

# THE HISTORY OF THE PASSAGE OF LEGISLATION AUTHORIZING THE OPTOMETRIC USE OF DRUGS FOR DIAGNOSTIC PURPOSES IN ALABAMA

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## ABSTRACT

*This article recalls events that led to the passage of legislation authorizing the use of drugs for diagnostic purposes by optometrists in other states prior to the law's passage in the State of Alabama. Some states authorized optometrists to utilize drugs for diagnostic purposes by state statute and others by attorney general's ruling. In Alabama a new state optometry practice act was passed in 1975. This law was complex and confusing, and of equal importance, resulted in a series of attorney general's opinions, after the new state optometry practice act was passed. A series of Attorney General's opinions shifted between a favorable, or an unfavorable, opinion over the next seven years. Finally, in 1982, the Attorney General issued a final determination that resulted in a favorable opinion for optometry. During the ensuing years no lawsuits were brought against optometrists that involved the use of drugs for diagnostic purposes.*

## KEYWORDS

*First optometry practice act, the La Guardia meeting, states permitting the use of drugs for diagnostic purposes prior to 1975, use of drugs for diagnostic purposes in Alabama, University of Alabama's general counsel's opinion, State of Alabama's Attorney General's opinion.*

## INTRODUCTION

The rise and successful expansion of the profession of optometry was largely a 20<sup>th</sup> Century phenomenon. This change in optometry is one of the greatest metamorphoses ever experienced by an independent American health care profession. It did, however, have its roots in the late 19<sup>th</sup> Century as a result of an insult.

In 1892, the battle for independence began, in which refracting opticians would eventually be lawfully recognized as optometrists. In this year Charles F. Prentice, who not only provided refracting and optical dispensing services, but also utilized an ophthalmoscope and other techniques for detecting eye disease, referred a patient to an ophthalmologist, Dr. Henry D. Noyes. Ultimately this resulted in an allegation by Noyes that Prentice was in violation of the law by charging a fee for his services and prescribing glasses based on his examination results.<sup>1</sup>

This incident led, within several years, to the organization of the first state association known as the Optical Society of the State of New York, on February 8, 1896. Within a week of the organization of the Optical Society of the State of New York, the first act to regulate the practice of optometry was introduced in the Assembly of the State of New York by the Society. It was granted a hearing in the Assembly before the Committee on Public Health on February 26, 1896. On March 18, 1896 the bill was brought to the committee for further consideration. On March 25, 1896 in

spite of Messrs. Prentice, Cross, McKinney, and Press calling on the members of the committee in Albany the bill failed to gain a favorable report.<sup>1</sup>

An amended Optometry Bill was introduced in the New York Assembly, January 28, 1897, and referred to the committee on General Laws. As before, this bill failed to pass. With the ultimate defeat of this bill, Prentice withdrew from the political arena, but an optometry law was eventually passed in New York in 1908 principally as a result of the efforts of Andrew J. Cross and E. E. Arrington.<sup>1,2</sup>

In 1898, the first national organization was formed under the name the American Association of Opticians. In 1910 the name of the organization was changed to the American Optical Association and later, in 1919, to the American Optometric Association (AOA).<sup>2</sup>

## FIRST OPTOMETRY PRACTICE ACT

The first Optometry Practice Act was, however, passed by the legislature of the State of Minnesota in 1901. This law was enacted on April 13, 1901 and served as the beginning of the profession of optometry in terms of its legal definition.<sup>2,3</sup> The next four original state Optometry Practice Acts that passed in relative rapid succession were; California (2nd) and North Dakota (3rd) passing in 1903, then Oregon (4th) and New Mexico (5th) in 1905.<sup>3</sup>

### **Alabama Optical Society Takes Action**

The Alabama Optical Society, after attempts in 1911 and 1915, passed its original Optometry Practice Act in the Senate (21-8) on September 3, 1919 and in the House of Representatives (50-16) on September 25, 1919. It was the 44<sup>th</sup> State to enact legislation establishing an Optometry Practice Act. The bill S. 306 was sent to the Governor on September 27, 1919. The Act S. 306 was enrolled on September 28, 1919 and it was finally signed into law by Governor Thomas Kilby on October 8, 1919 in New York City.<sup>4</sup>

The final state, in the 48 contiguous states, to pass an optometry practice act was Texas (48th) in 1921. This meant that all of the states had passed an optometry practice act in just a 20-year time period.<sup>3</sup> The U. S. Territories of Hawaii and Alaska passed optometry practice acts in 1917. The District of Columbia passed its Optometry Practice Act in 1924.<sup>2</sup>

### **DRUGLESS HERITAGE**

From its inception, optometry had been proud of its drugless heritage. In fact, many early leaders of the profession, including Charles F. Prentice, the "Father of Optometry", and his successor colleagues had eventually won legislative approval for optometry by using such phrases as "A Lens Is Not a Pill".<sup>1</sup> Within several decades all, or almost all, of the original practice acts, had been amended several times since their original enactment. Many of these later efforts through the 1920's to 1960's, were dedicated to further clarification of the definition of optometry and establishing criteria that described or characterized the practice of optometry.

Additional enactments or changes in law pertaining to optometry were issues that related to state board composition, duties, and responsibilities; provisions outside of specific optometry code but part of a state legal code that had application to the practice of optometry; description of different types of practice, e.g., proprietorships, partnerships or corporations; and the legal recognition of optometry as a profession.<sup>3</sup> However, none of these changes in practice acts had expanded the scope of practice of the profession since its inception. The profession was approaching a critical juncture in its maturation as the optometric curriculum continued to increase in terms of the number of years leading to the Doctor of Optometry (O.D.) degree. To continue on the present educational pathway optometry was on would not likely result in significant future growth for the profession.

### **THE LA GUARDIA MEETING**

#### **Scope of Practice**

The issue of scope of practice had not been substantively addressed for almost 70 years. An historic informal meeting was called by Dr. Alden N. Haffner in 1968. At the time this meeting was held, Dr. Haffner was the Director of the Optometric Center of New York. There is some confusion as to how many optometrists were invited to attend this meeting. Dr. Haffner recalled that some two dozen were invited but others recalled more being invited. Those optometrists who attended this meeting were Drs. Gordon Heath (Indiana University), William Baldwin (Pacific University), Richard Hazlett (Massachusetts College of Optometry), Norman Wallis (University of Houston), and Spurgeon Eure (Southern College of Optometry), all affiliated with optometric education

in one form or the other. Drs. Irvin Borish, Charles Seger and Milton Eger were in private practice, but involved in organized optometry in some capacity. This meeting was held over two days, January 16-17, 1968, in a hotel at La Guardia Airport in New York City. Although this unrecorded meeting was not reported in the literature for more than 20 years, the decisions made at this meeting changed optometry forever.<sup>5-7</sup>

### **Outcome of the Meeting**

The individuals attending this meeting did not come representing any organization or group but were there because of a sincere concern for the future of the profession. In fact, they each paid for their expenses to attend the meeting. Having no set agenda, a myriad of ideas and proposals were discussed. What emerged from this meeting was the opinion there was much discontent, especially among the more recent graduates, with the narrow scope of practice in light of the increase in pre-optometry and the professional program's optometry curricular requirements for the Doctor of Optometry degree.<sup>5</sup> There was also disagreement within the profession as to the future direction of the profession. In addition, the opponents of optometry continued to make great efforts to denigrate the profession, its use of the title doctor, some of its recommendations for the clinical management of vision correction of refractive errors and binocular vision conditions; and its standing as an academic profession. After two days of intense debate and discussion, the consensus opinion of this group was the profession must expand its scope of practice responsibilities.<sup>5-7</sup> It would also be necessary to discard the original concept of a drugless profession dedicated solely to vision correction and its significant reliance on the concept of functional vision.

