

Approved 3/20/90
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m./~~p.m.~~ on March 13, 1990 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Emalene Correll, Legislative Reserach
Norman Furse, Revisor's Office
Sandra Nash, Committee Secretary

Conferees appearing before the committee:

The Chairman called the meeting to order, asking for approval of the minutes of the Committee on February 26, 1990, and March 1, 1990. Senator Hayden made a motion to approve the minutes. Senator Langworthy seconded the motion. The motion carried.

The Chairman asked for the Committee's attention be turned to H.B. 2630, and called for the first proponent, Pete McGill, representing Cole Vision Corporation, Pearle Vision Centers and LensCrafters.

Mr. McGill stated his organization was contacted by Cole Vision Corporation, LensCrafters and Pearle Vision Centers the night before the bill was to go before the House Public Health and Welfare Committee and it was suggested to them that they wait until they could appear before the Senate Public Health and Welfare Committee before requesting amendments.

He stated that in inquiring about the purpose and intent of the bill they were advised that the purpose of the bill and the intent of the bill was for codification of existing practices and rules and regulations. And if that is exactly what that bill is intended to do, they are in full support of H.B. 2630, with two minor modifications. He said he thought they were minor and they're technical to probably do exactly what the bill was intended to do from their standpoint. Mr. McGill said he had Pat Hurley of their office who would present the balloon.

Mr. Pat Hurley said that their clients are optical dispensing companies and as such, obviously, they are not licensed to practice optometry and they have concerns relating to their existing practices and relationships with optometrists with just two sections of the bill and we are proposing two amendments. (Attachment 1 and 2)

The first amendment as indicated on the balloon on Page 3, Section 2(a), and it goes to the question whether leases that are now legal between an optical dispensing company and an optometrist would continue to be legal under this bill if adopted in its current form. The reason they have the concern is that the bill would do in section 2, is set out a number of acts which if performed by any individual or entity would deem them to practicing optometry and therefore requiring their licensure.

Mr. Hurley said they are recommending an insertion of an amendment in Sec. 1(a) that would read: "But the lease of premises, property, or equipment to an optometrist shall not constitute the maintenance of an office for the practice of optometry and is not barred under this subsection so long as the terms of the lease don't violate any other provision of this act."

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The second amendment recommended is on Page 16, New Sec. 18(e) adding the following: "But the purchase by an optometrist of an optical dispensing franchise shall not constitute the franchised practice of optometry and is not barred under this subsection, so long as the terms of the purchase do not violate any other provisions of this act."

Mr. Hurley said the two amendments would continue their status quo regarding the legal relationship between optical dispensing companies and optometrists in these two areas. This bill would make it clearly legal in the future and without it, we don't think that it is clear. Those two new terms aren't defined in the bill.

The Chairman called the next proponent, Gary Robbins, Executive Director of the Kansas Optometric Association. He appeared in support of H.B. 2630, and expressed concern over the amendments offered by Mr. Hurley. (Attachment 3)

Mr. Robbins said if the Committee felt a further clarification is needed on this issue, he offered the following amendment to 65-1501(a): "Maintain an office for the practice of optometry means: (1) to directly or indirectly control or attempt to control the professional judgment or the practice of a licensee; or (2) to bear any of the expenses of or to have, own or acquire any interest in the practice, books, records, files, or materials of a licensee."

With this definition, a lease which does not provide for the control of the professional judgment of the optometrist is not "maintaining an office". Thus such a lease is legal under this act.

In addition, Mr. Robbins offered the following language for New Sec. 18 if the Committee adopts this definition of "maintains an office:"

"Sec. 18(e) Nothing herein contained shall be construed to permit the franchised practice of optometry except that a licensee may purchase a franchise to engage in the business of optical dispensing separate and apart from the licensee's optometric practice, so long as the terms of the franchise agreement do not violate any provisions of the optometry law."

Mr. Robbins said they would support the bill only as amended by the House Committee.

The Chairman called for questions for Mr. Robbins.

Senator Hayden asked if these two amendments have been circulated to the other conferees?

Mr. Robbins said they talked about them this morning. They had just finished them last night. We did meet with the McGill lobbyist this morning and we're both waiting on answers from our clients at this point. And hopefully we will know by tomorrow morning, yes or no.

Senator Salisbury said, if she understands it correctly, the optical dispensing companies feel that the language, particularly the two sections indicated, would restrict current procedure. Do you feel that the methods that have been proposed would change the practice as it currently exists?

Mr. Robbins said we do not think the amendments are needed for a couple reasons. One of the things that we talked about, particularly in the lease area, that we are concerned about patient records. If you are in a situation where someone is allowed to lease to a doctor after doctor in a given space, separate and apart, but the records accidentally stay, in that space, then our concern is you are allowing an optical dispenser

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to practice optometry and have control over the records. Right now with the current law, it is possible to lease space separate and apart, and it's possible for an optometrist to invest in an optical dispensery. That's current practice and that's not going to change because I assume 30-40% of my members currently lease space. It's a non-issue in our minds.

Senator Salisbury said let her ask it in another way. Is it your intent to write law that would change the current practice?

Mr. Robbins said it clearly is not.

Senator Salisbury asked if there is some question in the language but what it could be construed to change current practice? Would that be your intent?

Mr. Robbins said no. We are making the assumption that all leases out there are valid. As far as we are concerned that's the responsibility fo the state licensing board to evaluate and be sure there's no problems with leases. We feel they should have the authority the same way it is under the Healing Arts Board in the event there are problems.

Senator Salisbury asked if they don't have that authority?

Mr. Robbins said they do, and this doesn't change that.

Senator Reilly said it was indicated on Page 2 of the testimony, that Mr. Rozak representing several of the national optical companies testified in support of the bill and then also offered up five amendments to the Public Health and Welfare Committee of the House. Were these amendments similar to Mr. Hurley's and were Mr. Hurley's circulated among the committee and no member of the committee chose to introduce the amendments.

Mr. Robbins said the amendments offered by Mr. Hurley are not identical to the ones they wanted in the House, but the same intent. Similar form. Actually their original testimony was insert the word "conducts or operates" for the word "maintains" and then they later came up with language, not identical but similar to that that was circulated among committee members.

Senator Reilly asked if any amendments were made at all in the House?

Mr. Robbins said no committee member chose to offer the amendments.

Senator Anderson asked who licenses the optical dispensing places, how are they licensed?

Mr. Robbins said they are not regulated in any way. He said he assumes the Consumer Protection Act is the only vehicle. They are totally unregulated.

Senator Burke asked if there is anything in the law that prevents optometrist from leasing space from a source that would happen to be adjacent to this type of service.

Mr. Robbins said right now, in current law, optometrist are not allowed to have a relationship with an optical dispenser. That's one of our concerns, that there's a hidden relationship where patients are being referred back and forth and there's no disclosure of ownership. That's prohibited under current law.

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Senator Burke asked if there is anything prohibiting an optometrist from renting space next to Pearle.

Mr. Robbins said no.

Senator Burke said but it would prevent them from sub-leasing?

Mr. Robbins said as far as we are concerned, an optometrist can lease next door and they can lease directly from Pearle, if that is your question, as long as it's an "arms-length" relationship. One of the concerns that we clearly have that the judgment of the doctor is not interfered with and we have patients going back and forth. But it is possible to do that.

Mr. Robbins said that is allowed right now and not changed, as we see it, in the rewrite of the law. It was the intent of the Joint Committee on Rules and Regs. We're trying to clean up as many areas as we could, but we weren't trying to change this area in any way. We think we accomplished that in the original bill.

Senator Anderson asked can a situation where an optometrist can go into a lease next door to an optical shop. The optometrist writes a prescription and they don't actually do the filling of the prescription?

Mr. Robbins said as soon as the patient gets their prescription, they are free to shop wherever they want.

Senator Anderson said the optometrist doesn't make any recommendations, go to this particular shop or says he does business with them.

Mr. Robbins said that is their concern separate and apart. Optometrist do, in their own offices, sell eyewear. But you can take your prescription and shop anywhere you want.

Senator Anderson said he was wondering what impact if an optometrist rented a shop next door, would this have an impact on your lease from not recommending business next door.

Mr. Robbins said in other states it has had an adverse impact on leases and in some states have had incidents where they have had rather short leases, as short as 6 months. That's what we are concerned about, obviously, that could be a very powerful tool for a doctor. It should be just a straight lease where there's not any stipulations.

Senator Reilly said in response to Senator Salisbury's questions, you indicated there is nothing in the bill which would change the current procedure, in your opinion.

Mr. Robbins said that was correct.

Senator Reilly said then, if that is the case, rather than play around with the language, it would seem appropriate to ask the Chair and the Staff by virtue of the record, which we do quite frequently in the Federal and State Committee, let the record reflect that on the basis of what we are hearing from the conferees, nothing is intended in H.B. 2630 that implies a change in the current law.

Mr. Robbins asked if Senator Reilly was saying to put that in the statute?

Senator Reilly said the wording does not change anything?

Mr. Robbins said that's right, it's still possible to lease. Page 4 of 9

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Senator Burke said under the suggestion for amending Section 18 in regards to allowing optometrist to own a franchise, is that what this would do?

