UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
CLEVELAND REGIONAL OFFICE

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COMMISSION AUTHORIZED
V890016

March 2, 1989

Ms. Marcia L. Malouin
Licensing Supervisor
Bureau of Health Services
Michigan Board of Optometry
Department of Licensing & Regulation
Post Office Box 30018
Lansing, Michigan 48909

Dear Ms. Malouin:

The staff of the Federal Trade Commission is pleased to respond to the Department of Licensing and Regulation's request for comments on proposed changes in the administrative rules of the Michigan Board of Optometry.[1] Our response is limited to an analysis of the potential effects of Section 338.262, which would prohibit optometrists from delegating specified procedures to nonlicensed, qualified eye-care professionals unless a licensed professional supervises the performance of the procedure.

As discussed below, proposed Section 338.262 would appear to prohibit Michigan opticians from performing various procedures that they now routinely perform on their own, unless supervised by a licensed optometrist or ophthalmologist. Opticians must be able to perform at least some of these procedures if they are to continue their current practice of filling eyeglass prescriptions and fitting and dispensing contact lenses. Permitting opticians to perform these procedures only when supervised is likely to increase costs to consumers. The Michigan Board of Optometry may have identified benefits to the supervision requirement of which we are not aware; however, the Board may also wish to consider the likely costs of the proposed regulation, which we offer in the following analysis.

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[1] These comments are the views of the staff of the Cleveland Regional Office and the Bureau of Consumer Protection of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner.

I. FEDERAL TRADE COMMISSION EXPERIENCE.

The Federal Trade Commission (FTC) is charged by Congress to prevent unfair methods of competition and unfair and deceptive acts and practices. In furtherance of its mandate, the Commission or its staff frequently submits comments, upon request by federal, state and local governmental bodies, concerning legislative and regulatory proposals that may impair competition or increase costs to consumers without offering countervailing benefits. By enforcing Section 5 of the FTC Act,[2] and undertaking economic studies of competition in various markets, the staff has gained substantial experience in analyzing the effects of various trade restraints, and the costs and benefits of those restraints to consumers.

Moreover, in recent years, the FTC has been actively involved in issues relating to the delivery of ophthalmic goods and services. The staff has published several consumer pamphlets on shopping for ophthalmic goods and services.[3] Also, the Commission staff conducted a detailed study of the quality of cosmetic contact lens fitting among three types of eye care providers: opticians, optometrists, and ophthalmologists.[4]

II. THE PROPOSED REGULATION MAY RESTRICT COMPETITION AND INCREASE CONSUMERS' COSTS.

Subsection (2) of proposed Section 338.262 would prohibit a nonlicensed but otherwise qualified person, such as an optician,[5] from performing certain functions without the supervision of an optometrist or ophthalmologist. It is our understanding that opticians currently perform many, if not all, of the tasks in Subsection (2) without supervision. For instance, many opticians routinely measure pupillary distances as part of filling eyeglass prescriptions. Opticians also take keratometry readings for the fitting of contact lenses. Under the proposed rule, an optician would not be permitted to perform these and other

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[2] 15 U.S.C. § 45.

[3] See "Eyeglasses" and "Facts For Consumers: Looking for Contact Lenses."

[4] G. Hailey, J. Bromberg, and J. Mulholland, A Comparative Analysis of Cosmetic Contact Lens Fitting by Ophthalmologist, Optometrist and Opticians, Bureaus of Consumer Protection and Economics, Federal Trade Commission (1983) ("Contact Lens Study").

[5] Typically, persons who wish to become opticians in Michigan complete either an apprenticeship or a two-year academic program. There is no licensure requirement.

common procedures unless supervised by a licensed professional. In exercising such supervision, the optometrist or ophthalmologist must establish the protocol, be continuously available for direct contact by telephone, radio, or other telecommunications facility, and conduct a regular review of the optician's records.

Subsection (3) of proposed Section 338.262, in effect, would prohibit a nonlicensed but otherwise qualified person from instructing patients on the placement and removal of contact lenses unless a licensed professional exercises "direct" supervision. Such direct supervision would appear to require, at a minimum, that an optometrist or ophthalmologist be on the premises when the instruction is given. Michigan opticians currently fit contact lenses based on a prescription issued by optometrists and ophthalmologists and perform related services such as instructing patients on how to place and remove the lenses. Under the proposed regulation, opticians could not fit contact lenses unless an optometrist or ophthalmologist were present.

The findings of our Contact Lens Study may be of interest to the Board in its deliberations.[6] The study concluded that restrictions on contact lens fitting by experienced opticians appeared unnecessary to protect the public.[7] The study found that the quality of cosmetic contact lens fitting provided by independent opticians was comparable to that provided by ophthalmologists and optometrists.[8]

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[6] This survey was carried out with the assistance of the major eye care professional organizations -- the American Academy of Ophthalmology, the American Optometric Association, and the Opticians Association of America. The study included over 500 cosmetic contact lens wearers located in 18 urban areas across the country. An ophthalmologist, an optometrist, and an optician examined the subjects for the presence of seven potentially pathological conditions that are commonly associated with improper contact lens fitting. The procedures closely resembled those used by contact lens fitters to perform "follow-up" evaluations of their patients.

[7] Contact lens wearers fitted by both licensed and nonlicensed opticians were examined as part of that study. The study data has not been analyzed to determine whether nonlicensed opticians fit contact lenses as well as licensed opticians.

[8] The Contact Lens Study covered only cosmetic contact lenses -- lenses that are worn as an alternative to eyeglasses in correcting vision. The study did not examine whether opticians could fit therapeutic or extended wear lenses as well as other providers.

We believe that proposed Section 338.262 could increase prices to Michigan consumers of certain eye goods and services. Because the supervision requirement is likely to increase the costs to opticians of providing the affected goods and services, opticians are likely to pass this increase on to consumers in the form of higher prices. The competition that now exists between optometrists and opticians in the sale of eyeglasses and contact lenses could decrease, which may result in higher prices.[9] Consumer purchasing alternatives could be reduced if opticians, faced with the prospect of ceasing independent operation and becoming associated with or employees of licensed professionals, leave the market entirely. Consumers may be injured if the proposed regulation reduces the number of outlets where consumers can purchase the affected goods and services.

III. CONCLUSION.

Adopting restrictions that may prevent or hinder unsupervised but otherwise qualified opticians from performing procedures that allow them to fill eyeglass prescriptions and fit contact lenses would appear to harm consumers by limiting competition and increasing costs, and – at least in the case of cosmetic contact lenses – without improving the quality of care. We hope that this analysis of the likely costs of Section 338.262 will be useful to the Board in its deliberations.

We appreciate this opportunity to provide our views. We would be pleased to provide further information at your request.

Very truly yours,

Mark D. Kindt
Director

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[9] This conclusion about the relationship between price and restriction on competition is supported generally by economic analysis and numerous studies. See, e.g., R. Bond, J. Kwoka, J. Phelan, and I. Whitter, Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry, Bureau of Economics, Federal Trade Commission (1980). In a different health care industry, an FTC staff study examining the cost to consumers of state restrictions on the functions that dental auxiliaries could perform found that the average price for dental visits was seven percent to eleven percent higher in the states with restraints. See J. N. Liang and J. D. Ogur, Restrictions on Dental Auxiliaries, Bureau of Economics, Federal Trade Commission (1987).