### **Keynote Address to New England Council of Optometrists**

On March 17, 1968 Dr. Haffner delivered the Keynote Address to the New England Council of Optometrists (NECO), in which he articulated this notion of an expanded scope of practice within the context of an evolving health care system in America.<sup>8</sup> The title of his presentation was "The Evolving Health Care System in the American Democracy's Welfare State and the Potential Role of the Profession of Optometry". The impact of this address would be felt within several years after its presentation.

### **RHODE ISLAND PLANS FOR LEGISLATION**

The effect of Dr. Haffner's address on those optometrists in the audience, at that NECO meeting in 1968, was it served to excite and inspire them. Some of the attendees began to imagine the possibility of the idea of optometry serving as a primary entry point in the American health-care system. Furthermore, optometry could perform this role more effectively and efficiently if it was able to utilize drugs for diagnostic purposes. In effect, optometrists were already providing primary vision care for much of America, although they may not have thought of the profession in those terms at the time.

### **Rhode Island Optometrists Take-Up the Call**

Dr. Haffner's message particularly fired the collective imagination of Rhode Island optometrists who, led by Drs. Morton Silverman, David Ferris and Richard Albert, worked for three years

to pass the first law that specifically authorized the optometric use of drugs for diagnostic purposes.<sup>9,10</sup> Dr. Haffner had met with these colleagues from Rhode Island before, during and after this NECO meeting. Dr. Haffner credited Dr. Silverman as being the person who originally encouraged his colleagues to attempt this groundbreaking legislation.<sup>6</sup>

The story of the Rhode Island Optometric Association's passage and implementation of a law authorizing optometrists to use drugs for diagnostic purposes serves as a prime example of the tortuous and prolonged effort some states had to endure, as they began the expansion of the scope of optometric practice. A different, but none the less perplexing set of circumstances, occurred in Alabama and proved no exception to the Rhode Island experience.

Although the Alabama Legislature passed, and the Governor signed, a new optometry practice act in November 1975, it required seven additional years before the interpretation of the language of the act was settled. During this time period the Attorney General's office issued four separate opinions regarding the Alabama optometry law.

### **RHODE ISLAND INTRODUCES LEGISLATION**

Bills authorizing the use of drugs for diagnostic purposes by optometrists were introduced in the Rhode Island Legislature, during both the 1969 and 1970 sessions, but neither passed either chamber. In 1971 the original bill H 1517 was introduced early in the session. After several amendments were added, the bill became H 1517A, the A designation referring to those amendments. Its formal designation was actually now H 1517, Substitute "A". This bill passed the House on June 4, 1971 by a margin of 31-26. A companion bill was introduced in the Senate about the same time as the House bill was introduced, but it became entangled in attempts to pass the first state income tax. Eventually this Senate bill was passed on July 14, 1971 by a margin of 25-16. The bill was signed into law by Governor Frank Licht on July 16, 1971. It became known as Rhode Island Public Law 1971, Chapter 229.<sup>9</sup>

### **Continuing Education by Optometrists**

During the 1971 legislative session, Dr. Norman Wallis, Director of Special Services for the Massachusetts College of Optometry, had designed a continuing education course to meet the educational requirements of the bill. It would consist of 96 didactic and 12 clinical laboratory instruction hours. Although most Rhode Island optometrists took this transcript-quality course and passed the examination, a second test would need to be administered later. About midway through the first course the optometrists learned the ophthalmologists had requested a meeting. At this meeting the ophthalmologists proposed that if the optometrists delay implementation of the law for five years they would consider teaching pharmacology to the optometrists at the end of this time period. The optometrists realized there was no purpose in delaying implementation to which the ophthalmologists replied they would take the RLOA to court and have the law declared unconstitutional.<sup>9,10</sup>

### **Challenges by Ophthalmology**

The Rhode Island Optometry law was challenged twice in Superior Court and once in the Supreme Court by ophthalmology, but ultimately, optometry prevailed. Next, however, some confusion existed regarding the role of the Chief of Pharmacy, State Department of Health, in the examination process. Since there was no language describing how the Rhode Island Board of Examiners in Optometry would be certified, it was decided by the Director of the State Health Department that the Chief of Pharmacy would accompany the Board of Optometry to Boston for the examination. Finally, on August 15, 1973, members of the Rhode Island Board of Examiners were tested by faculty from the New England College of Optometry (formerly the Massachusetts College of Optometry) on basic and ocular pharmacology. On passage of the examination they were duly certified to use drugs for diagnostic purposes. With the final ruling of the Supreme Court released on March 27, 1974 the optometrists of the state began in earnest the process of passing an examination and receiving certification for the use of drugs for diagnostic purposes.<sup>9</sup>

### **OTHER STATES WITH POSITIVE AG RULINGS**

Although at this time, ten state optometry practice acts did not expressly prohibit the use of drugs, Indiana (1946), New Jersey (1968) and Florida were the only three states that had authority to use drugs for diagnostic purposes by virtue of Attorney General's rulings.<sup>2,11,12</sup> Even though drugs for diagnostic purposes may have been clandestinely used by some optometrists, they were not widely utilized in these states or across the United States. It was Rhode Island's initiative that captured optometrist's attention around the nation. Laws similar to the one passed in Rhode Island were passed in Pennsylvania in 1974 as well as Tennessee, Oregon, Maine, Louisiana and Delaware in 1975.<sup>12</sup> Within a time period of 10 years, 30 more states had followed Rhode Island's lead.<sup>12</sup>

The passage of the new optometry law in 1971 by the Rhode Island Optometric Association set in motion actions by the 50 states, District of Columbia, Territories, and Commonwealth's of the United States to expand the scope of optometric practice. As of July 2012, 186 separate laws had been enacted expanding the scope of optometric practice in the United States.<sup>13</sup> This expansion of scope of practice has continued such that now over 225 such laws have been enacted. No doubt new laws will continue to be enacted into the foreseeable future.