Mr. Robbins said that under the current law it is not. One of the things that we are concerned about in a franchise situation is that for doctors that are vesting. We're talking about basically investing in a franchise has to be separate and apart, one of the things that we're looking at is the fact there shouldn't be hidden relationships. Congress is looking very seriously at this area right now, but in this next 90 days the Department of Human Resources is going to come up with rules and regulations, called the Safe Harbor Statutes that are going to make it clear if the value of any doctor that receives Medicaid, or Medicare funds, that their lease agreements. It's alright to rent anywhere but the value has to be fair-market value and there can't be based on referral patients or any other source, it has to be totally independent.

Senator Burke asked what would prevent an optometrist from having a practice next door to a franchise?

Mr. Robbins said that we have a prohibition against having a relationship in our law in that regard. And that's what prohibiting of franchise practice of optometry means, where it is next door.

Senator Burke pointed out Mr. Robbins was saying an optometrist could own a franchise.

Mr. Robbins said we're talking about an optical dispensing franchise. That's the key here, I think. It may not be clear where we're talking about a situation where you are only investing in an optical shop of some kind. In other words, where you are an investor, you're not practicing optometry in any way, shape or form. An optometrist wishes to invest and isn't referring patients to or from. Right now in this state they can invest in it. They can't practice next to it, refer patients back and forth, but could invest in it. One of the things, I think, needs to be pointed out to the Committee, is the fact that the three companies for this bill, the optical companies, only one of the three franchises at the present time. In their testimony in front of the House Committee, they indicated there's only 400 franchises that have been sold nationally. Yet, that represents, where they say optometrist have invested in one, that's less than 1% of the optometrist in this country. 1 to 2%. It's something optometrist can do right now but they can't be next door or refer patients. It has to be an arms-length agreement.

Senator Salisbury asked if the Committee on Rules and Regulations was recommending this bill as a matter of policy or as a matter of clarifying rules and regulations?

Chairman Ehrlich responded saying it is mostly what the federal mandate wanted.

Senator Salisbury asked if legislation reflect Federal Requirements.

Staff Wolff said the history of the bill Senator Salisbury was Chairman of the Committee on Rules and Regulations when the Committee took a review of the authorized statutes, rules and regulations that were adopted by the Board of Examiners of Optometry to regulate the practice of optometry in the state. We did 2 or 3 years ago. At the end of that study, the Joint Committee on Administrative Rules and Regulations concluded that the statutes and the regulations were fairly well outdated as they related to actual everyday practice of the profession. Some of the statutes and regulations go back to the 1920's and '30's.

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Others are more modern. At the end of that Rules and Regs study, there was a recommendation in a letter written to the Legislative Coordinating Council asking for an interim study on the whole subject. There was a follow-up letter requesting that study be delayed because the Federal Trade Commission was in the mist of a fairly indepth study of the whole profession, including some of the issues that have been raised by the Rules and Regs Committee. Last year the Federal Trade Commission made its pronouncement of its findings. And at that point, the Rules and Regs Committee then, not wishing to lose all the work that had been put in on the two-year study, revived its interest in the proposal and asked Staff to draft a bill that included all the issues that had been raised as a result of the 2-year study. Including the new issues raised by the Federal Trade Commission. Staff reviewed that bill with the Committee. Committee put off making any decisions until later than summer, when the Association and the Board, each presented separate drafts to the Committee so that in front of the Committee were three different drafts of legislation addressing all the issues--not all in the same manner. H.B. 2630 is a conglomeration of those three drafts. And I think they present to you some technical changes and some up-dating changes and some policy changes as the bill relates to the Federal Trade Commission. Specifically, that point in the bill that will prohibit commercial practice of optometry. I believe, it was everybody's intent at the beginning, middle, and at the end, that nothing in the revised draft change the manner in which the various players in the professions are treated. Except to the extent that there's new language and new law in the bill. Now whether or not the bill does that, I don't think anybody has written a guarantee that says that since the words have been reshuffled, they now mean something else. They very well could. It depends on how they are interpreted. But, I think that's how you have the bill in front of you, is the bill is basically at the recommendation of the Joint Committee to update and clean-up the statute that relates to the practice of optometry.

Senator Salisbury said if she understood Staff correctly there were some policy decisions that were made by members of the Joint Committee on Administrative Rules and Regulations. From time to time that Committee will introduce such legislation as result of a question that arises over regulations adopted by the administrative agency and the purpose is not to endorse a policy, but is to clarify law.

Senator Reilly asked of Staff Wolff, if any of the proposals that are now in the form of H.B. 2630, are any of the concerns expressed with regard to the amendments we have before us, or were they offered or were they a part of any of the discussions?

Staff Wolff said they were not a part of any of the discussions.

Senator Reilly said then the issue of the reshuffling of the language was not a concern then?

Staff Wolff said that the only persons that were a party to what is now H.B. 2630 were the Association, the Board and the Joint Committee. The bill was not presented to the opticians or anybody else for hearings.

Senator Reilly said what you are saying, is what is the intent and that we really changed the law to meet whatever the federal mandates were but there was no discussion to changing the philosophy in the practice of optometry.

Staff Wolff said in the House Committee, Mr. Rozak was reviewing the language of H.B. 2630, the amendments to the existing law he saw some differences. The questions in his mind presented to you today by Mr. Hurley is, "does that language mean the same now as it meant before?"

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I think that's the question Mr. Hurley has posed to you.

Senator Reilly said the response we got to the Senator's question was that there was not an intention to change.

Staff Correll said for clarification, some of the issues that have been raised and you have responded that there is no change, however, the current law does not overtly state many of these things, nor does this bill. In fact those are interpretations of the current law that apparently have arisen over the years. I think I raised a question in the House Committee and you responded again that there is nothing specific in the law that makes the statement relative to owning franchises or prohibiting them for that matter. What then is the real problem with clarifying some of these issues or codifying some of the apparent interpretation that have taken place over the years.

Mr. Robbins said one of the things I think is important to clarify and I know you know you didn't agree with my answer in the House, but one of the keys the Joint Committee on Administrative Rules and Regulations said they wanted us to make a policy change in the trade name area, which we did make, by prohibiting the trade name which in buying the franchise is buying the trade name. So, that is in effect, we don't see that as a policy change, where the Dental Office **thing that** we talked about, they put in similar provisions to prohibit franchising. One of the things in our testimony, we have offered language in it to address their concerns on franchising and also control. And I've thrown two alternatives out there that I think clarifies it. I think I have addressed them.

Chairman called Phil Ernzen, with the State Board of Optometry Examiners.

Mr. Ernzen is President of the State Board of Optometry Examiners and also in private practice in Kansas. He said the Board strongly supports H.B. 2630. It will change the date of renewals from May 1 to June 1, and will also raise the examination fee to cover the costs of examinations, and H.B. 2630 defines the provisions the Board has to cover the clinical examination applicants must pass. (Attachment 4)

Senator Salisbury said that there are two sections that we have been discussing in terms of their intent, and if they are in keeping with the current practices.

Mr. Ernzen said that the lease agreement, probably my answer would be that you can see how in 20 minutes on how hard it is to define what is a lease, what's ok in a lease. It appears to me that putting in language that authorizes leases is opening up an area that we're never going to be able to fully control. The language as it now states is dealt with speaks to how those leases affect control is something we can deal with. Opening up and authorizing leases is just going to be like you say, I don't know how we're going to understand them all. Actually having provision in there which speak to control of the professional judgment of the optometrist, we feel is the better way to go with it. The franchising agreement that I heard presented, it seems to me it isn't necessary. I don't understand the reason for it but I think we can live with it.

Senator Langworthy said that when you were reworking the language of the balloon, were there some thoughts that there had been abuses of the lease agreements in the past?

Mr. Ernzen said that we have concerns about potentials of abuse with lease agreements. I don't know if there have been any abuses now. But the natural setting raises questions, with LensCrafters over the

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name of the optometrist in a building raises some questions about that arrangement. And if our only goal was that it's just a lease agreement and somehow we said lease agreements were ok, then I think we're losing some form of authority to deal with that issue as it defines control, rather than a written lease agreement. A written lease agreement on the basis of no control is ok. Is every lease agreement ok? I don't know that I can say that.

Senator Salisbury asked either one of these proposed amendments been considered by the Board?

Mr. Ernzen said we were part of the discussion concerning the amendments. And our point is that the current law allows the base lease agreement, we don't see that changing, but if there is that question, then it needs to be answered. Then those amendments concerning control are far, far better as far as we are concerned. That then speaks to what is wrong.

Senator Salisbury asked why the Board hasn't adopted regulations?

Mr. Ernzen said this is law yet. But we understand that the burden on us will be to adopt regulations when this becomes law.

Staff Correll asked if it was anyone's intent to prevent an optometrist from practicing as part of a professional association such as the Wichita Clinic?

Mr. Ernzen said no.

Staff Correll said that you would then look at the language proposed in maintaining an office for the practice of optometry, Page 4, paragraph 2. In a professional association, it would appear it would be very difficult for all members of that association, regardless of whether or not they are optometrist, physicians, dentist, whomever may go together to form a professional association, not to have common interest in the books, records, files and materials. If, for example, the Wichita Clinic and use that as an example and I don't know if it is a professional association, have a central billing operation. Then it would seem clear that the corporate entity itself has an interest in some records and files. And this would appear to say that it would not be possible.

