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## HEALTH

### ***Optometric Practice: Allow Use of Topically Applied Agents for Treatment of Ocular Diseases; Provide for Continuing Education***

**CODE SECTIONS:** O.C.G.A. §§ 43-30-1 (amended), 43-30-8 (amended), 43-30-13 (amended)

**BILL NUMBER:** HB 1169

**ACT NUMBER:** 821

**SUMMARY:** The Act amends the definition of “optometry” to include the administration or prescription of topically applied pharmaceutical agents approved by the State Board of Examiners in Optometry. The Act also defines the standard of care to which optometrists who treat ocular disease with topical pharmaceutical agents must adhere. The Act provides misdemeanor penalties for those optometrists who treat ocular disease outside the authorized scope of practice. The Act exempts from continuing education requirements those optometrists who are sixty-five years of age or older. Finally, the Act sets forth presumptions for construing liability of pharmacists who, in good faith, fill prescriptions for topically applied pharmaceutical agents issued by optometrists under the Act.

**EFFECTIVE DATE:** July 1, 1988

#### ***History***

Optometry is a “learned profession,” defined as “the art and science of visual care” including “the diagnosis and interpretation of the visual behavior of the human organism . . . .”<sup>1</sup> The traditional practice of optometry involves “correction of visual anomalies” through prescription of lenses, orthoptic exercises, light frequencies, and other methods excluding drugs or surgery.<sup>2</sup> Under prior law, optometrists who were properly certified in pharmacological training from an accredited school and by the State Board of Examiners in Optometry could only use pharmaceutical

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1. O.C.G.A. § 43-30-1 (1988).

2. *Id.*

agents to diagnose ocular diseases.<sup>3</sup> Only ophthalmologists were permitted to use pharmaceutical agents to treat ocular diseases.<sup>4</sup>

The distribution of optometrists throughout the state is much wider than that of ophthalmologists.<sup>5</sup> Optometrists practice in 103 of the 159 counties in Georgia, while only thirty-eight counties have practicing ophthalmologists.<sup>6</sup> Of the ophthalmologists practicing in Georgia, nearly seventy-five percent practice in only eight counties.<sup>7</sup> Because of this unequal distribution and the time, travel, and expense associated with seeking ophthalmological care, the majority of Georgians with eye problems initially see an optometrist.<sup>8</sup> However, because optometrists have not been permitted to treat certain eye diseases with topically applied agents, even though optometrists are trained to do so and are permitted by law to use such agents in diagnosis, many patients have been subjected to sight-threatening delays in treatment.<sup>9</sup>

The Act is designed to update the law in Georgia to permit optometrists to diagnose and treat ocular disease with topically applied pharmaceuticals.<sup>10</sup> Concern for constituents prompted the introduction of HB 1169. The sponsors believed that allowing optometrists to treat patients in a prompt and appropriate manner upon the initial discovery of eye problems would save Georgians time and money and possibly prevent the loss of sight.<sup>11</sup>

### *HB 1169*

The Act amends Code section 43-30-1(2) relating to the definition of optometry by modifying subsection (A) and adding four new subsections.<sup>12</sup> The Act permits the topical application of pharmaceutical agents for treatment purposes in addition to the diagnostic purposes already permitted by the Code section.<sup>13</sup> To be certified to use pharmaceutical agents for treatment purposes, an optometrist must already be certified

3. *Id.*

4. An ophthalmologist is a physician who specializes in ophthalmology, "a branch of medicine dealing with the structure, functions, and diseases of the eye." WEBSTER'S DICTIONARY 827 (9th ed. 1984). An optometrist is a specialist licensed to examine "the eye for defects and faults of refraction" and to prescribe "corrective lenses or exercises but not drugs or surgery." *Id.* at 829.

5. Telephone interview with Linda Edmonds, Executive Director, Georgia Optometric Association (Apr. 4, 1988) [hereinafter Edmonds Interview].

