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Bill Analysis
Legislative Service Commission

H.B. 149

127th General Assembly
(As Introduced)

Reps. Daniels and Strahorn, J. Stewart, Driehaus, Aslanides, Bolon, J. McGregor, Wolpert, Luckie, Gibbs, R. Hagan, Combs, Flowers, Healy, Setzer, J. Hagan, Lundy, S. Williams, Heard, Sykes, Widener, Hughes, Adams, Garrison, Uecker, Huffman, DeBose, Fessler, Distel, Blessing, Patton, Domenick, Fende, Bubb, Beatty, Collier, Peterson, Okey, D. Stewart, Foley, Boyd, Carmichael, Reinhard, Hite

BILL SUMMARY

- Modifies the scope of practice of an optometrist holding a therapeutic pharmaceutical agents certificate or topical ocular pharmaceutical agents certificate.
- Requires the State Board of Optometry to adopt rules governing the authority of optometrists to administer and prescribe controlled substances.
- Prescribes the manner in which the Board may share information with other investigating boards and agencies.
- Increases the continuing education requirement for pharmacology to ten hours (from five) and applies it to all optometrists.
- Modifies the license exemption for optometry students.
- Requires optometrists and ophthalmologists who prescribe contact lenses to comply with a provision of federal law.

CONTENT AND OPERATION

OPTOMETRIST AUTHORITY TO ADMINISTER AND PRESCRIBE DRUGS

Current law

Under current law, optometrists may practice under three categories of authority to administer and prescribe drugs. The first category, which is the largest group, consists of optometrists holding therapeutic pharmaceutical agents certificates. Optometrists receiving licenses since May 19, 1992, receive this type of certificate. The second group consists of optometrists holding topical ocular pharmaceutical agents certificates. Optometrists who held licenses to practice issued prior to May 19, 1992 originally received this type of certificate and many retain it today. The third group has no prescriptive authority and thus may not prescribe drugs or use prescription drugs in their practices.¹ The bill modifies the prescriptive authority of optometrists holding therapeutic pharmaceutical agent certificates and topical ocular pharmaceutical certificates.

Therapeutic pharmaceutical agent certificate

(R.C. 4725.01(A)(3) and (C))

Under current law, an optometrist who holds a therapeutic pharmaceutical agent (TPA) certificate may employ, apply, administer, and prescribe instruments, devices, procedures (other than invasive procedures),² and therapeutic pharmaceutical agents for the following purposes:

(1) Examination, investigation, diagnosis, or prevention of any disease, injury, or other abnormal condition of the visual system;

¹ According to the 2006 Annual Report of the State Board of Optometry, 1,978 optometrists hold a therapeutic pharmaceutical agent certificate, 58 hold a topical ocular pharmaceutical agent certificate, and 63 hold no certificate to prescribe (2006 Annual Report, *available at*: <http://optometry.ohio.gov>, last visited April 24, 2007).

² "Invasive procedure" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, administering medication by injection, or the removal of intraocular foreign bodies (R.C. 4725.01(F)).

(2) Treatment or cure of any disease, injury, or other abnormal condition of the anterior segment of the human eye.³

Current law defines "therapeutic pharmaceutical agent" as including a lengthy list of drugs, including topical ophthalmic preparations and oral dosages of drugs such as acetazolamide or methazolamide (used to treat glaucoma and other conditions), terfenadine (an antihistamine), and tetracycline (an antibiotic).

Topical ocular pharmaceutical agent certificate

(R.C. 4725.01(A)(2) and (B))

Under current law, an optometrist with a topical ocular pharmaceutical agent (TOPA) certificate may administer certain topical drugs for the purpose of ascertaining departures from normal human eyes, measuring their functional powers, adapting optical accessories, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury. An optometrist with a TOPA certificate may use drugs such as enoxinate hydrochloride (an anesthetic) and tropicamide (used in pupil dilation) diluted in ophthalmic solutions.

The State Board of Optometry is authorized to approve by rule additional drugs if their primary indications are consistent with the purposes of the practice of optometry and the drug has been approved and its potency established by the U.S. Food and Drug Administration after January 1, 1983.

The bill

(R.C. 4725.01)

The bill modifies the prescriptive authority for optometrists holding therapeutic pharmaceutical agent certificates (TPA) and topical ocular pharmaceutical certificates (TOPA).

