

Opinion No. 46

OPTOMETRY; Practice of; contact lenses, who may fit—Section 66-1301, RCM, 1947—Section 66-1302, RCM, 1947—Section 66-1314, RCM, 1947—Section 66-1316, RCM, 1947

Held: Only duly licensed medical practitioners, commissioned officers of the U. S. Armed Forces whose regular duty includes eye care and treatment and duly licensed optometrists may prescribe and fit contact lens or lenses or dispense ophthalmic lens or lenses in this state.

November 23, 1959

Dr. E. A. Kuntz
Secretary-Treasurer
Montana State Board of Examiners in Optometry
Helena, Montana

Dear Dr. Kuntz:

This is in reference to your request for my opinion on the following questions:

1. Who may fit contact lens or lenses in the State of Montana?
2. Who may dispense ophthalmic lens or lenses in the State of Montana?

Section 66-1301, RCM, 1947, provides:

"Practice of Optometry Defined. The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

1. The optometric examination or optometric diagnosis of all those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied or relieved.
2. The employment of any optometric means, excluding the use of drugs or surgery, for the purpose of detecting any condition of the process of vision, or the effects of any condition of the process of vision, which may have any significance in a complete optometric diagnosis.
3. The application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies excluding the use of drugs or surgery."

Section 66-1302, RCM, 1947, provides in part:

"Provisions Regulating Practice of Optometry. It shall be unlawful for any person:

1. To practice optometry in the State of Montana unless he shall first have obtained a certificate of registration, in the manner hereinafter provided, and filed the same or a certified copy thereof with the County Clerk and Recorder of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; or

9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a duly licensed optometrist and is dispensed only by said optometrist or a person employed by said optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or
10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eye-glasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be deemed to be practicing optometry within the meaning thereof; provided, that nothing in this section shall apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.
12. To adapt any lens to direct contiguous contact to the human eyeball without having at the time of so doing a valid, unrevoked certificate as an optometrist."

Section 66-1314, RCM, 1947, provides a penalty for the violation of this act. Section 66-1316, RCM, 1947, provides:

"Act Not To Apply To Physicians And Surgeons. Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician or surgeon, nor to commissioned officers of the armed forces of the United States performing functions of this act in the line of their regular duty, nor to persons who sell spectacles or eye-glasses without attempting to traffic upon assumed skill in adapting them to the eye."

The meaning of these statutes is self-evident. When the meaning of a statute is clear from the language employed, the legislative intent, so expressed, should be carried out. (*Mills v. Bd. of Equalization*, 97 Mont. 13, 33 Pac. (2d) 563).

The practice of medicine includes the practice of optometry as the above statute clearly provides, medical practitioners are not subject to the restrictions on the prescribing, fitting or dispensing of contact and ophthalmic lens; nor are certain commissioned officers of our

armed forces. Opticians are restricted to mechanical work under supervision.

It is therefore my opinion that only duly licensed medical practitioners, commissioned officers of the U. S. armed forces whose regular duty includes eye care and treatment and duly licensed optometrists may prescribe and fit contact lens or lenses or dispense ophthalmic lens or lenses in this state.

Very truly yours,
FORREST H. ANDERSON
Attorney General