



PREVENTING STEALTH LEGISLATION:

OPHTHALMOLOGY NEEDS YOU TO PROTECT SURGICAL SAFETY

BY STEPHEN BARLAS,
Contributing Writer

It's up to each of us, as ophthalmologists, to fight for patient safety and our profession. Whether there is currently a legislative threat in your state or elsewhere in the country, the outcome matters to us all. Support your colleagues when they are under siege, with a contribution to the Surgical Scope Fund. And when your state is facing a threat, step forward and fight it back. It matters to you, your patients, and to all of ophthalmology.

—Daniel Briceland, MD,
Academy secretary of State Affairs

Woody Van Meter, MD, former president of the Kentucky Academy of Eye Physicians and Surgeons, couldn't believe what he was hearing. The phone in his Lexington, Ky., home rang at 9 p.m., Monday, Feb. 7, 2011. Kim Williams, executive director of the Kentucky Academy, was on the line with disturbing news. The Kentucky Senate's Committee on Licensing, Occupations, and Administrative Regulations had just added a notice to its website saying there would be a hearing the next morning on a bill expanding optometrists' scope of practice to include surgical privileges.

Neither Dr. Van Meter nor the greater medical community in Kentucky had any advance warning that the Kentucky Optometric Association was readying this legislative sneak attack. Since 1998, when Oklahoma passed the first state law giving optometrists surgical privileges, efforts in 25 states to replicate it had failed. But Dr. Van Meter had a sinking feeling that this time could be different. Heavyweights were sponsoring the bill, including Senate Majority Leader Robert Stivers and most members of the licensing committee.

It soon became clear that the legislation, euphemistically titled the "Better Access to Quality Eye Care Act," was being fast-tracked at top speed by the politicians in Frankfort.

Despite the bill's solid political backing by legislative leadership, newspapers across the state immediately let loose a stream of critical editorials. *The Courier-Journal* of Louisville flayed the bill on Friday, Feb. 11, the day the Senate was to vote. Its editorial listed the legislation's shortcomings. Begging the Senate to reject the bill, the editorial wryly concluded: "You don't need 20/20 vision to understand why."

Undeterred, the Senate passed the bill by a vote of 33-3. The House followed suit, voting 81-14 in its favor on Tuesday of the next week. Normally, it takes four to six weeks,

minimum, for a bill to complete its journey through the Kentucky legislature. But the bill was moving toward Gov. Steve Beshear's desk as fast as a forest fire.

The *Courier-Journal's* Frankfort bureau chief Tom Loftus reported, "Kentucky optometrists and their political action committee have given campaign money to 137 of the 138 members of the state legislature and Gov. Beshear, contributing more than \$400,000 as they push for a bill to expand their practices."

The *Lexington Herald-Leader* recognized the flawed legislative process and the special treatment the bill received by crediting its passage in both chambers to the political contributions made by optometrists to Kentucky legislators. Its editorial on Feb. 16 stated: "We've long known that politicians are blinded by money. If this bill becomes law, some of their constituents could be, too." On Feb. 24, 2011, Gov. Beshear signed the bill.

Kentucky and Iowa were a wake-up call for state societies to maintain a sense of urgency.

The swift passage of the Kentucky optometric bill clearly highlighted a flaw in ophthalmology's advocacy in Frankfort: a lack of effective relationships with state lawmakers. "I couldn't have stemmed the tide of the Kentucky bill," said Dr. Van Meter. "I didn't have the legislative contacts I do now. At the time, it was like we went into this football game, three minutes left to play, and down 72-0. My pointing out the procedural shortcomings of the way the bill was handled by the legislature would have been like me fussing about a holding call."

Following the passage of the bill, the Kentucky Board of Optometric Examiners in November 2011 published a regulation detailing how optometrists could gain authority to perform the procedures outlined in the legislation. According to Connie F. Calvert, executive director of the Kentucky Board of Optometric Examiners, about 200 optometrists have taken the 32-hour course required for certification to perform some surgeries. About 10 optometrists have been certified in one or more of four laser procedures: YAG capsulotomy, laser peripheral iridotomy, argon laser trabeculoplasty, and selective laser trabeculoplasty.