Therapeutic pharmaceutical agent certificate

(R.C. 4725.01 and 4725.012)

Under the bill, an optometrist who holds a TPA certificate is practicing within the scope of the optometrist's scope of practice when the optometrist administers or prescribes a drug for the following purposes:

- (1) Diagnosis, treatment, or prevention of injury of the visual system;

³ The Revised Code does not specify what segment of the human eye constitutes the "anterior segment."

(2) Treatment or management of disease or any other abnormal condition within or originating from the visual system.

An optometrist holding a TPA certificate may administer drugs topically and may perform the following invasive procedures:⁴

(1) Administration of a drug by injection for purposes of counteracting anaphylaxis or an anaphylactic reaction;⁵

(2) Use of a device that infiltrates human tissue for purposes of testing the level of glucose in an individual's blood.

An optometrist holding a TPA certificate is prohibited from the following:

(1) Administering a drug by injection except as provided above;

(2) Administering or prescribing a Schedule II controlled substance;⁶

(3) Administering or prescribing a Schedule III controlled substance or its equivalent unless the State Board of Optometry authorizes use of the drug in rules.⁷

⁴ These invasive procedures are permitted in all circumstances, not only when the optometrist is treating the patient for relevant conditions or provided treatment that led to the need for the invasive procedure.

⁵ "Anaphylaxis" is a "hypersensitivity to a foreign substance, especially in animals, induced by a small preliminary or sensitizing injection of the substance." Conditions such as anaphylactic shock can lead to a drop in blood pressure, breathing difficulties, and possible death. (*The American Heritage Dictionary*, 2d ed., at 107; see also "Anaphylaxis," available at: <http://dictionary.reference.com/browse/anaphylaxis>, last visited April 24, 2007.)

⁶ Schedule II controlled substances are drugs that have accepted medicinal uses, but also have a high potential for abuse and addiction. Examples are opium, morphine, codeine, methadone, hydromorphone (Dilaudid), oxycodone (Percodan), and methylphenidate (Ritalin). (R.C. Chapter 3719. and U.S. Department of Justice Drug Enforcement Administration, "Controlled Substances Security Manual," <http://www.deadiversion.usdoj.gov/pubs/manuals/sec/security.pdf>, last visited April 23, 2007.)

⁷ Schedule III controlled substances are drugs with a potential for abuse and dependence that is lower than the potential that applies to a Schedule II controlled substance. Schedule III controlled substances include nonnarcotic drugs, as well as preparations containing limited quantities of certain narcotics. (R.C. Chapter 3719. and "Controlled Substances Security Manual.") Not all drugs that require a prescription are classified as controlled substances.

Topical ocular pharmaceutical agent certificate

(R.C. 4725.01 and 4725.011)

Under the bill, an optometrist who holds a TOPA certificate may administer a drug topically for evaluative purposes in the practice of optometry.⁸ An optometrist holding a TOPA certificate is not authorized to do any of the following:

- (1) Administer a drug by any method other than topical administration;
- (2) Administer a Schedule II controlled substance;
- (3) Administer a Schedule III controlled substance or its equivalent unless the State Board of Optometry authorizes use of the drug in rules.

State Board of Optometry rulemaking

(R.C. 4725.091)

The bill requires the State Board of Optometry to adopt rules governing the authority of optometrists holding TPA and TOPA certificates to administer or administer and prescribe controlled substances. The rules must be adopted in accordance with Revised Code Chapter 119. (Ohio's Administrative Procedure Act) and in consultation with the State Board of Pharmacy and must comply with the following:

- (1) The rules may not permit an optometrist to administer or prescribe Schedule III controlled substances other than those included in the "narcotics-narcotic preparations" category on the list of controlled substances prepared by the Ohio State Board of Pharmacy or an equivalent of those drugs;⁹
- (2) The rules must limit the list of Schedule III controlled substances that an optometrist may administer or prescribe under a TPA or TOPA certificate to those the Board determines are appropriate for use in the practice of optometry;

⁸ Current law defines the "practice of optometry" as the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers, adapting optical accessories for the aide thereof, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury (R.C. 4725.01(A)(1)).

⁹ This category of Schedule III controlled substances includes drugs such as morphine, codeine, and opium in specific amounts mixed with other active, nonnarcotic ingredients in specific amounts (R.C. 3719.41, Schedule III, Division (D)).

