

OPINION NO. 2002-035

Syllabus:

1. Reviewing a patient's prescription for replacement contact lenses and selecting from inventory lenses that comply with the instructions set
-

forth in the prescription constitute "[o]ptical dispensing" as defined in R.C. 4725.40(B).

2. A person who is not licensed or permitted to dispense contact lenses under R.C. 4725.40-.59 may not review a patient's prescription for replacement contact lenses and select from inventory lenses that comply with the instructions set forth in the prescription.

To: Linda E. Hoshor, Executive Director, Ohio Optical Dispensers Board, Columbus, Ohio

By: Betty D. Montgomery, Attorney General, December 11, 2002

On behalf of the Ohio Optical Dispensers Board you have requested an opinion regarding the provision of replacement contact lenses to optical patients. You have informed us that patients who have a prescription from a licensed physician or optometrist for replacement contact lenses may purchase their replacement lenses from retail businesses that dispense contact lenses through employees licensed to dispense contact lenses under R.C. 4725.40-.59.¹ In addition to employing persons who are licensed to dispense contact lenses under R.C. 4725.40-.59, these businesses routinely employ persons who are not licensed or permitted to dispense contact lenses under R.C. 4725.40-.59. The question has arisen whether these unlicensed persons may review a patient's prescription for replacement contact lenses and select from inventory lenses for the patient.

Resolution of this question requires that we first examine the provisions of law regulating the practice of optical dispensing in Ohio. These provisions are set forth in R.C. 4725.40-.59 and the administrative rules adopted pursuant thereto. *See* R.C. 4725.44.

Except as provided in R.C. 4725.52 and R.C. 4725.59(A),² no person may engage in optical dispensing unless he is licensed under R.C. 4725.40-.59. R.C. 4725.54(B); 11 Ohio Admin. Code 4726-15-01(A). As used in R.C. 4725.40-.59, "[o]ptical dispensing" is defined in R.C. 4725.40(B) to mean the following:

"Optical dispensing" means *interpreting* but not altering a *prescription of a licensed physician or optometrist and designing, adapting, fitting, or*

¹R.C. 4725.59(B) provides that nothing in R.C. 4725.40-.59, which govern, *inter alia*, the licensing of dispensing opticians and the dispensing of contact lenses, prevents or restricts any individual, firm, or corporation from dispensing contact lenses through persons licensed or registered to dispense contact lenses under R.C. 4725.40-.59.

²R.C. 4725.52 provides, in pertinent part, that, "[a]ny licensed dispensing optician may supervise a maximum of three apprentices who shall be permitted to engage in optical dispensing only under the supervision of the licensed dispensing optician." R.C. 4725.59(A) provides that R.C. 4725.40-.59 do not apply to:

(1) A physician authorized under [R.C. Chapter 4731] to practice medicine and surgery or osteopathic medicine and surgery, or to persons while in the employment and under the supervision of [a] physician at the physician's office;

(2) An optometrist licensed under [R.C. 4725.01-.34], or to persons while in the employment and under the supervision of an optometrist at the optometrist's office.

replacing the prescribed optical aids, pursuant to such prescription, to or for the intended wearer; duplicating lenses, other than contact lenses, accurately as to power without a prescription; and duplicating nonprescription eyewear and parts of eyewear. "Optical dispensing" does not include selecting frames, transacting a sale, transferring an optical aid to the wearer after an optician has completed fitting it, or providing instruction in the general care and use of an optical aid, including placement, removal, hygiene, or cleaning. (Emphasis added.)

Accord [2002-2003 Monthly Record] Ohio Admin. Code 4726-3-06(B) at 123. For purposes of R.C. 4725.40(B), the term "[o]ptical aid" includes contact lenses. R.C. 4725.40(A);³ *accord* rule 4726-3-06(A).

R.C. 4725.40(B) thus specifies the activities and services conducted in conjunction with the provision of contact lenses that constitute "[o]ptical dispensing" for purposes of R.C. 4725.40-.59. Such activities and services include interpreting a prescription of a licensed physician or optometrist for contact lenses and designing, adapting, fitting, or replacing contact lenses pursuant to such prescription. Accordingly, a person who is not licensed or permitted under R.C. 4725.40-.59 to engage in "[o]ptical dispensing," as defined in R.C. 4725.40(B), may not interpret a prescription of a licensed physician or optometrist for contact lenses and design, adapt, fit, or replace contact lenses pursuant to such prescription. R.C. 4725.54(B); rule 4726-15-01(A).