Mr. Ernzen said he thought Mr. Robbins could address that.

Staff Correll said she thought there are a number of issues here than need to be addressed and she thought everyone involved ought to be careful that they are not somehow limiting a practice in the letter it's not intended.

Mr. Robbins said if you look at page 16 on the bill, we did address in the trade name section, optometrist may practice in the name of a professional corporation authorized by Subsection B and there indicates a total practice, may practice with other health care providers and one of the things that's new in the statutes Subsection C is in the definition section where we define Medical Facility and Medical Care Facility which picks up clinics, hospitals and those settings.

Staff Correll said she is aware of that, but then you appear by your amendments to be producing a diometrically opposed potential.

Chairman called Rebecca Rice of the Kansas Opthamological Society.

Ms. Rice said her organization supports H.B. 2630(Attachment 5) and ask that the bill be passed in its present form. She said she would support any of the franchise language and would like to present a slightly different perspective that what you are talking about and I
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think if you would enlarge the thinking about this to include other health care providers, primarily physicians, and other professionals such as attorneys, and how the legislature and the professions themselves have controlled their members to make certain that there are no sweetheart deals. And the problem that you have you start allowing a professional to engage in sweetheart deals you get into a position where the consumers are no longer protected. That's one of the reasons now why federal government requires that every ophthalmologist and optometrist hands that prescription for your eyeglasses to you so that you have the freedom to go anywhere you want to because the practice was before to make certain that you got to the guy that the doing the work and giving the kickback. We want to avoid that under any circumstances and I would suggest that, a few years ago when you passed the enlargement scope of optometrist practice to include therapeutic drugs, we would now point out to you that because of that enlarged scope of practice, we want to make certain that there is no one controlling that optometrist who is now dispensing drugs.

Chairman said that you have a letter from J.M. White (Attachment 6).

The Chairman said the H.B. 2758 testimony will be heard March 14.

The Committee adjourned at 11:00a.m., and will reconvene at 10:00a.m. on March 14, 1990.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3/13/90

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SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3/13/90

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SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3/13/90

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KPIHS

MEMORANDUM

TO: Chairman and Members of the Senate Public Health and Welfare Committee

FROM: PETE MCGILL & ASSOCIATES
On behalf of Cole Vision Corporation, Pearle Vision Centers and LensCrafters

DATE: March 13, 1990

RE: Proposed Amendments to HB 2630

Our office represents Cole Vision Corporation, LensCrafters and Pearle Vision Centers in regard to HB 2630.

Each of these companies is an optical dispensing company doing business in Kansas. As such, under current law they are not engaged in the practice of optometry and do not come under the regulatory authority of the Board Of Examiners In Optometry.

HB 2630 is designed to clarify the current law and codify certain regulations of the Board. Its declared purpose is to maintain the status quo and it is not intended to prohibit any existing practices or relationships between optometrists and optometric dispensing companies which are legal under current law.

These companies have reviewed HB 2630 and have concerns that two of the new provisions in the bill could be interpreted by the Board to bar existing practices and relationships.

I. First Concern: New Section 2(a):

A. New Law:

The companies' first concern is with new subsection (a) of Section 2 which defines those acts by any person which are deemed to be the

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practice of optometry, thereby requiring licensure by the Board.

Specifically, subsection (a) provides that any person who "maintains an office for the practice of optometry" shall be deemed to be practicing optometry.

The act does not define the term "maintains an office for the practice of optometry".

B. The Problem Created By Subsection 2(a):

The problem created by §2(a) is that it is currently legal for any person (including an optical dispensing company) to lease premises, property, and equipment to an optometrist so long as the rent is not set as a percentage of the fees or compensation of the optometrist, and the terms of the lease don't violate any other provisions of the law.

Currently, certain optical dispensing companies in Kansas sublease portions of their rental space to optometrists in compliance with existing law. They typically lease and maintain the premises, property and equipment for a flat rental rate.

The companies' concern is that such a lease arrangement could be construed by the Board under new §2(a) as constituting the practice of optometry by the optical dispensing company lessor.

C. Proposed Amendment:

In order to make it clear that existing practices would continue to be legal under new §2(a), the companies would propose the following amendment to HB 2630.

Add to new subsection (a), on page 3, in line 15, after the word "thereto" the following language:

"But the lease of premises, property, or equipment to an optometrist shall not constitute the maintenance of an office for the practice of optometry and is not barred under this subsection so long as the terms of the lease don't violate any other provision of this act."

II. Second Concern: New Section 18(e):

A. New Law:

The companies' second concern is with new subsection (e) of Section 18 which effectively prohibits the franchised practice of optometry.

Specifically, subsection 18(e) provides that nothing in the act shall be construed to permit the franchised practice of optometry.

The act does not define anywhere the "franchised practice of optometry".

B. The Problem Created By Subsection 18(e):

The problem created by §18(e) is that it is currently legal for an optometrist to purchase an optical dispensing business, whether or not a franchise, so long as the terms of the purchase do not violate any provisions of the law.

Currently around the country, optometrists are purchasing franchises of optical dispensing businesses without engaging in the franchised practice of optometry.

The companies' concern is that this current legal practice could be construed by the Board under §18(e) as being prohibited by this section since the act does not define what constitutes a "franchised practice of optometry".

C. Proposed Amendment:

In order to make it clear that existing practices would continue to be legal under new §18(e), the companies would propose the following amendment to HB 2630.

Adding to new subsection (e) on page 16, line 31, after the word "optometry" the following language:

"But the purchase by an optometrist of an optical dispensing franchise shall not constitute the franchised practice of optometry under this subsection, so long as the terms of the purchase do not violate any other provisions of the act."

III. Conclusion:

These two amendments to HB 2630 would in no way alter the purpose and intent of this legislation.

These two amendments would clearly continue the status quo regarding the legal relationship between optical dispensing companies and optometrists in these two areas.

These two amendments would make it clear that these current practices would continue to be legal under the law if HB 2630 is enacted by the Legislature.

HOUSE BILL No. 2630

By Joint Committee on Administrative Rules and Regulations

1-16

10 AN ACT concerning the optometry law; amending K.S.A. 65-1502,
11 65-1508, 65-1509, 65-1512, 65-1513, 65-1514, 74-1502 and 74-1504
12 and K.S.A. 1989 Supp. 65-1501a, 65-1505 and 65-1509a and re-
13 pealing the existing sections; also repealing K.S.A. 65-1504, 65-
14 1504a and 65-1510 and K.S.A. 1989 Supp. 65-1506.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 1989 Supp. 65-1501a is hereby amended to
18 read as follows: 65-1501a. For the purposes of this act the following
19 terms shall have the meanings respectively ascribed to them unless
20 the context requires otherwise:

21 (a) "Board" means the board of examiners in optometry ~~for the~~
22 ~~state of Kansas established under K.S.A. 74-1501 and amendments~~
23 ~~thereto.~~

24 (b) "License" means a license to practice optometry granted un-
25 ~~der this act the optometry law.~~

26 (c) "Licensee" means a person licensed under ~~this act the op-~~
27 ~~tometry law~~ to practice optometry.

28 (d) "Adapt" means the determination, selection, fitting or use of
29 lenses, prisms, orthoptic exercises or visual training therapy for the
30 aid of any insufficiencies or abnormal conditions of the eyes after or
31 by examination or testing.

32 (e) "Lenses" means any type of ophthalmic lenses, which are
33 lenses prescribed or used for the aid of any insufficiencies or ab-
34 normal conditions of the eyes.

35 (f) "Prescription" means a verbal or written order directly from
36 a licensee giving or containing the name and address of the pres-
37 criber, the license registration number of the licensee, the name
38 and address of the patient, the specifications and directions for lenses,
39 prisms, orthoptic exercises or visual training therapy to be used for
40 the aid of any insufficiencies or abnormal conditions of the eyes,
41 including instructions necessary for the fabrication or use thereof
42 and the date of issue.

43 (g) "Prescription for topical pharmaceutical drugs" means a verbal

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1 or written order directly from a licensee expressly certified to pre-
2 scribe drugs under ~~this act~~ *the optometry law* and giving or con-
3 taining the name and address of the prescriber, the license
4 registration number of the licensee, the name and address of the
5 patient, the name and quantity of the drug prescribed, directions
6 for use, the number of refills permitted, the date of issue and ex-
7 piration date.

8 (h) "Topical pharmaceutical drugs" means drugs known generi-
9 cally as anesthetics, mydriatics, cycloplegics, anti-infectives and anti-
10 inflammatory agents, which anti-inflammatory agents shall be limited
11 to a ~~14-day~~ *fourteen-day* supply, administered topically and not by
12 other means for the examination, diagnosis and treatment of the
13 human eye and its adnexae.

14 (i) "Dispense" means to deliver prescription-only medication or
15 ophthalmic lenses to the ultimate user pursuant to the lawful pre-
16 scription of a licensee and dispensing of prescription-only medication
17 by a licensee shall be limited to a twenty-four-hour supply or minimal
18 quantity necessary until a prescription can be filled by a licensed
19 pharmacist.

