THE HISTORY OF THE PASSAGE OF LEGISLATION AUTHORIZING THE OPTOMETRIC USE OF THERAPEUTIC DRUGS IN ALABAMA

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ABSTRACT

Some 20 years after passing legislation authorizing the use of drugs for diagnostic purposes by optometrists in Alabama, legislation was enacted by the Alabama legislature that authorized the use of therapeutic drugs. The history of events that preceded the passage of this legislation, the development of a plan to successfully achieve this goal, and the actions of the Alabama legislature during the legislative session are discussed in this article. The plan developed for this legislation may serve as a guide to any state optometric organization desiring to enact expansion of scope legislation.

KEYWORDS

Alabama Optometric Association, optometrists, history of legislation enacted authorizing the use of therapeutic drugs by optometrists in Alabama.

INTRODUCTION

The governor of Alabama signed into law a new optometry practice act on Nov. 14, 1975. However, there was disagreement as to the language in the legislation that led to protracted legal action over the next seven years. During the following year, Attorney General (AG) William Baxley's office rendered a negative ruling on May 10, 1976, followed by a positive ruling on June 21, 1976, regarding the use of diagnostic drugs by optometrists. The same AG's office then rendered a second negative opinion, issued as the third ruling, on Nov. 12, 1976, regarding this legislation. The leadership of the Alabama Optometric Association (ALOA) made the decision, at this time, to devote most of its resources to other endeavors until such time as more favorable circumstances prevailed regarding a positive AG's ruling.[1]

At this point in time, as a result of the opinion rendered by the Office of University Counsel, the faculty of the UAB School of Optometry were, however, permitted to utilize drugs for diagnostic purposes in the professional program, leading to the Doctor of Optometry (O.D.) degree. Optometrists practicing in Alabama made a decision regarding the use of drugs for diagnostic purposes based on the patient's history or their individual belief as to necessity. Of course, the ALOA continued to seek a positive AG's ruling regarding the use of drugs for diagnostic purposes. The ALOA eventually did prevail after several unfavorable, then favorable, AG's rulings, receiving a final favorable ruling on Sept. 30, 1982.

In either late October or, more likely, early November, Mr. Wendell Morgan, general counsel for the Board of Medical Examiners, wrote to the AG's office asking for a reconsideration of the opinion. On Nov. 12, 1982, Lynda Knight, writing on behalf of AG Graddick, stated the conclusion reached in that opinion was correct and should stand. Therefore, the AG would not reconsider his ruling allowing optometrists to use drugs for diagnostic purposes.[1] This ruling finally ended the seven-year battle to secure authorization for the use of drugs by optometrists for diagnostic purposes in the delivery of patient care.

Across the United States there was great legislative activity within the profession. This had originally begun with the Rhode Island Optometric Association passing an optometry practice act in 1971 that specifically authorized the use of drugs for diagnostic purposes. However, the national discussion and activity was greatly increased in 1976 with the passage of legislation authorizing the use of drugs for therapeutic purposes by optometrists in West Virginia.

Impact of West Virginia Passing First Therapeutic Law

The level of legislative discussion and activity was especially true, following the somewhat unanticipated passage of legislation authorizing the use of drugs for therapeutic purposes. This landmark legislation was enacted by West Virginia on March 4, 1976, and North Carolina on June 3, 1977.[2,3] These events set in motion a great deal of discussion in many state optometric associations. Clearly the ALOA was among those states engaged in discussion among its members and observing with great interest the activity or political success of the immediate surrounding states, those other states in the southeastern region, and across the United States. The Southern Council of Optometry (SoCO), an organization that sponsors the Southeastern Congress of Optometry (SECO) meeting, is an organization whose member

states were particularly interested in expansion of optometry scope of practice laws.