### **THE ALOA TAKES ACTION**

The issue of drug use had not escaped the attention of the Alabama Optometric Association (ALOA). During their terms as Presidents of the ALOA, Drs. Jim Day, Sr., (1972-73), Thomas Bingham (1973-74) and G. Robert Crosby (1974-75), their respective Boards of Directors and other leaders in the ALOA, had discussions related to the best approach for Alabama to take in addressing the matter concerning a new optometry practice act. Authorization for the use of drugs by optometrists for diagnostic purposes seemed an entirely different manner.

**INTERACTIONS BETWEEN OPTOMETRY AND OPHTHALMOLOGY - 1973**

A series of discussions took place during 1973 related to legislation proposed by optometry. The first action was a letter sent on April 19, 1973 from Dr. Ralph Levene, Chairman, of the combined Program in Ophthalmology, to Dean Peters expressing his disappointment in the wording of the proposed optometry legislation. Dr. Levene and Dr. Peters had a telephone conversation on April 17, 1973 in which Dr. Peters had told Dr. Levene that there was nothing in the proposal that was unacceptable to ophthalmology. Dr. Levene was upset that Dr. Peters had found the proposal acceptable, saw it as a threat to the "big picture", and failed to sound the alarm.<sup>14</sup> The "big picture" no doubt referred to future possible cooperation between the two professions.

On April 19, 1973 Dr. Levene sent Dr. Peters a memorandum in which he told Dr. Peters of a meeting he and Dr. Alston Callahan had with Dr. Jim Day, President of the Alabama Optometric Association on April 18, 1973. Dr. Levene appreciated the courtesy of discussing the proposed legislation. He also understood the major purpose of the legislation was to "clean house" within optometry and was in response to a judicial setback by optometry in its recent suit against Lee Optical. However, he warned that some ophthalmologists would object to optometry being recognized as a learned profession and the use of the terms diagnosis and prognosis, pathologic conditions, neurologic and psychiatric conditions in the new definition of optometry. He found this to be grossly beyond any proposal on a national level and not acceptable and a "pyrrhic victory" with regard to the "big picture".<sup>15</sup>

On April 24, 1973 Dr. Peters sent a memorandum to Dr. Coshatt in which he was enclosing several items of recent letters from Dr. Levene, a copy of Dr. Peters letter to Dr. Pfeiffer, a copy of confidential statements written at the Association of Academic Health Centers (AAHC), as well as the Kansas statement. Furthermore, Dr. Peters believed that such phrases as "detect and refer" would be quite acceptable if related to "ocular disease and ocular manifestations of systemic disease". Dr. Peters welcomed the opportunity to discuss this matter with Dr. Coshatt if he were agreeable and rewrite this paragraph to more clearly reflect our aims.<sup>16</sup>

On June 8, 1973 Dr. Peters received a copy of a letter sent from the Executive Committee of the Board of Trustees of the Eye Foundation Hospital to the Honorable Richard McBride. In this letter regarding the proposed optometry legislation Senate Bill 297, and House Bill 633 and Other Bills, the Medical Association of the State of Alabama (MASA) is opposed to the new definition of optometry and that the effect of these bills would reinforce existing legislation that severely curtails the ophthalmologists utilization of physician assistants and orthoptists who work under the supervision of the physician. Enclosed were two amendments MASA proposed to rectify the situation. If these proposals were not added the bills should be defeated. The Board members were in complete agreement with the MASA position.<sup>17</sup>

On June 13, 1973 Dr. S. Richardson Hill, Jr., received a memorandum from James H. White in which Mr. White had drafted a very supportive letter to be sent to members of the Jefferson County House Delegation as requested by Dr. Coshatt.

Whether this letter was sent to the members of the delegation is unknown.<sup>18</sup>

The date the legislation was introduced in the House and Senate is not known. It may have been in either May or June. Dr. Levene's memorandum to Dr. Peters dated April 19, 1973 mentions the month of May. In a letter to Dr. Hill dated June 22, 1973, Dr. Coshatt states that one of optometry's bills passed the House Tuesday, June 19, 1973 by a vote of 95-2. He was explaining to Dr. Hill that although the bill passed there were some aspects of the language that needed to be changed and they would attempt to do so in the Senate. This legislation failed to move forward as it was strongly opposed by ophthalmology and commercial interests.<sup>19</sup>

In a letter dated July 6, 1973 Drs. Faulker, Kirkland and Levene informed Dr. Volker they had met with Drs. Day, Coshatt and Overton on June 27, on the campus of UAB. The purpose of the meeting was to discuss objections raised by ophthalmology to the legislation proposed by optometry. No agreement was reached in the area of the proposed definition of optometry.<sup>20</sup> This legislation ultimately failed to move forward as it was strongly opposed by ophthalmology and commercial interests.

It seemed clear that ophthalmology was not interested in discussing the possibility of any agreement prior to the introduction of legislation by optometry related to a new definition of optometry or issues related to utilization of ancillary personnel.<sup>20</sup> During this time period the legislature met on the biennium.

**CONTINUED PLANNING BY THE ALOA**

The failure to pass a new optometry act was not the only issue facing the profession in Alabama.<sup>21,22</sup> Dr. E. A. "Bert" Coshatt was Chair of the ALOA Legal/Legislative Committee for several years during the early part of the 1970's. Not only was the ALOA dealing with the issue of Medicaid parity during the early part of the decade there was some difference of opinion as to the best approach for addressing the diagnostic drug issue. In light of the many issues unresolved regarding Medicaid parity and deciding on the best approach for enacting a new or modified optometry practice act and seeking drugs for diagnostic purposes it perhaps would have been better to wait until the 1975 session to introduce such legislation. The many issues surrounding Medicaid parity were not settled until June 1974 after three individual optometrists had sued the Medical Association of the State of Alabama.

Dr. Coshatt favored a broad approach in which the entire Alabama Optometry Practice Act would be re-written. This approach would have addressed many issues including the authorization of drug use for diagnostic purposes and eliminating the practice of optometry in commercial settings. Others, however, favored a more limited approach because of the risks attendant in "opening" a law for a complete revision. In the end, many of the changes proposed were altered during legislative committee hearings or on the floor of the House or Senate. One result of this time period was that the ALOA made a decision to hire its first Executive Director. Interviews for this position were held during the spring and in the summer of 1975 and Mr. Vernon Knight was hired by the ALOA in July 1975.<sup>22</sup>



## THE 1973 REGULAR SESSION OF THE ALABAMA LEGISLATURE

The Regular Session of the 1973 Alabama Legislature began on Tuesday, May 1, 1973 and ended on Thursday, September 13, 1973. It consisted of 36 calendar days. During the Regular Session of the Alabama Legislature, legislation related to the issues of defining the practice of optometry and creating a different State Board of Optometry, along with describing the new Board's duties and responsibilities was the focus of the ALOA's effort. It resulted in many legislative actions that resulted in a complex outcome.