20 (j) "Diagnostic licensee" means a person licensed under ~~this act~~
21 *the optometry law* and certified by the board to administer or dis-
22 pense topical pharmaceutical drugs for diagnostic purposes.

23 (k) "Therapeutic licensee" means a person licensed under ~~this~~
24 ~~act~~ *the optometry law* and certified by the board to prescribe, ad-
25 minister or dispense topical pharmaceutical drugs for therapeutic
26 purposes.

27 (l) "*False advertisement*" means any advertisement which is false,
28 misleading or deceptive in a material respect. In determining whether
29 any advertisement is misleading, there shall be taken into account
30 not only representations made or suggested by statement, word,
31 design, device, sound or any combination thereof, but also the extent
32 to which the advertisement fails to reveal facts material in the light
33 of such representations made.

34 (m) "*Advertisement*" means all representations disseminated in
35 any manner or by any means, for the purpose of inducing, or which
36 are likely to induce, directly or indirectly, the purchase of profes-
37 sional services or ophthalmic goods.

38 (n) "*Health care provider*" shall have the meaning ascribed to
39 that term in subsection (f) of K.S.A. 40-3401 and amendments
40 thereto.

41 (o) "*Medical facility*" shall have the meaning ascribed to that
42 term in subsection (c) of K.S.A. 65-411 and amendments thereto.

43 (p) "*Medical care facility*" shall have the meaning ascribed to

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1 that term in K.S.A. 65-425 and amendments thereto.

2 Sec. 2. K.S.A. 65-1502 is hereby amended to read as follows:
3 65-1502. ~~Any~~ Except as provided in K.S.A. 65-1508 and amendments
4 thereto, a person shall be deemed to be practicing optometry within
5 the meaning of this act, ~~who shall the optometry law if such person~~
6 in any manner, except as provided in K.S.A. 65-1508; ~~first, dis-~~
7 ~~play any sign, circular, advertisement or device purporting or~~
8 ~~offering to in any manner examine eyes, test eyes, adapt lenses,~~
9 ~~or setting himself or herself forth as an optometrist, or as fur-~~
10 ~~nishing optometric services with intent to induce people to~~
11 ~~patronize himself, herself or any other person; second, who~~
12 ~~shall make in any manner:~~

13 (a) Holds oneself out to the public as being engaged in or who
14 maintains an office for the practice of optometry as defined in K.S.A.
15 65-1501 and amendments thereto. A

16 (b) makes a test or examination of the eye or eyes of another
17 to ascertain the refractive, the muscular or the pathological condition
18 thereof; ~~third, who shall in any manner adapt~~

19 (c) adapts lenses to the human eye for any purpose, either di-
20 rectly or indirectly; or ~~fourth, who shall conduct or perform~~

21 (d) conducts or performs orthoptic exercises or visual training
22 therapy for the correction, remedy or relief of any insufficiencies or
23 abnormal conditions of the eyes.

24 Sec. 3. K.S.A. 1989 Supp. 65-1505 is hereby amended to read
25 as follows: 65-1505. (a) Persons entitled to practice optometry in
26 Kansas shall be those persons heretofore lawfully registered, and
27 every person who is hereafter licensed in accordance with the
28 provisions of this act. Every licensee at the time this act takes
29 effect shall be deemed to be a licensed optometrist under this
30 act, and every licensee certified by the board to use topical
31 pharmaceutical drugs for diagnostic purposes at the time this
32 act takes effect shall be deemed to be a diagnostic licensee
33 under this act the optometry law. A person shall be deemed qual-
34 ified to be licensed and to receive a license as an optometrist: (1)
35 Who is of good moral character; and in determining the moral char-
36 acter of any such person, the board may take into consideration any
37 felony conviction of such person, but such conviction shall not au-
38 tomatically operate as a bar to licensure; (2) who has graduated from
39 a school or college of optometry approved by the board; and (3) who
40 successfully meets and completes the requirements set by the board
41 and passes an examination given by the board. All licenses issued
42 on and after July 1, 1987 the effective date of this act, to persons
43 not licensed in this state or in another state prior to July 1, 1987,

But the lease of premises, property, or equipment to an optometrist shall not constitute the maintenance of an office for the practice of optometry and is not barred under this subsection so long as the terms of the lease don't violate any other provision of this act.

1 shall be diagnostic and therapeutic licenses.

2 (b) ~~On and after July 1, 1987,~~ All applicants for licensure or
3 reciprocal licensure and all licensed optometrists at the time this act
4 takes effect, except as provided in subsection (a) and (e), in addition
5 to successfully completing all other requirements for licensure, shall
6 take and successfully pass an examination required by the board
7 before being certified by the board as a diagnostic and therapeutic
8 licensee.

9 (c) All persons before taking the examination required by the
10 board to be certified as a diagnostic and therapeutic licensee shall
11 submit evidence satisfactory to the board of having successfully com-
12 pleted a course approved by the board in didactic education and
13 clinical training in the examination, diagnosis and treatment of con-
14 ditions of the human eye and its adnexae, totaling at least 100 hours.

15 (d) Any person ~~desiring to be examined~~ *applying for exami-*
16 *nation* by the board ~~must shall~~ fill out and swear to an application
17 furnished by the board, accompanied by a fee fixed by the board
18 *by rules and regulations* in an amount of not to exceed ~~\$75~~ \$150,
19 and file the same with the secretary of the board at least 30 days
20 prior to the holding of ~~an the~~ examination ~~which the applicant is~~
21 ~~desirous of taking~~. At such examinations the board shall examine
22 each applicant in subjects taught in schools or colleges of optometry
23 approved by the board, as may be required by the board. If such
24 person complies with the other qualifications for licensing and passes
25 such examination, such person shall receive from the board, upon
26 the payment of a fee fixed by the board *by rules and regulations*
27 in an amount of not to exceed ~~\$15~~ \$30, a license entitling such
28 person to practice optometry. In the event of the failure on the part
29 of the applicant to pass the first examination, such person may, with
30 the consent of the board, within 18 months, by filing an application
31 accompanied by a fee fixed by the board *by rules and regulations*
32 in an amount of not to exceed ~~\$37.50~~ \$75, take a second examination;
33 for the third and each subsequent examination a fee fixed by the
34 board *by rules and regulations* in an amount of not to exceed ~~\$22.50~~
35 \$45. *Any examination fee and license fee fixed by the board under*
36 *this subsection which is in effect on the day preceding the effective*
37 *date of this act shall continue in effect until the board adopts rules*
38 *and regulations under this subsection fixing a different fee therefor.*

39 (e) Any applicant for reciprocal licensure may in the board's dis-
40 cretion be licensed and issued a license without examination in the
41 category of licensure under the optometry law for which application
42 is made *if the applicant has been in the active practice of optometry*
43 *in another state and the applicant:*

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1 (1) Presents a certified copy of a certificate of registration or
2 license which has been issued to the applicant by ~~any other~~ another
3 state where the requirements for licensure are deemed by the board
4 to be equivalent to the requirements for licensure in the category
5 of licensure under this act for which application is made, if such
6 state accords a like privilege to holders of a license issued by the
7 board;

8 (2) *submits a sworn statement of the licensing authority of such*
9 *other state that the applicant's license has never been limited, sus-*
10 *sended or revoked and that the applicant has never been censured*
11 *or had other disciplinary action taken; and*

12 (3) *successfully passes an examination of Kansas law administered*
13 *by the board and such clinical practice examination as the board*
14 *deems necessary.*

15 Such applicant shall be required to satisfy only the requirements
16 of the category of licensure under the optometry law for which
17 application is made and which existed in this state at the time of
18 the applicant's licensure in such other state; or, if such requirements
19 did not exist in this state at the time of the applicant's licensure in
20 such other state, the applicant shall be required to satisfy only the
21 requirements of the category of licensure under the optometry law
22 for which application is made which originally were required for that
23 category of licensure. The fee for licensing such applicants shall be
24 fixed by the board *by rules and regulations* in an amount of not to
25 exceed ~~\$75~~ \$150. *The reciprocal license fee fixed by the board under*
26 *this subsection which is in effect on the day preceding the effective*
27 *date of this act shall continue in effect until the board adopts rules*
28 *and regulations under this subsection fixing a different fee therefor.*

29 (f) The board shall adopt rules and regulations establishing the
30 criteria which a school or college of optometry shall satisfy in meeting
31 the requirement of approval by the board established under sub-
32 section (a). The board may send a questionnaire developed by the
33 board to any school or college of optometry for which the board
34 does not have sufficient information to determine whether the school
35 or college meets the requirements for approval and rules and reg-
36 ulations adopted under this ~~section~~ act. The questionnaire providing
37 the necessary information shall be completed and returned to the
38 board in order for the school or college to be considered for approval.
39 The board may contract with investigative agencies, commissions or
40 consultants to assist the board in obtaining information about schools
41 or colleges. In entering such contracts the authority to approve
42 schools or colleges shall remain solely with the board.

