

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

79-203

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

November 30, 1979

Norman K. Varnum, O.D.  
Secretary, Maine Board of Optometry  
79 Hardy Street  
Presque Isle, Maine 04769

Dear Norman:

I am writing in response to the question posed by the Board of Optometry regarding who may legally fit contact lenses in Maine. More specifically, you have asked whether the fitting of contact lenses is part of the practice of optometry and may, therefore, only be performed by a licensed optometrist (or by a licensed physician pursuant to the exception to the law contained in 32 M.R.S.A. § 2421). It is the opinion of this Office that the practice of optometry includes the fitting of contact lenses and that, consequently, such fitting may legally be done only by a licensed optometrist or physician.<sup>1/</sup>

32 M.R.S.A. § 2411(1) defines the practice of optometry in applicable part as follows:

---

<sup>1/</sup> Based upon my discussion with the Board, it is my understanding that the fittings of contact lenses by unlicensed persons about which the Board is concerned are taking place outside of an established office of a physician. Therefore, this opinion will not deal with whether the fitting of contact lenses may be done pursuant to 32 M.R.S.A. § 3270-A (physician's assistant statute) or pursuant to 32 M.R.S.A. § 2594-A (osteopathic physician's assistant statute), since those sections state in applicable part that "[w]hen the delegated activities are part of the practice of optometry as defined in chapter 34-A [the Optometry statute], then the person to whom such activities are delegated. . . shall perform only as a technician within the established office of a physician. . . ." (emphasis added).

"C. Correctional treatment. The correction of vision problems without the use of drugs, medicine or surgery by prescribing or adapting ophthalmic lenses, including contact lenses and other optical aids, and by using other corrective procedures to preserve, restore or improve vision;

"D. Fitting of eyeglasses. The fitting, bending and adjusting of eyeglasses with ophthalmic lenses, except that this subsection shall not be considered as the practice of optometry providing [sic] the fitting, bending and adjusting is by order of and under the responsibility of an optometrist or ophthalmologist."

§ 2411(1) states as an exception that,

"Nothing in this section shall be construed to prevent an optical mechanic from doing the merely mechanical work associated with adapting, fitting, bending, adjusting, replacing or duplicating of eyeglasses with ophthalmic lenses."

The statute defines an "ophthalmic lens" as

". . . any spectacle lens or contact lens which has a spherical, cylindrical or prismatic power or value or any lens ground pursuant to a written prescription." § 2411(1).

As noted above, 32 M.R.S.A. § 2411(1)(C) specifically states that the practice of optometry includes ". . . adapting ophthalmic lenses, including contact lenses. . . ." Thus, the issue is whether adapting contact lenses encompasses the fitting of contact lenses. The answer is affirmative. In State ex inf. Danforth v. Dale Curteman, Inc., 480 S.W.2d 848 (Missouri, 1972), the Missouri Supreme Court examined a statute similar in material part to 32 M.R.S.A. § 2411(1)(C) to determine whether the fitting of contact lenses was considered to be the practice of optometry.<sup>2/</sup> Said the Court,

---

<sup>2/</sup> The Missouri statute stated in applicable part that the practice of optometry included "[t]he prescription or adaptation without the use of drugs, medicine or surgery, of lenses, prisms, or ocular exercises to correct defects or abnormal conditions of the human eye. . . ." §336.010(3), V.A.M.S. See Danforth at 851.

"To 'adapt' means to make suitable or fit. . . Adaption is synonymous with fitting. The adaptation of contact lenses by one prescribing such lenses is the activity or process by which such lenses are fitted to the eyes of an individual." (emphasis in original) 480 S.W.2d at 856.

Accord People ex rel Watson v. House of Vision, 322 N.E.2d 15 (Illinois, 1974), cert. denied 422 U.S. 1008 (1975).