### House

This specific legislation was introduced in the House of Representatives as H. 633 on Thursday, May 24, 1973, the 4<sup>th</sup> Day of the Regular Session, by Representative Joe McCorquodale and 13 co-sponsors and assigned to the Standing Committee on Public Welfare.<sup>23</sup>

### Senate

In the Senate this legislation, S. 297, was introduced on Tuesday, May 29, 1973, the 5<sup>th</sup> Day of the Regular Session, by Senator Joe Fine and five co-sponsors and assigned to the Senate Standing Committee on Commerce, Transportation and Common Carriers.<sup>24</sup>

This legislation was the initial attempt by the ALOA to expand the scope of practice of optometry by the authorization of the use of drugs for diagnostic purposes.

### Summary of Legislative Actions

Rather than provide a detail of each action taken, a brief summary of this legislation is as follows: it was acted on twenty-five (25) times in the House and four (4) times in the Senate. All but six of the actions in the House occurred on the 12<sup>th</sup> Day of the Regular Session. House bill 633 passed the House of Representatives by a vote of 86 to 15 on Tuesday, June 19, 1973, the 12<sup>th</sup> Day of the Regular Session.

### Senate

Unfortunately, the bill was not passed out of the Committee to which it was assigned in the Senate. This legislation was vigorously opposed by ophthalmology because it used such wording as "any examination," "diagnosis" and "prognosis" and the opposition viewed the definition of optometry as too broad and an intrusion into medicine. In addition, the bill reinforced existing legislation that severely curtailed ophthalmologist's utilization of physician assistants and orthoptists who worked under the supervision of the physician. Dr. Peters had expressed to Dr. Coshatt the opinion that he thought the wording could be changed to avoid unnecessarily arousing the ire of ophthalmology without changing its intent.<sup>16</sup>

### Conference Meeting

A midterm legislative conference was held on the UAB Campus Wednesday, June 27, 1973 attended by three optometrists (Drs. Day, Coshatt and Overton) and three ophthalmologists (Drs. Faulkner, Levene and Kirkland). The purpose of the meeting was to discuss objections raised by ophthalmology to the legislation

proposed by optometry. Unfortunately, no agreement was reached as a result of this meeting.<sup>20</sup>

### Senate Failed to Act

The final action on Senate bill 297 occurred on Thursday, August 9, 1973, the 28<sup>th</sup> Day of the Regular Session, when the Senate committee to which this bill had been assigned failed to take action. This was not surprising given the lack of agreement that resulted from the June 27, 1973 meeting.<sup>20</sup>

With elections taking place in late 1973, it was clear the ALOA needed to develop a different strategy from that utilized for the Regular Session of 1973. As a result of events that unfolded in 1975, it is obvious that the efforts of the ALOA during 1974 were dedicated to discussing the best approach for success and seeking more support for the new legislation that would be introduced in 1975. In spite of the bill not moving forward in the Senate during the 1973 Regular Session, the leadership of the ALOA had learned what the specific objections of the opposition were in regard to this legislation.

## THE 1975 REGULAR SESSION OF THE ALABAMA LEGISLATURE

The separate actions taken by the House of Representatives and the Senate during the Regular Session of the Legislature of the State of Alabama in 1975 related to this legislation were numerous, complex, and at times confusing. What follows has been collected for the archives of the ALOA, and represents an attempt to bring some clarity to these events.

The Regular Session of the Legislature of the State of Alabama began May 6, 1975 and ended on October 9, 1975, the 36<sup>th</sup> Day of the Session. This session consisted of 36 calendar days. Almost all of the action regarding this bill occurred in the House.

### House

On June 5, 1975, the Fifth Day of the Regular Session, House Bill H. 600 was introduced in the House of Representatives by Representative Nelson Starkey (District 1). This bill was co-sponsored by Representatives Sandusky, Albright, Sasser, Carothers, Martin, Kelley, Roberts, Callahan, Cross, Plaster, Smith (C), Moore (O), Trammell, Smith (M), Mitchem, Brindley, Carter, Boles, Smith (B), McCorquodale, Coburn, Jackson (F), Folmer, Crawford, Higginbotham, Taylor, Riddick, Andrews, Hopping, Campbell, Manley, Dial, Weeks, Jolly, Warren, Sparks, Robertson, Baker, McNees, Morris, McMillan, Quarles, Edwards, Malone, Greer, Reed, LeFlore, Hill, Hilliard, Holley, Ford, Howard, Pegues, Glass, Turnham, Kennedy, Smith (J), Gregg, Moore (W), Clark, Lee, Armstrong, Whatley, Sonnier, Owens, Teague, Drake, McCulley, Burgess, Falkenburg, and Killian. The number of sponsors and co-sponsors totaled 72 Representatives. The bill was assigned to the Committee on Health.<sup>25</sup>

The bill, H. 600 set forth a major revision of the optometry practice act as last passed in 1940 and any other laws which conflicted with this act. It basically defined the practice of optometry in greater detail and created a new Alabama Board of Optometry that set forth with greater specificity the powers, duties, and authority of this Board on all matters related to licensure for the practice of optometry.

On September 18, 1975, the 31<sup>st</sup> day of the Regular Session, H. 600 (with amendment) was taken up by the House. The amendment of H. 600 related to the report by the House Standing Committee on Health regarding the definition of the practice of optometry. Most of the issues surrounding this bill related to the definition of the practice of optometry and who would be legally exempt from the practice of optometry. This legislation was of particular interest because of the many changes introduced during the Regular and Special Sessions and the tenacity of the legislators and ALOA members.

A short summary of the many changes made to this bill might be useful for purposes of posterity. The bill, H. 600 was acted on 26 times (including the original amendment from the Standing Committee on Health) in both chambers during the Regular Session. Of these actions, 24 took place in the House and two in the Senate. Many were in the form of amendments and much of this activity occurred on September 18, 1975, the 31<sup>st</sup> Day of the Regular Session.

The bill H 600 (With Amendment) was related to defining the practice and profession of optometry; providing for the licensing and examination, and regulation of optometrists; abolishing the State Board of Optometry; creating the Alabama Board of Optometry and prescribing its powers, duties, and authority; providing for all matters related to licensing, certificates, and qualifications of persons to practice optometry, providing for all matters related to taking the examination, to issue and deny conduct hearings and to initiate legal proceedings to impose sanctions against licensees for violating the provisions of this act; providing for the enforcement of the act, and prescribing penalties for violations thereof; repealing Chapter 11 of Title 46, Code of Alabama (1940) and any other laws that conflict with this act. (A repeat of what was introduced on the 5<sup>th</sup> Day of the Regular Session).