Answering the Call, Lessons Learned

The optometrists' political maneuvers in Kentucky emboldened the profession in Iowa and elsewhere. This year, Iowa optometrists took advantage of existing ambiguities in the law to persuade the state legislature to approve surgical procedures for ODs, although that legislation includes a caveat not in the



Kentucky law: Optometrists cannot use injectable anesthesia when doing surgery. That theoretically diminishes the type of surgeries they can do. But Daniel Briceland, MD, secretary of State Affairs for the Academy, pointed out that optometrists will certainly return to the legislature at their earliest opportunity in an effort to knock the restriction on injectable anesthesia out of the law.

"Kentucky and Iowa were a wake-up call for state societies to maintain a sense of urgency," said Dr. Briceland. "When ophthalmology's advocacy tools are in place, including mobilizing our foot soldiers on the ground, we make a difference by educating legislators on the patient risks associated with optometric surgical proposals."

Two lessons. When ophthalmology makes its case and implements its ground game, positive results for patient safety can and do occur. Ophthalmology has successfully defeated optometric surgery initiatives in 25 states. In 2012, one year after Kentucky, OD surgery initiatives were derailed in Idaho, Indiana, Massachusetts, Nebraska, and South Carolina, and in the U.S. territory of Puerto Rico. In each instance, the success boiled down to two primary factors that were missing in Kentucky and Iowa: 1) early action and mobilization of the local ophthalmological and medical communities, and 2) maintaining and utilizing relationships with legislators to establish ophthalmology as the go-to authority on issues dealing with medical and surgical eye care.

While these two factors have significantly helped ophthalmology on the defensive side of the playing field, they have also contributed to the successes in advancing proactive measures on behalf of eye pa-

ACTIVE LEGISLATION AT A GLANCE.

(1) Use the state tracker at www.aao.org/advocacy/leg_state.cfm to see which states have scope legislation under consideration. Click on the state for details. (2) Active legislation will be listed below the state name, along with sponsor, title, abstract, and status (where applicable). Click the title to view the bill; click the status line to view the complete bill history.

tients, most recently in Virginia and West Virginia.

A win in Virginia. Alan Wagner, MD, FACS, is a graduate of the Academy Leadership Development Program and is currently president of the Virginia Society of Eye Physicians and Surgeons (VSEPS). In terms of his state's recent legislative fight to push back OD prescribing privileges, Dr. Wagner knew VSEPS would be David, and optometry would be Goliath. As in Kentucky, there are many more optometrists than ophthalmologists in Virginia, and the optometrists had traditionally been more politically active at the grassroots level, as well. That optometric activism resulted in the Virginia legislature passing a bill back in 2004 expanding optometrists' pharmaceutical prescribing privileges.

"We had to reframe the conversation," said Dr. Wagner. "This was not a turf battle. Nurses and physical therapists have the same 1,100 to 2,200 hours of training as optometrists. Ophthalmologists, all physicians/surgeons, have 18,500 to 22,000 hours of training. The issue is all about patient safety and quality of surgical care, as all patients deserve to get the safest medical eye care possible."

During advocacy meetings across Virginia put on by the Medical Society of Virginia (MSV), Dr. Wagner, along with then-VSEPS President Barry Roper, MD, and other Virginia ophthalmologists, explained to physicians the importance of this position relative to ensuring patient safety. There was interest, but there always seemed to be other political issues that medicine was pushing in the state legislature. Then the Kentucky legislature passed its optometric scope bill with uncommon dispatch. VSEPS and its lobby-

ing team began to collaborate with MSV to develop a bill with legislative language based on a definition of surgery used by the American Medical Association. "We boiled it down into something much simpler [than the AMA definition] and to something that would fit into the Virginia code of statutes," explained Cal Whitehead, a lobbyist at the time for VSEPS.

When the MD bill was introduced, it drew, not surprisingly, complaints from nonphysicians, including optometrists and others. "The medical community was prepared for a three-month battle, but by the third week of the 2012 session, the bill had passed unanimously through all of the committees and both houses of the legislature, without a single dissenting vote along the way, and was signed by Gov. Bob McDonnell," said Mr. Whitehead. "It is a good win for patients and professionals who want clarity in health care, but I know we continue to face proposals that will try to weaken high standards."