32 M.R.S.A. § 2411(1)(D) defines the fitting of eyeglasses with ophthalmic lenses as part of the practice of optometry, but allows this fitting to be done by one other than a licensed optometrist (or physician) provided the fitting is done by order of and under the responsibility of an optometrist or ophthalmologist. Furthermore, § 2411(1) also permits an optical mechanic to perform the merely mechanical work associated with fitting eyeglasses with ophthalmic lenses. The question thus arises whether the term "eyeglasses" includes contact lenses. It does not. 1 M.R.S.A. § 72(3) states as a general rule of statutory construction that "[w]ords and phrases shall be construed according to the common meaning of the language." The common meaning of "eyeglasses" is lenses that are in a frame and that are supported by the ears. See Webster's New World Dictionary, Second College Edition and Webster's Third New International Dictionary. Contact lenses do not fall within this common meaning. Consequently, the provisions of § 2411(1) specifically permitting unlicensed persons to do certain fittings of eyeglasses do not permit those persons to do any fittings of contact lenses.<sup>3/</sup>

The same conclusion arrived at by the Maine Board and by this Office has been reached by the courts of several different states. Those courts have examined statutes similar in material part to the Maine optometry statute, and have concluded that the fitting of contact lenses is part of the practice of optometry to be performed only by a licensed optometrist. E.g., State ex rel. State Board of Examiners in Optometry v. Kuhwald, 389 A.2d 1277 (Delaware, 1978); People ex rel. Watson v. House of Vision, supra; State ex inf. Danforth v. Dalé Curteman, Inc., supra. The Court in Danforth pointed out that the optometry statute was enacted to

---

<sup>3/</sup> Moreover, it is my understanding, based upon your letter to me of June 6, 1979 and upon my discussions with the Board, that the Board has interpreted the optometry statute to prohibit anyone other than a licensed optometrist (or physician) from fitting contact lenses. Since the Maine Board of Optometry is charged with the responsibility of carrying out the provisions of the optometry statute, the Board's own interpretation ". . . is to be accorded due consideration by the courts in construing the statute." Mottram v. State, 232 A.2d 809, 816 (Me., 1967).

protect the public health, and that the fitting of contact lenses involved far more than merely routine, mechanical acts; such fitting required a high degree of professional skill and judgment. The Court in Watson noted that the fitting of contact lenses required that the person doing the fitting come into actual contact with the customer's eyeball. Danforth and Watson describe in detail the rather complex procedures involved in the fitting of contact lenses. In the interest of protecting public health and carrying out the purpose of the statute, it is entirely reasonable to interpret the Maine optometry statute as those courts interpreted the laws in their respective states.<sup>4/</sup>

There is an additional tool of statutory construction which provides further indication that the Legislature in Maine intended that the fitting of contact lenses be considered the practice of optometry. The Maine Supreme Court has stated that the statutory history of legislation, including the body of previous legislation upon a particular subject, should be utilized in interpreting a statute. Finks v. Maine State Highway Commission, 328 A.2d 791 (1974).

Prior to the present optometry legislation, the statute defined the practice of optometry in applicable part as,

"3. Prescriptions. The prescription or adaptation, without the use of drugs, medicines or surgery, 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 occupation and the fitting, bending and adjusting of spectacles and eyeglasses with ophthalmic lenses for the betterment of vision;

---

<sup>4/</sup> Indeed, it is a principle of statutory construction that legislation should be interpreted in such a manner as to accomplish the Legislature's purpose - in this instance, the protection of public health. Waddell v. Briggs, 381 A.2d 1132 (Me., 1978); Davis v. State, 306 A.2d 127 (Me., 1973). It must be noted, however, that not all courts that have examined this issue have reached the same conclusion as the Danforth and Watson line of cases. There are decisions contra. See, e.g., State ex rel. Londerholm v. Doolin, 497 P.2d 138 (Kansas, 1972); State Board of Optometry v. Chester, 169 So.2d 468 (Mississippi, 1964).

"4. Replacement of lens. The replacement or duplication of an ophthalmic lens without a prescription from a person authorized under the laws of this State to practice either optometry or medicine. This subsection shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work in such a case."

