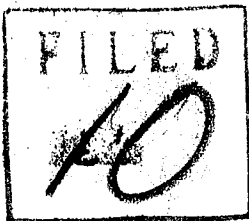


: Neither insertion of lenses into spectacle frames,  
OPTOMETRY: : nor the adjustment of such frames to the wearer's  
EYEGLASSES: : face which does not affect or change the measure-  
SPECTACLES: : ments upon which the original prescription is based,  
: are required to be done by registered optometrists.  
.....



April 18, 1955

Honorable J. R. Bockhorst, O.D.  
Secretary-Treasurer  
Missouri State Board of Optometry  
359 Paul Brown Building  
St. Louis 1, Missouri

Dear Dr. Bockhorst:

You have requested an opinion of this office on the following:

"Hearing aid manufacturers are now engaged in the manufacture of hearing aids made in the form of optical frames. The working components of the hearing aid are concealed in the temples of the frames.

"In order for the purchaser to obtain the proper benefits from the use of the hearing aid which is built into the optical frames, some fitting of these frames will have to be done in relation to the hearing and the purchaser's ear. Otherwise optimum results may not be obtained from the hearing aid.

"These hearing aid optical frames shall contain corrective lenses in some instances.

"Hearing aids are sold through hearing aid distributors who are not familiar with and who are not licensed in the fitting of eye glasses. The question presents itself as to whether or not in your State the laws provide that any part of spectacle frames containing corrective lenses may be fitted only by persons licensed by the State to do this work.

Honorable J. R. Bockhorst, O.D.:

"We need this information to establish a point of procedure. 1. The hearing aid dealer will have the optical frames in his possession of which the hearing aid is a part. May the hearing aid retailer insert the customers' lenses into the frames and fit the temples to the wearer?

"2. Must the optical frames from the hearing aid dealer be sent to a licensed optical operator and there have the lenses installed in the frames? May the hearing aid retailer then adjust the temples of the optical frames so that the purchaser gets the proper fitting and use of the hearing aid?

"3. May the hearing aid dealer re-adjust the temples of the optical frames in order to complete the hearing aid fitting after they have been previously adjusted by a licensed optical operator."

According to our interpretation of your letter, you wish answers to the following questions: (1) May persons not registered optometrists insert lenses into spectacles frames, and (2) May such persons adjust the frames to the face.

It is made unlawful by Section 336.020, RSMo 1949, for persons not registered optometrists to engage in the practice of optometry as defined by Section 336.010, RSMo 1949. The latter section provides:

"Any one of any combination of the following practices constitutes the practice of optometry:

"(1) The examination of the human eye, without the use of drugs, medicines or surgery, to ascertain the presence of defects or abnormal conditions which can be corrected by the use of lenses, prisms or ocular exercises.

"(2) The employment of objective or subjective mechanical means to determine the accommodative or refractive states of the human eye or the range of power of vision of the human eye.

"(3) The prescription or adaptation without the use of drugs, medicines or surgery,

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of lenses, prisms, or ocular exercises to correct defects or abnormal conditions of the human eye or to adjust the human eye to the conditions of special occupations. No registered apprentice may independently practice optometry. A registered apprentice may, however, under the immediate personal supervision of a registered optometrist, assist a registered optometrist in the practice of optometry.

Certain exemptions from the provisions of Chapter 336 are made by Section 336.120, RSMo 1949. That section provides:

"The following persons, firms and corporations are exempt from the operation of the provisions of this chapter except the provisions of section 336.200:

"(1) Physicians or surgeons of any school lawfully entitled to practice in this state;

"(2) Persons, firms and corporations, not engaged in the practice of optometry, who sell eye glasses or spectacles in a store, shop or other permanently established place of business on prescription from persons authorized under the laws of this state to practice either optometry or medicine and surgery.

"(3) Persons, firms and corporations who manufacture or deal in eye glasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry, and who do not use a trial case, trial frame, test card other than that used by the customer or customers alone, vending machine or other mechanical means to assist the customer in selecting glasses."

A study of Section 336.010, supra, convinces us that the insertion of lenses into spectacles frames is not the practice of optometry. Nor is the adjustment of the frames to the face, which adjustment does not affect or change the measurements upon which the original prescription is based, the practice of optometry.

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Our position is substantiated by the Supreme Court of Arkansas in the case of Arkansas State Board of Optometry vs. Keller, 218 Ark. 820, 239 S.W. (2d) 14. The factual situation in that case was, i.e. 16:

"Briefly, the evidence here shows that the examining oculist determines any deficiencies in the patient's vision, notes on a prescription the type and power of corrective lenses and facial measurements, for correct size of frames. The patient takes the prescription to the Medical Arts Optical Service, or any other optician of his choice, to be filled. When taken to Medical Arts, Keller displays different styles of frames to the patient and where the physician or oculist has so requested, he, Keller, will check or verify the facial measurements, and should he discover what he conceives to be an error, he notifies the oculist who would, after re-checking make any corrections he deemed necessary. This final decision always rested with the oculist or physician and not with Keller. After final instructions from the oculist, Keller has the lenses ground in accordance with the prescription, and affixes them to the correct style frame (as the customer may select). All that remains to be done after the actual delivery to the patient is to see if the glasses fit comfortably, which service Keller performs. In some cases, the bridge may pinch or the nose hook may need adjusting, in which event Keller, by bending the offending parts, makes it comfortable."

In construing the Arkansas statute which provided that any person who "prescribes, dispenses, adapts, or duplicates lenses \* \* \* shall be deemed to be engaged in the practice of optometry", the court held that the acts of Keller, as above set-out, did not constitute the practice of optometry.

And, in Palmer vs. Smith, 229 N.C. 612, 51 S.E. (2d) 8, 12, it was held:

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"\* \* \* And so long as the optician confines his work to the mere mechanical process of duplicating lenses, replacing or duplicating frames and mountings, 'making mechanical repairs to frames for spectacles', filling prescriptions issued by a duly licensed optometrist or oculist, and does not in any manner undertake 'the measurement of the powers of vision and the adaptation of lenses for the aid thereof', he is not practicing optometry."

By way of contrast we note the case of State vs. Roves, 223 La. 839, 67 So. (2d) 99, holding the adaptation of frames to be the practice of optometry. However, the Louisiana statute specifically provided that the adaptation of frames was the practice of optometry, while the Missouri statutes do not so provide. And in Oklahoma the statute (59 Okla. Stat. Ann., Sec. 942), provides: "It shall be unlawful for any person \* \* \* not licensed \* \* \* to fit, adjust, adapt, or to any manner apply lenses, frames, prisms \* \* \* to the face of any person."

That the statutes of some states specifically touch on the fitting of frames, and the Missouri statutes do not, lends weight to our conclusion that it was not intended to regulate, in Missouri, the adjustment of frames.

#### CONCLUSION

It is, therefore, the opinion of this office that neither insertion of lenses into spectacles frames, nor the adjustment of such frames to the wearer's face, which does not affect or change the measurements upon which the original prescription is based, are required to be done by registered optometrists.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

PMcG:irk

JOHN M. DALTON  
Attorney General