43 Sec. 4. K.S.A. 65-1508 is hereby amended to read as follows:

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1 65-1508. (a) Nothing in this act shall be construed to prevent persons
2 who are licensed to practice medicine and surgery in this state from
3 performing the acts or services authorized for optometrists under
4 the optometry law or from delegating the performance of screening
5 procedures for visual acuities, color vision, visual fields and intra-
6 ocular pressure to assistants.

7 ~~(b) Except for the limitations and prohibitions upon the ex-~~
8 ~~amination procedures which may be performed by assistants~~
9 ~~under subsection (e), a person who is licensed to practice med-~~
10 ~~icine and surgery by this state and who has completed an~~
11 ~~approved postgraduate training program in ophthalmology, a~~
12 ~~person who is practicing as a full-time ophthalmologist on the~~
13 ~~effective date of this act and a person who is licensed to prac-~~
14 ~~tice optometry by this state may utilize not more than three~~
15 ~~(3) assistants to perform examination procedures which may be~~
16 ~~performed by a person licensed to practice optometry.~~

17 ~~(e) (b)~~ The examination procedures performed by assistants to
18 optometrists or ophthalmologists shall be limited to data gathering
19 at the direct request of the ophthalmologist or optometrist and to
20 those examination procedures which do not require professional
21 interpretation or professional judgment. These examination proce-
22 dures may be performed by assistants only under the immediate and
23 personal supervision and within the office of an ophthalmologist or
24 optometrist. Delegation to such assistants of the external and internal
25 evaluation of the eye, biomicroscopic evaluation, subjective refra-
26 ction, gonioscopic evaluation, final contact lens fit evaluation, orthoptic
27 and strabismus evaluations, visual training evaluations, analysis of
28 findings and the prescribing of ophthalmic lenses are prohibited.

29 ~~(d) (c)~~ Persons who dispense ophthalmic materials pursuant to
30 the prescription of a person licensed to practice medicine and surgery
31 or optometry shall not be construed to be assistants within the
32 meaning of this section.

33 Sec. 5. K.S.A. 65-1509 is hereby amended to read as follows:
34 65-1509. (a) Before engaging in the practice of optometry *in this*
35 *state*, it shall be the duty of each licensed optometrist to notify the
36 board in writing of the address of the office or offices where such
37 licensee is to engage or intends to engage in the practice of optometry
38 and of any changes in the licensee's location of practice, ~~and~~. Any
39 notice required to be given by the board to any licensed optometrist
40 may be given by mailing to such address through the United States
41 mail, postpaid. ~~An optometrist shall not have or maintain more~~
42 ~~than two offices for the practice of optometry exclusive of prac-~~
43 ~~tice in governmental institutions.~~

1 (b) Any license to practice optometry issued by the board shall
2 expire on May 31 of each year and may be renewed annually upon
3 request of the licensee. The request for renewal shall be on a form
4 provided by the board and shall be accompanied by the prescribed
5 fee, which shall be paid no later than the expiration date of the
6 license.

7 (c) On or before May 1 each year, the board each year, ~~on or~~
8 ~~before April first,~~ shall determine the amount that may be necessary
9 for the next ensuing fiscal year to carry out and enforce the provisions
10 of the act of which this section is amendatory optometry law,
11 and shall fix by rules and regulations the renewal fee and the fees
12 provided for in K.S.A. 65-1505 and amendments thereto, in such
13 amounts as may be necessary for that purpose. The renewal fee shall
14 not exceed ~~seventy five dollars (\$75)~~ \$150. Upon fixing such fees,
15 the board shall immediately notify all licensees of the amount of
16 such fees for the ensuing year. In every year hereafter, every li-
17 censed optometrist shall in every year hereafter pay to the board
18 of examiners the sum so fixed as a fee for a renewal of such license
19 for each year. Such payment shall be made on or before the
20 first day of May of each year, and in case of default in such
21 payment by a licensee, the license shall be revoked by the
22 board of examiners after twenty (20) days' notice is given to
23 the licensee of the time and place of a hearing on such re-
24 vocation. The board of examiners may reinstate the license
25 upon the payment of the amount fixed for renewal as provided
26 in this section. The license renewal fee fixed by the board under
27 this subsection which is in effect on the day preceding the effective
28 date of this act shall continue in effect until the board adopts rules
29 and regulations under this subsection fixing a different fee therefor.

30 (d) At least 30 days before the expiration of the licensee's license,
31 the board shall notify each licensee of the expiration by mail ad-
32 dressed to the licensee's last known address. If the licensee fails to
33 pay the annual fee or show proof of compliance with the continuing
34 education requirements by the date of the expiration of the license,
35 the licensee shall be mailed a second notice that the licensee's license
36 has expired, that the board shall suspend action for 30 days following
37 the date of expiration, that upon receipt of the annual fee together
38 with an additional fee not to exceed \$500, within the thirty-day
39 period, no order of cancellation will be entered and that, if both
40 fees are not received within the thirty-day period, the license shall
41 be canceled.

42 (e) Any licensee who allows the licensee's license to lapse or be
43 canceled by failing to renew as herein provided, may be reinstated

1 *by the board upon payment of the renewal fees then due and upon*
 2 *proof of compliance with the continuing education requirements es-*
 3 *ablished by the board.*

4 Sec. 6. K.S.A. 1989 Supp. 65-1509a is hereby amended to read
 5 as follows: 65-1509a. In addition to the payment of the license re-
 6 newal fee, each licensee, *other than one who has graduated from*
 7 *an optometry school within 12 months of the date of the application*
 8 *for renewal*, applying for license renewal shall furnish to the secretary
 9 of the board satisfactory evidence of successfully completing a min-
 10 imum of 20 hours of continuing education programs approved by
 11 the board in the year just preceding such application for the renewal
 12 of the license. The board ~~may~~, in its discretion, ~~may~~ increase the
 13 required hours of continuing education by rules and regulations
 14 adopted by the board. *On or before April 1 of each year*, the
 15 secretary of the board shall send a written notice of continuing
 16 education requirements to this effect to every person holding a valid
 17 license to practice optometry within the state at least 30 days prior
 18 ~~to the first day of May in each year~~. *Such notice shall be directed*
 19 *to the last known address of such licensee.*

20 ~~In the event that any licensee fails to meet such continuing~~
 21 ~~education requirements, such licensee's license may be re-~~
 22 ~~voked by the board after 20 days' notice is given to the licensee~~
 23 ~~of the time and place of a hearing on such revocation. The~~
 24 ~~board may reinstate such licensee to practice optometry upon~~
 25 ~~the presentation of satisfactory evidence of completion of the~~
 26 ~~annual continuing education requirement approved by the~~
 27 ~~board and upon the payment of all fees due.~~

28 Sec. 7. K.S.A. 65-1512 is hereby amended to read as follows:
 29 65-1512. This act shall be known and may be referred to *cited as*
 30 *"the optometry law."*

31 Sec. 8. K.S.A. 65-1513 is hereby amended to read as follows:
 32 65-1513. Any person who ~~shall violate~~ *violates* any of the provisions
 33 of this act shall be deemed guilty of a class C misdemeanor ~~and~~
 34 ~~upon conviction shall be fined not less than fifty dollars (\$50),~~
 35 ~~nor more than two hundred dollars (\$200), or to be imprisoned~~
 36 ~~not less than ten (10) days and not more than thirty (30) days~~
 37 ~~or both, for the first offense, and for the second and each subsequent~~
 38 ~~offense shall be fined not less than two hundred dollars (\$200)~~
 39 ~~nor more than five hundred dollars (\$500), or by imprisonment~~
 40 ~~in the county jail not less than three (3) months, and not more~~
 41 ~~than one (1) year, or both. All fines thus received shall be paid~~
 42 ~~to the state treasurer pursuant to K.S.A. 20-2801, and any~~
 43 ~~amendments thereto guilty of a class B misdemeanor. It shall be~~

1 is the duty of the respective county and district attorneys to prosecute
2 all violators of this act.

3 Sec. 9. K.S.A. 65-1514 is hereby amended to read as follows:
4 65-1514. The provisions of K.S.A. 65-1501a, 65-1504a, 65-1504b and
5 65-1509a and sections 12 to 21, inclusive, and amendments thereto,
6 are hereby declared to be a part of and supplemental to the op-
7 tometry law.

8 Sec. 10. K.S.A. 74-1502 is hereby amended to read as follows:
9 74-1502. ~~Said~~ The board shall keep a record in which shall be
10 registered the name, residence, place of business, date of issuance
11 of ~~certificate license~~, renewals, *limitations* revocations and suspen-
12 sions of a license of every person authorized under ~~this act~~ the
13 *optometry law* to practice optometry in this state. A majority of ~~said~~
14 the board shall constitute a quorum and the ~~proceedings thereof~~
15 shall be open for public inspection.

16 Sec. 11. K.S.A. 74-1504 is hereby amended to read as follows:
17 74-1504. (a) The board is hereby authorized, empowered and
18 directed to shall administer and enforce the provisions of this act
19 the *optometry law*, and ~~it the board~~ is hereby granted such specific
20 powers as are necessary for the purpose of administering and en-
21 forcing the same such law. In addition thereto, the board shall
22 have the power may:

23 (a) ~~To~~ (1) Employ agents, attorneys and inspectors under such
24 rules and regulations as ~~it the board~~ may prescribe in accordance
25 with the provisions of this act. *Provided, the optometry law, except*
26 that no state officer shall be eligible to for employment by the board.

