

**OPINION  
61-161**

June 12, 1961 (OPINION)

OCCUPATIONS AND PROFESSIONS

RE: Optometrists - Practice of Optometry by Unlicensed Persons

We have received a letter dated June 5, 1961, from Mr. John Hjellum, Attorney-at-Law, Jamestown, North Dakota, through whom you requested an opinion concerning chapter 43-13 of the North Dakota Century Code.

The question as stated in Mr. Hjellum's letter is: "Whether an unregistered optometrist, or a physician or surgeon not authorized to practice medicine in this State, all as defined in Chapter 43-13 of the North Dakota Century Code, may be employed by an individual or a group of individuals who is or are a registered optometrist, or optometrists, or physician or surgeon, or physicians or surgeons who are authorized to practice medicine in this State, and as such employee perform acts which would constitute a 'practice of optometry' if such employee were a registered optometrist or a physician or a surgeon authorized to practice medicine in this State."

We note that section 43-13-01(1) defines optometry in this state. Subsection 3 of the same section defines the term "practicing optometry."

Section 43-13-15 of the North Dakota Century Code provides:

UNLAWFUL TO PRACTICE WITHOUT CERTIFICATE - SALE OF GLASSES - REGULATIONS. No person shall practice optometry in this state unless he first obtains a certificate of registration and complies with the requirements of this chapter. Eyeglasses, spectacles, and lenses shall be vended as merchandise only:

1. To dealers;
2. From permanently located and established places of business in this state.

Any registered optometrist, however, may fit and vend eyeglasses, spectacles, and lenses at any place in this state."

We further note the provisions of section 43-13-28 of the North Dakota Century Code which provides:

PROHIBITIONS. It shall be unlawful for any corporation, organization, association, group, or individual who is not himself the holder of a certificate to practice optometry, to engage in the practice of optometry, directly or indirectly, by employing or hiring upon a salary, commission, or other basis or by associating upon a lease or any other profit sharing arrangement with a licensed optometrist or licensed physician. The provisions of this section shall not apply to cooperative

or to nonprofit associations or nonprofit corporations."

Section 43-13-02 of the North Dakota Century Code provides certain exemptions to the provisions of chapter 43-13. This section provides:

PERSONS EXEMPT FROM PROVISIONS OF CHAPTER. The provisions of this chapter shall not apply to the following persons:

1. Persons who sell spectacles, eyeglasses, or other articles or merchandise without attempting to practice optometry;
2. Student practitioners under the immediate and direct supervision of a registered optometrist;
3. Physicians and surgeons authorized to practice medicine in this state, except that the provisions of section 43-13-28 shall remain applicable."

We believe it is apparent, under the provisions of the above-quoted statutes, that an unregistered optometrist, or a physician or surgeon not authorized to practice medicine in this state, may not be employed by an individual or a group of individuals who is or are a registered optometrist, or optometrists, or physician or surgeon, or physicians or surgeons who are authorized to practice medicine in this state, and as such employee perform acts which would constitute a practice of optometry, as that term is defined in section 43-13-01.

This statement is, of course, subject to the exceptions provided in section 43-13-02, quoted above. You will note that subsection 2 of this section provides that the provisions of chapter 43-13 of the North Dakota Century Code shall not apply to student practitioners under the immediate and direct supervision of a registered optometrist. We believe the language of this statute must be considered in its plain meaning and if a person is not, in fact, a student practitioner under the immediate and direct supervision of a registered optometrist the provisions of chapter 43-13 would be applicable. It is apparent that many situations, with variations of facts, may arise. Each situation must, of course, be determined on its own merits.

LESLIE R. BURGUM

Attorney General