief that such person, firm or corporation is authorized to render optometrical services and such optometrist will be held responsible for all such advertisements on the grounds and for the reasons that such advertisements constitute unprofessional conduct on the part of the such optometrist."

The Minnesota Supreme Court, in Williams vs. Mack, 202 Minn. 402,

278 N.W. 585 (1938), held specifically that:

> "We think the board in rule #6 exceeded the power granted it. . .Rule #6 itself recognizes that it is lawful for a licensed optometrist to accept employment by another in the business of retailing eyeglasses. The employment being lawful under the optometry law as it now stands, it seems to us that it is contrary to the letter and spirit of the law to make the employee responsible for the employer's violation of the law and to impute knowledge of such violations to the employee. If the employer violates the optometry act in any manner he may be enjoined or prosecuted." 202 Minn. at pages 405-406.

The wording of the proposed 1936 optometry rule #6 so closely parallels that of proposed Opt. 1 that the holding in Williams vs. Mack is controlling. State law which specifically allows employment of an optometrist cannot at the same time require that the employee be responsible for the advertising of his employer. Thus, even under the interpretation that the State Board of Optometry now puts forth, the proposed rule is clearly illegal.

The truth is that a plain reading of the proposed rule restricts a person, firm or corporation who employs an optometrist in the same way that an optometrist is presently restricted. That firm or corporation could not advertise price. If a firm or corporation did advertise price, which is clearly "in violation of the optometry statute" for an individual licensed optometrist, it would be deemed unprofessional conduct on the part of the employed optometrist. As a result, to avoid losing his license, the employed optometrist would be forced to terminate a lawful employment. This illegal result and interpretation cannot be permitted.

The Minnesota Optometry Act is contained in Minn. Stats. §148.52 - §148.62. One provision in §148.56 reads as follows:

"Nothing in §148.52 - 148.62 shall be construed to apply to. . .the sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor. . ."

This clearly indicates that the types of "unprofessional conduct" including price advertising, that are enumerated in Minn. Stats. §148.57(3) do not apply to those functions which are carried out by dispensing opticians under the direction of an optometrist. The Minnesota Supreme Court in Williams v. Mack, supra, State v. Goodman, 206 Minn. 202, 288 N.W. 157 (1939), and most recently State v. Ritholz, 263 Minn. 36, 15 N.W. 2d 743 (1962), has specifically held that the provisions of the Optometry Act do not apply to the activities of a corporation or firm that employs an optometrist. These firms do not practice optometry. In State v. Ritholz, supra, the Court stated:

"Obviously §148.52 - 148.62 were intended to regulate the practice of optometry. They prescribe the qualifications and requirements for licensing optometrists and direct the Board of Optometry to supervise their professional conduct. The 'unprofessional conduct' referred to in §148.57, subd. 3, including that of price advertising, has reference solely to the practice of optometry. Had the legislature intended thereby to prohibit the dispensing optician from price advertising surely it would have expressed such intent in definite language." 263 Minn. at page 44.

Minnesota law thus provides a distinction that allows a dispensing optician or a firm employing an optometrist to advertise prices, but forbids the same advertising by an optometrist. In this regard the Court in Ritholz further stated:

"We cannot escape the conclusion that it is for the legislature rather than the courts to eliminate the distinction noted. For this court to do so would constitute the usurpation of legislative power through judicial fiat." 263 Minn. at p. 44.

Certainly, if it is not proper for the Court to eliminate this

distinction, the Board of Optometry exceeds its power in attempting so to do.

It is relevant to consider the activity of the Minnesota state legislature with regard to this section of the statute. As early as 1953, the Minnesota state legislature considered the question of dual treatment of optometrists and dispensing opticians. In that year, H.F. 671 and its companion S.F. 635 would have changed this provision to make unlawful price advertising by both optometrists and dispensing opticians. Those bills were not passed by our legislature. The mere existence of the bill indicates that the legislature recognized the existence of but did not act upon this dichotomy of treatment.

Again in 1959, H.F. 1497 and its companion S.F. 1418 would have brought dispensing opticians under the terms of the Optometry Act. These bills prohibited price advertising by dispensing opticians. Neither bill passed its respective legislative body. In 1961, H.F. 908 and S.F. 923 were introduced. These bills, which would have restricted advertising, were defeated. In 1963, S.F. 555 and its House companion H.F. 488 would have restricted the employment of optometrists, and among other things, brought the employing firm or corporation under the terms of the Optometry Act. Also that year, H.F. 1865 specifically provided that advertising by dispensing opticians would be forbidden. Both of these bills were defeated. In 1965, H.F. 578 and its companion S.F. 479 attempted to regulate the practice of optometry by prohibiting corporate employment. This bill was defeated. In 1967, S.F. 2205 and

its companion H.F. 2430 would have brought dispensing opticians under the State Board of Optometry and would have provided that the activities of those opticians would be governed by the Optometry Act. That bill was defeated. In 1969, S.F. 1073 would have forbidden advertising by opticians and again, the bill failed to pass. In 1971, S.F. 1181 and its companion H.F. 1360 again provided for the licensing of optometrists and the placing of opticians under the terms of the Optometry Act. It did not pass.

Thus, nearly every session of our legislature in the past 20 years has considered whether dispensing opticians should be allowed to advertise. In every single instance, the legislature has determined by its failure to act that dispensing opticians and firms and corporations that employ optometrists do not engage in the practice of optometry and as such are not bound by the Optometry Act. Clearly, for the State Board of Optometry to attempt now to do by rule or regulation what the legislature has refused to do over the past 20 years exceeds the proper powers of that State Board.

Attached hereto and made a part hereof is a study financed by the Public Health Service which demonstrates that bans on advertising cause increased costs for eyewear. That study alone is sufficient cause to estop adoption of the proposed rule.

The Minnesota Association of Optometrists and Opticians urges that the State Board refuse to enact proposed optometry regulation #1. Under any possible reading, that proposed regulation violates Minnesota law and is contrary to public policy. If the State Board

of Optometry were to adopt the proposed regulation, it must certainly be invalidated either upon initial review by the State Attorney General, or in the course of later litigation.

II.

PROPOSED OPTOMETRY RULE #4 CONCERNING CONTINUING EDUCATION DOES NOT IMPLEMENT THE CLEAR LEGISLATIVE REQUIREMENTS OF LAWS 1973, CHAPTER 62

Laws 1973, Chap. 62, states in part:

> "The Board may, after promulgation of rules relating thereto and the issuance of an initial list of approved courses, require that optometrists satisfactorily complete appropriate educational requirements as a condition precedent to annual license renewal. Courses conducted within the State of Minnesota to be eligible for approval by the Board must be open to all optometrists licensed in this state. The Board shall consider both curriculum and fees in approving courses." (Emphasis added)

It is pursuant to this statute that the State Board of Optometry now proposes optometry regulation #4.

The Minnesota Association of Optometrists and Opticians strongly supports required continuing education for optometrists. Our only concern is that the proposed rule does not adequately provide fair availability of courses at equal fees to all optometrists within the state. This non-discriminatory requirement is clearly indicated in the statute. See underlined portions above. Attached hereto and identified as Exhibit B are changes to the proposed regulation which would be far preferable. The Minnesota Association of Optometrists and Opticians also has previously provided the State Board of Optometry with two proposals, both of which are incorporated in Exhibit B. The first was a true copy of the proposed rules of the State Board of Pharmacy concerning continuing education, sub-

mitted at the hearing as M.A.O.O. Exhibit 1. Those proposed rules for pharmacists implement in a better way similar requirements for continuing education and represent a better approach which the Minnesota Association of Optometrists and Opticians wishes to advocate for optometry. The second proposal to the State Board was a proposed rule to assure non-discrimination (M.A.O.O. Exhibit 2.) That reads:

> "The Board shall approve only such programs as are available to all persons practicing optometry in the state on a reasonable non-discriminatory fee basis."

More specific proposed changes are contained in the attached Exhibits B. In summary, we make the following suggestions:

The Board proposal would certify only subjects that are presently taught in optometry schools or colleges. Certainly, there are other courses being taught at medical schools or other institutions relating to the care, treatment and diagnosis of problems of the eye that would be valuable as continuing education. This restriction in proposed optometry regulation #4 to only courses presently taught in optometry schools or colleges is unreasonable and arbitrary.

The compliance period should extend over a period of more than one year. It is suggested that 24 hours of continuing education be required bi-annually. This would allow an optometrist to attend a concentrated seminar once every two years for purposes of fulfilling his required education. It would eliminate hardships for licensed optometrists in scheduling attendance at such meetings.

The proposed list of approved programs is much too restrictive. There are various other optometric programs offered, for example those of the National Eye Research Foundation, the Contact Lens

Society, and the Optometric Extension Program, which should be given approval, as they are by other states. Courses relative to optometric education conducted by any recognized institution should be accepted.

The requirement that educational programs can only be approved 60 days prior to the date of the program is unreasonable. Approval after attendance should be provided.

A rule setting forth specific criteria for approval is clearly preferable to one listing a few selected programs that meet the approval of the present Board, which lacks two public members in its present membership.

Courses sponsored for commercial purposes should not be automatically excluded. It is clearly within the proper realm of continuing education to learn about new equipment and to become familiar with its proper operation.

In sum, continuing education, while a valuable and perhaps necessary requirement, should not be so limited in its scope as to make difficult the attainment of the required course hours. Courses should be open to all optometrists and there should be enough courses available so that every optometrist can fulfill his requirement with reasonable ease and convenience.

Specific suggestions are included in the attached exhibit B.

III.

THE PROPOSED OPTOMETRY RULE CONCERNING CONTACT LENSES CLEARLY VIOLATES MINNESOTA LAW

Minn. Stats. §148.56 reads in pertinent part:

"Nothing in §148.52 to 148.62 shall be construed to apply to. . .the sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor. . ."

The proposed Opt. 5 attempts to regulate the adaptation to the eye of contact lenses in a manner that would regulate both opthalmologists and opticians. The use by the State Board of Optometry of the phrase "adaptation to the eye" makes uncertain the intent of the Board concerning what parts of the process of providing contact lenses to a customer could be accomplished by a paramedical person. Clearly the State Board does not have the power to regulate technicians but only optometrists -- and certainly not doctors of medicine. It is also clear under Minn. Stats. §148.56 that the Board has no power to regulate dispensing opticians. The proposed rule attempts to regulate both such groups.

Additionally, Laws 1973, Chap. 709, is clear that the State Board of Health is the proper state agency to act in this area if action is required. Under the terms of that law, the State Board of Health is given power to investigate the use of technicians and aids by the various medical professions. Upon finding a need for regulation, the State Board of Health has the power to license or otherwise regulate these paraprofessionals. The legislature in enacting Chapter 709 stated its clear intent to have any and all such regulation conducted by the State Board of Health. The present attempt by the State Board of Optometry to pre-empt regulation in one such field clearly exceeds its authority and ignores legislative intent as expressed in Chapter 709.

