

LEGAL ASPECTS OF OPTOMETRY

John G. Classé

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Legal Aspects of Optometry

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Foreword

Ever since optometrists were first licensed in the United States—in Minnesota in 1901—and as a consequence of having had the parameters of the profession established by statutory demarcation, optometry has been inextricably intertwined with the law.

Over the years, due to an ever-expanding educational base, and with greater public acceptance of its proper place in the health-care delivery system, the optometric profession has continued to grow and evolve.

As a result of this recognition of their professional status, individual optometrists are no longer exempt from the more general legal maxims that have long been applied to other doctors. Decisions requiring professional judgments by optometrists formerly were almost always limited to those scientific or practical matters that related to patient care. Today these decisions are complicated by difficult legal considerations as well.

Optometry has always been affected by revisions in the state statutes defining the profession and by interpretative court rulings of these statutes. Now, however, each individual optometrist is directly affected by “optometricolegal” developments.

Thus, it is no longer sufficient for an optometrist to be conversant with those concerns and constraints that are unique to the practice of optometry. Today’s doctor of optometry must also be aware of those legal principles that are applicable to providers of primary health care.

This book, *Legal Aspects of Optometry*, like any other massive effort, builds upon the past contributions of other knowledgeable authors who have addressed portions of this subject in their research. From Dr. Henry W. Hofstetter’s *Optometry: Professional, Economic, and Legal Aspects* in 1948, through the efforts of Drs. George Elmstrom, James E. Gregg, George M. Milkie, Monroe J. Hirsch, and Ralph E. Wick, to Seymour Coblens’ 1976 primer, *Optometry and the Law*, there has been valuable information presented for optometrists concerned about meeting their responsibilities to their patients.

However, *Legal Aspects of Optometry* does more

than merely update the past. It breaks new ground, as it is the first comprehensive work to fully delineate an optometrist’s professional and legal responsibilities. The author, John G. Classe, O.D., J.D., writes from a particularly appropriate vantage point. An Assistant Professor at the School of Optometry of the University of Alabama at Birmingham, he is an optometrist who teaches and participates in clinical practice. A member of the Alabama Bar, he is an experienced trial lawyer who has litigated medico-legal issues in the courtroom. With expertise in both optometry and law, John is one of those rare geniuses who can ably assimilate two disparate disciplines. His studied understanding of the history and precedents of legal scholarship, and his practical appreciation of the art and science of optometry are joined in this quintessential text.

The reader may wonder (as I have wondered and have been unable to deduce), is John an optometrist who has a law degree, or a lawyer with a degree in optometry? This inability to discern which of John’s *schizos*, if you will, dominates, is evidence to me of his skills in synthesizing this material into an integrated whole. He dissects complicated legal philosophies and proceedings and makes them intelligible to non-lawyers. Similarly, he describes pertinent vision care precepts and procedures in terms understandable by laypersons.

Be cautioned, however; this is not light reading. It is not really meant to be—the subject matter is too significant for that. Indeed, it will be, I am sure, the leading text on its subject in optometry schools. More importantly, it will be an outstanding reference for practicing optometrists and for the attorneys representing them.

Legal Aspects of Optometry is a valuable contribution to the literature of two professions. Practitioners—both legal and optometric—and optometry students will gain wise counsel and practical guidance from this book.

Thomas E. Eichhorst, J.D., L.H.D.
Counsel, American Optometric Association

Preface

This book is an attempt to achieve what is admittedly a virtually impossible task: to write a text that is suitable both for students and for practitioners. The motivation to assume such a difficult undertaking arises from my experiences as an educator at the University of Alabama at Birmingham, and as a lecturer at optometric educational seminars. It has been my privilege to come to know students and practitioners of optometry throughout the nation, and to learn firsthand of the many vexing legal issues that complicate the contemporary practice of optometry. This experience has imbued me with a deep sense of respect for the clinical practice of this profession and with a profound admiration for the dedicated individuals who are the primary providers of eye care in our country. Indeed, there is much to admire in optometry, which today must be regarded as very much an American success story. The reason for the profession's rapid advancement during the past several decades can be found in the unique genius of the American system, and particularly in its system of laws.