27 (b) ~~To~~ (2) Make all necessary disbursements, to carry out the
28 provisions of this act, including payment for stationery supplies,
29 *acquire* all necessary optical instruments to be used in the conducting
30 of examination, ~~the printing and circulating print and distribute~~
31 to all optometrists in the state, and issue a yearbook which shall
32 contain of the names and addresses of all optometrists in the state
33 licensed by the board.

34 (c) The board shall meet at least annually for the purpose
35 of examining applicants for certificates of registration. Such
36 meetings shall be held in Topeka. The board shall cause a
37 special notice to be published in some newspaper of general
38 circulation stating the date and hour for holding such exami-
nations, at least ~~thirty~~ (30) days prior thereto. Special meetings
shall be held at such times and places as the board may direct.

41 (d) The board shall preserve an accurate record of all meet-
42 ings and proceedings of the board including receipts and dis-
43 bursements with vouchers therefor and complete minutes of

1 all prosecutions and violations of this act and of examinations
2 held under the provisions hereof and an accurate inventory of
3 all property of the board; that all such records shall be kept
4 in the office of the board and made accessible to the public.

5 ~~(e) To~~ (3) Grant all certificates of registrations as it shall
6 licenses as seem just and proper and to suspend, limit, revoke or
7 refuse to renew any such certificates licenses granted for any of the
8 causes specified in under K.S.A. 65-1504 65-1506 and amendments
9 thereto.

10 ~~(f) To~~ (4) Administer oaths; and take testimony upon granting
11 or refusing to grant, revoking, limiting or suspending certificates
12 of registration licenses.

13 ~~(g) To~~ (5) Issue subpoenas, compel the attendance of witnesses
14 and the production of any papers, books, accounts, documents, and
15 testimony, and to cause the deposition of witnesses, either residing
16 within or without the state, to be taken in the manner prescribed
17 by law for taking depositions in civil actions in the district courts.
18 In case of disobedience on the part of any person to comply with
19 any subpoena issued in behalf of said the board, or on the refusal
20 of any witness to testify to any matters regarding which he such
21 witness may be lawfully interrogated, the judge of the district court
22 of any county; or the judge thereof, on application of a member
23 of said the board, may compel obedience by proceedings for con-
24 tempt, as in the case of disobedience of the requirements of a
25 subpoena issued from such court or a refusal to testify therein in
26 such court. Each witness who appears before said the board by its
27 the board's order or subpoena, other than a state officer or employee,
28 shall receive for his attendance the fees and mileage provided for
29 witnesses in civil cases in courts of record which shall be audited
30 and paid upon the presentation of proper vouchers sworn to by such
31 witnesses and approved by the president and secretary secretary-
32 treasurer of said the board.

33 ~~(h) To make~~ (6) Adopt rules and regulations for the procedure
34 and conduct of the board and for the conduct and government of
35 applicants for certificates of registration, and licensed and reg-
36 istered optometrists, and to prescribe a code of ethics for op-
37 tometrists practicing within this state, which said rules,
38 regulations and code of ethics administration of the optometry
39 law, which rules and regulations shall not be inconsistent with the
40 provisions of this act the optometry law.

41 (b) The board shall meet at least annually for the purpose of
42 examining applicants for licensure. Such meetings shall be held in
43 Topeka. At least 30 days prior to the examination, the board shall

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1 *cause a special notice to be published in the Kansas register stating*
2 *the date and hour for holding such examination. Special meetings*
3 *shall be held at such times and places as the board may direct.*

4 (c) *The board shall preserve an accurate record of all meetings*
5 *and proceedings of the board including receipts and disbursements*
6 *with vouchers therefor and complete minutes of all prosecutions and*
7 *violations of the optometry law and of examinations held under the*
8 *provisions of the optometry law and an accurate inventory of all*
9 *property of the board. All such records shall be kept in the office*
10 *of the board and made accessible to the public.*

11 New Sec. 12. As used in this act:

12 (a) "Professional incompetence" means:

13 (1) One or more instances involving failure to adhere to the
14 applicable standard of care to a degree which constitutes gross neg-
15 ligence as determined by the board.

16 (2) Repeated instances involving failure to adhere to the appli-
17 cable standard of care to a degree which constitutes ordinary neg-
18 ligence, as determined by the board.

19 (3) A pattern of practice or other behavior which demonstrates
20 a manifest incapacity or incompetence to practice optometry.

21 (b) "Unprofessional conduct" means:

22 (1) Using fraudulent or false advertisement.

23 (2) Engaging in the practice of optometry as an agent or employee
24 of a person not licensed under the optometry law.

25 (3) Conduct likely to deceive, defraud or harm the public.

26 (4) Making a false or misleading statement regarding the licen-
27 see's skill or the efficacy or value of the drug, treatment or remedy
28 prescribed by the licensee or at the licensee's direction.

29 (5) Aiding or abetting the practice of optometry by an unlicensed,
30 incompetent or impaired person.

31 (6) Allowing another person or organization to use the licensee's
32 license to practice optometry.

33 (7) Commission of any act of sexual abuse, misconduct or ex-
34 ploitation related to the licensee's professional practice.

35 (8) The use of any false, fraudulent or deceptive statement in
36 any document connected with the practice of optometry.

37 (9) Obtaining any fee by fraud, deceit or misrepresentation.

38 (10) Directly or indirectly giving or receiving any fee, commis-
39 sion, rebate or other compensation for professional services not ac-
40 tually and personally rendered, other than through the legal
41 functioning of lawful professional partnerships, corporations or
42 associations.

43 (11) Performing unnecessary tests, examinations or services which

1 have no legitimate optometric purpose.

2 (12) Charging an excessive fee for services rendered.

3 (13) Prescribing, dispensing, administering, distributing a pre-
4 scription drug or substances, in an excessive, improper or inappro-
5 priate manner or quantity or not in the course of the licensee's
6 professional practice.

7 (14) Repeated failure to practice optometry with that level of
8 care, skill and treatment which is recognized by a reasonably prudent
9 similar practitioner as being acceptable under similar conditions and
10 circumstances.

11 (15) Failure to keep written optometry records which describe
12 the services rendered to the patient, including patient histories,
13 pertinent findings, examination results and test results.

14 (16) Delegating professional responsibilities to a person when the
15 licensee knows or has reason to know that such person is not qualified
16 by training, experience or licensure to perform them.

17 (17) Using experimental forms of therapy without proper in-
18 formed patient consent, without conforming to generally accepted
19 criteria or standard protocols, without keeping detailed legible rec-
20 ords or without having periodic analysis of the study and results
21 reviewed by a committee of peers.

22 (18) Allowing improper interference with the licensee's profes-
23 sional judgment in providing patient care.

24 (19) Allowing optometric services to be provided by a person or
25 entity not qualified to do so under state law.

26 (20) Failure to disclose to the patient the identity of the licensee
27 who performs optometric services before the time optometric services
28 are performed.

29 (21) Failure to maintain minimum standards for ophthalmic goods
30 and services provided by the licensee determined by rules and reg-
31 ulations of the board.

32 (22) Willful betrayal of a patient's confidence.

33 New Sec. 13. A licensee's license may be revoked, suspended
34 or limited, or the licensee may be publicly or privately censured,
35 upon a finding of the existence of any of the following grounds:

36 (a) The licensee has committed fraud or misrepresentation in
37 applying for or securing an original or renewal license.

38 (b) The licensee has committed an act of unprofessional conduct
39 or professional incompetence.

40 (c) The licensee has been convicted of a felony, whether or not
41 related to the practice of optometry.

42 (d) The licensee has used fraudulent or false advertisements.

43 (e) The licensee has willfully or repeatedly violated the optometry

1 law, the pharmacy act of the state of Kansas or the uniform controlled
2 substances act, or any rules and regulations adopted pursuant
3 thereto.

4 (f) The licensee has unlawfully performed practice acts of optom-
5 etry for which the licensee is not licensed to practice.

6 (g) The licensee has failed to pay annual renewal fees specified
7 in this act.

8 (h) The licensee has failed to comply with the annual continuing
9 education requirements as required by this act and the board.

10 (i) The licensee has engaged in the practice of optometry under
11 a false or assumed name, or the impersonation of another practi-
12 tioner. The provisions of this subsection relating to an assumed name
13 shall not apply to licensees practicing under a professional corporation
14 or other legal entity duly authorized to provide such professional
15 services in the state of Kansas.