Exhibit A

(42)

Reprinted for private circulation from THE JOURNAL OF LAW AND ECONOMICS, Volume XV (2), October, 1972, Copyright 1972, The University of Chicago.

THE EFFECT OF ADVERTISING ON THE PRICE OF EYEGLASSES*

LEE BENHAM
University of Chicago

I. INTRODUCTION

THE impact of advertising on prices has long been a matter of dispute. It has been argued that the persuasive aspects and the product differentiation effects of advertising tend to raise the prices of products to consumers. On the other hand, by providing consumers with information about products and alternatives in the market, allowing them to economize on search and to locate low-priced sellers more readily, advertising may tend to lower prices to consumers. It may also lower prices by allowing sellers or producers to economize on other merchandising costs and to take advantage of economies of scale. On purely theoretical grounds, therefore, no reliable prediction can be made as to the overall effect of advertising on prices.[1]

While there has been much discussion of this question, relatively little has been done to estimate empirically the relationship between advertising and prices. Some studies have compared prices for different brands of "homogeneous" items, some of which were advertised and some of which were not. In general, the advertised brands were found to sell at higher prices.[2] While such comparisons have frequently neglected such characteristics as quality control, service provided with the sale, location of sales outlets, waiting time to purchase, and inventory and range of stock available, it is not my purpose here to further refine measures of homogeneous commodities. It is rather to propose an alternative approach to this question.

One way to understand better the full impact of advertising on prices is

* I would like to thank Ronald Andersen for generously making available the data used in this study, Sara Paretsky for assistance in editing the data, and Harold Pashner for computer programming. Helpful comments by Gary Becker, Alexandra Benham, Harold Demsetz, Reuben Kessel, Willard Mueller, and Melvin Reder are gratefully acknowledged. This investigation was supported by PHS Grant Number HS00080 from the National Center for Health Services Research and Development.

1 See The Economist Advisory Group, The Economics of Advertising: A Study (1967).

2 For example, Borden compared the prices of private and manufacturers brands of several items. An extreme case was that of Bayer aspirin: in 1938 the wholesale price for the generic equivalent was only 17% of the wholesale price for Bayer. See Neil H. Borden, The Economic Effects of Advertising 576 (1944).

to examine markets for a product in which advertising is prohibited and markets for the same product in which advertising is allowed, comparing the price structures of the two types of markets. Market organization and price structure may be significantly affected by the presence in a market of even one seller who advertises or who potentially can do so. The full impact on prices of the existence of advertising may be much greater than the price differences we observe when some producers of an item choose to advertise it and others do not.

For a variety of goods and services, especially in the service sector, advertising is frequently prohibited by cities or states. Examples are most services of physicians and dentists, prescription drugs, and eyeglasses. Unfortunately, for most such items there is little if any variation in the restrictions imposed across states. A major exception is eyeglasses: some states prohibit advertising related to eyeglasses and eye examinations while others do not. By examining the prices paid for these items by a sample of individuals in each category of states, we may gain more insight into the impact of advertising on prices.

II. Advertising and Information

The full cost of purchase (C_f) of a good to a consumer includes not only the cost of the item itself (C_g) but the cost of knowledge (C_k) concerning the location of sales outlets and prices and the cost of time and transportation (C_t) required to purchase the item:

$$C_f = C_g + C_k + C_t$$

These components of full cost are in part jointly determined. For a given frequency distribution of retail prices offered in the market, the distribution of prices paid (C_g) will depend upon the extent of consumers' knowledge of the alternative prices available and the cost of time and transportation. Past studies have shown that both the mean and the dispersion of prices paid generally decrease as the extent of search (knowledge) increases.[3]

Insofar as advertising increases consumers' knowledge of alternative prices in the market, it will tend to decrease the mean and dispersion of prices paid. If there are economies of scale in retailing the good, then the effect of advertising in lowering mean prices should be intensified.[4] In general, large-volume

[3] See the work of Stigler and others on the economics of information: George J. Stigler, The Economics of Information, 69 J. Pol. Econ. 213 (1961); Roger E. Alcaly, Information and the Distribution of Prices, Sept. 1970 (Dep't of Econ., Columbia Univ., unpublished paper presented at 2nd World Congress of Econometric Society, Cambridge, Eng.).

[4] However, the consequences for price dispersion are less clear-cut. When economies of scale exist, the size distribution of firms will be changed by advertising. Consequently, the

low-price sellers are dependent upon drawing consumers from a wide area and consequently need to inform their potential customers of the advantages of coming to them. If advertising is prohibited, they may not be able to generate the necessary sales to maintain the low prices. In such a situation, the cost of disseminating information to consumers will more than offset the other economies of scale. At the same time, the likelihood that small-volume high-priced retailers survive in the market will increase. Consequently, the distribution of retail prices offered will shift upward. The question under consideration here is the extent to which economies resulting from the information provided through advertising are offset by the costs of advertising and by product differentiation.

III. Advertising Restrictions in the Market for Eyeglasses

The advertising of eyeglasses and eye examinations is controlled in many states by various state agencies. From a predominantly laissez-faire situation in the first decades of this century, the trend has been toward increased regulation and restriction of advertising. In 1963, the year for which data on prices were available for this study, approximately three-quarters of the states had some regulations against advertising. Some states prohibited only price advertising while others allowed virtually no information concerning eye examinations or eyeglasses to be published, broadcast, or in any way distributed.[5] Since 1963, several additional states have introduced restrictions. The following excerpts are taken from 1963 laws.

Arkansas: The following Acts are hereby declared to be unlawful Acts: . . . For any optometrist, physician, surgeon, individual, firm, partnership, corporation, wholesaler, jobber or retailer to solicit the sale of spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or any other optical appliances or devices, eye examinations or visual services including vision training or orthoptics by radio, window display, television, telephone directory display advertisement, newspaper advertisement, hand bills, circulars, prospectus, posters, motion pictures, stereopticon slides or any other printed publication or medium or by any other means of

average cost of time and transportation to purchase the given item may increase, even as costs of information fall. In this situation, the dispersion of prices paid will depend upon several factors including the cost of time and transportation to consumers and the functional relationship between prices and volume of sales.

[5] Because sellers are prevented from advertising through normal channels, they are not necessarily prevented from providing information through other methods. The selling effort within a store is in part a substitute for general advertising. Joint sales arrangements may be developed (where permitted) to take advantage of consumer knowledge concerning low prices for other items which can be advertised. Insofar as these other ways of offering information are close substitutes for regular advertising, then the prohibition will not have much effect.

advertisement; or to use any method or means of baiting, persuading, or enticing the public into buying spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or other optical appliances or devices for visual correction or relief of the visual system or to train the visual system. . . .

Nothing in this Act except as expressly provided otherwise herein shall apply to physicians and surgeons, nor to persons who sell eyeglasses, spectacles, lenses, frames, mountings, or prisms at wholesale on individual prescriptions to optometrists, physicians, and surgeons. . . .[6]

Florida: Any certificate of registration granted by the Florida state board of optometry . . . may be revoked by said board, if the person . . . is found guilty of unprofessional conduct. . . . 'Unprofessional conduct' . . . is defined to mean any conduct of a character likely to deceive or defraud the public, including among other things free examination advertising, price advertising, billboard advertising, use of any advertising either directly or indirectly, whether printed, radio, display, or of any nature which seeks to solicit practice on any installment payment or price plan. . . .

It is unlawful for any person, firm or corporation to . . . advertise either directly or indirectly by any means whatsoever any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses or any optometric sevice; to advertise in any manner that will tend to mislead or deceive the public; to solicit optometric patronage by advertising that he or some other person or group of persons possess better qualifications or are best trained to perform the service or to render any optometric service pursuant to such advertising. This section is passed in the interest of public health, safety and welfare, and its provisions shall be liberally construed to carry out its objects and purposes.[7]

A survey was made of several state boards of optometry concerning the sanctions used to enforce these regulations. Injunctions and suspensions of license for periods up to a year were the most common sanctions mentioned by the respondents. In some cases they said that fines were levied and licenses revoked. There appears to be careful policing and enforcement of these regulations in most states.

IV. Price Differentials Associated with Advertising Restrictions

The data on eyeglass and eye examination prices used in this study were obtained from a 1963 survey of a national sample of individuals. The survey examined use of and expenditures on medical services.[8] The present study

[6] The Blue Book of Optometrists 87-88 (1964).

[7] *Id.* at 146-47.

[8] See Ronald Andersen & Odin W. Andersen, A Decade of Health Services: Social Survey Trends in Use and Expenditure (1967).

uses a subsample of 634 individuals who each underwent an eye examination and/or obtained a pair of eyeglasses in 1963. In addition to the amount spent by individuals for eye examinations and eyeglasses, detailed demographic information on each individual was included in the survey. With this information, the prices paid for eye examinations and eyeglasses could be associated with the state of purchase.

The analysis below deals principally with eyeglasses and not with eye examinations; very few states permitted advertising of eye examinations in 1963. However, 291 individuals in the survey quoted only the combined price of the examination and glasses. Since relatively little variation in the cost of eye examinations was found across states and since prices of examinations and eyeglasses were not highly correlated across states,[9] the systematic variation in total cost examined here is assumed to reflect variation in the cost of eyeglasses.

To estimate the differential in prices associated with prohibition of advertising, two comparisons were made. First, the mean price paid for eyeglasses and the mean price paid for eyegiasses and eye examination together were calculated for individuals living in states with and without restrictions on advertising. Next, since the demographic characteristics of individuals in the sample were not uniform across the states, the following simple model was used to estimate price differentials.

$$P_i = \alpha + \beta_1 X_{1i} + \sum_{j=2}^{5} \beta_j X_{ji} + \mu_i$$

where P_i is the price paid by individual i for his eyeglasses;

X_{1i} is a dummy variable which equals 1 if individual i purchased his eyeglasses in a state with complete prohibition of advertising, and equals 0 otherwise;

$X_{2i}, \ldots, X_{5i}$ are total family income, age, sex, and family size.[10]

Thus β_1 estimates the average difference in dollars paid for eyeglasses between states with complete prohibition of advertising and states without such prohibition.

[9] States with low prices for eyeglasses had a higher proportion of combined price quotes. This might disguise lower mean prices for examination in those states.

[10] These variables might account for the differences in prices paid across states. In addition, various other combinations of variables not shown here were examined, including education of individual, race of individual, size of city of residence, and mean level of education and income in county of residence. The coefficient of the advertising variable was basically unchanged when these latter variables were included in the estimating equation.

TABLE 1

MEAN COST OF EYEGLASSES AND MEAN COMBINED COST OF EYE EXAMINATION PLUS EYEGLASSES IN 1963 AS A FUNCTION OF RESTRICTIONS ON ADVERTISING IN STATES (in Dollars)

Population Group	States with Complete Advertising Restrictions $\overline{X}_1$	N	States with No Advertising Restrictions $\overline{X}_2$	N	$\overline{X}_1$-$\overline{X}_2$
	Eyeglasses Alone				
1) All individuals	33.04	50	26.34	127	6.70
2) All individuals in Texas, North Carolina, and the District of Columbia	37.48	21	17.98	27	19.50
	Eyeglasses and Eye Examinations Combined				
3) All individuals	40.96	121	37.10	261	3.86
4) All individuals in Texas, North Carolina, and the District of Columbia	50.73	37	29.97	72	20.76

There appears to be no single most satisfactory way to categorize states by the extent to which they restrict advertising, so two sets of estimates are presented to indicate the likely range of impact. The first set of estimates (Table 1, line 1 and Table 2, equation 1) is based on all individuals purchasing eyeglasses in 1963 in states either with no restrictions on advertising or in states with complete prohibition of it.[11]

To estimate the probable upper bound of the effects of advertising restrictions, the second set of estimates (Table 1, line 2 and Table 2, equation 2) is based only on individuals living in states at the extremes: Texas and the District of Columbia, extreme laissez-faire states, versus North Carolina, a state with extensive restrictions in force for a number of years prior to 1963 (hence

11 Several sources of information were used to determine states' restrictions on advertising. State laws were canvassed, a survey of state optometry board members was made, 1963 newspapers from several states were sampled to search for eyeglass advertisements, and optometrists in several states were contacted. The problem was to ascertain not only the restraints against advertising by optometrists but also the restraints against advertising by other sellers. In some states optometrists were prohibited from advertising but opticians or commercial firms were permitted to advertise. States were classified as allowing advertising if any sellers were permitted to advertise. Despite the aforementioned search, it was not possible to classify several states satisfactorily. Furthermore, Ohio was excluded because cities apparently had regulatory authority over advertising; New Jersey was excluded because the individuals sampled lived predominantly near New York City, creating substantial classification problems. In addition, the original survey did not include respondents from some states. In the estimates here, states classified as having no restrictions on advertising in 1963 are: Alabama, the District of Columbia, Georgia, Illinois, Indiana, Kansas, Maryland, Michigan, Minnesota, Missouri, Texas and Utah. States classified as having total prohibition of advertising are Arkansas, Massachusetts, North Carolina, North Dakota, Oklahoma, and South Carolina.

TABLE 2

REGRESSION ESTIMATES FOR COST OF EYEGLASSES AND COMBINED COST OF EYE EXAMINATION PLUS EYEGLASSES FOR VARIOUS POPULATION GROUPS IN 1963 AS A FUNCTION OF RESTRICTIONS ON ADVERTISING IN STATES AND OTHER VARIABLES
(t statistic in parentheses)

Population Group	Complete Advertising Restrictions 0 = No, 1 = Yes	Total Family Income	Age	Sex Female = 0 Male = 1	Family Size	Constant	R^2	$\bar{R}^2$	N
				EYEGLASSES ALONE					
1) All individuals in states with complete restrictions or with no restrictions	7.482 (2.5)	.03981 (1.4)	.01246 (.17)	−3.192 (−1.1)	.1256 (.11)	23.27 (3.5)	.046	.018	177
2) All individuals in Texas, North Carolina and District of Columbia	18.89 (4.1)	−.02422 (−.5)	.1572 (1.1)	−8.298 (−1.6)	.1599 (.07)	18.06 (1.54)	.34	.26	48
				EYEGLASSES AND EYE EXAMINATION COMBINED					
3) All individuals in states with complete restrictions or with no restrictions	4.33 (1.96)	.04560 (2.03)	.05615 (.96)	−.2998 (−.15)	−1.528 (−1.92)	36.72 (7.5)	.038	.025	382
4) All individuals in Texas, North Carolina and District of Columbia	21.07 (5.6)	.001651 (.04)	.06701 (.63)	−3.437 (.94)	−2.54 (−1.6)	37.30 (4.5)	.28	.25	109

likely to have the long-run effects of these restrictions in evidence). This latter set of estimates is likely to overstate the impact of advertising restrictions, since North Carolina had other laws which would tend to raise prices independent of advertising regulations, and the proportion of the total price difference which can be attributed to advertising restrictions cannot be determined at this stage.

In the first set of estimates, the difference in mean prices of eyeglasses between the two categories of states is $6.70, with the lower mean price found in states having no advertising restrictions (Table 1, line 1).[12] The regression estimate of the difference is similar, $7.48 (Table 2, equation 1). The difference in price between the most and least restrictive states is much larger, $19.50 as measured by means (Table 1, line 2) and $18.89 as measured by the regression coefficient (Table 2, equation 2). Estimates using combined cost of eyeglasses and eye examinations yield the same results, although the absolute difference is somewhat smaller in one case (Table 2, equation 3).

Despite the shortcomings of these estimates,[13] they serve to indicate the direction and magnitude of effect. The estimates of eyeglass prices alone suggest that advertising restrictions in this market increase the prices paid by 25 per cent to more than 100 per cent.[14] Furthermore, these estimates are

[12] The coefficient of variation in prices (σ/X) is also smaller in states which allow advertising (.56) as compared with states which prohibit advertising (.73).

[13] The coefficient of determination is low in these estimates. In terms of predicting the prices paid by individuals for eyeglasses, the model is obviously incomplete. A higher R^2 would be desirable, but results of this order are common in estimates of economic models which use individual data. One of the likely reasons for the low R^2 in this case is the unmeasured variation in type and quality of eyeglasses purchased. In the survey used, individuals were not asked about the specification or quality of frames and eyeglasses purchased. However, provided that quality is uncorrelated with the advertising variable X_1, the coefficient β_1 is an unbiased estimate of the systematic effects of advertising on prices. This issue is discussed *infra* at 345-48.

It has also been suggested that the difference in prices between states with advertising and states without is due to systematic variation in types of service provided: where physicians are the more frequent source of eye care, that is, in the restrictive states (see Table 4), fees for non-routine services may have been more frequently included with fees for eye examinations and eyeglasses. Although all the original questionnaires were examined for any indication that services other than eye examination and eyeglasses were provided, and these cases were excluded from the estimates of this paper, the possibility remains that a few non-routine items may have been included in the sample. To see if a few expensive cases affected the overall results, *median* prices for eyeglasses were calculated. The difference in median prices between states with advertising and states without is $4.00, and between North Carolina and Texas and the District of Columbia is $14.00, with the higher prices in the states restricting advertising.

[14] A further comparison was made by sampling, through personal visits, the prices of eyeglasses at nineteen opticians, optometrists, and commercial firms in Texas and New Mexico in July, 1971. A price quote was requested for eyeglasses with a given lens and frame specification without an examination. The mean price sampled in New Mexico, a

likely to understate the total savings to consumers occasioned by advertising, since the search process itself is less expensive when information is more readily and cheaply available.[15]

V. Alternative Explanations of Observed Price Differentials

Some have argued that in this model advertising restrictions serve only as a proxy for other restraints on competition.[16] If this is so, then the higher prices observed in states with restrictions on advertising may be improperly attributed to the advertising restrictions. For example, interstate barriers to mobility for optometrists and opticians might account for the observed price differentials. If there are effective barriers to entry in some states, there will be an artificially low number of optometrists and opticians per capita there,[17] and this in turn will be reflected in higher prices. If states restricting advertising also keep the number of optometrists and opticians artificially low by restrictions on entry, then the higher prices might be inappropriately attributed to advertising restrictions.

To examine this question, the equations in Table 1 were re-estimated including as additional variables the number of optometrists and opticians per capita. To the extent that barriers to entry are systematically associated with the restrictions on advertising, the coefficient of the advertising variable should be reduced in absolute value when these two variables are added to the equation. However, the coefficient of X_1 was essentially unchanged when these two variables were added.

Many other types of regulations, if vigorously or selectively enforced, could

---

state with restrictions on advertising, was \$31.70 ($n = 10$) and in Texas, a state without restrictions, \$25.90 ($n = 9$). The difference in mean prices paid by consumers would be larger than those figures indicate, since the volume of sales in the low-priced firms in Texas is much larger than the average volume of the other outlets.

Consumers in New Mexico are apparently not completely unaware of the lower prices in Texas. A newspaper editor from Alburquerque, New Mexico told Professor Yale Brozen of the University of Chicago that some families had in the past driven from Albuquerque to Amarillo, Texas to purchase glasses, a distance of 288 miles.

[15] Other associated costs of purchase such as transportation and time costs required to purchase items may increase with advertising. If so, the savings in search would be partially offset.

[16] A related argument suggests that advertising restrictions serve as a proxy for collusive behavior by sellers. Since there are a large number of establishments in the states included here, effective collusion appears unlikely without some method of enforcement. The most likely method would appear to be state laws or regulations. If prohibition of advertising is the only method used to reduce competition, then the argument presented earlier holds. If other restrictive legislation is involved, then the issue is that discussed in this section.

[17] For discussion of this issue, see L. Benham, A. Maurizi & M. Reder, Migration, Location and Remuneration of Medical Personnel: Physicians and Dentists, 50 Rev. Econ. & Stat. 332 (1968).

reduce competition and raise prices. These range from restrictions on employment of optometrists to extra-legal harassment. Unfortunately, they cannot be investigated as easily as barriers to entry because of the difficulties in classifying states according to the severity of these other regulations. *A priori* judgments concerning the effects of each regulations are quite arbitrary, and data limitations prevent the development of a model at this time to estimate the separate effects of each such regulation on prices.

In an attempt to deal with these problems, representatives of several optometric associations and commercial firms were contacted to obtain assistance in classifying states according to the extent of these other types of regulations. There was general agreement that certain states were generally restrictive (for example, North Carolina) and that others were generally unrestrictive (for example, Texas), but otherwise opinion diverged. There appeared to be considerable variation in these other types of regulations across states in both groups: advertising and non-advertising. An attempt was made to match states which allowed advertising with states which did not by the severity of their other regulations. The price patterns obtained were similar to those reported in Tables 1 and 2, but the comparisons were crude at best.

The representatives of commercial firms were also asked to give their assessments of the impact of advertising restrictions. All stated that the presence or absence of advertising restrictions affected their decision to move into new market areas. Several said that they would not enter a new market unless advertising were permitted, no matter what the other restrictions.[18] Furthermore, the representatives of two large commercial firms stated that the retail prices of their own firms varied across states, with the higher prices in the states with advertising restrictions.