6. *Id.*

7. *Id.*

8. *Id.*

9. Telephone interview with Representative DuBose Porter, House District No. 119 (Apr. 8, 1988) [hereinafter Porter Interview].

10. *Id.*

11. *Id.*

12. O.C.G.A. § 43-30-1(2)(A)—(E) (1988).

13. O.C.G.A. § 43-30-1(2)(A) (1988).

to use pharmaceutical agents for diagnostic purposes and must pass an examination approved by the State Board of Examiners in Optometry.<sup>14</sup> The examination tests knowledge of pharmaceutical agents in diagnosis and treatment of ocular diseases.<sup>15</sup> The new subsections provide that the State Board of Examiners in Optometry will establish a list of approved pharmaceutical agents to be used for topical treatment;<sup>16</sup> prohibit optometrists from administering or prescribing pharmaceutical agents in the treatment of glaucoma;<sup>17</sup> provide that doctors of optometry who use pharmaceutical agents for treatment of ocular disease will be held to the standard of care applied to physicians who are licensed to perform similar acts;<sup>18</sup> and provide a misdemeanor penalty for any optometrist who uses a pharmaceutical agent in any manner other than those specified by the chapter.<sup>19</sup>

The Act also amends the continuing education requirements for optometrists.<sup>20</sup> Optometrists who are sixty-five years of age or older are exempted from the minimum continuing education requirements.<sup>21</sup>

Finally, the Act provides that a licensed pharmacist who, in good faith, fills a prescription issued by an optometrist shall presume that the optometrist is permitted and licensed to do so and that the pharmaceutical agent is one approved by the optometry board.<sup>22</sup> However, if the pharmacist has actual or constructive knowledge that the pharmaceutical agent prescribed by the optometrist is not one approved by the board, then the presumption in favor of the pharmacist no longer exists.<sup>23</sup>

When introduced, HB 1169 amended Code section 43-30-1(2) by permitting optometrists to prescribe pharmaceutical agents for treatment purposes, in addition to the diagnostic purposes already permitted.<sup>24</sup> The bill required optometrists to be certified for diagnostic use of pharmaceutical agents and to pass a board examination testing knowledge of pharmacology pertaining to treatment of ocular diseases.<sup>25</sup> The bill also amended Code section 43-30-13 by deleting the provision which prohibited optometrists from prescribing or administering drugs.<sup>26</sup> The final version of HB 1169 represents the views of optometrists, physicians, and

14. *Id.*

15. *Id.*

16. O.C.G.A. § 43-30-1(2)(B) (1988).

17. O.C.G.A. § 43-30-1(2)(C) (1988).

18. O.C.G.A. § 43-30-1(2)(D) (1988).

19. O.C.G.A. § 43-30-1(2)(E) (1988).

20. 1976 Ga. Laws 185 (formerly found at O.C.G.A. § 43-30-8(b) (1982)).

21. O.C.G.A. § 43-30-8(b) (1988).

22. O.C.G.A. § 43-30-13(b) (1988).

23. *Id.*

24. HB 1169, as introduced, 1987 Ga. Gen. Assem.

25. *Id.*

26. *Id.*

pharmacists.<sup>27</sup>

The House Committee on Health and Ecology offered a substitute to HB 1169 which included more extensive amendments.<sup>28</sup> The substitute amended Code section 43-30-1 to permit the use, prescription, and administration of pharmaceutical agents for diagnostic and treatment purposes.<sup>29</sup> In addition, two new Code sections set forth the educational and certification requirements to permit optometrists to use, prescribe, and administer pharmaceutical agents; this language was incorporated into the final version of HB 1169.<sup>30</sup>

The House Health and Ecology Committee substitute also permitted optometrists to administer or prescribe pharmaceutical agents for treatment of glaucoma for a period of twelve months following a written, dated, and signed approval of an ophthalmologist.<sup>31</sup> The final version prohibits optometrists from administering or prescribing pharmaceutical agents, whether topically applied, orally administered, or by injection, for treatment of glaucoma.<sup>32</sup>