16 (j) The licensee has the inability to perform optometry practice
17 acts for which the licensee is licensed with reasonable skill and safety
18 to patients by reason of illness, alcoholism, excessive use of drugs,
19 controlled substances, chemical or any other type of material or as
20 a result of any mental or physical condition. In determining whether
21 or not such inability exists, the board, upon probable cause, shall
22 have authority to compel a licensee to submit to mental or physical
23 examination by such persons as the board may designate. The li-
24 censee shall submit to the board a release of information authorizing
25 the board to obtain a report of such examination. A person affected
26 by this subsection shall be offered, at reasonable intervals an op-
27 portunity to demonstrate that such person can resume the competent
28 practice of optometry with reasonable skill and safety to patients.
29 For the purpose of this subsection, every person licensed to practice
30 optometry and who shall accept the privilege to practice optometry
31 in this state by so practicing or by the making and filing of an annual
32 renewal to practice optometry in this state shall be deemed to have
33 consented to submit to a mental and physical examination when
34 directed in writing by the board and further to have waived all
35 objections to the admissibility of the testimony or examination report
36 of the person conducting such examination at any proceeding or
37 hearing before the board on the grounds that such testimony or
38 examination report constitutes a privileged communication. In any
39 proceeding by the board pursuant to the provisions of this subsection,
40 the record of such board proceedings involving the mental and phys-
41 ical examination shall not be used in any other administrative or
42 judicial proceeding.

43 (k) The licensee has had a license to practice optometry revoked,

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1 suspended or limited, has been censured or has had other discipli-
2 nary action taken, or an application for a license denied, by the
3 proper licensing authority of another state, territory, District of Co-
4 lumbia, or other country, a certified copy of the record of the action
5 of the other jurisdiction being conclusive evidence thereof.

6 (l) The licensee has violated any lawful rules and regulations
7 promulgated by the board or violated any lawful order or directive
8 of the board previously entered by the board.

9 (m) The licensee has cheated on or attempted to subvert the
10 validity of the examination for a license.

11 (n) The licensee has been found to be mentally ill, disabled, not
12 guilty by reason of insanity or incompetent to stand trial by a court
13 of competent jurisdiction.

14 ~~(o) The licensee has prescribed, sold, administered, distrib-~~
15 ~~uted or given a controlled substance to any person for other~~
16 ~~than optometrically accepted or lawful purposes.~~

17 ~~(p)~~ (o) The licensee has violated a federal law or regulation re-
18 lating to controlled substances.

19 ~~(q)~~ (p) The licensee has failed to furnish the board, or its in-
20 vestigators or representatives, any information legally requested by
21 the board.

22 ~~(r)~~ (q) Sanctions or disciplinary actions have been taken against
23 the licensee by a peer review committee, health care facility or a
24 professional association or society for acts or conduct similar to acts
25 or conduct which would constitute grounds for disciplinary action
26 under this section.

27 ~~(s)~~ (r) The licensee has failed to report to the board any adverse
28 action taken against the licensee by another state or licensing juris-
29 diction, a peer review body, a health care facility, a professional
30 association or society, a governmental agency, by a law enforcement
31 agency or a court for acts or conduct similar to acts or conduct which
32 would constitute grounds for disciplinary action under this section.

33 ~~(t)~~ (s) The licensee has surrendered a license or authorization to
34 practice optometry in another state or jurisdiction or has surrendered
35 the licensee's membership on any professional staff or in any profes-
36 sional association or society while under investigation for acts or
37 conduct similar to acts or conduct which would constitute grounds
38 for disciplinary action under this section.

39 ~~(u)~~ (t) The licensee has failed to report to the board surrender
40 of the licensee's license or authorization to practice optometry in
41 another state or jurisdiction or surrender of the licensee's member-
42 ship on any professional staff or in any professional association or
43 society while under investigation for acts or conduct which would

1 constitute grounds for disciplinary action under this section.

2 ~~(u)~~ (u) The licensee has an adverse judgment, award or settle-
3 ment against the licensee resulting from a medical liability claim
4 related to acts or conduct similar to acts or conduct which would
5 constitute grounds for disciplinary action under this section.

6 ~~(v)~~ (v) The licensee has failed to report to the board any adverse
7 judgment, settlement or award against the licensee resulting from a
8 malpractice liability claim related to acts or conduct similar to acts
9 or conduct which would constitute grounds for disciplinary action
10 under this section.

11 ~~(w)~~ (w) The licensee has failed to maintain a policy of professional
12 liability insurance as required by K.S.A. 40-3402 or 40-3403a and
13 amendments thereto or pay the annual premium as required by
14 K.S.A. 40-3404 and amendments thereto.

15 ~~(x)~~ (x) The licensee has knowingly submitted any misleading,
16 deceptive, false or fraudulent representation on a claim form bill or
17 statement.

18 ~~(y)~~ (y) The licensee has failed to provide to a patient the patient's
19 written prescription for lenses for eyeglasses subsequent to the com-
20 pletion of the eye examination in accordance with applicable state
21 or federal law.

22 New Sec. 14. (a) All administrative proceedings provided for by
23 article 15 of chapter 65 of the Kansas Statutes Annotated and affecting
24 any licensee licensed under that article shall be conducted in ac-
25 cordance with the provisions of the Kansas administrative procedure
26 act.

27 (b) Judicial review and civil enforcement of any agency action
28 under article 15 of chapter 65 of the Kansas Statutes Annotated shall
29 be in accordance with the act for judicial review and civil enforce-
30 ment of agency actions.

31 (c) If any order of the board in any administrative proceedings
32 provided for by article 15 of chapter 65 of the Kansas Statutes
33 Annotated is adverse to the licensee the costs shall be charged to
34 the licensee as in ordinary civil actions in the district court. Witness
35 fees and costs may be taxed in accordance with the statutes governing
36 taxation of witness fees and costs in the district court.

37 New Sec. 15. The board shall not suspend, limit, restrict or
38 revoke, the license of a licensee or privately or publicly censure a
39 licensee for any reason or conduct for which a defense is provided
40 for in Title 16, Part 456 of the Code of Federal Regulations and
41 amendments thereto from and after the effective date of such Trade
42 Regulation Rule.

43 New Sec. 16. Whenever the board directs, pursuant to subsec-

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1 tion (j) of section 13, that a licensee submit to a mental or physical
2 examination, the time from the date of the board's directive until
3 the submission to the board of the report of the examination shall
4 not be included in the computation of the time limit for hearing
5 prescribed by the Kansas administrative procedure act.

6 New Sec. 17. At any time after the expiration of one year, ap-
7 plication may be made for reinstatement of any licensee whose li-
8 cense shall have been revoked, and such application shall be
9 addressed to the secretary-treasurer of the board. The board may
10 promulgate such rules and regulations concerning notice and hearing
11 of such application as are deemed necessary.

12 New Sec. 18. (a) A licensee may practice optometry under the
13 name of a professional corporation, authorized by K.S.A. 17-2706
14 and amendments thereto. Such professional corporate name may
15 contain a trade name or assumed name approved by the board.

16 (b) A licensee may practice as a sole practitioner or may associate
17 with other licensees or health care providers licensed under the laws
18 of the state of Kansas and may practice optometry as a sole prac-
19 titioner or in such associations under a trade or assumed name
20 approved by the board.

21 (c) A licensee may practice in a medical facility, medical care
22 facility or a governmental institution or agency.

23 (d) ~~A licensee shall not practice pursuant to subsections (a),~~
24 ~~(b) and (c) in more than three practice locations from which~~
25 ~~the licensee derives any economic benefit. A licensee shall not~~
26 ~~have, maintain or derive any economic benefit pursuant to sub-~~
27 ~~sections (a), (b) and (c) in more than three practice locations ex-~~
28 ~~clusive of practice in governmental institutions. In all office locations~~
29 ~~a licensee shall:~~

30 (1) Provide adequate staff during the hours of its operation and
31 shall provide the necessary optometric equipment to enable a li-
32 censee to provide adequate optometric care on the premises; and

33 (2) provide that there shall be present at the office location a
34 person licensed by optometry law when optometric practice acts
35 requiring a license are performed at the office location.

36 (e) Nothing herein contained shall be construed to permit the
37 franchised practice of optometry.

38 New Sec. 19. The board in its discretion, in addition to any
39 other remedies provided in this act, may apply to a court of com-
40 petent jurisdiction for injunctive relief to restrain violations of the
41 provisions of this act, lawful rules and regulations promulgated by
42 the board under authority of this act.

43 New Sec. 20. Nothing contained herein shall be construed to

But the purchase by an optometrist of an optical dispensing franchise shall not constitute the franchised practice of optometry and is not barred under this subsection, so long as the terms of the purchase do not violate any other provisions of this act.

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1 allow a corporation except as provided in K.S.A. 17-2706 and amend-
2 ments thereto to practice, offer, or undertake to practice or hold
3 itself out as practicing optometry.

4 New Sec. 21. The confidential communications between a li-
5 censed optometrist and the optometrist's patient are placed on the
6 same basis of confidentiality as provided by law for communications
7 between a physician and the physician's patients.

8 Sec. 22. K.S.A. 65-1502, 65-1504, 65-1504a, 65-1508, 65-1509,
9 65-1510, 65-1512, 65-1513, 65-1514, 74-1502 and 74-1504 and K.S.A.
10 1989 Supp. 65-1501a, 65-1505, 65-1506 and 65-1509a are hereby
11 repealed.