Data limitations prevent a fuller treatment of this question. The qualitative evidence presented hardly eliminates the possibility that the advertising variable serves as a proxy for other restrictions.[19] Nevertheless, the available evi-

[18] The data used in this study suggest that commercial firms have a larger share of the market in the states with lower prices (Table 4). Another recent study of prices charged for frames and lenses by optometrists and by retail stores in New York showed substantially lower prices in the retail stores. The study also found that prices charged by optometrists were lower in an area with a high concentration of commercial firms (New York City) than in areas with a lower concentration of commercial firms. See A Retail Shopping Study of Optometrists and Retail Opticians, submitted by Marketing Research Dep't, Dale System, Inc., to N.Y. St. Optical Retailers Ass'n, January, 1968.

[19] An examination of the changes in prices over time as a function of changes in advertising laws would provide a better test of this question. For example, the actions being currently taken in some areas to reduce restrictions on prescription drug advertising should provide extremely useful evidence on this question.

dence is consistent with the hypothesis that restrictions on advertising reduce competition and raise prices and that the estimates in Tables 1 and 2 reflect the effects of advertising restrictions.

Another type of argument often given by the professionals (optometrists and ophthalmologists) is that the quality of service and product supplied by the "commercial" establishments is lower than that supplied by "professionals." By implication, the average quality of eyeglasses would be lower in states where commercial establishments were more strongly represented,[20] the states in which advertising was permitted. During the course of this study, several professionals referred to their own personal experience with low quality commercial work. Commercial representatives responded to these charges with allegations of low quality work by certain professionals. Although standards do not appear to be uniform across establishments, either commercial or professional,[21] the issue here is not that of establishing how many of these specific allegations are valid. It is rather one of determining any systematic differences in quality of products between states which allowed and states which prohibited advertising.[22] Several attempts were made to investigate this question.

The issue was first examined by investigating the source of eyeglasses by type of retail establishment. Some commercial firms produce their own eyeglasses; however, many purchase from the same sources as the professionals.[23] The professionals also purchase from the commercial firms. In 1971, one of the largest commercial firms sold only 50 per cent of its eyeglass output through its own retail outlets. The remainder was sold through professional establishments.[24] To the extent that commercial and professional firms both

20 See Table 4, *infra*.

21 For example, a reporter for the CBS Television Network traveled around the country having his eyes examined in 1969. He had excellent vision and did not wear glasses. He read all the charts and answered all questions honestly. Out of the 28 eye examinations which he took he was given three prescriptions, one each from an optical firm, an optometrist, and an opthalmologist. CBS Television Network, 60 Minutes, Tuesday, October 28, 1969.

22 Even if the commercial firms sold eyeglasses which were unambiguously lower in quality, the case for eliminating these firms through legislative action is not obviously strengthened. For many individuals, the choice may be between the low quality, low price product and no product at all. The quality issue arises in this study because of the need to compare reasonably homogeneous items across states. For a discussion of the costs and benefits of eliminating "low quality" products from the market, see Milton Friedman, Capitalism and Freedom, ch. 9 (1962).

23 Approximately 90% of eyeglasses worn in the U.S. are made by three companies: American Optical, Bausch and Lomb, and Shuron Continental.

24 In the small survey of eyeglass prices in Texas and New Mexico, one of the highest

have the same source of eyeglasses, possibilities for quality variation are obviously reduced.

The quality issue was then raised with representatives of several large retail chains. They argued that the commercial firms were generally under more careful scrutiny by state regulatory authorities and state optometric association than the typical professional establishments and consequently had to be more concerned about quality control. They also argued that evidence on systematic quality differences would long since have been used against them in political and legal disputes, if any such evidence could be found, and that none had been so presented.

In following up this point, a search was made attempting to locate references to quality differences. No specific evidence was found to support the claim of systematic quality differences as a function of type of firm or of advertising regulations. The headquarters of the American Optometric Association, the Illinois State Optometric Association, and local optometrists were also unable to give any specific references to support these allegations. This lack of evidence does not establish the absence of a systematic difference in quality. However, it is consistent with this position particularly since the professional associations have a strong incentive to generate and use such information in their disputes with the commercial firms.

Some direct evidence on the prices of standardized products is available from two other sources. In a personal survey of retail outlets in Texas and New Mexico in which specification of frames and lenses was uniform, prices were found to be higher in New Mexico, a state with strict advertising laws.[25] The Bureau of Labor Statistics also collects price estimates of eye examinations and eyeglasses across cities for the consumer price index. The specifications used in pricing eyeglasses are quite detailed and leave little room for variation in type or quality of lenses or frames. The published data do not permit a comparison across states, and the Bureau would not release its detailed price estimates by cities. However, a representative at the Bureau who was familiar with its price estimates of eyeglasses stated that the price patterns were similar to the ones found here: cities in states with advertising restrictions tended to have higher prices than cities in states without restrictions.

The findings discussed in this section, although far from conclusive, suggest that variations in quality were not responsible for the results presented in Tables 1 and 2.

---

prices quoted was by an optometrist in New Mexico who was selling frames and lenses produced by Texas State Optical, one of the large and low priced commercial firms in Texas (see *supra* note 14).

25 See *supra* note 14.

VI. Content of Advertising

The results presented above are consistent with the hypothesis that, in the market examined, advertising improves consumers' knowledge and that the benefits derived from this knowledge outweigh the price-increasing effects of advertising. However, some individuals have argued that eyeglass advertising contains substantially more information than other types of advertising and that consequently these findings cannot be generalized to most other goods and services.[26] It is true that there has been little if any advertising of eyeglasses on national television, a medium which some feel provides a less information-intensive form of advertising. However, there has been considerable local and statewide television advertising in those states which allow advertising. One large commercial firm spends 80 per cent of its advertising budget on television.

As one means of investigating this question further, newspapers of several cities in Illinois, a state with no advertising restrictions on eyeglasses in 1963, were examined for 1963 advertisements. During a week's search, few advertisements were found which contained any reference to price, and fewer still quoted specific prices. The proportion of eyeglass advertisements which contained price information was smaller than for most other items advertised in the newspapers, in particular clothing and furniture. This is obviously fragmentary but suggestive evidence that eyeglass advertising is not markedly more information intensive than other advertising.

Note that the relative infrequency of price advertising of eyeglasses is not necessarily inconsistent with the argument that restrictions on advertising have a significant impact on price. Only a few price advertisements may be required to inform a sufficient number of consumers so that the average purchase price is reduced substantially. Non-price advertising may also be a close substitute for price advertising.

To examine the effect of non-price advertising on prices, I re-estimated Table 2, equation 1 with the addition of individuals in the sample who purchased eyeglasses in states which in 1963 prohibited price advertising but allowed other types of advertising.[27] A dummy variable X_6 was added, where X_6 equals 1 if the individual purchased eyeglasses in a state which prohibited only price advertising, and equals 0 otherwise. The results are shown in Table 3. The coefficient of X_6 suggests that in states prohibiting only price advertising prices are slightly higher than in states with no restrictions, and

[26] For an interesting discussion of advertising as information, see Phillip Nelson, Information and Consumer Behavior, 78 J. Pol. Econ. 311-29 (1970); and Phillip Nelson, Advertising as Information, (unpublished manuscript at St. Univ. of N.Y. at Binghampton).

[27] These states were California, Florida, New York, Oregon, and Virginia.

are considerably lower than in states prohibiting all advertising.[28] This estimate suggests that even "non-price" advertising may lower prices.

TABLE 3

REGRESSION ESTIMATES FOR COST OF EYEGLASSES FOR VARIOUS POPULATION GROUPS IN 1963 AS A FUNCTION OF RESTRICTIONS ON ADVERTISING IN STATES AND OTHER VARIABLES

(t statistic in parentheses)

Population Group	Complete Advertising Restrictions 0 = No, 1 = Yes	Restrictions on Price Only 0 = No, 1 = Yes	Total Family Income	Age	Sex Female = 0 Male = 1	Family Size	Constant	R^2	N
				EYEGLASSES ALONE					
All individuals	7.369 (2.4)	1.320 (.55)	.03154 (1.3)	—.0003 (.00)	—2.645 (—1.2)	—.01409 (—.02)	24.73 (4.7)	.028	287

VII. WHO BENEFITS?

The discussion thus far has been concerned with the costs of advertising restrictions to consumers. The extent to which various groups supplying eyeglasses benefit from these restrictions depends upon a number of factors including the elasticity of demand for eye examinations and eyeglasses, the effect of advertising restrictions on firm size, the level of specialization within firms of differing sizes, and restrictions on entry into the state.

A crude estimate of the elasticity of demand can be obtained by comparing per capita expenditures on eyeglasses and eye examinations for the total sample population in states which restricted advertising and in those which did not. Two comparisons were made, one for the sample as a whole and one for the subset of Texas, the District of Columbia, and North Carolina. Both results suggest that the industry faces an inelastic demand, since per capita expenditures were higher in states which had higher prices (and which had restrictions on advertising).

There is in addition some evidence which suggests that the share of the market held by the large commercial firms declines when advertising is prohibited (Table 4). The individuals in the sample were asked about the source of their eye examinations and eyeglasses, and responses were classified into four categories: physicians, optometrists, firms (or clinics), and unknown. The first two categories are more likely to indicate individual or small firm operations, while the third category is more likely to represent larger com-

[28] This estimate should be viewed with caution, because without the observations from New York the coefficient of X_6 would be approximately the same as the coefficient of X_1.

TABLE 4
SOURCE OF EYE EXAMINATION AND EYEGLASSES FOR INDIVIDUALS IN STATES WITH AND WITHOUT ADVERTISING RESTRICTIONS, IN 1963
(percentage)

Population Group	Physicians	Optometrists	Clinic or Firm	Source Unknown
Individuals living in states with advertising permitted	22.1	31.1	36.4	10.3
Individuals living in states with all advertising prohibited	39.7	43.7	15.0	1.6
Individuals living in Texas and the District of Columbia (advertising allowed)	13.6	16.4	52.0	1.6
Individuals living in North Carolina (advertising prohibited)	55.3	39.5	5.3	0.0

mercial firms. Although these figures should not be interpreted as accurate measures of the distribution of sales by firm size, the results do suggest that a larger fraction of purchases are made from "large" firms in states which allow advertising. The frequency with which the large chains were specifically named as the source also follows the same pattern. Since larger firms tend to employ fewer optometrists per volume of sale,[29] a decline in the large firms' share of the market would appear to benefit optometrists and physicians.

Finally, advertising restrictions make it more difficult for new firms to become established, and they increase the opportunities for price discrimination.

