

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 03-021

Interpretation of Tenn. Code Ann. §§ 63-8-101, *et seq.*

QUESTION

Whether the Optometry Law, Tenn. Code Ann. §§ 63-8-101, *et seq.*, or any rules promulgated pursuant to the Optometry Law, authorize licensed Tennessee optometrists to inject patients for any purpose other than to counteract anaphylaxis or anaphylactic reaction.

OPINION

The Optometry Law, Tenn. Code Ann. §§ 63-8-101, *et seq.*, as well as the General Rules Governing the Practice of Optometry, Tenn. Comp. R. & Reg. 1045-2-.01, *et seq.* authorize licensed optometrists with appropriate therapeutic certification and approval from the Board of Optometry to use pharmaceutical agents by injection for treatment purposes, *i.e.*, purposes rational to the diagnosis and treatment of conditions or diseases of the eye or eyelid.

ANALYSIS

Tenn. Code Ann. § 63-8-102(12) defines the parameters of the term “practice of optometry as a profession” to include:

- (A) The employment of objective or subjective methods (either or both) for the purpose of ascertaining defects of vision or muscular anomalies or other abnormal conditions of the eyes;
- (B) The prescribing of ophthalmic lenses or prisms to remedy or relieve defects of vision or muscular anomalies;
- (C) The orthoptic training, the adjusting, or fitting or adapting of lenses or prisms or eyeglasses or spectacles to remedy or relieve defects of vision or muscular anomalies;
- (D) The supplying, replacement or duplication of an ophthalmic lens or frame.

Moreover, Tenn. Code Ann. § 63-8-102(12)(E) provides that one who thus is engaged in the practice of optometry as a profession, and who has sufficient education and professional competence (as determined by the Board of Optometry) further is authorized to examine, diagnose, manage and treat

conditions and diseases of the eye and eyelid,¹ including:

- (a) The administration and prescribing of pharmaceutical agents rational to the diagnosis and treatment of conditions or diseases of the eye or eyelid;
- (b) The performance of primary eye care procedures rational to the treatment of conditions or diseases of the eye or eyelid as determined by the board;
- (c) The performance or ordering of procedures and laboratory tests rational to the diagnosis of conditions or diseases of the eye or eyelid; and
- (d) Additionally, the authority to administer benadryl, epinephrine or equivalent medication to counteract anaphylaxis or anaphylactic reaction.

Any optometrist practicing under the authority of the above section shall be held to the same standards of care as that of other physicians performing similar services, and no optometrist shall practice under the provisions of the section unless and until the optometrist has submitted to the Board evidence of satisfactory completion of all educational requirements of Tenn. Code Ann. § 63-8-112, and been certified by the Board as educationally qualified. Tenn. Code Ann. § 63-8-102(12)(E)(iii).

Further, Tenn. Code Ann. § 63-8-112(4)(A)(i) authorizes the Board to “[c]ertify optometrists to administer and prescribe pharmaceutical agents for treatment and perform primary eye care procedures as provided in § 63-8-102(12)(E),” but adds that “[n]o optometrist shall be certified to prescribe or use pharmaceutical agents for treatment purposes in the practice of optometry unless and until that optometrist meets all of the following” specific requirements:

- (a) The optometrist has been certified to utilize diagnostic pharmaceutical agents;
- (b) The optometrist has completed at least one hundred fifty (150) classroom hours and at least forty (40) hours of clinical experience relative to diagnosis and treatment of ocular disease, including the use of pharmaceutical agents; and
- (c) The optometrist has taken and successfully passed the examination administered by or approved by the board.

Last, Tenn. Code Ann. § 63-8-112(4)(A)(ii) provides that “[n]othing in this section shall be construed as prohibiting the board of optometry from requiring additional education, training or experience of an optometrist before allowing an optometrist to examine, diagnose, manage and treat conditions and diseases of the eye and eyelid authorized by this chapter,” while Tenn. Code Ann. § 63-8-112(4)(B) and (C) add:

¹Tenn. Code Ann. § 63-8-102(12)(E)(ii) prohibits all optometrists practicing in this state from using non-diagnostic ophthalmic lasers; from performing cataract surgery or any surgical procedure requiring other than a topical anesthetic; and from performing radial keratotomy.

(B) The board shall require each optometrist certified to use pharmaceutical agents for treatment purposes in the practice of optometry to complete a minimum of ten (10) hours of continuing education annually on diagnosis and treatment and use of pharmaceutical agents in the practice of optometry.

(C) The board shall provide the board of pharmacy semi-annually with a list of optometrists so certified pursuant to this section, and shall provide each certified optometrist with an application certificate which shall be prominently displayed in the optometrist's professional office.

Against this statutory backdrop, the Board of Optometry has by rule circumscribed the scope of the use of pharmaceutical agents by injection. Tenn. Comp. R. & Reg. 1045-2-.07(3)(d) provides that

[n]o therapeutically certified optometrist shall use pharmaceutical agents by injection except to counter anaphylaxis *until they have received approval from the board*. The board will not approve the use of injections until the optometrist demonstrates to the board's satisfaction sufficient educational training and/or clinical training, and submits proof of current certification in cardiopulmonary resuscitation (CPR). The education must be obtained from board approved courses.

(Emphasis added).

Clearly, Tenn. Code Ann. § 63-8-102(12)(E), together with Tenn. Code Ann. § 68-11-112(4), permit the Board to determine which persons engaged in the practice of optometry as a profession are authorized to examine, diagnose, manage and treat conditions and diseases of the eye or eyelid, and to certify optometrists to administer and prescribe pharmaceutical agents for treatment and to perform primary eye care procedures. However, nowhere in the Optometry Act does it appear that the Board's authority to permit therapeutically certified optometrists to administer medications in the diagnosis and treatment of conditions of the eye or eyelid is in any way limited to the administration of non-injectable medications. Further, nowhere in the Optometry Act does it appear that the Board's authority to permit therapeutically certified optometrists to administer injectable medications is in any way limited to the administration of medications to counteract anaphylaxis.