Important bill passed in West Virginia. A similar proactive bill in neighboring West Virginia was supported this year by the West Virginia State Medical Association (WVSMA), the West Virginia Academy of Eye Physicians and Surgeons (WVAEPS), and the Academy. After years of battling optometric scope expansion initiatives in the Mountain State, the West Virginia legislature, supported by the local ophthalmological and medical communities, sought to pass legislation that enacted

The West Virginia bill enacted a "sunrise review" requirement for establishment, revision, or expansion of scope of practice for all health professionals.

CALL TO ACTION: FIVE WAYS TO PROTECT PATIENT SAFETY

1 **Contribute to the Surgical Scope Fund.** Give as generously as possible. Contributions are confidential. Go to www.aaopt.org/ssf to contribute online or download a form to fax or mail with your donation.

2 **Join your state society.** Visit www.aaopt.org/advocacy, and select "Join

Your State Society" in the left-hand column.

3 **Support your state PAC.** Contact the leadership of your state ophthalmological society to learn how you can donate to their political action committee. For a directory of state ophthalmological societies, visit www.aaopt.org/advocacy, and select "Join Your State Society" in the left-hand column.

4 **Get to know your state legislators.** Even if a scope issue is not at the forefront in your state right now, it could be very soon. As an ophthalmologist in your community, you can help educate your legislators and establish ophthalmology as the leading authority on eye care. Contact your legislators by visiting www.aaopt.org/advocacy and selecting "Contact Your

Legislator" in the left-hand column.

5 **Make a contribution to OphthPAC.** OphthPAC is your voice in Washington, D.C. It represents the profession of ophthalmology to Congress and advocates for you, your practice, and your patients. For more information, and to contribute, visit www.aaopt.org/advocacy/ophthpac/about.cfm.

a “sunrise review” requirement for establishment, revision, or expansion of scope of practice for all health professionals.

“Tremendous political pressure was placed on our legislators during the optometric battles—and those of other allied health professions—related to quick passage of scope expansion bills in previous legislative sessions. The consideration of the impact these proposals had on patients became increasingly lost in a push for political expediency,” said Stephen Powell, MD, legislative chair for the WVAEPS. “To ensure a more balanced and reasoned review of scope expansion proposals, the legislature enacted the ‘sunrise review’ for any allied health profession that is seeking to expand its authority. This has, in effect, put patient protection measures in place by making them the priority, as opposed to those wanting to expand their scope of practice.”

The Scope Review Act required that parties proposing scope of practice expansion in West Virginia first submit an extensive application to the legislature’s Joint Standing Committee on Government Organization. That committee would then refer the application to the Performance Evaluation and Research Division of the independent Legislative Auditor’s Office for thorough analysis and evaluation before consideration by the full legislature. WVSMA and WVAEPS supported the legislative effort in conjunction with other local medical organizations, a collaboration that was instrumental in passing the bill.

On March 14, 2012, the legislation was signed into law by Gov. Earl Ray Tomblin. The new law creates a process that places more emphasis on empirical evaluation of the scope review. It reduces the political pressure that had previously been placed on lawmakers to act quickly without a thorough review of the scope request, professional need, training and education requirements, access, costs, and potential harm to patients.

Maintaining Momentum

There is little doubt that when ophthalmology is “late to the game” or has underestimated optometry’s political aggressiveness in a given state, the lessons learned are all too painful. When it comes to optometry’s pursuit of surgical privileges, politics is everything. However, there is also little doubt that when ophthalmology gets out in front of the issues early in the process and capitalizes upon existing relationships with state legislators, it has the greatest opportunity for legislative successes to preserve medical and surgical safety for patients.

South Carolina’s secret of success. In states such as South Carolina, optometrists have been returning to those legislatures, session after session, hoping to get a bill allowing them to perform surgery. In 2012, optometry failed again in South Carolina. Jack Wells, MD, president of the South Carolina Society of Ophthalmology, noted that ophthalmology’s repeated success in his state is the result of ongoing, positive relationships with legislators. “Even if you are outnumbered and outspent by optometrists,” he said, “if you have a committed group of ophthalmologists who are willing to take time away from their practice and family, you can win for quality patient care. Ophthalmology benefits when more of our colleagues are involved in advocating for their patients—whatever the level [of participation].” For example, the South Carolina leadership and other members of the South Carolina Society visit the capitol seven or eight times during the six-month legislative session to meet with lawmakers. In doing so, they further enhance ophthalmology’s presence and visibility in Columbia as the foremost authority on medical and surgical eye care.