Next, the question was taken up on the adoption of the amendment reported by the Standing Committee on Health, said committee amendment being as follows:

Following this was the statement "Provided, however, nothing in this section shall be construed so as to permit the administration of drugs in any form or prescribing of drugs for the medical treatment of eye disease or performing surgery of any nature for any purpose". (This language is taken from the bill as passed and delivered to the Governor on October 9, 1975 and not specifically from the language that was introduced on June 5, 1975. However, the language may have been slightly changed once the bill was placed in its final form following the many actions passed that effected H. 600).

On September 18, 1975, the 31<sup>st</sup> Day of the Regular Session, the amendment of the Committee on Health, which contained the above statement, but also added after the word "nature": provided further that nothing in this section shall be construed so as to prevent the use and prescribing of the soft-lens or hydrophilic contact lenses and the solutions commonly used in the prescribing and fitting of contact lenses; and provided further that nothing in this Act shall be construed as repealing or affecting the provisions of Title 49, Section 32 (8), Code of Alabama, as amended.<sup>16</sup> This amendment was unanimously adopted, Yeas 63; Nays 0.

Representative Sasser then offered a series of amendments that related to the bill H. 600 (with amendment). Amendment No. 1 related to striking the term "a learned profession" from Section 1. It was adopted, Yeas 67; Nays 1.

Next, amendment No. 2 offered substitutions for Section 2 paragraphs (1) and (2) relating to the definition of the practice of optometry. One of the important aspects of the bill H. 600, as originally introduced, was in Section 2, (A) paragraph (2) describing the diagnosis and treatment of the refractive and functional ability of the visual system for the purposes of the prevention, rehabilitation, correction or relief of anomalies of the visual system or visually related symptoms or disabilities or the enhancement of visual performance in accordance with accepted teaching by means of any or all of the following: (a) related to the prescribing and employment of ophthalmic lenses, prisms, frames, ophthalmic aids, and prosthetic materials; (b) the prescribing and employment of contact lenses; (c) administering visual training, orthoptics, and pleoptics; and (d) providing advice regarding environmental factors which influence visual performance, safety and comfort. This portion of the newly introduced legislation was not altered.

However, most notable was the placement of a semi-colon after the word "form" in the sentence describing the use of drugs. This amendment was adopted, Yeas 64; Nays 0.

Amendment No. 3 related to deleting paragraphs (14), (15), and (16) of Section 9 on Revocation and Suspension of License. This amendment was adopted, Yeas 68; Nays 0.

Likewise, amendment No. 4 deleted parts of paragraph 19 of this same section and substituted language that specified who an optometrist could be employed by, e. g., as a partner, employee or associate of another licensed optometrist. This amendment was adopted, Yeas 68; Nays 0.

Amendment No. 5 called for the deletion of paragraph (20) of Section 9 and this was adopted, Yeas 69; Nays 0 and amendment No. 6 added language to Section 17 on Limitation on Application of Act such that physicians, physician assistant or ophthalmic assistant programs conducted under any accredited state university program; nor to any physician's assistant as defined in Act No. 1948, Acts of Alabama, 1971. Nothing in this Act shall be construed as preventing an ophthalmologist from using assistants normally used in his practice under his supervision in the office in which such ophthalmologist normally actually practices his profession, and nowhere else.<sup>17</sup> This amendment was adopted, Yeas 64; Nays 0.

An amendment by Mr. Holmes called for the deletion of lines 20 to 23 of Subsection 9, Section 5, and was tabled on motion of Mr. Starkey, Yeas 56; Nays 10.

A substitute to the entire bill, H. 600 offered by Mr. Johnson was, on motion of Mr. Sasser, tabled, Yeas 54; Nays 15. (This substitute to the bill H. 600 would have relegated optometrists to screening for the presence of ocular disease and any other departure from the normal which may require referral to other health care practitioners.)

Next, Mr. Johnson offered an amendment to bill, H. 600 as amended, to amend Section 9 – Revocation or Suspension of License - by deleting subsection (13) and renumbering the

remaining subsections accordingly, and on motion of Mr. Starkey, the amendment of Mr. Johnson was tabled, Yeas 43; Nays 21. Mr. Crowe offered an amendment to the bill, H. 600 by deleting a line and substituting the following: "required for the sale, preparation, or fitting of eyeglasses, spectacles, or contact lenses in a retail optical". This amendment was adopted, Yeas 66, Nays 0.

Finally, the bill, H. 600 as amended was read a third time at length and passed, and ordered sent forthwith to the Senate without engrossment, Yeas 82, Nays 2. Unanimous consent was granted for the Journal to show Mr. Sasser voting "Yea" on the bill, H. 600 as amended.

## **Senate**

On Thursday, October 9, 1975, the 36<sup>th</sup> Day of the Regular Session, on motion of Mr. Fine, the Rules were suspended and the Resolution H. J. R. 425, set out in the foregoing Message from the House, was concurred in and adopted by the Senate.<sup>26</sup> Under the heading "Bills on Third Reading Resumed" the bill, H. 600 was taken up.

Senator St. John offered an amendment to the Bill, H. B. 600, Section 17 deleting lines 26 through 30 describing who can sell, prepare, or dispense eyeglasses or spectacles, where they may be sold and by whom they may be sold. Likewise, the same was stated for the sale of contact lenses but prevented opticians from fitting contact lenses. Senator St. John also moved to Amend H. B. 600, as amended, Section 2, (A), paragraph (2) which removed the semi-colon after the word "form" related to the use of drugs for the treatment of eye disease. He also moved to Amend H. B. 600, as amended, to more narrowly define that ophthalmologists, instead of physicians, may use assistants in their office.<sup>26</sup> These amendments were adopted, Yeas 18; Nays 1. And said Bill H. B. 600, as thus amended, was then read a third time at length and passed, Yeas 23; Nays 0.

## **House**

On October 9, 1975, the 36<sup>th</sup> Day of the Regular Session, on motion of Mr. Starkey the House rules were suspended in order to receive the following amended bill, H. 600. This was in reference to a message from the Senate notifying the House the Senate had amended House bill, H. 600 and returned same herewith to the House.

On the 36<sup>th</sup> Day of the Regular Session Mr. Starkey offered the motion that the House non-concur in the Senate amendment to the bill H. 600 which amended Section 2 and Section 17. The most important part of these amendments was that the semi-colon following the word "form" was not reinstated. On motion of Mr. Cooper to temporarily carry over the bill, H. 600 with Senate amendment was tabled, Yeas 51, Nays 22. The question was then on the adoption of the Senate amendment to the bill, H., 600, and the House concurred in and adopted the Senate amendment, Yeas 65; Nays 11. And the bill, H. 600 as amended, was again read at length and passed, Yeas 69; Nays 6.

The bill, H. 600 as amended was delivered to the Governor on October 9, 1975 at 9:55 PM. At the request of the sponsor the legislation was not signed by the Governor.

