



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1998

The Honorable Judith Zaffirini
Chair, Health and Human Services Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 98-113

Re: Whether an optician has any right of
access to the records of an optometrist's
patient (RQ 1183)

Dear Senator Zaffirini:

You present a fact situation that raises an issue under article 4552-5.15(d), V.T.C.S., a provision governing the relationship of optometrists and dispensing opticians.¹ You inform us that *an individual received medical treatment from an optometrist. Shortly thereafter, an optician accessed the optometrist's records and reviewed the patient's medical file without the patient's consent. You are concerned that the optician unlawfully obtained the patient's file and ask whether an optician who works closely with an optometrist has any right of access to records of the optometrist.*²

Article 4552, V.T.C.S., regulates the practice of optometry. Section 5.12(a) requires an optometrist who signs a prescription for an ophthalmic lens to make and record certain findings about the patient's condition. The prescription files, patient records, and business records of an optometric practice are the sole property of the optometrist, but a patient may obtain a copy of his or her optometric records or may have them forwarded to another doctor by making a signed, written request to the optometrist.³

Section 5.15(a) of article 4552, V.T.C.S., which regulates the business relationships between optometrists and opticians, provides as follows:

(a) The purpose of this section is to insure that the practices of optometry and therapeutic optometry⁴ shall be carried out in such a manner that they are

¹A "dispensing optician" sells or delivers to the consumer eyeglasses, contact lenses, or other ophthalmic devices prescribed by an optometrist, therapeutic optometrist, or physician. V.T.C.S. art. 4552-1.02(5). *See also* V.T.C.S. art. 4551-1 (Opticians' Registry Act).

²We understand that the optometrist and optician work in the same building.

³V.T.C.S. art. 4552-5.21.

⁴Both an optometrist and a therapeutic optometrist must be licensed by the Texas Optometry Board, V.T.C.S. (continued...)

completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other, except as hereinafter set forth.

The other provisions of section 5.15 help effectuate this statutory purpose. If an optometrist and a dispensing optician occupy space in the same building, subsection 5.15(b) provides for separation of their premises. Subsection 5.15(c) provides that an optometrist “may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician,” but the books, records, and accounts of the optical business must be kept separate and distinct from the books, records, and accounts of the optometrist’s practice.⁵ Subsection (d), which you specifically mention, provides as follows:

(d) No person, firm, or corporation engaged in the business of a dispensing optician, other than a licensed optometrist, therapeutic optometrist, or physician, shall have, own, or acquire any interest in the practice, books, records, files, equipment, or materials of a licensed optometrist or therapeutic optometrist . . . [or in the premises of an optometrist other than a lease for a specific term].⁶

Thus, the statute does not allow an optometrist and an optician to own patient records jointly.

We find no provision giving an optician who works closely with an optometrist a right of access to the optometrist’s patient records. Although the fact that an optician has reviewed a patient’s records of treatment by an optometrist may be relevant to proving that an optometry practice and a dispensing optician’s business are not sufficiently separated, we cannot conclude as a matter of law that the transfer of records violates any provision of article 4552, V.T.C.S.

⁴(...continued)

art. 4552-1.02(9), (10). A “therapeutic optometrist” must complete educational requirements set out by board rule and may administer and prescribe ophthalmic devices and certain oral medications and topical ocular pharmaceutical agents as set out in section 4552-1.03(b), V.T.C.S. For purposes of this opinion, we will use the term “optometrist” to mean both optometrists and therapeutic optometrists.

⁵An optometrist practicing under his own name and dispensing lenses in his office as part of his optometric practice would not be required to keep separate records because it is not a separate dispensing business. 22 TAC § 279.4 (Board Interpretation Number Four).

⁶In addition, if an optometrist who is also engaged in the business of a dispensing optician owns an interest in the practice, books, records, files, equipment or materials of another licensed optometrist, the optometrist “shall maintain a completely separate set of books, records, files, and accounts in connection therewith.” V.T.C.S. art. 4552-5.15(d).

S U M M A R Y

Article 4552, V.T.C.S., does not grant an optician who works closely with an optometrist a right of access to the optometrist's patient records. Although the fact that an optician has reviewed a patient's records of treatment by an optometrist may be relevant to proving that an optometry practice and a dispensing optician's business are not separated to the degree required by section 4552.-5.15, V.T.C.S., we cannot conclude as a matter of law that the transfer of records violates any provision of article 4552, V.T.C.S.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee