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Bill Analysis
Legislative Service Commission

Sub. H.B. 149

127th General Assembly
(As Passed by the House)

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, Brown, Gerberry, Koziura, Miller, Sayre, Seitz, Ujvagi, Wachtmann, Webster, Zehringer

BILL SUMMARY

- Modifies the scope of practice of an optometrist holding a therapeutic pharmaceutical agents certificate or topical ocular pharmaceutical agents certificate, particularly by eliminating the statutory specifications of the types and dosages of drugs that may be administered or prescribed.
- Requires the State Board of Optometry to adopt rules governing the authority of optometrists to administer and prescribe drugs that are Schedule III 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.
- Provides that prescriptions for contact lenses must include information required by federal law.

CONTENT AND OPERATION

OPTOMETRIST AUTHORITY TO ADMINISTER AND PRESCRIBE DRUGS

Background

In 1992, Substitute Senate Bill 110 of the 119th General Assembly expanded the scope of the practice of optometry by permitting optometrists to be licensed to prescribe and administer specific types and amounts of therapeutic pharmaceutical agents. Prior to S.B. 110, optometrists were licensed to practice general optometry and had the option of obtaining an additional license to administer topical ocular pharmaceutical agents. Since the enactment of S.B. 110, persons who apply for optometry licenses are required to be licensed in the use of therapeutic pharmaceutical agents, which includes the use of topical ocular pharmaceutical agents. Optometrists who were already practicing on S.B. 110's effective date may choose to upgrade their licenses to allow for the administration and prescription of therapeutic pharmaceutical agents. Optometrists who do not upgrade their licenses continue to practice according to the licenses they received prior to S.B. 110.

Thus, optometrists in Ohio are licensed in one of three ways: (1) to practice only general optometry, signified by holding a "certificate of licensure," (2) to practice general optometry and to use topical ocular pharmaceutical agents, signified by holding a certificate of licensure and a "topical ocular pharmaceutical agents certificate," or (3) to practice general optometry and to administer and prescribe therapeutic pharmaceutical agents, signified by holding a certificate of licensure and a "therapeutic pharmaceutical agents certificate."¹

Therapeutic pharmaceutical agents certificate

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

Under current law, an optometrist who holds a therapeutic pharmaceutical agents (TPA) certificate may employ, apply, administer, and prescribe

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).

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;

(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 a drug that is used for the above-specified purposes and is an anti-microbial agent, anti-allergy agent, anti-glaucoma agent, anti-inflammatory agent, or analgesic. The drug must be either a topical ophthalmic preparation or an oral dosage.

With regard to oral dosages, current law lists the specific drugs that may be used, and in some cases, the specific amount of the dosage that may be used. Examples include diphenhydramine, methazolamide, ampicillin, cephalexin, penicillin VK, and tetracycline.

The State Board of Optometry is permitted by current law to adopt rules specifying other oral dosages of drugs that may be used in the practice of an optometrist who holds a TPA certificate. The rules must be adopted in consultation with the State Board of Pharmacy.

The bill

(R.C. 4725.01 and 4725.012)

The bill eliminates from statute the categories of drugs and specific types of drugs and amounts that may be prescribed and administered by optometrists holding TPA certificates. Instead, the bill provides that 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 purposes of (1) diagnosis, (2) treatment or prevention of injury, or (3) treatment or management of disease or any other abnormal condition within or originating from the visual system. The bill specifies that optometrists holding a TPA certificate may

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)).

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

administer any of the drugs that may be administered by optometrists holding topical ocular pharmaceutical agents certificates.

Invasive procedures

(R.C. 4725.012(C))

The bill provides that an optometrist holding a TPA certificate 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.

Prohibited activities

(R.C. 4725.012(B))

The bill provides that an optometrist holding a TPA certificate is not authorized to do either of the following:

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

(2) Administering or prescribing a controlled substance unless the drug is a Schedule III controlled substance authorized by the State Board of Optometry in rules.⁶

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 III controlled substances are drugs with a potential for abuse and dependence including nonnarcotic drugs, as well as preparations containing limited quantities of certain narcotics. (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.) Not all drugs that require a prescription are classified as controlled substances.