In general, this law consisted of 19 Sections and contained

a much more in depth description of the Alabama Optometry Practice Act than existed heretofore. Much of the effort expended towards the passage of this legislation was a result of the ALOA leadership, the ALOA committees and the member's relationships with legislators in their districts.

As the Regular Session ended, it was apparent that the ALOA and the legislation's sponsors, Mr. Starkey and Mr. Mitchell, were not entirely pleased with the legislation as it existed. Although it passed both chambers, it had amendments that were not what the sponsors and the ALOA wanted. To wit, the Governor, at the request of the sponsors, did not sign the bill.

Specifically, as regarding the use of drugs in Section 2, paragraph 2, it stated "Provided, however, nothing in this section shall be construed so as to permit the administering of drugs in any form or prescribing of drugs for the medical treatment of eye disease or the performing of surgery of any nature for any purpose". It was important that this statement remain as originally introduced and finally passed without the semi-colon.

In addition, part of the objection involved the wording of the last sentence in Section 17 "Nothing in this Act shall be construed as preventing an ophthalmologist from using assistants normally used in his practice under his supervision in the office in which such an ophthalmologist normally actually practices his profession, and nowhere else". In prior amendments this section had been even more broadly stated as "physician" rather than "ophthalmologist".

## **THE 1975 FOURTH EXTRAORDINARY (SPECIAL) SESSION OF THE LEGISLATURE OF THE STATE OF ALABAMA**

On October 11, 1975 Governor George Wallace issued a call for a Fourth Extraordinary Session of the Alabama Legislature. These extraordinary sessions are also frequently referred to as Special Sessions. This session consisted of 12 meeting days and began Monday, November 3, 1975 and ended on Tuesday, November 18, 1975, as the State of Alabama, Fourth Extraordinary (Special) Session of 1975.

## **Senate**

In the Senate, Senator Wendell Mitchell, from Luverne, AL, introduced amendment S. 138 to clarify certain aspects of Act No. 1148, H. 600 on the first day of the session. In this Fourth Special Session there were 12 actions regarding this legislation that was taken by both chambers, seven in the House and five in the Senate. Clearly Senator Mitchell and Representatives Nelson Starkey from District 1 and James Sasser from then, District 88, played major roles in steering this legislation through the Fourth Special Session.<sup>27,28</sup>

On November 13, 1975, a new Alabama Optometry Practice Act was passed by both chambers of the legislature. It was approved by Governor Wallace on November 14, 1975. This was officially known as House Bill H. 600, Act Number 1148 as amended by Senate Bill S. 138, Act Number 124.

It had taken a total of 38 actions during both the Regular and Special Sessions of the Alabama Legislature and endless patience on the part of the ALOA members, the sponsors, and many others to enact this legislation.

According to the Governor's Executive Secretary, Mr. Henry Steagall, this legislation was signed by the Governor late in the afternoon of November 4, 1975. There was not a photograph taken of Governor Wallace signing this legislation but Mr. Steagall had reassured Dr. Crosby, the prior evening, the Governor would sign the enactment. By happenstance, Dr. Crosby had called Mr. Steagall that evening to determine when, or if, the Governor was going to sign the bill.<sup>22</sup> Dr. Crosby's timing could not have been better.

In the version of the House Bill H. 600 passed during the Fourth Special Session, there were two important aspects in the language the ALOA wanted to either maintain or modify. The first was in Section 2, Subsection A, paragraph 2; that defined the practice of optometry. It was of paramount importance that the semi-colon found in an earlier version of the bill not be in the definition. If included, it would eliminate the administering of drugs in any form for any purposes whereas, if excluded, it could be interpreted that this statement applied to the administration or prescribing of drugs for the medical treatment of eye disease. However, in this instance it would not exclude drugs used for diagnostic purposes.

The second change came from the Governor. In a message to the Senate on November 13, 1975 Governor Wallace returned, at the request of the sponsor, Senate Bill 138 unsigned with suggested language change in Section 17 on Limitations on Application of Act.

The last sentence of this section had read "nurse, technician, medical assistant, optician, or other allied or ancillary health personnel acting under the prescription, supervision, or direction of a licensed physician in the office in which such a physician normally actually practices his profession, and nowhere else".

The Governor suggested change was "Nothing in this Act shall be construed as preventing an ophthalmologist from using assistants normally used in his practice under his direct personal supervision in the office in which such an ophthalmologist normally actually practices his profession, and nowhere else". In this substitute paragraph suggested by the governor the language is narrowed to include only ophthalmologists and describe that supervision must be "direct". This modification helped reassure optometrists that ophthalmologists could not send staff to a separate location to engage in practice without there being direct supervision by an ophthalmologist.

#### **CLARIFICATION OF THE 1975 OPTOMETRY PRACTICE ACT**

Dr. Henry Peters, Dean of the UAB School of Optometry, must have felt relatively sure the proposed change in the optometry law was going to be acted on in the Fourth Special Session of the State Legislature of Alabama. This is predicated on the fact he sought the opinion of the University of Alabama, Office of Counsel. This is corroborated by the written response Dr. Peters received from the staff attorney in the Office of Counsel's UAB Office, Mr. R. Lee Walthall.<sup>29</sup>

Dr. Peters was interested in determining if such a language change in the Alabama Optometry Practice Act would prohibit the use of drugs for diagnostic purposes by optometrists. The opinion of Mr. Walthall from the Office of University Counsel dated October 30, 1975 was that, if enacted as written, drugs could be "prescribed" for other than medical treatment of eye disease,

even though that may not have been the intent of the Alabama Legislature.<sup>29</sup> Based on this opinion, UABSO faculty began using drugs for diagnostic purposes on a much more frequent basis. It is clear that Mr. Walthall had a unique understanding of the role of so-called "diagnostic drugs" and that these agents, while prescription in nature, were only administered by the optometrist for purposes of facilitating the examination of the eye to further aid diagnosis, not for the treatment of eye disease.

This opinion permitted faculty and students to utilize instrumentation requiring the use of such agents. The professional program would have been negatively impacted if such agents were not permitted. A significant aspect of this issue was that UABSO, by this time, was a regional school and admitted students from surrounding states that permitted the use of drugs for diagnostic purposes. In a later conversation, Mr. Walthall confirmed he recalled he most likely had discussed this matter with both Drs. Peters and Hill.<sup>30</sup>

#### **SOURCE OF CONFUSION**

There has been debate as to what actually was changed in the 1975 Alabama Optometry Practice Act. The common opinion was that it involved a change in punctuation regarding the language describing the use of drugs. Unfortunately, those closest to this legislative effort are either no longer alive or do not remember the matter in sufficient detail to recall the specific changes made.