A standard of care provision regarding optometrists' use of pharmaceutical agents for treatment purposes was added in the House substitute; it provides that optometrists who treat ocular diseases with pharmaceutical agents be held to the same standard of care as physicians who perform the same or similar acts.<sup>33</sup> This provision was an area of compromise between the medical and optometric professions.<sup>34</sup> A misdemeanor penalty was also added in the House substitute to prevent the existence of a loophole for optometrists, since physicians and pharmacists already are subject to this penalty for exceeding their lawful scope of practice.<sup>35</sup> Another addition to the substitute, incorporated in the final version, was the presumption against assessing liability to pharmacists who in good faith fill prescriptions from optometrists.<sup>36</sup>

The House Committee on Health and Ecology proposed a substitute which created an Optometrists' Pharmaceutical Utilization Review Committee (OPURC) and included details of its structure and function.<sup>37</sup> The Utilization Review Committee was to review complaints against optometrists who use pharmaceutical agents in the treatment of ocular diseases and to make disciplinary recommendations to the State Board of Exam-

27. Porter Interview, *supra* note 9.

28. HB 1169 (HCS), 1988 Ga. Gen. Assem.

29. *Id.*

30. O.C.G.A. § 43-30-8 (1988).

31. HB 1169 (HCS), 1988 Ga. Gen. Assem.

32. O.C.G.A. § 43-30-1(2)(C) (1988).

33. HB 1169 (HCS), 1988 Ga. Gen. Assem.

34. Porter Interview, *supra* note 9.

35. *Id.* See also O.C.G.A. § 51-1-27 (1982).

36. O.C.G.A. § 43-30-13 (1988).

37. HB 1169 (HCS), 1988 Ga. Gen. Assem.

iners in Optometry.<sup>38</sup> The substitute also authorized the board to compile a list of approved pharmaceutical agents for topical application by optometrists in the treatment of ocular diseases and to modify the list.<sup>39</sup> The substitute established procedures allowing objection to the OPURC listing or modification through judicial review of any OPURC final decisions.<sup>40</sup> The aspect of the House substitute creating the OPURC was deleted because it was considered too complicated and cumbersome.<sup>41</sup> The provision was also considered unnecessary since such power already exists in the State Board of Examiners in Optometry<sup>42</sup> and judicial review already is provided for in the chapter.<sup>43</sup>

The continuing education exemption for practicing optometrists who are sixty-five years of age or older was also added in the House substitute.<sup>44</sup> This exemption was not related to the drug treatment aspect of the bill, but was included at the request of the Speaker of the House who planned to introduce the amendment as a separate bill.<sup>45</sup> The purpose of the exemption is to permit optometrists of that age to continue to practice insofar as their activity relates to correction of visual anomalies. To diagnose and treat ocular diseases, however, optometrists who are sixty-five years of age or older must meet the requisite certification and take continuing education courses as prescribed by the board.<sup>46</sup>

The Senate Committee on Human Resources also offered a substitute to HB 1169.<sup>47</sup> The Senate substitute became the version of HB 1169 that passed the 1988 Georgia General Assembly.<sup>48</sup> The various versions of HB 1169 were the result of ongoing negotiation and compromise among various groups affected by the legislation, including medical doctors, the Medical Association of Georgia (MAG), ophthalmologists and the Georgia Society of Ophthalmologists, optometrists and the Georgia Optometric Association, and pharmacists.<sup>49</sup> Medical doctors were concerned that HB 1169 would permit optometrists to use not only topical pharmaceutical agents but also oral and injectable medications.<sup>50</sup> They feared that optometrists, trained to work on healthy eyes and to correct vision, would be permitted to treat conditions outside their scope of training and

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38. *Id.*

39. *Id.*

40. *Id.*

41. Porter Interview, *supra* note 9.

42. *Id.* See also O.C.G.A. § 43-30-5 (1988).