For the advancement of optometry is directly related to changes in the legal status of the profession, an evolutionary process that even now continues unabated within the legislatures and courts of the United States, as optometrists seek the best means and methods to serve the vision care needs of the people. However, these advances have also engendered new-found responsibilities, and nowhere are these responsibilities more evident than in the everyday clinical practice of optometry, which has been irrevocably altered by the legal developments of the 1970s and 1980s. As a result of these changes, optometric clinicians have found themselves confronted by the same legal issues that have perplexed other providers of health care. Students of optometry have similarly found it necessary to grapple with numerous legal problems before feeling truly prepared to enter the practice of the profession. It is for these reasons that I have embarked upon this effort: to provide in one text the information sought by optometrists in clinical practice and by students looking to careers as practitioners of optometry.

The book is divided into fourteen parts, and although I realize that curriculum requirements at the various schools and colleges of optometry will differ, the text is designed to be used during the entire four years of professional education.

Parts One through Four describe the history and ethics of the profession; the legislative, judicial, and administration functions of the legal system; and the regulation of optometrists by state boards and by various third parties. These sections are designed for first-year students of optometry, so that these students will conclude the first year of training with an understanding of the fundamental ethical and legal requirements that are necessary to the practice of their chosen profession.

Parts Five and Six are intended to be used in the second professional year, as students are preparing for the clinical phase of their education. I feel strongly that legal obligations inherent in the doctor-patient relationship and principles of professional liability should be taught to optometry students before they enter the teaching clinics of the schools. Furthermore, appropriate recordkeeping and documentation, which are emphasized in the text, are habits that will benefit not only the schools but also will improve the clinical practice of these students after they have graduated.

Parts Ten through Fourteen may be used in the third or fourth year of the professional program, and discuss legal issues that relate to a student's entry into the world of private practice, including the various types of business entities; the use of contracts for associateship, partnership, or the formation of a professional corporation; income and business taxes; legal paper—loans, purchase agreements, and leases—and the economic problems of credit and collections; and the complexities of life, disability, and personal insurance protection.

Parts Seven through Nine describe liability issues in some detail and are probably best taught in the fourth year. These sections are concerned with the major sources of liability claims against optometrists; with the specific legal problems of contact lens, binocular vision, and low vision practice; and with the

particular difficulties of serving as an expert witness in the legal forum.

Although the book is designed to serve as a teaching text, the depth of information included in each section clearly goes beyond that needed to introduce optometry students to these issues. I assume that optometric educators will limit discussions and reading assignments as they deem appropriate since some topics may be covered in more depth than necessary for optometry students. The reason for this detail is because *Legal Aspects of Optometry* is also intended to serve as a reference for practitioners, who are both the mainstay and the future of the profession. Optometry has entered its most revolutionary period, and the legal issues facing the profession are varied and complex. Hopefully, this text clarifies these issues and assists optometrists in meeting the demands of clinical practice.

I owe a huge debt of gratitude to an inordinate number of people for their assistance in the preparation of this manuscript, but I would be remiss if I did not begin these acknowledgments with special thanks to Tom Eichhorst. Tom, who is the counsel for the American Optometric Association (AOA), has been a constant source of expertise, advice, and encouragement, and I am deeply appreciative for his assistance. Others in the office of counsel who have given of their time are Mark Adams, Brian Andrew, and Sally Bowers. Several members of the AOA staff have been kind enough to review portions of my manuscript and offer advice, and I sincerely thank Dave Lewis, Joan Weinstock, Al Katz, Steve Miller, and Gloria Lemmex for their efforts. And I have been most grateful for the assistance of Maria Dablemont of the International Library, Archives and Museum of Optometry, and her able staff for helping me prepare the historical portions of this text.