Taken together, this evidence suggests that established optometrists and other professionals within a state are likely to benefit if advertising is prohibited, not a surprising conclusion given the enthusiasm with which they support these restrictions.[30]

VIII. CONCLUSION

Several professors in economics and marketing at the University of Chicago were asked whether they thought the price of eyeglasses would increase or decrease if advertising were prohibited. Of those individuals polled, approxi-

[29] Higher costs of production are often alleged to be evidence of higher quality, particularly when the higher costs are associated with the use of a larger proportion of professional inputs. This argument essentially defines the quality of output in terms of the quality (costs) of inputs and denies benefits to specialization in production.

[30] When questioned about restrictions on advertising in the District of Columbia, an optometrist there informed me that there were none but that such restrictions would be the first item on the agenda if the optometrists ever obtained professional control.

mately 40 per cent of the economists and 100 per cent of those in marketing expected prices to be the same or lower where advertising was prohibited. It is, I think, the most common view to emphasize the costs of advertising,[31] the demand inducing and product differentiating aspects and to put relatively less emphasis on the information provided and the effects of this information on organization and efficiency in the market. These results suggest that, at least for the item considered, the emphasis has been misplaced. Prices were found to be substantially lower in states which allowed advertising.

The extent to which these results can be generalized to other goods will have to await further study. Eyeglasses may of course be a special case. Nevertheless, on a question which has in the past been overwhelmingly judged on *a priori* grounds, it has been possible to obtain a range of estimates of the impact of advertising on prices.

[31] Several large commercial firms were questioned about their advertising costs per pair of eyeglasses sold. Such a figure is often used to estimate the cost to consumers of advertising. Only one firm, a large firm operating in many states, was willing to provide this information: its average expenditure on advertising per pair of glasses sold is approximately $2.00.

EXHIBIT B

PROPOSED SUBSTITUTE FOR OPTOMETRY #4,

REQUIRED CONTINUING EDUCATION

A. Commencing January 1, 1976, no annual license renewal shall be issued to any optometrist until such optometrist shall have submitted to the State Board of Optometry satisfactory evidence that he has completed an accredited program of continuing education during the previous two-year period. Thereafter, each optometrist shall submit such evidence every two years, except as modified by Section F herein. In the event an optometrist becomes ineligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice until such requirements are satisfied. The Board may reinstate any such suspended license upon a showing that the requirements have been satisfied.

B. Definitions

1. Continuing optometric education shall include any courses bearing upon the scientific and clinical aspects of the practice of optometry that shall meet the standards set forth in this regulation.

2. Approved program sponsor means any association, corporation, educational institution, organization or person which has been approved by the State Board of Optometry to conduct continuing optometric education programs.

3. Accredited program of continuing optometric education means at least 24 hours of credit in approved programs conducted

by an approved program sponsor and which are approved by the State Board of Optometry.

4. Approved programs means those classes, conferences, correspondence, study courses, institutes, lectures, professional meetings, programmed learning courses, journal readings, seminars, study groups or comparable educational activities in continuing optometric education conducted by an approved program sponsor and which are approved by the State Board of Optometry.

C. Approval of Program Sponsors

Any association, corporation, educational institution, organization or person may apply to the State Board of Optometry for initial approval as a program sponsor. The Board shall accept or reject applications by written notice to the applicant within 30 days after receipt of the application. Approved program sponsors shall apply for renewal of their approval biennially 30 days before the biennial anniversary date of their initial approval notice, and shall be required to maintain records of attendance at programs for a period of at least three years.

D. Approval of Programs

Approved program sponsors may obtain approval of particular programs by submitting an application to the Board of Optometry setting forth thereon the following information:

1. Program title
2. Description of the program
3. Objectives of the program
4. Description of plans for evaluating the achievement of the objectives.

5. Resources

6. Manner of presentation

7. Program faculty and its qualifications

8. The average number of clock hours required to participants to complete the program

9. Such other information as the Board may request

Any such application shall be submitted to the Board not less than 60 days prior to the proposed date for commencement of the program. The Board shall assign a number of credit hours to each program and shall accept or deny any such application by written notice to the applicant within 30 days after receipt of the application. The Board shall judge the educational program solely upon whether or not it is likely to contribute to the improvement, advancement, or extension of professional skill and knowledge in the practice of optometry.

E. The Board shall approve only such programs as are available to all persons practicing optometry in the state on a reasonable, non-discriminatory fee basis.

F. Revocation or Suspension of Approval

The Board may deny, refuse to renew, revoke or suspend authorization or approval previously furnished to program sponsor or approved programs if the sponsor or program fails to conform to its application approved by the Board, fails to furnish program content as advertised or if the sponsor or program is in any other way to satisfy the provisions of this rule.

G. Proof of Attendance

Certificates of attendance at continuing education courses

shall be submitted by each optometrist to the State Board of Optometry at the time he applies for renewal of his license. Each approved program shall have submitted to the State Board of Optometry an explanation of its method of certifying attendance. Any reasonable method, including individual certification, roster certification, computer certification, or any other method, shall be accepted.

H. Exemptions from Required Attendance

The following licensees shall be exempt from the requirements of this section:

1. Any licensee serving in the regular Armed Forces of the United States during any part of the 24 months immediately preceding the annual license renewal date.

2. Those licensees whom the Board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, disability, family hardship, or other unavoidable circumstance.

3. Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

I. Non-Approved Programs

Optometrists may apply for credit for programs not previously approved by the Board, provided that the name and address of the program sponsor and all other information required by the Board to comply initially with section D is submitted to the Board within 45 days after completing the program. Such programs shall be subject to all of the standards herein provided.

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

2400 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

(612) 340-2600
CABLE: DOROW
TELEX: 29-0605
TELECOPIER: (612) 340-2868

1468 W-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
(612) 227-8017

JONATHAN VILLAGE CENTER
CHASKA, MINNESOTA 55318
(612) 448-4012

115 THIRD STREET SOUTHWEST
ROCHESTER, MINNESOTA 55901
(507) 288-3156

DONALD WEST
WALDO F. MARQUART
JOHN W. WINDHORST
HENRY HALLADAY
JULE M. HANNAFORD
ARTHUR B. WHITNEY
RUSSELL W. LINDQUIST
DAVID R. BRINK
HORACE HITCH
VIRGIL H. HILL
ROBERT V. TARBOX
DeFOREST SPENCER
ROBERT J. JOHNSON
M. B. HASSELQUIST
PETER DORSEY
GEORGE P. FLANNERY
CURTIS L. ROY
ARTHUR E. WEISBERG
DUANE E. JOSEPH
FREDERICK E. LANGE
JAMES B. VESSEY
WILLIAM A. WHITLOCK
E. J. SCHWARTZBAUER
THOMAS M. BROWN
CORNELIUS D. MAHONEY
THOMAS S. ERICKSON
WILLIAM C. BABCOCK

MICHAEL E. BRESS
RAYMOND A. REISTER
JOHN J. TAYLOR
BERNARD G. HEINZEN
WILLIAM J. HEMPEL
JOHN S. HIBBS
ROBERT O. FLOTTEN
JOHN D. LEVINE
ROBERT J. STRUYK
MICHAEL A. OLSON
LARRY W. JOHNSON
THOMAS S. HAY
G. LARRY GRIFFITH
CRAIG A. BECK
DAVID L. McCUSKEY
THOMAS O. MOE
JAMES H. O'HAGAN
JOHN M. MASON
MICHAEL W. WRIGHT
LARRY L. VICKREY
LOREN R. KNOTT
PHILLIP H. MARTIN
REESE C. JOHNSON
CHARLES J. HAUENSTEIN
CHARLES A. GEER
JOHN C. ZWAKMAN
JOHN R. WICKS

EUGENE L. JOHNSON
JOHN W. WINDHORST, JR.
MICHAEL PRICHARD
WILLIAM R. SOTH
THOMAS R. MANTHEY
RICHARD G. SWANSON
FAITH L. OHMAN
DAVID A. RANHEIM
ROBERT J. SILVERMAN
JAMES M. KLEBBA
WILLIAM R. HIBBS
JOHN D. KIRBY
PHILIP F. BOELTER
WILLIAM B. PAYNE
JAN STUURMANS
R. A. SCHWARTZBAUER
DAVID N. FRONEK
THOMAS W. TINKHAM
JON F. TUTTLE
ROBERT A. HEIBERG
EMERY W. BARTLE
MICHAEL J. RADMER
CURTIS L. STINE
MICHAEL TRUCANO
WILLIAM J. KEPPEL
JAMES A. FLADER
WILLIAM A. JOHNSTONE

WILLIAM E. BOWEN
WILLIAM P. LUTHER
DOUGLAS D. McFARLAND
DAVID L. BOEHNEN
CRAIG L. WILLIAMS
VINCENT S. WALKOWIAK
ALAN D. GILLILAND
LAWRENCE R. OLIVER
FRANK H. VOIGT
WILLIAM E. MARTIN
WILLIAM H. HIPPEE, JR.
STEPHEN G. SHANK
ROBERT A. BURNS
TONI A. BEITZ
MICHEL A. LaFOND
BRADFORD L. FERGUSON
ROGER J. MAGNUSON
J. ROBERT HIBBS

OF COUNSEL
DAVID E. BRONSON
LEAVITT R. BARKER
GEORGE E. ANDERSON
ROBERT L. VANFOSSEN

OCT 29 1973

October 26, 1973

Curtis D. Forslund, Esq.
Office of the Attorney General
State Capitol
St. Paul, Minnesota
55155

Dear Curt:

Enclosed herewith is a copy of the letter we forwarded today to the State Board of Optometry commenting on its proposed rules.

Cordially,

Jule M. Hannaford

JMH:md
Enclosure

CHESTNUT, BROOKS & BURKARD
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
SUITE 854 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

NOV 21 1973

JACK L. CHESTNUT
RICHARD C. JONES (1969)
WILLIAM F. BROOKS, JR.
JOSEPH T. BURKARD
W. ROY JOHNSON
FLOYD E. BOLINE
JAMES C. BECKSTROM
WILLIAM L. ORR
TERRY R. FARMER
THOMAS M. STRINGER
DAVID G. KUDUK

AREA CODE 612
333-6513

November 20, 1973

Curtis Forslund, Esq.
Deputy Attorney General
102 State Capitol
St. Paul, Minnesota 55101

Dear Curt:

My appointment at the Capitol was cancelled today so I decided to stick this in the mail instead of bringing it over to you.

The thing I was going to tell you is that on reviewing the brief and the record I think we failed to adequately make the point that our objections on the educational rules are because the Minnesota Optometric Association and its members would be somewhat favored by those rules and our employees who are not accepted into the MOA for membership will be disadvantaged if the only programs approved are programs that are MOA oriented.

I tried to suggest in the proposed rules drafted by us a procedure that would permit the Board to issue a list of approved courses each year that would include most or all of the courses approved by other states also.