Schedule III controlled substances

(R.C. 4725.091)

The bill requires the State Board of Optometry to adopt rules governing the authority of optometrists holding TPA certificates to administer and prescribe controlled substances. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) and in consultation with the State Board of Pharmacy. The rules 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 Schedule III controlled substances prepared by the State Board of Pharmacy;⁷

(2) The rules must limit the Schedule III controlled substances that an optometrist may administer or prescribe under a TPA certificate to those the Board determines are appropriate for use in the practice of optometry;

(3) The Board must establish standards for the prescription of Schedule III controlled substances to be followed by optometrists who hold TPA certificates, taking into account the prescribing standards 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 administering and prescribing Schedule III controlled substances by taking into consideration and examining issues that include appropriate length of drug therapy, appropriate standards of drug treatment, necessary monitoring systems, and any other factors the Board considers relevant.

Topical ocular pharmaceutical agents certificates

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

Under current law, an optometrist with a topical ocular pharmaceutical agents (TOPA) certificate may administer specified topical drugs in the examination of human eyes. Examples include benoximate hydrochloride (an anesthetic) and tropicamide (used in pupil dilation).

⁷ 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)).

The State Board of Optometry is authorized to approve by rule additional drugs that may be administered under a TOPA certificate. The drugs' primary indications must be consistent with the practice of optometry.⁸

The bill

(R.C. 4725.01 and 4725.011)

The bill eliminates from statute the specific types of drugs that may be administered by optometrists holding TOPA certificates. Instead, the bill provides that an optometrist who holds a TOPA certificate is practicing within the scope of the optometrist's practice when the optometrist administers a drug topically for evaluative purposes in the practice of optometry.

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 contact lens must include information as required by federal law.

Board investigations

(R.C. 4725.23(C))

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 make public 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 and patient record

⁸ With regard to the Board's authority to add topical drugs that may be administered by optometrists holding TOPA certificates, existing law includes a reference to drugs approved by the federal government after January 1, 1983. According to representatives of the State Board of Pharmacy, the date was included to accommodate the approval of new drugs relative to the effective date of the legislation that authorized optometrists to practice under TOPA certificates.

information, 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 which 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 or topical ocular pharmaceutical agent certificate to complete annually at least five hours of continuing education focused on pharmacology. 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, including those holding certificates of licensure to practice only general optometry.

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 and application not later than November 1. If an optometrist fails to file a license renewal application, the Board is required to send a second notice of renewal not later than December 1. A third notice of renewal must be sent before the Board can classify the optometrist's certificate as delinquent.

The bill modifies the annual renewal notification requirements as follows:

(1) First notice: The Board is required to mail a renewal notice only if the optometrist is eligible for renewal. If the Board knows that the optometrist has completed the required continuing education, the Board may include a renewal application.

(2) Second notice: The Board must mail the notice not later than December 15, rather than December 1.

Optometry students

(R.C. 4725.26)

Under current law, a student at a school of optometry located in Ohio is not required to have a license to practice optometry while enrolled in an optometry training program.

The bill provides that a student enrolled in a school of optometry is exempt from licensure in Ohio while the student is participating in Ohio in an optometry training program provided or sponsored by the school. The school in which the student is enrolled may be located in Ohio or another state.

Contact lens prescriptions

(R.C. 4725.28 and 4731.44)

Current law requires an optometrist or physician 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.

In the case of a contact lens prescription, the bill provides that in addition to the information required above, the prescription must include a set of information required under federal law,⁹ 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;

⁹ "Fairness to Contact Lens Consumers Act," 117 Stat. 2024 (2003), 15 United States Code 7610.

(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
Reported, H. Health	06-14-07
Passed House (92-5)	06-26-07

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