Various individuals have been kind enough to review the manuscript and to offer useful criticism, and I am pleased to acknowledge the contributions of Drs. Norman Haffner, John Amos, James Gregg, James Scholles, Jimmy Bartlett, Jack Runninger, and Frank Watkins. And I wish to thank Dr. Larry Alexander for encouraging me to develop a format that has proven useful for the presentation of information concerning "clinicolegal aspects of practice."

A number of individuals here at the University of Alabama at Birmingham School of Optometry have worked diligently in the preparation of the manuscript, and I am indeed thankful for the hours of typing and proofing by Debbie Hicks, Affie Martin, Ann Simpson, Donna Rhodes, and Debbie Hodgson, and for the copying services provided by Ann Honeycutt. The drawings that accompany the text are due to the skills of UAB illustrator Ken Norris.

This project has taken far longer than anyone envisioned, especially my publisher, and I cannot conclude these acknowledgments without saluting the technical assistance, dedication to excellence, unrelenting patience, and ultimate perseverance of Susan Gay, Margaret Quinlin, Julie Stillman, Esther Hanlon, Arlyn Powell, Kristina Smead, and Barbara Murphy, all of Butterworth Publishers, whose support has been remarkable, to say the least.

Last, I must recognize the one person who, more than any other, has contributed to the realization of this book—my wife Jeanne. From its beginnings as an idea, through the years of writing and editing the manuscript, and during the intense weeks of preparing for production, she has been a constant source of strength, understanding, and encouragement. To her I owe the greatest acknowledgment of all—and my love.

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PART ONE

HISTORY

Chapter 1

Optometry—A Legal History

What's past is prologue.
—William Shakespeare, *The Tempest*

Genesis (1892–1924)
In Dubious Battle (1925–1954)
The Great Leap Forward (1955–1970)
Revolution! (1971–Present)

The development of optometry as a clinical discipline in the United States has been discussed by a number of distinguished authors.¹ For the most part, these accounts have focused on the scientific and sociological development of optometry, as it progressed from trade to profession. This rather remarkable transformation occurred because of (and at times in spite of) changes in the legal status of optometry, which became the true measure of progress; optometry's metamorphosis into a profession was complete only when recognized by the courts and legislatures. The arduous struggle waged by optometry to attain legal recognition is a rich story deserving of its own history, for the events of the past century say much about where optometry has been and foretell accurately where optometry is going.

It is a story that would not need retelling at all—indeed, there would be no optometry to recount the history of—had there not been a hardy cadre of men in the United States at the end of the nineteenth century dedicated to preserving the right of opticians to practice refraction. As historians have shown, refraction and dispensing of eyewear were non-medical functions that were perfected over several centuries by tradesmen who became popularly known as opticians.² Physicians frequently disparaged the use of glasses to correct eye problems and usually restricted themselves to those remedies that were strictly medical in origin, the use of drugs and sur-

gery.³ As a result, the practice of the eye physician was rather restricted. Because the overwhelming majority of people needed nonmedical services, the opticians prospered; since they practiced neither medicine nor surgery, they were not in direct competition with physicianry. And since the physicians eschewed the use of refraction, they were not in direct competition with the opticians. In 1864 Frans Donders, a physician, published *On the Anomalies of Accommodation and Refraction of the Eye*; it was a primer on the practice of optometry and heralded the invasion of opticianry by physicians that was then beginning.³

In America, refraction and dispensing had been the exclusive domain of opticianry until about the time of Donder's book. Physicians, becoming increasingly interested in refraction, were taught the skill by American opticians and began using it in their practices.⁴ At around this same time—the mid- and late-nineteenth century—modern medical practice acts began to be enacted by the several states. The laws were written in such a way as to be all-inclusive, granting to physicians a monopoly over the entire field of health care.⁵ Despite the presence of these laws, by the end of the 1870s a tripartite eye care system had evolved: eye physicians, refracting opticians, and dispensing opticians.⁶

Eye physicians were known as oculists or ophthalmologists. Oculists were physicians who had been granted a license to practice medicine by a state and had thereafter decided to limit their practice to the eye; they had no formal training (such as a residency) in their area of specialty. In addition to the oculists there were a number of general practitioners who performed refraction but did not term themselves