If I can elaborate on anything for you, I will be happy to, otherwise I will leave it in your hands.

Very truly yours,

Bill

William F. Brooks, Jr.

WFB:tlu
Enclosure

CHESTNUT, BROOKS & BURKARD
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
SUITE 854 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401

JACK L. CHESTNUT
RICHARD C. JONES (1969)
WILLIAM F. BROOKS, JR.
JOSEPH T. BURKARD
W. ROY JOHNSON
FLOYD E. BOLINE
JAMES C. BECKSTROM
WILLIAM L. ORR
TERRY R. FARMER
THOMAS M. STRINGER
DAVID G. KUDUK

AREA CODE 612
333-6513

November 19, 1973

Dr. Leo Meyer, Secretary
Minnesota State Board of Optometry
3069 Shorewood Lane
Roseville, Minnesota 55113

Dear Dr. Meyer:

Enclosed herewith and served upon you is our brief with respect to the proposed rules and regulations now under consideration by the Board.

Very truly yours,

William F. Brooks, Jr.

WFB:tlu
Enclosure

cc: Howard Marker, Esq.
Assistant Attorney General

Curtis Forslund
Deputy Attorney General

MEMO - To File

March 20, 1974

FROM - Thomas G. Mattson
Assistant Attorney General

SUBJECT: MEETING RE REJECTED OPTOMETRY RULE 5 ON RELEASE OF PRESCRIPTIONS FOR CONTACT LENSES

I met with Dr. John Kennedy of the Board of Optometry and Special Assistant Attorney General Howard Marker from 10:00 A.M. to 11:20 A.M. Dr. Kennedy wished to discuss the reasons supporting the Board's desire to have a rule of this nature and wanted to discuss a possible alternative rule which we could find valid. At this meeting they could not readily devise such a rule and none came to my mind. They will consider it more and possibly again consult with us.

DR. JOHN R. KENNEDY, President
1790 No. Lexington Ave.
Roseville, Minnesota 55113
488-6771 Area Code 612

DR. B. J. DAVISON, Vice President
Lincoln Arcade
Olivia, Minnesota 56277
523-1330 Area Code 612

DR. LEO A. MEYER, Secretary
3069 Shorewood Lane
Roseville, Minnesota 55113
631-0447 Area Code 612

MRS. BARBARA STREET
121 W. Wayside Road
Hopkins, Minnesota 55343
935-2987 Area Code 612

RECEIVED
MAR 2 61974
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

STATE OF MINNESOTA
BOARD OF OPTOMETRY

DR. J. BURKE
Professional Building
East Grand Forks, Minnesota 56721
773-0143 Area Code 218

DR. CORA BRABAZON RUHR
2555 E. County Road E
White Bear Lake, Minnesota 55110
770-2955 Area Code 612

MR. ROBERT E. MORAN
2700 No. Dale Street
Roseville, Minnesota 55113
331-1350 Area Code 612

MR. HOWARD S. MARKER, Legal Counsel
909 1st National Bank Building
Minneapolis, Minnesota 55402
336-4375 Area Code 612

March 23, 1974

Mr. Tom Mattson, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
State Capitol
St. Paul, Minnesota 55101

Dear Mr. Mattson:

I wish to sincerely thank you and Mr. Forsland for the time and advice that you gave to Mr. Marker and myself on Wednesday morning. I see the problems in my own field so clearly, but it is difficult to develop the legal approach to solve these problems. I have one objective in mind and have had all my life, and that is to serve humanity to the best of my ability. I am not a politician nor very skillful in diplomacy, but I will do what I can to carry out the responsibility entrusted to me. Again my sincere appreciation for your kindness and understanding.

Very truly yours,

John R. Kennedy

John R. Kennedy, O. D.

JRK:g

cc: Mr. Howard Marker
Board

AN EQUAL OPPORTUNITY EMPLOYER

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the State Board of Optometry (Agency or Board)

Regulation No. Opt 4 thru 6 (amended)

Subject: Required Continuing Education

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

FEB 8 1974 2:35 p m

BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 2-8-74

Rev. 9-72

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Optometry Board
(Agency or Board)

Regulation No. Opt 4 thru 7 (new)

Subject: Incorporating under the Professional Corporations Act
Display and Disclosure of Name

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

JAN 4 1974 3:37 pm

BY Edla Staudenmaier
AUTH. SIGNATURE Ef

Stamped and filed with the Secretary of State 1-4-74

Rev. 9-72

February 12, 1974

Dr. Leo A. Meyer
Secretary
State Board of Optometry
3069 Shorewood Lane
Roseville, Minnesota 55113

Dear Dr. Meyer:

Your board recently submitted to our office revised Rule 4 of the Board of Optometry relating to continuing education. We have approved this rule and have filed it with the offices of Secretary of State and Commissioner of Administration. I am enclosing the Board's copy as approved and filed.

Very truly yours,

THOMAS G. MATTSON
Assistant Attorney General

TGM:bw
enc.

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

December 28, 1973

Dr. Leo A. Meyer
Secretary
State Board of Optometry
3069 Shorewood Lane
Roseville, Minnesota 55113

Dear Dr. Meyer:

The Board of Optometry of the State of Minnesota has submitted Rules 4, 5, 6, and 7 to this office for review. Based upon this review, Rule 4 is hereby returned to the Board of Optometry for revision pursuant to Rule 305(a)(4) of the Attorney General and Rule 5 is hereby disapproved pursuant to Rule 305(a)(2) of the Attorney General. Rules 6 and 7 are hereby approved and will be filed in the office of the Secretary of State pursuant to Rule 305(a)(1) of the Attorney General.

1. Rule 4 - Continuing Education

For the following reasons, Rule 4 is returned for revision.

Rule 4 provides that before an optometrist can receive credits toward continuing education requirements, he must submit a proposed course of instruction to the board for approval 60 days prior to the date of the course. The evidence which is part of the record does not set forth the reasons for this provision and the Findings of Fact do not contain "that which the agency finds to be fact which supports the reasons or need for the rule adopted." See Atty. Gen. 302(h). For this reason the provision requiring approval prior to the date of the course must be deleted from the rule. (It is preferable for boards and agencies to set forth the need for requirements of this kind in the Statement of Need. Atty. Gen. 302(g) states that such a statement "shall contain a recitation of the reasons which support a finding of need for the rules. . . . A general statement of statutory implementation will not suffice." Setting forth these matters will help assure that rules will not be rejected for the reasons established in Atty. Gen. 302(b)(2), relating to whether the rules have a reasonable relationship to statutory purposes or are arbitrary or unreasonable.)

Rule 4 provides that credit will not be given for courses sponsored "for primarily commercial purposes" or for those urging the use of particular products. The evidence which is part of the record is not adequate to show a need for this restriction and the Findings of Fact do not contain that which the board finds to be fact which supports the reasons or need for the provision. For this reason, this provision must be deleted from the rule.

Rule 4 provides that courses will be judged by the board "solely" on the basis of certain criteria, but the criteria established do not include the matter of fees. Minn. Laws 1973, ch. 62 § 6, requires that the board shall consider fees when approving courses. This provision therefore conflicts with the governing statute, see Atty. Gen. 305(b)(2)(bb), and must be revised.

Rule 4 provides that if an optometrist fails to fulfill the continuing educational requirements, he shall be ineligible for license renewal. The rule also provides that the board may reinstate an optometrist under such terms "as it determines will insure that the licensee possesses sufficient knowledge of recent scientific and clinical advances." This provision for determining when an optometrist may be reinstated is general in its terms and fails to provide an objective standard. It is therefore susceptible of being used as the basis for an arbitrary denial of reinstatement. Since the record does not support the propriety of this particular provision, it must be revised.

It is also noted that optometrists who are not members of one of the conferences, associations, or academies whose courses the rule has specifically approved may be required to pay a higher fee for course attendance than are members. (See Transcript at p. 54, line 13 et seq., and p. 58, line 14 et seq.) Since Minn. Laws 1973, ch. 62 § 6 requires that approved courses given in Minnesota be "open" to all state optometrists, it is likely that giving credit for courses where a non-member optometrist pays more than does a member optometrist would be improper unless the difference results from the fact that a part of the membership fees is spent to operate the course. If any such difference in course fees is not legitimate, then the provision in Rule 4 for deleting certain courses from approval would presumably be utilized.

2. Rule 5 - Release of Prescriptions and Specifications for Contact Lenses

For the following reasons, Rule 5 is disapproved.

Minn. Stat. § 148.53 (1971) authorizes the Board of Optometry to make rules not inconsistent with the law which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 148.62 or for the full and efficient performance of its duties

thereunder. The legislature has assigned to the Board of Health the power to study and regulate, if necessary, the practices of health technicians. Minn. Laws 1973, ch. 709. The record shows that the work of many technicians in the optical field relates to contact lenses. (Transcript at p. 75, lines 15-19; p. 86, lines 16-19; p. 90, lines 7-16; p. 91, lines 11-20, p. 93, line 13 to p. 94, line 19.) Except for the inference that certain technicians may be engaged in the unauthorized practice of optometry (Transcript at p. 106, lines 20-25), the record does not indicate that the technicians as a whole are performing tasks or otherwise conducting themselves so as to render them subject to the control of the board. Rule 5 would, however, constitute a substantial regulation of these technicians by forbidding optometrists to dispense a prescription for contact lenses if it is to be used by a health technician. Because the legislature has so clearly assigned to the Board of Health the task of studying the practices of health technicians and promulgating any necessary rules to regulate them, Rule 5 would be inconsistent with the 1973 law. See Atty. Gen. 305(b)(2)(bb).

In addition the evidence in the record shows that physicians practicing in the optical field supervise various technicians who participate in the different phases of contact lens work. The rule would therefore also affect the work of such physicians and those technicians who are supervised by those physicians. See generally Transcript at p. 75, lines 15-19; p. 77, lines 7-13; p. 113, lines 19-21; and p. 114, lines 9-12. The rule thus constitutes the regulation of physicians. Such regulation is beyond the power of the board. See Atty. Gen. 305(b)(2)(aa).

It is noted that the first sentence of the rule as proposed stated that the board interpreted the laws of Minnesota as requiring that the adaptation to the eye of contact lenses be performed only by licensed optometrists or physicians. A reading of the language of this sentence and the evidence in the record indicates that the function of this sentence was to explain the reason for Rule 5 and that it was intended to serve as a preamble to the rule. See Transcript at p. 114, lines 4-12. The deletion of this sentence in the rule as adopted therefore has little or no effect on the meaning of the rule and does not negate the reasons stated above for disapproving the rule.