ISSUES IN ALABAMA

ALOA Organizational Issue

Perhaps the greatest issue for the ALOA at this time was the lack of a well-organized, broad, grassroots political effort related to legislation, especially drug legislation. Although the ALOA had been successful on a number of legislative initiatives, expansion of the scope of practice would be another matter requiring a greater degree of involvement. The ALOA had hired its first Executive Director, Vernon Knight, in the summer of 1975. Prior to this time, the ALOA had relied exclusively on the efforts of its member volunteers.[1] These volunteers had been successful in passing legislation regarding practice setting, advertising, employer/employee relationships, Alabama State Board of Optometry issues, the establishment of a school of optometry, Medicaid parity, and most recently a change in the practice act that allowed the use of drugs for diagnostic purposes after a seven-year effort to seek a final positive AG ruling. However, legislation that authorized the use of drugs for therapeutic purposes was an area of far greater clinical significance.

Opposition of the Dean

Another issue of some note at this time, and potential difficulty for the ALOA, was the opposition of the dean of the UAB School of Optometry to therapeutic drug legislation. Dean Henry Peters was of the opinion that the use of therapeutic drugs by optometry was an intrusion into the practice of ophthalmology. It was also widely assumed he had discussions with the UAB administration and presumably informed them that optometrists were only interested in seeking the legislative authority to use drugs for diagnostic purposes.

Dr. Peters was a highly respected and visionary leader in optometric education. He was the first dean of the UAB School of Optometry, which was the first school of optometry to be established as an integral part of a major academic medical center. It would seem feasible that with the rather sudden possibility of therapeutic drug legislation he found himself, in his role, in a rather precarious position. Dr. Peters had already achieved a number of unique "firsts" by establishing programs for the school that had not been established in optometry programs elsewhere in the country.

Dr. Peters had, within a short period of time, accomplished several major educational innovations for the UAB School of Optometry. He had integrated the basic health science courses utilized by medicine and dentistry into the optometry curriculum. He also established a clinic in the Center for Developmental and Learning Disorders, a clinic in the Diabetes Research and Education Hospital, a low-vision program at the Alabama School for the Deaf and Blind, a community vision screening program, the design of a unique teaching clinic, and played a central role in initiating an optometry service and clinic in the Birmingham Veterans Administration Medical Center.[4] This was the first such optometry program in a VA Hospital affiliated with a School of Optometry.[5] However, Dr. Peters, while in favor of drugs used for diagnostic purposes, was opposed to therapeutic drug legislation and expressed his views regarding this issue on several occasions.

The proposed legislation in West Virginia caught many optometrists, and optometric leaders, by surprise. It introduced a level of care that, while a long-term goal for some, was a short-term goal for a few dedicated leaders in that state. Even individual board members of the American Optometric Association (AOA) advised against this effort by the West Virginia Optometric Association (WVOA).[6] Outside of West Virginia, very few optometrists expected such an expansion of scope of care within such a short time period.

Dr. Henry B Peters (Image courtesy University of Alabama at Birmingham School of Optometry).

WEST VIRGINIA PASSES FIRST THERAPEUTIC DRUG LEGISLATION IN OPTOMETRY

The new optometry practice act passed by the legislature of the State of West Virginia was vetoed by the governor. However, the veto was overridden by the West Virginia legislature. The House had, on March 2, voted 59 to 39 and the Senate, two days later, voted 27 to 6, and the legislation became law on the same day, March 4, 1976. This had been an epic achievement by the leaders and members of the WVOA. Those leaders deserving of particular recognition include Drs. Gordon Butterfield, John Casto, David (John) Janney, Walter Ramsey and Frieda Slaymaker.[6,7] The passage of this law caught almost all involved in organized optometry off-guard.

This legislative feat was especially remarkable because a well-known member of the House of Representatives was an ophthalmologist. Dr. Albert Esposito was active in organized ophthalmology, and following the passage of the law, challenged the legality of the law in court.[7] A suit was filed by Dr. Esposito on Dec. 16, 1976, in the Cabell Circuit Court, but his actions ultimately

proved unsuccessful. The trial court decision was appealed to the state supreme court but review was denied on June 6, 1977, thereby permitting the lower court's determination to stand.[8]

Concern Expressed by Dr. Peters

On March 8, 1976, in a memorandum to the Association of Schools and Colleges of Optometry (ASCO), with distribution to the Board of Trustees of the AOA and the Council on Optometric Education, Dr. Peters offered a "tongue-in-cheek" new professional program with the degree Doctor of Dental Optometry (DDO).[9] A person in this field would confine their attention to the eye-teeth. Because this change would be accomplished through continuing education, a new organization would be formed. It would be known as The Academy of TEHEE (Teeth, Eyes, Health, Everything, Everywhere).