The Maine Supreme Court had occasion to comment upon the above sections in Small v. Maine Board of Registration and Examination in Optometry, 293 A.2d 786 (1972). In the course of reviewing a decision of the Administrative Hearing Commissioner [now Administrative Court Judge], suspending the license of an optometrist, the Maine Supreme Court stated in part that the statute as written was unclear regarding what the Court felt were adjustments and adaptation of frames and contact lenses requiring the skill of a licensed optometrist and adjustments and adaptation which were merely mechanical in nature. The Court said that the particular wording of the statute ". . . seems to suggest that some 'fitting, bending and adjusting' may properly be done by a person not a qualified optometrist. . . ." 293 A.2d at 791. It is, however, important to point out that the Court's discussion on this issue was cursory and contained none of the exhaustive type of reasoning found in such leading cases as People ex rel. Watson v. House of Vision, supra, and State ex inf. Danforth v. Dale Curteman, Inc., supra. The Maine Court specifically noted that the case contained no probative expert testimony on the issue, and its comments were made therefore without the benefit of such views.<sup>5/</sup>

Consequently, in direct response to the decision in Small, the Maine Legislature the following year amended the optometry statute to make clear, as more fully discussed supra in this opinion, that only licensed optometrists (or physicians) could fit contact lenses - as distinct from eyeglasses. The Statement of Fact to L.D. 1107 (L.D. 1107, "An Act to Revise the Laws Relating to the Practice of Optometry," was redrafted as L.D. 1964 and was enacted as P.L. 1973, Chapter 474) stated clearly that

---

<sup>5/</sup> The Maine Supreme Court may also have been unaware of the opinion of the Maine Attorney General's Office, dated September 9, 1946, wherein the issue of the fitting of contact lenses by anyone other than a licensed optometrist was presented to the Attorney General. That opinion stated that such fitting would violate the optometry statute - which statute was worded in material part in the same manner as the statute under consideration by the Court in Small. While an opinion of an Attorney General interpreting a statute is not, of course, binding upon a court, it is generally accorded due consideration by the courts. See, e.g., Kasper v. City of Edmonds, 420 P.2d 346 (Washington, 1966).

"By this bill, the Legislature intends to correct defects in the present optometry law as set forth by the Supreme Judicial Court in its decision in Small v. Maine Board of Registration and Examination in Optometry, 293 A.2d 786 (Me. 1972). In essence, the Court criticized the present law in 3 areas: . . .

"3. The definition of the practice of optometry does not clearly distinguish the functions which must be performed by an optometrist from those which may be performed by an 'optical mechanic.' (293 A.2d at 790-791).

"Because of the sweeping nature of these criticisms, it was felt that the entire prior law should be repealed and replaced with a more detailed and comprehensive chapter on optometric practice. . . .

"3. The definition of what constitutes optometric practice remains in Section 2451. The basic provisions have been tightened up to provide a better distinction between the diagnostic and correctional work of an optometrist, and the mechanical work of an optician."

Thus, the Legislature clarified that the only fittings of ophthalmic lenses that could be performed by a person other than a licensed optometrist (or physician) were fittings of eyeglasses, which do not include contact lenses. (32 M.R.S.A. § 2411(1)(D) and § 2411(1)).<sup>6/</sup>

Based upon our discussion at the September 12, 1979 Optometry Board meeting and upon your letter to me of September 17, 1979, I am aware that the Board wishes the Attorney General's Office to investigate the fitting of contact lenses by unlicensed persons. I shall be in contact with the Board regarding this, so that we may discuss said investigation in more detail.

Very truly yours,



DAVID ROSEMAN  
Assistant Attorney General

DR/ec  
cc: All members of the Board of  
Optometry

---

<sup>6/</sup> Very brief mention can also be made that in the 1973 session of the Maine Legislature a bill was introduced which would have licensed opticians and would have specifically permitted licensed opticians to, among other things, fit contact lenses. See L.D. 1610. This bill did not, of course, become law. While, as a principle of statutory construction, this fact alone is not of great significance, it is a factor which can permissibly be looked at for some slight guidance to determine legislative intent. See Lovell v. Democratic Central Committee of Pulaski County, 327 S.W.2d 387 (Arkansas, 1959).