Dollars Make a Difference: Surgical Scope Fund

Maintaining solid working relationships with legislators and mobilizing the ophthalmic community to recognize and act upon legislative threats early are both critical components of any winning advocacy effort in state capitals. But a third component—financial resources—is equally important. Financial wherewithal allows ophthalmology to implement effective public awareness and educational activities to position its message with the proper audiences, including state policymakers, local media, and the general public.

Thomas Graul, MD, is past president of the Nebraska Academy of Eye Physicians and Surgeons and is currently chairman of the Academy Surgical Scope Fund (SSF) Committee. Since its inception, the SSF has helped ophthalmologists in many states and territories (including Puerto Rico and the District of Columbia) derail OD surgery initiatives that

SURGERY BY SURGEONS FORUM



The Council, an advisory body to the Academy Board of Trustees, and ophthalmic state and subspecialty society leaders will

discuss the latest on the Surgery by Surgeons campaign, updates on Academy activities, strategic issues affecting the profession, and key advocacy issues related to state and federal affairs. **When:** Sunday, Nov. 11, 11:30 a.m.-1 p.m. **Where:** Fairmont Chicago, Imperial Ballroom. **Access:** Registration for the fall Council meeting is required for the forum; Academy members and invited guests only.

threatened patient safety. These activities are implemented as part of the Surgery by Surgeons campaign. This year the Surgery by Surgeons campaign has partnered with state societies in a number of battle-ground states.

“Without Surgical Scope Fund assistance, state ophthalmological societies lack the resources that are required to mount successful public awareness and advocacy efforts that educate state lawmakers on the dangers of optometric surgery initiatives,” Dr. Graul said. “The Surgical Scope Fund was huge for us here in Nebraska, and it’s been a critical resource for ophthalmology in 32 other states and territories.”

After passage of the Kentucky legislation, more and more ophthalmologists across the country have recognized the value of the SSF. “Our members are beginning to get it, but we have a long way to go,” Dr. Graul said. He believes that 75 percent of optometrists contribute to their national organization’s political efforts and their state PACs.

Organized optometry remains steadfast in its widespread campaign to perform surgery without attending medical school. While they are embarking on an unprecedented push for optometric surgery



THE OD STORY. Visit www.kyeyes.org/about-legislation.html for the Kentucky Optometric Association’s account of its victory.

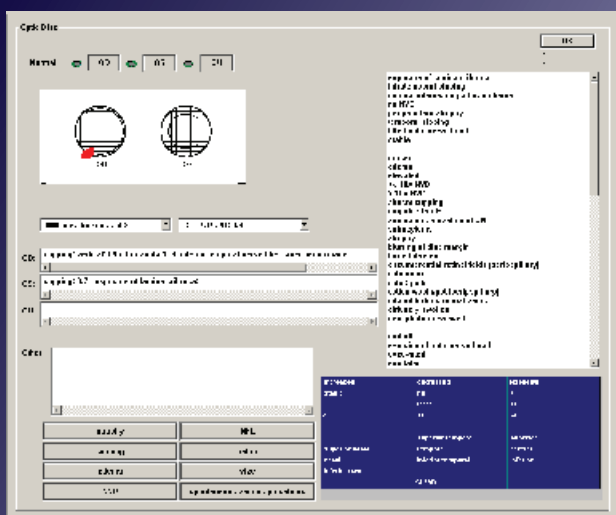
in up to 20 states in the 2012 and 2013 state legislative sessions, ophthalmologists in the other 30 states must proactively become vigilant—their state may be next.

The ability to pool financial resources to fight for the preservation of quality of surgical care in state legislatures and at state regulatory agencies is critical to a successful advocacy strategy. Now, more than

ever, ophthalmologists across the United States are being asked to contribute to the SSF (see page 65) to ensure that state ophthalmological societies have the resources to turn aside legislative efforts to enact optometric surgery. Funds are used for political education purposes only. Because funds are not used to support candidates or their PACs, contributions to the SSF are confidential. SSF accepts individual and corporate contributions. In the post-Kentucky paradigm, the SSF is a tool in your surgical toolkit as important and effective as a needle, scalpel, or laser.

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