In promulgating Tenn. Comp. R.& Reg. 1045-2-.07(3)(d), the Board clarified that not even a therapeutically certified optometrist shall use pharmaceutical agents by injection, except to counter anaphylaxis, until first receiving approval from the Board to do so. Apparently, the Board excepted the use of pharmaceutical agents by injection by therapeutically certified optometrists to counter anaphylaxis, because counteracting anaphylaxis or anaphylactic reaction does not fall within the purview of "the diagnosis and treatment of conditions or diseases of the eye or eyelid," but rather, it represents a clinical intervention to oppose a systemic allergic reaction or hypersensitivity to a substance. Even the statutory language reflects this, since Tenn. Code Ann. § 63-8-102(12)(E)(i)(a) - (c) concern diagnosis or treatment of conditions or diseases of the eye or eyelid, while Tenn. Code

Ann. § 63-8-102(E)(i)(d) provides, “[a]dditionally, the authority to administer benadryl, epinephrine or equivalent medication to counter anaphylaxis or anaphylactic reaction.” (emphasis added). Were it otherwise, a therapeutically certified optometrist who has not yet received approval from the Board to use pharmaceutical agents by injection, would be disallowed from intervening to counteract a patient’s emergency anaphylactic reaction. Certainly, the statute does not countenance such a result.

Nevertheless, the fact that the Board, reflecting the provisions of the statute, has excepted the use of pharmaceutical agents by injection by therapeutically certified optometrists in order to counteract anaphylaxis, in no way implies that the Board lacks authority to approve the use of pharmaceutical agents by injection in the diagnosis and treatment of conditions or diseases of the eye or eyelid. Nothing in the Optometry Act would support this view, since Tenn. Code Ann. § 63-8-112(4)(A)(i) specifically authorizes the Board to “[c]ertify optometrists to administer and prescribe pharmaceutical agents for treatment and perform primary eye care procedures as provided in § 63-8-102(12)(E),” without any limitation as to the route of administration of such pharmaceutical agents.

It was not always so: prior to the enactment of 1993 Pub. Chap. 295, a properly certified optometrist’s authority to prescribe, administer, or dispense drugs was limited to topically applied drops, ointments or creams; benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction; and diagnostic pharmaceutical agents (miotics, mydriatics, cycloplegics, and anesthetics) applied topically only. Moreover, at that time, no optometrist had authority to prescribe, administer, or dispense controlled substances. *See* Tenn. Op. Atty. Gen. No. 88-76 (1988). However, 1993 Pub. Chap. 295 amended the Optometry Act by deleting the first paragraph of Tenn. Code Ann. § 63-8-102(12)(E) and substituting the current § 63-8-102(E)(i) - (iii); by deleting § 63-8-112(4)(A) and substituting the current section; by deleting §§ 63-8-131 and 68-8-132 (concerning a therapeutic review panel); and by adding §63-8-123(giving the Commissioner of Health authority to regulate the laboratory practices of optometrists to ensure that such practices are in full compliance with the Clinical Laboratory Improvement Act, 42 USC § 263a). Further, 1993 Pub. Chap. 295 also amended Tenn. Code Ann. § 39-17-402(22)(A) (to include optometrists within the definition of “practitioner” permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state); Tenn. Code Ann. § 53-10-101(a) (to include optometrists among the professionals prescribing legend drugs); Tenn. Code Ann. § 68-29-104(2)(to exclude laboratories operated by a duly licensed optometrist, for the sole purpose of testing samples collected from the optometrist’s own patients, as a medical laboratory under that chapter); and by deleting the last sentence of 68-29-121(a) in its entirety (requiring the Board to identify by rule those medical laboratory procedures which were within the scope of the authorized practice of a licensed optometrist).

Therefore, enactment of 1993 Pub. Chap. 295 broadened the scope of the practice of optometry as a profession in this state. A statute should be viewed as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel City of Loudon*, 571 S.W.2d 297 (Tenn. 1978). In construing a statute, the principal objective is to give effect to the intent and purpose of the legislature, *Carson Creek Vacation Resorts, Inc. v. State Department of Revenue*, 865 S.W.2d 1 (Tenn. 1993), and such intent is ascertained primarily from the natural and ordinary meaning of the

language contained in a statute, when read in context with the whole statute. *James Cable Partners, L.P. v. City of Jamestown*, 818 S.W.2d 338 (Tenn. App. 1991). This broadened scope of practice includes the Board's authority to certify optometrists to administer and prescribe pharmaceutical agents for treatment, Tenn. Code Ann. § 63-8-112(4)(A)(i), whether by injection or otherwise. The Board, in turn, has promulgated rules which authorize a therapeutically certified optometrist to utilize injectable medications to counteract anaphylaxis, but which also proscribe the use of other pharmaceutical agents by injection, absent Board approval. In our view, the Board's interpretation comports with both the letter and the spirit of the Optometry Act.

Therefore, it is the opinion of this office that the Optometry Law, Tenn. Code Ann. §§ 63-8-101, *et seq.*, as well as the General Rules Governing the Practice of Optometry, Tenn. Comp. R. & Reg. 1045-2-.01, *et seq.*, authorize licensed optometrists with appropriate therapeutic certification and approval from the Board to use pharmaceutical agents by injection for treatment purposes, *i.e.*, purposes rational to the diagnosis and treatment of conditions or diseases of the eye or eyelid.

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