12 Sec. 23. This act shall take effect and be in force from and after
13 its publication in the statute book.

KANSAS OPTOMETRIC ASSOCIATION
TESTIMONY ON HOUSE BILL 2630
BEFORE THE
SENATE PUBLIC HEALTH & WELFARE COMMITTEE
March 13, 1990

It is a pleasure to appear before the Senate Public Health and Welfare Committee on House Bill 2630. I am Gary Robbins, Executive Director of the Kansas Optometric Association. I am appearing in support of House Bill 2630. This legislation is a result of the hard work of the Joint Committee on Administrative Rules and Regulations during the interim session. At three interim meetings, the committee devoted time to the review and update of the optometry law. I want to thank Senator Ehrlich and the other members of the Joint Committee on Administrative Rules and Regulations for their leadership in developing this bill.

Many of the changes in House Bill 2630 are of a technical nature. An example would be the deletion of the phrase "this act" and the insertion of the phrase "the optometry law" in numerous sections. There were also areas in the law that contained language which required reorganization and others which were simply outdated. The new definitions of "false advertisement" and "advertisement" replace outdated language and less clear rules and regulations.

*SPH & W
Attachment #3
3/13/90*

In 1987 and again in 1989, the Joint Committee on Administrative Rules and Regulations noted that there was a code of ethics as authorized by optometry law rather than a section on unprofessional conduct in the law which is common in many practice acts. One of the major changes in this bill inserts the Rules and Regulations covering the code of ethics into the law under new Section 12 which defines "professional incompetence" and "unprofessional conduct." The term "professional incompetence" is defined and the grounds stated by which an optometrist's license could be revoked, suspended, limited, or the licensee censured. The majority of Section 12, including the subsections on "unprofessional conduct," are modeled after the Healing Arts statute. We also updated the grounds for discipline in Section 13 which is modeled after the Healing Arts Act as well.

During the testimony on House Bill 2630 before the House Public Health and Welfare Committee, Mr. Frank Rozak representing several national optical companies testified in support of House Bill 2630. At that time he offered five amendments which were considered by the House Public Health and Welfare Committee and not included in the bill.

When the House Committee reviewed Mr. Rozak's testimony, the inescapable question arose as to why unlicensed non-optometrists

were expressing their concerns. Did they want to influence or control optometrists? Before final action by the House Committee, the lobbyist for these optical companies indicated that their major concerns were limited to maintaining an office (Section 2(a)) and franchising (Section 18). After consideration, the House Committee did not adopt any of the proposed changes.

We have met with lobbyists for the optical companies to discuss their two concerns and reviewed their latest proposed amendments. Again, our initial observation is that unless there is an ulterior motive to control optometrists, optical companies should not be concerned with a law that applies only to optometrists. Additionally, we have the following substantive objections to their amendments.

Their amendment regarding maintaining an office is unnecessary because a simple lease is not maintaining an office. This same language without further definition or limitation appears in the Healing Arts Act. Persons who lease space and equipment to physicians are not considered to be practicing medicine. It is also important to note that leases can contain provisions that are illegal and the State Board of Examiners in Optometry should have the ability to prevent such conduct. In fact, optical companies have used leases in other states to limit the judgment of doctors by directly or indirectly controlling patient referrals, limiting hours, and other aspects of their practices.

This same objection applies regarding their franchise amendment. In other states, franchise agreements have been used by non-optometrists as a vehicle to exert control and influence over the professional judgment of optometrists. A similar franchising provision appears in the Dental Law. The Dental Board has successfully administered their law without the need for further definition or limitation.

Although we don't feel it necessary to address the two issues beyond the current language in the bill, if the committee believes that further clarification is beneficial on these two issues, we would offer the following definition to be inserted in 65-1501(a):

"Maintain an office for the practice of optometry" means:

- (1) to directly or indirectly control or attempt to control the professional judgment or the practice of a licensee; or
- (2) to bear any of the expenses of or to have, own or acquire any interest in the practice, books, records, files, or materials of a licensee.

With this definition a lease which does not provide for the control of the professional judgment of the optometrist is not

"maintaining an office." Thus such a lease is legal under this act.

If the committee adopts this definition of "maintains an office," we would support the following exception to the "franchise practice of optometry" section which is similar to their proposed language.

New Section 18

- (e) Nothing herein contained shall be construed to permit the franchised practice of optometry except that a licensee may purchase a franchise to engage in the business of optical dispensing separate and apart from the licensee's optometric practice, so long as the terms of the franchise agreement do not violate any provisions of the optometry law.

In conclusion, House Bill 2630 represents the hard work of the Joint Committee on Administrative Rules and Regulations, the legislative staff, the State Board of Examiners in Optometry, and our association. We believe we've made some substantial compromises, but that the final product is a significant improvement over our current law. This bill was approved unanimously by the House Public Health and Welfare Committee, and the House of Representatives. It is also supported by the

Kansas State Ophthalmological Society. We would respectfully ask your support for House Bill 2630 as amended by the House Committee.

PUBLIC HEALTH AND WELFARE COMMITTEE

TESTIMONY ON H.B. 2630

MARCH 13, 1990

My name is Phil Ernzen. I am an optometrist in private practice in Wichita, Kansas. I serve as President of the Kansas State Board of Examiners in Optometry. Our Board administers the Kansas State optometry law. We issue licenses to optometrists after they have successfully passed an examination administered by the Board. There are currently over 400 persons licensed to practice optometry in Kansas.

It is also the responsibility of the Board to enforce the optometry law as set out by state statutes. Our jurisdiction is over the licensed optometrists in the state of Kansas and not unlicensed individuals.

Optometrists are health care providers whose primary concern is the patient's ocular health and well being. After college, optometrists attend a four-year doctoral program with intensive clinical training in the detection and treatment of eye disease.

I am here today representing the state optometry board in support of House Bill 2630. Since last fall, we have been working with the members of the Joint Committee on Administrative Rules and Regulations and Legislative staff in a cooperative effort to develop House Bill 2630. Our Board has been working with the Joint Committee over the past three years seeking to update our rules and regulations.

*SPH + W
Attachment #4
3/13/90*

The board strongly supports House Bill 2630 as a means to revise the Kansas Optometry Law. We recognize the need to conform to currently accepted terminology and to a format consistent with other licensing acts. We see this bill primarily as a means for making technical changes, a method to replace outdated language in our current law, and improved administration of our law.

We welcome the changes presented in this bill which allows for additional flexibility for the State Board in that we will no longer be limited to revocation or suspension in disciplinary matters. House Bill 2630 will give us the ability to put limitations on licensure and to publicly or privately censure a licensee for wrongful acts.

This bill will help us address certain problems that the Board currently faces in administering license renewals such as a change in our renewal date from May 1 to June 1, and will allow for penalty fees for delinquent renewals similar to other state licensing boards. It also better organizes our unlawful acts section and further defines grounds for disciplinary action consistent with other practice acts.

This bill will also allow our Board the ability to increase our licensing fees to a level consistent with other regulatory boards to cover increasing costs. We have been at or near our \$75 maximum fee for several years.

Current board policy requires each applicant for reciprocity to supply the board with a statement of good standing from the applicant's reciprocal state board. The board currently requires each applicant pass a test on Kansas Optometry Law and to demonstrate basic clinical knowledge by passing a practical clinical exam. These provisions are consistent with the requirements of most other states. H.B. 2630 defines these provisions in a more organized manner.

Current law prohibits the franchise practice of optometry because of restrictions on trade names and relationships with unlicensed persons in the areas of fee splitting and patient referrals. With the change to allow professional association trade names and the change in certain relationships with unlicensed persons, H.B. 2630 continues to prohibit the franchised practice of optometry.

I want to thank this committee for its efforts on behalf of the Kansas Optometry Law and the board looks forward to working with the legislature and staff on these revisions.

Thank you.

TESTIMONY TO THE SENATE PUBLIC HEALTH & WELFARE COMMITTEE

by: Rebecca S. Rice

ON

House Bill 2630

Tuesday, March 13, 1990

Chairman Ehrlich and members of the committee, my name is Rebecca Rice and I appear before you today regarding HB 2630 on behalf of the Kansas State Ophthalmological Society.

The Society supports HB 2630 in its present form. We requested the deletion of the language regarding controlled substances and would ask that you retain that deletion. We are unaware of any other amendments which we would support including the amendments which were requested of but rejected by the House Public Health & Welfare committee concerning franchises. We would ask that you pass the bill in its present form.

Thank you for allowing me to testify on this bill. I can stand for any questions.

*SPH & W
Attachment #5
3/13/90*



OPTOMETRIST

DR. J. M. WHITE

814 N. ELM

HOISINGTON, KS 67544

TELEPHONE: (316) 653-2749

March 9, 1990

Senator Roy Ehrlich
State House
Topeka, KS 66600

RE: HB 2630

Dear Senator Ehrlich:

As an optometrist, I am concerned with my patients' health, visual function, diagnosing and managing eye disease. I am pleased with the language of the above mentioned House Bill and am opposed to any amendments dealing with allowing any form of corporate control of our profession. I am deeply concerned that commercial practice interests (optical companies whose sole interest is to sell eye wear) are not in the best interest of the people of Kansas.

In visiting with my ophthalmology friends and colleagues in our area we are in total agreement that commercial practice is self serving for the corporations and is not in the best interest of our patients.

I am asking for your support of this bill as it is written and would be more than happy to visit with you at any time if you have any questions regarding this issue.

Sincerely,

J. M. White, O.D.

SPH+W
Attachment
3/13/90