Very truly yours,

THOMAS G. MATTSON
Assistant Attorney General

TGM:bw

December 28, 1973

William F. Brooks, Jr.
Chestnut, Brooks & Burkard
Suite 854 Midland Bank Building
Minneapolis, Minnesota

Jule M. Hannaford
Dorsey Law Firm
2400 First National Bank Bldg.
Minneapolis, Minnesota 55402

Joseph J. Dudley, Esq.
Dudley, Smith & Belisle
W. 1260 First National Bank Bldg.
St. Paul, Minnesota 55101

Douglas L. Skor, Esq.
Briggs & Morgan
2200 First National Bank Bldg.
St. Paul, Minnesota 55101

RE: Proposed Rules of Minnesota Board of Optometry

Gentlemen:

In view of your interests in the recently proposed Rules of the Minnesota State Board of Optometry, we are enclosing a copy of the Attorney General's letter of December 28, 1973, to Dr. Leo A. Meyer, Secretary of the Board of Optometry, reflecting the Attorney General's action on the rules in issue.

Very truly yours,

CURTIS D. FORSLUND
Chief Deputy
Attorney General

CDF:jct

cc: Dr. Leo A. Meyer
Howard Marker, Esq.

REVIEW OF RULES OF

STATE BOARD OF OPTOMETRY

A. Rule 4

Board Rule Opt. 4 relates to continuing education. Minn. Laws 1973, ch. 62 § 6, provides in part that the Board may promulgate rules requiring completion of appropriate educational requirements as a condition to annual license renewal. This law states that courses conducted within Minnesota "must be open to all optometrists licensed in this state. The board shall consider both curriculum and fees in approving courses."

Rule 4 is a rather detailed rule. The Board's Statement of Need merely states that the continuing education rule is a "result of [the] enabling legislation" and that "[c]ontinuing education requirements are essential in order to insure that the public will continue to receive optometric services at the highest level."

The transcript of the hearing before the board contains a restatement of these comments. (P. 43, lines 4-14, by Howard Marker.) The Findings of Fact restates the foregoing and also states:

> The board has painstakingly drafted this section after reviewing the rules of all the various state boards of optometry as they pertain to continuing education. The provisions as stated in this section are common to most of the continuing education rules of the state boards of optometry throughout the country.

A number of specific provisions of this rule must be considered.

1. Place of Education

Only those courses given in "optometry schools or colleges" appear to be subject to approval by the Board. (Opt. 4 at p.1, para. 1). (Provision (6) at page 2 of Rule 4, which permits the Board to approve educational programs not specifically approved by the Rule, does not seem to alter this restriction.) Nothing in the Statement of Need, Transcript, or Findings of Fact relates to this restriction. The Brief of the Minnesota Association of Optometrists and Opticians, by William F. Brooks, Jr., at p. 12, states rather vaguely that "certainly" there are other courses being taught "at medical schools or other institutions" which would be valuable, and that such a restriction "is unreasonable and arbitrary."

The question therefore arises whether the Statement of Need and/or Findings of Fact are deficient, whether such a restriction

has no reasonable relationship to statutory purposes (Atty. Gen. 305(b)(2)(cc)), and whether it is arbitrary or unreasonable. (Atty. Gen. 305(b)(2)(dd)). (My conclusions are found at pages 5-7.)

2. Consequence of Non-Fulfillment

The rule provides for ineligibility for license renewal if an optometrist fails to fulfill the continuing education requirements. This ineligibility provision is authorized by the 1973 law. The rule also provides that the Board may reinstate an optometrist under such terms "as it determines will insure that the licensee possesses sufficient knowledge of recent scientific and clinical advances."

This provision is not expressly authorized by the 1973 law, and arguably is in conflict with the law since the law states that the Board may require that optometrists "satisfactorily complete appropriate education courses as a condition precedent to annual license renewal." Nothing in the Statement of Need, Findings of Fact, Transcript or Briefs relates to this provision. (The Brooks' Brief presents "Exhibit B," however, which is a proposed rule. That proposal (which was not accepted) states that nonfulfillment of the educational requirements shall continue "until such [continuing education] requirements are satisfied").

The question arises whether the Statement of Need and/or Findings of Fact are deficient, whether this provision exceeds the statutory authority conferred (Atty. Gen. 305(b)(2)(aa)), whether it conflicts with the governing statute (Atty. Gen. 305(b)(2)(bb)), whether it has no reasonable relationship to statutory purposes (Atty. Gen. 305(b)(2)(cc)), and whether it is arbitrary and unreasonable (Atty. Gen. 305(b)(2)(dd)).

3. Extent of Continuing Education

Opt. 4 requires that 12 hours of continuing education be completed in each year. The only reference in any of the documents to the need for 12 hours per year is that by Brooks that "I don't think we have any objection to the assessment as to the requirement that is twelve hours per year." (Transcript at p. 52, line 4 et seq.).

Brook's questioned the wisdom of the requirement that the 12 hours be completed in one year, rather than permitting 24 hours to be completed in two years. (Transcript at p. 52, line 6 et seq. and p. 58, line 1 et seq. (See also Brooks' Brief at p. 12.) The only evidence presented in any of the documents supporting the 12 hour in one year requirement is that by Board member Meyer. He says "I can see problems of logistics" in the two year proposal, and "we know from experience" that the dental board's law or rule permitting an extended time has created "a problem," and that since licenses are renewed annually, "it would seem logical" that the continuing education term also be one year.

The question arises whether the Statement of Need and/or Findings of Fact are deficient in that they make no reference to either the 12 hour requirement or the one year term provision, and whether the one year term provision is reasonable, (Atty. Gen. 305 (b)(2)(dd)).

4. Approved Courses

The rule approves specifically of courses offered by certain state, regional and national optometric conferences and associations, such as the Minnesota Optometric Association and the North Central States Optometric Conference, (Opt. 4 at p. 2). Nothing in the Statement of Need or Findings of Fact relates to the quality of these groups or their courses offered. The Transcript, at p.61, lines 10-13, states that Board member Meyer said: "I believe it was the opinion of the Board when they decided on this provision that these particular five have shown past excellence . . . ." A testifying optometrist concurred.

A question arises as to whether the Statement of Need and/or Findings of Fact are deficient in that they make no reference to this matter.

5. Availablility of Courses to All Optometrists

As noted above, the 1973 law states that courses given in Minnesota "must be open to all optometrists licensed in this state" and that the board "shall consider both curriculum and fees in approving courses." It would therefore seem that if members of the associations or conferences specified in the rule may, at a certain fee, attend the courses offered by the conference or association, and if non-members are charged a higher fee, then the course might in fact not "be open" to all Minnesota optometrists.

The Brook's testimony is that non-members do pay a higher fee and that it may be that the difference cannot be attributed to a legitimate difference such as the possibility that part of membership fees are used to operate the courses. (Transcript at p. 54, line 13 et seq. and p. 58, line 14 et seq.) No one contradicted this testimony.

Opt. 4 provides that the Board may, upon notice, "delete from approval" one or more of the programs offered by one of the approved conferences or associations. If the Board utilizes this provision to disapprove of courses where there is a difference in fees which is not legitimate, then a question may not arise as to whether the rule conflicts with the governing statute, (Atty. Gen. 305(b)(2)(bb)). However, since the 1973 law requires the Board to consider fees in determining whether to approve a course and since nothing in the Transcript indicates that the possibility of a fee differential was considered in approving the courses offered by the specified conferences and associations, the Findings of Fact may be deficient.

6. Criteria for Approval of Other Courses

The rule provides that other courses may be approved by the Board if they meet "minimum standards." (Opt. 4, p. 2, para. no. 6.) The rule goes on to provide that:

> Educational programs will be judged by the board solely on whether or not they are likely to contribute to the improvement, advancement and extension of professional skill and knowledge in the practice of optometry. Speakers, lecturers and others participating in the presentation of any such program shall be recognized by the profession as being expert in their field.

Nothing in the Statement of Need, Findings of Fact, or Transcript relates to the relevance of such standards, even though they may well be reasonable. A question therefore arises whether the Statement of Need and/or Findings of Fact are deficient, and to a much lesser extent, whether the criteria are arbitrary or unreasonable. (Atty. Gen. 305(b)(2)(dd).) (The Brooks' testimony states that he did not see any specific criteria for approving courses and that the rule "may be constitutionally vague." He indicated, however, that he would not challenge this in a court because his group is "prepared to operate" under this rule (insofar as this matter is concerned)). (Transcript at p. 56, line 11 et seq.)

In addition, since the rule states that courses "will be judged by the board solely" on the basis of certain criteria, and the criteria do not include the question of fees as is required by the 1973 law, the question arises whether the rule conflicts with the governing statute, (Atty. Gen. 305(b)(2)(bb)).

7. Pre-Approval of Courses

Opt. 4 at p. 2 requires that an optometrist submit to the board a proposal that a course he plans to take be approved, and that the proposal be submitted 60 days before the date of the course. Nothing in any of the documents provides reasons for this pre-approval requirement. This requirement is termed unreasonable by Brooks. (Transcript at p. 53, line 23 et seq.; Brooks' Brief at p. 13).

The question arises whether the Statement of Need and/or Findings of Fact are deficient, and whether the pre-approval requirement is arbitrary or unreasonable. (Atty. Gen. 305(b)(2)(dd)).

8. Exclusion of Courses Sponsored for Commercial Purposes

Opt. 4 at p. 3 provides that no credit will be given to courses sponsored "for primarily commercial purposes or programs the primary purpose of which is to advertise or urge the use of any particular opthalmic product or appliance." (Opt. 4 at p. 3.) The only support in any of the documents for this requirement is that by Board member Burke that "we are more concerned with the expertise of the lecture, itself, . . . rather than someone producing or promoting

a product that he is selling which really is no relationship to professional optometry, as such." (Transcript at p. 62, line 3 et seq.)

The Brooks' Brief at page 13 says that courses sponsored for commercial purposes should not be automatically excluded and that it is "clearly within the proper realm of continuing education to learn about new equipment and to become familiar with its proper operation."

The question arises whether the Statement of Need and/or Findings of Fact are deficient, and whether this exclusion provision has any reasonable relationship to statutory purposes or is arbitrary and unreasonable. (Atty. Gen. 305(b)(2)(cc) and (dd).)

9. Exemptions from Educational Requirement

An optometrist is exempted from the continuing educational requirement if he has served in the armed forces in the previous 12 months, if he was first licensed in the previous 12 months, or if he has been unable to attend courses due to illness, incapacity or other unavoidable circumstances. (Opt. 4 at pp. 3-4.) Nothing in any of the documents shows a need for such a rule, although it may well be reasonable.

The question arises whether the Statement of Need and/or Findings of Fact are deficient.

10. Specific Courses

Opt. 4 at page 4 provides that the Board may, upon notice, require all optometrists to obtain credit in a specified subject. Nothing in the documents supports the need for this provision.