#### **Original Language**

A review of the original language as proposed during the 31<sup>st</sup> Day of the 1975 Regular Session, and its various amendments, does make clear that in Section 2, (A), paragraph 2, the House Standing Committee on Health recommended an amendment of Section 2 of House Bill 600 by deleting Section 2 (A), (2) in its entirety and inserting in lieu thereof the following: "Provided, however, nothing in this section shall be construed so as to permit the administration of drugs in any form, or the prescribing of drugs for the medical treatment of eye diseases or the performing of surgery of any nature: provided further that nothing in this section shall be construed so as to prevent the use and prescribing of the soft-lens or hydrophilic contact lenses and solutions commonly used in the prescribing and fitting of contact lenses; provided further that nothing in this Act shall be construed as repealing or affecting the provisions of Title 49, Section 32 (8), Code of Alabama, as amended. And the amendment was adopted, Yeas 63; Nays 0.

The bill, H. 600 was then amended during the 31<sup>st</sup> day of the Regular Session by Mr. Sasser to include a semi-colon after the word "form". It is not entirely clear why Mr. Sasser offered this amendment since it would not change the content of the law significantly. Obviously, the ALOA or Mr. Sasser, felt it would change the interpretation of the law. Perhaps there was some confusion between he and the ALOA or some other reason altogether.

#### **Substitute for Bill H. 600**

Before this amendment was voted on, Representative Roy Johnson offered a substitute to the bill H. 600 that stated "any examination of the human eyes and visual system except by



the use of drugs or surgery for the purpose of ...” In this bill drugs could not be administered to the eyes for any purpose. Fortunately, this substitute bill was tabled on this same day in a vote by the House, Yeas, 54; Nays 15.

### **Vote for Non-concurrence**

On the 36<sup>th</sup> day of the Regular Session, Representative Starkey had offered the motion that the House non-concur in the Senate Amendment to bill, 600. The reason for this recommended non-concurrence is not clear from reading the language of the bill but may not have been entirely related to the issue of drugs but perhaps there were other issues such as the lack of the word “direct” in terms of ophthalmology’s use or supervision of technicians.

The language of the bill passed during the Special Session in its final form for Section 2 was, (A) the practice of optometry is defined to be any of the following: (1) any examination of the human eyes or visual system for the purpose of; (2) Provided, however, nothing in this section shall be construed so as to permit the administration of drugs in any form or prescribing of drugs for the medical treatment of eye diseases or the performing of surgery of any nature for any purpose.”

These important aspects of the language remained unchanged during the Special Session. These are seemingly subtle changes but this language accomplished the following: (1) removed the prohibition against using drugs for examination of the eye and (2) made it clear that drugs could not be administered for the treatment of medical eye diseases.

Of course, using drugs in office for examination was a completely different issue and was not resolved to some degree for several more years. Using drugs for corneal anesthesia, pupillary mydriasis, or cycloplegia were necessary to facilitate examination of the eyes but did not constitute the specific treatment of eye diseases. This was a concept immediately grasped by University Counsel Lee Walthall but one that required careful reading and interpretation by attorney Truman Hobbs. Mr. Hobbs had been retained by the ALOA to carefully review the language of the law before ultimately convincing the Attorney General to grant a positive ruling some seven years later.

### **THE OPPOSITION GOES ON THE ATTACK**

On February 26, 1976 Mr. R. Lee Walthall, from the Office of University Counsel, wrote a memorandum to Dr. Peters regarding this legislation.<sup>31</sup> He informed Dr. Peters he had received a phone call from Mr. Jack Mooresmith, General Counsel of the Medical Association of the State of Alabama (MASA), concerning the fact that drugs were being used in the School of Optometry. This use was apparently based on Mr. Walthall’s interpretation of the optometry act provided to him. The discussion between Mr. Walthall and Mooresmith centered on the matter of a semi-colon. The copy of the Act that Mr. Mooresmith was reading showed a semi-colon after the word “form” while the one that had been given to Mr. Walthall did not. They both agreed that the presence of a semi-colon, or lack thereof, made a substantial difference in the interpretation of the act.

### **Almost Identical Bills Passed**

Evidently two identical bills had been passed one with a semi-colon and one without. Senator Mitchell had introduced a bill trying to clarify the problem but the final bill did not contain the semi-colon. Mooresmith indicated that MASA was prepared to enjoin the further use of drugs for diagnostic purposes. Walthall discussed the possibility of MASA enjoining someone other than the faculty of UABSO but since that was the only place these drugs were being used, he saw no other option. He asked that Dr. Peters discuss this issue with Dr. Hill and then the three of them would meet. Clearly drugs were also being utilized to some degree for diagnostic purposes in practices across the state. It was obvious this legislation would be challenged by medicine to the greatest extent possible.

### **MASA SEEKS ATTORNEY GENERAL’S RULING**

#### **Attorney General Ruling 1**

On April 26, 1976 Dr. Robert Parker, Secretary of the Alabama Board of Medical Examiners, sought the opinion of the Alabama Attorney General’s Office regarding H. B. 600, Act Number 1148, as amended by S.B. 138, Act Number 124 in the Fourth Special Session, as to whether or not Section 2 authorized optometrists to administer topical drugs to the human eye for the purposes of diagnosis. Writing for AG William Baxley, Assistant Attorney General, L. G. Kendrick rendered the opinion that optometrists could not administer topical drugs to the human eye for the purpose of diagnosis on May 10, 1976.<sup>32</sup>

#### **Attorney General Ruling 2**

On June 9, 1976 Dr. Coshatt, Chairman of the Legal/Legislative Committee, sought the opinion of the AG’s office relative to the same legislation – Act Number 124. (One assumes Dr. Coshatt requested this opinion on behalf of the ALOA but he may have acted independently). In a response to this request, on June 21, 1976, Assistant Attorney General Reaves writing for Attorney General Baxley rendered the opinion that sub-section 2 would not forbid the use of drugs in the diagnosis of eye disease so long as those drugs are not used for the purposes of the treatment of such eye disease.<sup>33</sup>

#### **Attorney General Ruling 3**

Again, on October 8, 1976 (almost one year after its passage) Dr. Parker requested a clarification of a possible conflict between the opinions rendered by the A. G.’s Office. On November 12, 1976 A.G. Kendrick rendered the opinion on behalf of the Attorney General that the practice of optometry did not permit the administration of topical drops in any form to the human eye for the purposes of diagnosis.<sup>34</sup> This overruled the opinion of June 21, 1976.

This back and forth ruling on the interpretation of the 1975 Alabama Optometry Law left both sides in a quandary. However, many optometrists throughout the State did not use diagnostic drugs, while others continued to use drugs for diagnostic purposes during this period, as they judged their use to be medically necessary. In some situations, diagnostic drug use might be dictated by the patient’s history, while other optometrists used these drugs more routinely. Regardless of the situation, it left the

matter unresolved and neither side satisfied with the outcome. Fortunately, no legal action was taken in the intervening years.