43. Porter Interview, *supra* note 9; see also O.C.G.A. § 43-30-11 (1988).

44. HB 1169 (HCS), 1988 Ga. Gen. Assem.

45. Porter Interview, *supra* note 9.

46. *Id.*

47. HB 1169 (SCS), 1988 Ga. Gen. Assem.

48. O.C.G.A. §§ 43-30-1, -8, -13, (1988).

49. Porter Interview, *supra* note 9; see also Edmonds Interview, *supra* note 5.

50. Telephone interview with Scott Mall, Director, Governmental Affairs, Medical Association of Georgia (Mar. 31, 1988).

practice.<sup>51</sup>

MAG, representing medical doctors in the state, recognized that some version of the legislation would likely pass the General Assembly.<sup>52</sup> MAG sought to safeguard the public from the possibility of an optometrist attempting to treat a condition for which he has not been trained or licensed or continuing to treat an ocular disease with topical agents beyond the point of efficacy, thus delaying necessary systemic treatment.<sup>53</sup> Therefore, the medical doctors lobbied against the original version of HB 1169 which would have permitted treatment of ocular diseases by means of oral or topical application or injection. The medical doctors accepted a compromise which permits optometrists to treat ocular diseases with only topical pharmaceutical agents.<sup>54</sup> Eye infections, such as conjunctivitis, iritis or similar conditions amenable to treatment by topical pharmaceutical agents, are examples of ocular diseases contemplated by the final version of the Act.<sup>55</sup>

Glaucoma was not mentioned in the original version of HB 1169.<sup>56</sup> The House Health and Ecology Committee substitute added glaucoma as a condition which optometrists could treat provided an ophthalmologist gave written, dated and signed approval.<sup>57</sup> Physicians expressed concern about the seriousness and complexity of glaucoma because it requires treatments which may affect other eye problems.<sup>58</sup> Physicians argued that the treatment of glaucoma requires medical expertise and that physicians are the more appropriate source for long-term therapy.<sup>59</sup> The final version of HB 1169, a compromise resulting from legislative mediation between these two interest groups, permits optometrists to diagnose glaucoma and to use appropriate pharmaceutical agents to treat the disease on a short-term basis.<sup>60</sup> Long-term treatment of glaucoma with pharmaceutical agents, including topical ones, is precluded by the Act.<sup>61</sup>

While concern remained that the Act inappropriately expands the scope of an optometrist's practice,<sup>62</sup> the competing professions reached a compromise which reflects what other states have permitted optometrists

51. *Id.* For example, conditions such as acquired immune deficiency syndrome (AIDS), diabetes mellitus, and hypertension can be diagnosed from examination of the eye, but treatment of these conditions is beyond the training of optometrists. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. HB 1169, as introduced, 1987 Ga. Gen. Assem.

57. HB 1169 (HCS), 1988 Ga. Gen. Assem.

58. Porter Interview, *supra* note 9.

59. *Id.*

60. *Id.*

61. O.C.G.A. § 43-30-1(2)(C) (1988); Edmonds Interview, *supra* note 5.

62. Telephone interview with Senator Frank Albert, Senate District No. 23 (Mar. 31, 1988).

to do in treating ocular disease with pharmaceutical agents.<sup>63</sup> The Act permits the optometrist to treat with topical pharmaceutical agents some ocular diseases that optometrists were capable of diagnosing but previously were precluded from treating.<sup>64</sup>

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63. Edmonds Interview, *supra* note 5; *see also* Porter Interview, *supra* note 9. Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, West Virginia, and Wyoming have adopted similar statutes. *See* Georgia Optometric Ass'n, *Updating Georgia Optometry Law* (1987) (copy on file at Georgia State University Law Review office).

64. Compare O.C.G.A. § 43-30-1 (1988) with 1980 Ga. Laws 47 (formerly found at O.C.G.A. § 43-30-1 (1982)).