The question therefore arises whether the Statement of Need and Findings of Fact are deficient, and to a lesser degree, whether this provision is unreasonable. (Atty. Gen. 305(b)(2)(dd).)

The following is a proposed statement to the Board of Optometry regarding Rule 4.

For the following reasons, we hereby return Rule 4 to you for revision pursuant to Atty. Gen. 305(a)(4).

1. Rule 4 provides that only those continuing education courses given in "optometry schools or colleges" can be approved by the Board. The evidence which is part of the record does not set forth the reasons for this restriction and the Findings of Fact do not contain "that which the agency finds to be fact which supports the reasons or need for the rule adopted." See Atty. Gen. 302(h). For this reason, this provision must be deleted from Rule 4. (We also feel it is preferable

for boards and agencies to set forth the need for requirements of this kind in the Statement of Need. Atty. Gen. 302(g) states that such a statement "shall contain a recitation of the reasons which support a finding of need for the rules. . . . A general statement of statutory implementation will not suffice." Setting forth these matters will help assure that rules will not be rejected for the reasons established in Atty. Gen. 302(b)(2), relating to whether the rules have a reasonable relationship to statutory purposes or are arbitrary or unreasonable.)

2. Rule 4 provides that an optometrist must submit a course to the board for approval 60 days prior to the date of the course. For the reason stated in section 1 above, the provision requiring approval prior to the date of the course must be deleted from the rule.

3. Rule 4 provides that credit will not be given for courses sponsored "for primarily commercial purposes" or for those urging the use of particular products. The evidence which is part of the record is not adequate to show a need for this requirement and the Findings of Fact do not contain that which the board finds to be fact which supports the reasons or need for the provision. For this reason, this provision must be deleted from the rule.

4. Rule 4 provides that courses will be judged by the board "solely" on the basis of certain criteria, but the criteria established do not include the matter of fees. Minn. Laws 1973, ch. 62 § 6, requires that the Board shall consider fees when approving courses. This provision therefore conflicts with the governing statute, see Atty. Gen. 305(b)(2)(bb), and must be revised.

We also note that Rule 4 provides that if an optometrist fails to fulfill the continuing educational requirements, he shall be ineligible for license renewal. The rule also provides that the Board may reinstate an optometrist under such terms "as it determines will insure that the licensee possesses sufficient knowledge of recent scientific and clinical advances." We assume that this provision will be applied in a manner which would permit an optometrist to obtain license renewal unless the reasons for refusal to renew are directly related to the purpose, and within the scope, of the continuing education statute.

We also note that it is possible that optometrists who are not members of one of the conferences, associations, or academies whose courses the Rule has specifically approved may be required to pay a higher fee for course attendance than are members. (See Transcript at p. 54, line 13 et seq., and p. 58, line 14 et seq.)

Since Minn. Laws 1973, ch. 62 § 6 requires that approved courses given in Minnesota be "open" to all state optometrists, it is likely that giving credit for courses where a non-member optometrist pays more than does a member optometrist would be improper unless the difference results from the fact that a part of the membership fees is

spent to operate the course. We assume that if any such difference in course fees is not legitimate, then the provision in Rule 4 for deleting from approval certain courses would be utilized.

(End of Statement Regarding Rule 4)

The rationale for treating Rule 4 in this manner is as follows. It seems likely that considerable time was spent in preparing these rules and holding hearings on them. If we disapprove of Rule 4, then the process would probably begin all over again because continuing education seems important and the Board would probably want to make a rule on this matter.

Therefore, if the Board can simply revise the rule, then the whole process of making a new rule can be avoided. If we take this approach, however, we must be aware that a number of vital provisions in Rule 4 are arguably of questionable validity. For example, we would let stand the provision which approves of courses of certain specified conferences and associations even though no real evidence was adduced supporting this provision. The same may be said of the 12 hour per year requirement, the criteria established to determine whether other courses will be approved, the provision containing the exemptions for persons recently in the military and for certain others, and the provision permitting the Board to require all optometrists to obtain credit in a specific subject matter.

It seems likely, however, that proper evidence could have been quite easily adduced to fully support the need for these provisions. In addition, no substantial objection was made to any of these provisions. We are therefore faced with the question of whether we want to disapprove of the rule. If so, a whole new rule-making process would be necessary.

We could also, of course, state that the provision relating to courses of certain specified conferences and associations and the provision permitting the Board to require credit in a specific subject must be deleted for lack of proper fact finding. If we return the rule for revision we probably would want to refrain from rejecting the necessary provisions, i.e., the 12 hour per year requirement, the criteria established to determine whether courses will be approved, and the provision granting certain exemptions. These provisions, it would seem, could not be revised without additional factfinding, and such additional factfinding could not be done without an additional hearing.

B. Rule 5

The following is a proposed statement to the Board of Optometry regarding Rule 5.

For the following reasons, we disapprove Opt. 5. See Atty. Gen. 305(a)(2).

Minn. Stat. § 148.53 (1971) authorizes the Board of Optometry to make rules not inconsistent with the law which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 148.62 or for the full and efficient performance of its duties thereunder. The regulation of physicians and surgeons is not within the powers of the Board, Minn. Stat. § 148.56 (1971), nor is the regulation of opticians and other technicians unless they are engaged in the practice of optometry as such practice is defined in section 148.56.

The expressed purpose and the language of the rule, however, indicates that it would directly affect the work of physicians who practice in the optical field and ~~who supervise~~ there technicians. See generally Transcript at p. 75, lines 15-19; p. 77, lines 7-13; p. 113, lines 19-21; and p. 114, lines 9-12. The rule thus constitutes the regulation of physicians. As noted above, such regulation is beyond the power of the Board. See Atty. Gen. 305(b)(2)(aa).

In addition, the 1973 Legislature assigned to the Board of Health the power to study and regulate, if necessary, the practices of health technicians. Minn. Laws 1973, ch. 709. The record shows that the work of many techicians in the optical field relates to contact lenses. (Transcript at p. 75, lines 15-19; p. 86, lines 16-19; p. 90, lines 7-16; p. 91, lines 11-20, p. 93, line 13 to p. 94, line 19.) Except for the inference that certain technicians may be engaged in the unauthorized practice of optometry (Transcript at p. 106, lines 20-25), the record does not indicate that the technicians as a whole are performing tasks or otherwise conducting themselves so as to render them subject to the control of the Board. Opt. 5 would, however, constitute the regulation of these technicians. Because the legislature has so clearly assigned the task of studying the practices of health technicians and promulgating any necessary rules to regulate them, Opt. 5 would be inconsistent with the 1973 law. See Atty. Gen. 305(2)(bb).

C. Rule 6

Opt. 6 appears to me to be valid.

D. Rule 7

Opt. 7 appears to me to be valid.

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of the Rules of the State Board of Optometry

REVISION OF ADDITIONS TO MINNESOTA ADMINISTRATIVE RULES AND REGULATIONS RELATING TO THE STATE OF MINNESOTA BOARD OF OPTOMETRY

Opt 4 Required Continuing Education

All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs ~~covering one or more of the subjects taught in those optometry schools or colleges approved by the board.~~ as may be approved by the board under the provisions of this rule. In the event an optometrist becomes inelligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board shall reinstate any such suspended license upon receipt of satisfactory proof that the licensee has made up the deficient hours of study.

(a) Study compliance year. The optometric study compliance year shall extend from February 1 through January 31, during which period attendance at approved study sessions may be used as evidence of fulfillment of study requirements for the subsequent license renewal year beginning April 1 and expiring on March 31. Credit will be allowed only for the year in which the education course was actually attended. Example: Credit for 1975 must be obtained between February 1, 1974 and January 31, 1974 for license renewal on April 1, 1974.

(b) Approved programs. Educational programs which ~~will~~ are be approved as meeting the required standards include the following (this approval is and shall be based on continued maintenance of high standards):

(1) Courses on subjects relative to optometry at any board-approved school or college of optometry.

(2) Educational meetings of the North Central States Optometric Conference.

(3) Educational meetings of the Minnesota Optometric Association.

(4) Educational meetings of the American Optometric Association.

(5) Educational meetings of the American Academy of Optometry.

(6) Other educational programs approved by the board as meeting the criteria as set forth in paragraph (c) herein, after submission of a program, schedule, and outline to the board secretary not less than ~~60~~ 45 days prior to the date of the program.

(c) Criteria for judging and approving educational programs. Board approval of continuing education programs will be determined on the following basis:

(1) Whether or not the program is likely to contribute to the advancement and extension of professional skill and knowledge in the practice of optometry.

(2) Whether or not the speakers, lecturers and others participating in the presentation of any such program are

by the Board highly qualified
recognized ~~within the profession~~ as being ~~expert~~ in their field.

(3) Whether or not the proposed course, if it is to be conducted within the State of Minnesota, is open to all optometrists licensed in this State.

(4) Whether or not the tuition fee charged for courses conducted within the State of Minnesota is the same for non-members of the course sponsoring organization as it is for members. Any difference in tuition charged to non-members as opposed to members of the sponsoring organization shall be reasonably and directly related to the sponsoring organization's expense in operating the course.

(5) As a condition of approval of an educational program hereunder, the board may require that the program director furnish it with satisfactory evidence of attendance of all Minnesota licensees.

(d) Notice of deletion of approved courses. The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, delete from approval for the ensuing study compliance year, one or more of the programs as set forth in paragraphs (c) (2) through (5) herein.

(e) Proof of attendance. Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board secretary at the time he applies for renewal of his license and shall contain the following information:

(1) The name of the sponsoring organization.

(2) The name, signature, and address of the licensee.

(3) The subject of the educational topic.

(4) Number of hours in attendance.

(5) The date of the ~~lecture.~~ educational program.

(6) Such other evidence of attenance as the board may deem necessary.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section (b)(6) herein. Such forms shall be made available by the board secretary upon request.

(f) Limitation on credit to be given for certain courses. Credit shall not be given for more than two hours attendance in courses of office management or administration.

(g) Exemptions from required attendance. The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the 12 months, immediately preceding the annual license renewal date.

(2) Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances.

(3) Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

(h) Board may require attendance of specified subjects. The board may, by mailing written notice thereof to each licensed

optometrist on or before January 1 of each year, require all optometrists to attend specified subjects of continuing education for credit toward the annual hourly requirement.

Opt 5 Release of Prescriptions and Specifications for Contact Lenses

This section was disapproved by the Attorney General.

Opt 5 Incorporating under the Professional Corporations Act

This section was formerly numbered Opt 6 and has been approved by the Attorney General.

Opt 6 Display and Disclosure of Name

This section was formerly numbered Opt 7 and has been approved by the Attorney General.

Adopted as revised January 27, 1974.

STATE OF MINNESOTA
BOARD OF OPTOMETRY