## **THE ALOA RECEIVES A POSITIVE ATTORNEY GENERAL'S RULING**

### ***ALOA Decides to Defer Action Until New AG***

It seems apparent that at some point after the last Attorney General's ruling, a decision was made by the ALOA leadership to wait until there was a change in the Attorney General's Office. The ALOA Legal/Legislative Committee did engage the services of Mr. Truman Hobbs who was not only familiar with the optometry profession, but was held in high esteem by those in the legal profession.

Mr. Hobbs and Dr. Coshatt reviewed the 1975 enacted Optometry Practice Law in great detail. Mr. Hobbs was of the opinion that this Optometry Act did not prohibit the use of drugs for diagnostic purposes. In November, 1979 Mr. Charles Graddick was elected Attorney General of Alabama. He assumed the office in January, 1980. As a result of the detailed review of the Optometry Practice Act by Mr. Hobbs and, no doubt some behind the scenes legal discussions, Mr. Alton Turner, the Attorney representing the Alabama Board of Optometry and, acting on its behalf, sought the opinion of the Attorney General's Office relative to the use of drugs by optometrists for diagnostic purposes.

It is not clear how, or on what date this request was made, since there is not a copy in the UAB Archive files. It is known that having been informed, the Alabama Board of Optometry had asked for a ruling, the ALOA sent a small delegation consisting of Drs. Catherine Amos and Charles Brown, to call on the Attorney General in June 1982. They were ushered into a locked room that had to be unlocked by a guard and made their presentation to Mr. Graddick as to why optometrists should be allowed to use such drugs. They also made a modest contribution to Mr. Graddick on behalf of the ALOA.<sup>35,36</sup>

### ***Attorney General's Ruling 4***

On September 30, 1982 Lynda F. Knight, Assistant Attorney General, rendered a rather lengthy opinion that cited case law as to statutory construction and legislative intent. She states "he (the Attorney General) concludes that there is no prohibition in the laws of this State which would prevent optometrists from using topical drugs for diagnostic purposes only".<sup>37</sup>

This same paragraph also stated that Mr. Graddick did recognize and respect the concern the medical profession had with regard to seeking to prevent the use of medical treatment of the eye by those not in the medical profession. Ms. Knight's letter on behalf of Attorney General Graddick did remind Mr. Turner that the opinion did not in any way sanction the prescribing or use of drugs by optometrists for medical treatment of the eye.<sup>37</sup>

## **THE MEDICAL LICENSURE COMMISSION CHALLENGES THE RULING**

On November 8, 1982, Mr. Turner, as Attorney for the Alabama Board of Optometry, wrote a response to the letter Dr. Leon Hamrick, Chairman of the Medical Licensure Commission of

the State of Alabama, had written to Dr. Willard Smith. Dr. Smith was the President of the Alabama Board of Optometry and had received Dr. Hamrick's letter dated November 4, 1982.<sup>38</sup> (A letter was also sent on November 4, 1982 by Dr. Hamrick to Mr. James McLane, Executive Secretary of the Alabama State Board of Pharmacy.<sup>39</sup> In this letter to Mr. McLane, Dr. Hamrick had expressed the Medical Licensure Commission's concern regarding the possible use or prescribing of controlled substances or other drugs by optometrists and if this practice was being undertaken it should be discontinued immediately). This was an effort, through the Pharmacy Board, to enlist the practicing pharmacist's assistance to not provide optometrists access to these drugs.

In his letter, Mr. Turner states he does not agree with Dr. Hamrick's construction of Alabama Law as it relates to the use of topical drugs for diagnostic purposes by licensed optometrists. He also enclosed a copy of the recent Attorney General's opinion. Furthermore, Mr. Turner had advised the Board against forwarding copies of Dr. Hamrick's letter, in its present form, to licensed optometrists as requested unless he would amend his letter to comply with the Attorney General's opinion.<sup>28</sup>

In perhaps late October or, more likely, early November Mr. Wendell Morgan, the General Counsel for the Board of Medical Examiners, State of Alabama, wrote to the Attorney General's Office asking for a reconsideration of the opinion issued on September 30, 1982. On November 12, 1982, Ms. Knight, writing on behalf of the Attorney General, stated that the conclusion reached in that opinion was correct and should stand. Therefore, the Attorney General would not reconsider his ruling allowing optometrists to use drugs for diagnostic purposes.<sup>40</sup>

## **SUMMARY**

This opinion clarified, to some degree, the matter of drug use for diagnostic purposes in the State of Alabama. It did not necessarily result in widespread use of these topical ophthalmic pharmaceutical agents across the optometric community in Alabama. It may have given some comfort to those optometrists who chose to use these agents routinely or when their use was judged to be medically necessary. It is probably safe to conclude that the level of use of drugs for diagnostic purposes varied according to when one graduated. This is to say, the more recent the graduate the more likely the use of drugs for diagnostic purposes. It is also likely that drug use varied widely in the optometric community across Alabama. Clearly this legislation helped raise the level of drug use by optometrists who used these agents on a relatively routine basis. It served to effectively bring to a close the matter of drug use by optometrists for diagnostic purposes. It would be 20 years before the issue of drug use by optometrists for treatment of eye disease would be authorized by the legislature of the State of Alabama. This would take place in 1995.

## **ACKNOWLEDGEMENT**

It has been over 45 years since legislation was passed that authorized optometrists to use drugs for diagnostic purposes. With the passage of time it has been more difficult to find or recall specific information related to this important event in the history of the ALOA. I am indebted to the following individuals who provided insights and information regarding this seminal event:

Drs. Catherine S. Amos, Charles K. Brown, G. Robert Crosby, Jim Day Sr., Jim McClendon and L. Don Snellgrove. Dr. Snellgrove discussed this legislation with me on several occasions and was kind enough to read this paper.

Each of these individuals patiently let me interview them as everyone has struggled to bring forth these memories from the mists of time. I am especially indebted to Representative (now Senator) (Dr.) Jim McClendon for providing access to the State of Alabama Legislative Reference Service (LRS). Mr. Frank Caskey, Ms. Carma Marks and Helen Hanby of the LRS provided all of the information from the Journal of the House and Journal of the Senate related to the specific legislation and legislative actions referenced in this history. I also thank Amanda Buttenshaw, Executive Director of the Alabama Optometric Association, for providing copies of correspondence involving the Attorney General's ruling. Likewise, I am indebted to Mr. Tim Pennycuff and Ms. Jennifer Beck of the UAB Archives for assisting me in reviewing the files and providing materials from the correspondence of Dr. Henry B. Peters and others related to this legislation.

Mr. Lee Walthall's interpretation of this legislation permitted the professional program (Doctor of Optometry) at the UAB School of Optometry to continue to remain current as it endeavored to teach optometry students during this time period. I also thank Dr. Jim Marbourg for sharing his memory related to the use of drugs for diagnostic purposes at UABSO during this time period.

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