Let us now consider whether reviewing a patient's prescription for replacement contact lenses and selecting from inventory lenses for the patient constitute "[o]ptical dispensing" as defined in R.C. 4725.40(B). It is reasonably apparent that, when a person performs these activities, the person is not engaging in designing, adapting, or fitting contact lenses to or for the patient. Therefore, the pertinent issue is whether reviewing a patient's prescription for replacement contact lenses and selecting from inventory lenses for the patient constitute "interpreting" a prescription for contact lenses and "replacing" contact lenses pursuant to such prescription. *See* R.C. 4725.40(B); rule 4726-3-06(B).

The General Assembly has not enacted separate definitions of the terms "interpreting" and "replacing" as they are used in the definition of "[o]ptical dispensing" set forth in R.C. 4725.40(B). It is, however, a codified rule of statutory construction that, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. According to *Webster's New World Dictionary* 737 (2d college ed. 1986), the verb "interpret," which is the root form of "interpreting," means "to explain the meaning of; make understandable[:]; ... to translate[:]; ... to have or show one's own understanding of the meaning of; construe[:]; ... to bring out the meaning of." The root form of "replacing" is the verb "replace," which means, *inter alia*, "to provide a substitute or equivalent for." *Id.* at 1205.

In the situation in which a person reviews a patient's prescription for replacement contact lenses and selects from inventory lenses for the patient, it is readily apparent that the person is directly responsible for ensuring that the replacement lenses match the patient's prescription for contact lenses. *See generally* R.C. 4725.40(A) ("[c]ontact lenses shall be

³R.C. 4725.40(A) defines "[o]ptical aid," for purposes of R.C. 4725.40-.59, as "an instrument or device prescribed by a physician or optometrist licensed by any state to correct human vision, including spectacles, eyeglasses, contact lenses, and accessories." *Accord* [2002-2003 Monthly Record] Ohio Admin. Code 4726-3-06(A) at 123.

dispensed only in accordance with a written prescription designated for contact lenses"). In order to perform this important responsibility in an appropriate manner, it is essential that the person be able to understand and construe correctly the instructions set forth in the patient's prescription. *See generally New Jersey State Bd. of Optometrists v. Reiss*, 83 N.J. Super. 47, 57, 198 A.2d 816, 822 (Ct. App. Div. 1964) (the fabrication of contact lenses and the fitting of them directly to the eyes "involve a direct exposure to possible eye injury and require professional skill and judgment. The character, intensity and severity of ocular damage resulting from the improper fitting of contact lenses has general recognition"). If the person is unable to understand or does not construe correctly the instructions set forth in the patient's prescription, the person may select replacement lenses for the patient that do not comply with those instructions. Such an improper selection of replacement lenses by the person may be deleterious to the patient's health and well-being. *See id.* Thus, under the dictionary definitions of the terms "interpreting" and "replacing," reviewing a patient's prescription for replacement contact lenses and selecting from inventory lenses that comply with the instructions set forth in the prescription constitute "[o]ptical dispensing" as defined in R.C. 4725.40(B).

In construing the terms used to define "[o]ptical dispensing," it is also important to bear in mind the object to be attained by the General Assembly in enacting the provisions of R.C. 4725.40-.59. *See* R.C. 1.49(A) (when determining legislative intent, a court may consider "[t]he object sought to be attained"). In R.C. 4725.40-.59 the General Assembly has enacted a comprehensive statutory system to regulate the practice of "[o]ptical dispensing." The ultimate goal, or intent, of this system is the preservation of the health, safety, and general welfare of every patient who wears contact lenses to correct a vision problem. *See* 1995 Op. Att'y Gen. No. 95-045 at 2-247; *cf.* 1971 Op. Att'y Gen. No. 71-014 at 2-30 ("the General Assembly has enacted legislation to insure the health and safety of the individual citizens who seek eye treatment and care"). *See generally State ex rel. Londerholm v. Doolin*, 209 Kan. 244, 257, 497 P.2d 138, 148 (1972) ("[t]he optometry law was deemed necessary by the legislature, in the interest of public health, safety, and welfare to provide statutes concerning the granting of that privilege and its use, control, and regulation to the end that the public should be properly protected against unprofessional, unauthorized and unqualified practice of optometry").