(3) The Board must establish protocols for the prescription of Schedule III controlled substances to be followed by optometrists who hold TPA certificates, taking into account the prescription protocols that exist within the health care marketplace and are used in other states that grant optometrists the authority to prescribe drugs;

(4) The Board must establish standards and procedures governing the administration and prescription of Schedule III controlled substances by taking into consideration and examining issues that include appropriate length of drug therapy, appropriate protocols of drug treatment, necessary monitoring systems, and any other factors the Board considers relevant;

(5) The Board must conduct an annual review of these rules.

OTHER PROVISIONS

The bill makes several other changes to the law governing the practice of optometry. First, the bill contains a provision regarding the sharing of information stemming from an investigation made by the State Board of Optometry. Second, it modifies the continuing education requirements for optometrists and changes the license renewal notification duties of the Board. Next, it modifies the law governing which optometric students are exempt from licensure requirements. Finally, the bill provides that optometrists and ophthalmologists who supply contact lenses must provide information required by federal law.

Board investigations

(R.C. 4725.23)

Under current law, the State Board of Optometry must conduct all of its investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. The Board may not publicize the names or other identifying information about patients or persons who file complaints unless proper consent is given.

The bill provides that the Board may share any information it receives pursuant to an investigation, including patient records, with other licensing boards and governmental agencies that are investigating alleged professional misconduct and with law enforcement agencies and other governmental agencies that are investigating or prosecuting alleged criminal offenses. A board or agency with whom the Board shares information must comply with the same confidentiality requirements as the Board, notwithstanding any conflicting provision of law or procedure that applies to the particular board or agency. The shared information may be admitted into evidence in a criminal trial in accordance with the Rules of

Evidence, but the court must require that appropriate measures are taken to ensure that confidentiality is maintained with respect to any information that contains names or other identifying information. The court may seal records or delete information from its records to ensure confidentiality.

Continuing education

(R.C. 4725.16(B) and (C))

Under current law, all licensed optometrists must annually complete continuing education in subjects relating to the practice of optometry. The length of study is determined by the Board, but must be not less than six nor more than 25 clock hours each year. The bill provides that the length of study must be 25 clock hours each year. In addition, current law requires each licensed optometrist who holds a therapeutic pharmaceutical agent (TPA) or topical ocular pharmaceutical agent (TOPA) certificate to complete at least five hours of continuing education focused on pharmacology annually. The bill increases this requirement to ten hours annually but includes it in the required 25 hours. It applies the pharmacology requirement to all optometrists, not just those holding TPA or TOPA certificates.

License renewal notification

(R.C. 4725.16(F))

Under current law, an optometrist's license expires annually at the end of December. The Board must send each licensed optometrist a renewal notice not later than November 1. If an optometrist fails to file a license renewal application at least one month before the optometrist's license is scheduled to expire, the Board is required to send a second notice of renewal not later than December 1. The bill provides that the second renewal notification must be mailed not later than December 15, instead of December 1. The bill further provides that a third notice of renewal must be sent before the Board can classify the optometrist's certificate, if applicable, as delinquent.

Optometry students

(R.C. 4725.26)

Under current law, a student studying optometry in a school of optometry located in Ohio is not required to have a license to practice optometry while enrolled in the school if the student is in an optometry training program. The bill provides that the student can be enrolled in a school in Ohio or another state if the student is participating in a training program in Ohio provided or sponsored by the school.

Contact lens information

(R.C. 4725.28 and 4731.44)

Current law requires an optometrist or ophthalmologist who prescribes any vision correction item, device, or procedure to provide one copy of the prescription to the patient. The prescription must include the date of its issuance and sufficient information to enable the patient to obtain the vision correction item, device, or procedure from a supplier of the patient's choice.

The bill provides that in addition to the information required above, the prescription must also include a set of information required under federal law,¹⁰ including the following:

- (1) The name of the patient;
- (2) The date of the patient's examination;
- (3) The issue date and expiration date of the prescription;
- (4) The name, address, telephone number, and fax number of the prescriber;
- (5) Power and material or manufacturer of the contact lens;
- (6) Base curve or appropriation designation;
- (7) Diameter, where appropriate;
- (8) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

HISTORY

ACTION	DATE
Introduced	04-12-07

H0149-I-127.doc/jc

¹⁰ "Fairness to Contact Consumers Act," 117 Stat. 2024 (2003), 15 United States Code 7601.