

1977 WL 37252 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 1, 1977

***1 Re: H-2158**

Honorable Paul Gelegotis
Member
House of Representatives
The State Capitol
Columbia, South Carolina

Dear Mr. Gelegotis:

It is my understanding that you are requesting an opinion of this Office as to whether or not House Bill H-2158 will expand the obligations of the optometrists to recognize eye disorders while giving eye examinations. In this regard, you have requested a comparison of the optometrist's responsibility under the existing law and their responsibilities under H-2158.

It must first be stated that as a qualification to the opinion of this Office, the questions you ask are very general in nature and that our answers would apply only as generalities and that most cases with regard to a malpractice suit against an optometrist would rest very clearly upon the facts of that particular case and could not be subject to the general statements in which this opinion will necessarily be couched.

It is well recognized that malpractice suits are founded on a legal concept called 'negligence.' Negligence in any case consists of the following elements:

1. The duty or obligation requiring the actor to conform to a certain standard of conduct.
2. A failure on his part to conform to the standards required.
3. A reasonably close causal connection between the conduct and resulting injury.
4. Actual loss or damages resulting to the interest of another.

Prosser, Law or Torts, § 30, Third Edition (1964).

The above principles applied to the existing statutes with respect to optometrists would require the optometrist to recognize eye disorders which come to his attention, or should have come to his attention, while giving an examination without the use of chemicals.

On the other hand, when the optometrist is allowed to use chemicals as set forth in H-2158, it would necessarily expand the optometrist's obligation to recognize eye disorders. He would then have the responsibility to recognize any eye disorder which he should have noticed while using the specific drugs allowed.

While the above is a generalized statement, a more fully developed analysis of the optometrist's responsibility would depend upon a technical study of the eye disorders which are recognizable with chemicals and those eye disorders which are recognizable without chemicals.

Even with the use of chemicals, prior to his examination the patient of the optometrist should be thoroughly briefed as to that optometrist's limitations as to diagnosis and the discovery of eye disorders.

I do hope that the prior discussion answers, at least in a general manner, your inquiry.

Sincerely,

A. Camden Lewis
Assistant Attorney General

ATTACHMENT

A BILL

TO AMEND SECTION 56-1051, CODE OF LAWS OF SOUTH CAROLINA, 1962, RELATING TO THE PRACTICE OF OPTOMETRY, SO AS TO PERMIT THE USE OF CERTAIN CHEMICALS WHICH ARE ADMINISTERED TOPICALLY IN EYE EXAMINATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

*2 SECTION 1. Section 56-1051 of the 1962 Code is amended to read:

'Section 56-1051. Any person shall be deemed to be practicing optometry within the meaning of this chapter who shall:

- (1) Display a sign or in any way advertise as an optometrist;
- (2) Employ any means, other than the use of drugs, except the use of topical ocular diagnostic pharmaceutical agents, for the measurement of the powers of vision or the adaptation of lenses for the aid thereof;
- (3) In the sale of spectacles, eyeglasses or lenses, use lenses in the testing of the eye therefor other than lenses actually sold;
- (4) Examine the human eye by the employment of any subjective or objective physical means, without the use of drugs, except the use of topical ocular diagnostic pharmaceutical agents, to ascertain the presence of defects or abnormal conditions for the purpose of relieving them by the use of lenses, prisms or other physical or mechanical means; or
- (5) Practice orthoptics or prescribe or fit contact lenses. 'Diagnostic pharmaceutical agent' means any chemical in solution, suspension, emulsion or ointment base, other than a narcotic, which when applied topically to the eye results in physiological changes which permit more efficient, or otherwise facilitate, examination of the external eye or its adnexa or the evaluation of vision, or which is necessary to determine normal physiological function as part of an examination regimen.'

SECTION 2. This act shall take effect upon approval by the Governor.

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