R.C. 4725.40-.59, therefore, have as their essential, underlying purpose the protection of the health and welfare of patients who are prescribed contact lenses for vision correction. Accordingly, R.C. 4725.40(B)'s language of "interpreting" a prescription for contact lenses and "replacing" contact lenses pursuant to such prescription should be construed in a manner that advances that important purpose. *See* 1995 Op. Att'y Gen. No. 95-045 at 2-248.

Reviewing a patient's prescription for replacement contact lenses and selecting lenses that comply with the instructions set forth in the prescription are activities that are directly and unequivocally related to the protection of the patient's health and welfare. It follows, therefore, that these activities constitute "interpreting" a prescription for contact lenses and "replacing" contact lenses pursuant to such prescription, and, in turn, "[o]ptical dispensing" as defined in R.C. 4725.40(B).

As explained previously, except as provided in R.C. 4725.52 and R.C. 4725.59(A), no person may engage in "[o]ptical dispensing" as defined in R.C. 4725.40(B) unless he is licensed under R.C. 4725.40-.59. R.C. 4725.54(B); rule 4726-15-01(A). Because reviewing a patient's prescription for replacement contact lenses and selecting from inventory lenses that comply with the instructions set forth in the prescription constitute "[o]ptical dispensing,"

ing” as defined in R.C. 4725.40(B), a person who is not licensed or permitted to dispense contact lenses under R.C. 4725.40-.59 may not perform these activities.

You have informed us that a company that sells contact lenses in its retail stores contends that reviewing a patient’s prescription for replacement contact lenses and selecting from inventory lenses for the patient do not constitute “[o]ptical dispensing” as defined in R.C. 4725.40(B). The company states that R.C. 4725.40(B) specifically provides that “[o]ptical dispensing” does not include ... transacting a sale,” and that reviewing a patient’s prescription for replacement contact lenses and selecting from inventory lenses for the patient constitute “transacting a sale,” and thus these activities do not constitute “[o]ptical dispensing” as defined in R.C. 4725.40(B). The company, therefore, asserts that a person who is not licensed or permitted to dispense contact lenses under R.C. 4725.40-.59 may review a patient’s prescription for replacement contact lenses and select from inventory lenses for the patient.

The activities and services performed in interpreting a prescription for contact lenses and replacing contact lenses pursuant to such prescription are separate and distinct from the activities and services performed in transacting a sale of the contact lenses. In the former the activities and services are performed in order to ensure that the patient receives contact lenses that match the patient’s prescription. In the latter, the activities and services are performed in order to conduct an exchange of contact lenses for an agreed sum of money.⁴

Reviewing a patient’s prescription for replacement contact lenses and selecting from inventory lenses that comply with the instructions set forth in the prescription are activities that are performed in order to ensure that the patient receives contact lenses that match the patient’s prescription. These activities are not performed in order to conduct an exchange of contact lenses for an agreed sum of money, and thus, these activities do not constitute “transacting a sale” as used in R.C. 4725.40(B). Accordingly, a person who is not licensed or permitted to dispense contact lenses under R.C. 4725.40-.59 may not review a patient’s prescription for replacement contact lenses and select from inventory lenses that comply with the instructions set forth in the prescription.⁵

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Reviewing a patient’s prescription for replacement contact lenses and selecting from inventory lenses that comply with the instructions set forth in the prescription constitute “[o]ptical dispensing” as defined in R.C. 4725.40(B).

⁴*Webster’s New World Dictionary* 1509 (2d college ed. 1986) defines the verb “transact,” which is the root form of “transacting,” as “to carry on, perform, conduct, or complete.” The term “sale” means, *inter alia*, “the act of selling; exchange of property of any kind, or of services, for an agreed sum of money or other valuable consideration.” *Id.* at 1255-56. Accordingly, the phrase “transacting a sale” as used in R.C. 4725.40(B) denotes performing or conducting an exchange of property of any kind, or of services, for an agreed sum of money or other valuable consideration.

⁵Once a person who is licensed or permitted under R.C. 4725.40-.59 to dispense contact lenses reviews a patient’s prescription for replacement contact lenses and selects from inventory lenses that comply with the instructions set forth in the prescription, it is permissible for another person who is not licensed or permitted under R.C. 4725.40-.59 to perform the exchange of contact lenses for money. R.C. 4725.40(B).

2. A person who is not licensed or permitted to dispense contact lenses under R.C. 4725.40-.59 may not review a patient's prescription for replacement contact lenses and select from inventory lenses that comply with the instructions set forth in the prescription.