Clearly, Dr. Peters was concerned about the potential mischief the West Virginia action may create as a consequence of its passage. For this action to have taken place, at least three crucial actions were necessary. First, the WVOA leadership wanted the use of drugs for treatment purposes. Secondly, a school of optometry was willing to provide continuing education "courses" that convinced these optometrists they had the knowledge, skill and clinical experience to take on this new responsibility. Thirdly, the AOA failed to make, contrary to its stated policy, a forthright effort to influence the outcome. However, the biggest missing element in the whole affair was communication. In essence, Dr. Peters felt there had been a lack of communication on the part of all parties involved. He believed time was running out for those with a more moderate viewpoint to develop rational solutions.[9]

On June 17, 1976, Dr. Peters wrote the boards of ASCO and the AOA expressing his grave concerns over optometry's incursion into ophthalmology.[10] He expressed concern about this legislation threatening the strenuous efforts to improve interprofessional relations—which slowly but surely successful, had now been set back 20 years—and his position within an academic health center placed in dire jeopardy.. He then proposed four options of the few available. These options were: 1) Reaffirm the stated policy of the AOA and ASCO that the use of drugs by optometrists is for diagnostic purposes only and that the treatment of the eye by drugs or surgery is the practice of medicine. 2) Provide tacit approval of optometry's changed position regarding the role of the profession and its claim to therapeutic use of drugs by doing nothing. 3) Recognize the West Virginia Optometry Law as "the wave of the future" and try to modify the curricula to adjust to the new demands. 4) Recognize this move by optometry is, in fact, an invasion of ophthalmology and/or medicine and that optometry and medical ophthalmology be combined into a new program of ophthalmic science. In conclusion, he offered two resolutions that were mutually exclusive and while not representing all the possibilities, the profession was at a profound crossroads and must make a choice.

These resolutions were: A) That ASCO reaffirm its stated policy that the use of drugs by optometrists is for diagnostic purposes only and the treatment of the eye by drugs or surgery is the practice of medicine. ASCO must bring this policy to the attention of the AOA House of Delegates and urge it reaffirm its similar position. B) That ASCO recognize the public need for medical care by optometrists and in the public interest the present optometric curriculum be combined with the medical ophthalmology curriculum to produce a new professional to provide these services. That ASCO authorize its constituent members to explore with their related institutions the possibilities and opportunities for such developments. That ASCO bring this statement to the attention of the AOA House of Delegates and urge it concur in this position.[10]

At an AOA-sponsored meeting "Think Tank III" held in Biloxi, Mississippi, Oct. 26-30, 1976, Dr. Peters spoke against adding therapeutic pharmacology to the optometric curriculum and felt it was too costly and these costs were not justified by the benefits gained. Epidemiologically speaking, he stated optometrists take care of 90% of the nation's vision care needs and that the less than 10% requiring therapeutic drug treatment can be handled by ophthalmologists. He favored the establishment of new schools as having a higher priority than therapeutic legislation. Finally, he expressed the opinion that more patients could benefit from low-vision specialists than from those practicing with therapeutic drugs.[11] There were many older optometrists who, at this time, concurred with Dr. Peters' position regarding therapeutic legislation. There were, however, two optometrists who wrote to Dr. Peters expressing disappointment with his editorial and remarks in the *AOA News*.[12,13] There is no evidence in his correspondence that Dr. Peters responded to either of these letters.

In a Jan. 26, 1979, letter to Dr. Peters, Dr. Van Lilly, president of the WVOA, asked Dr. Peters to please clarify his position related to various comments he had made regarding the West Virginia Optometry Practice Act. Dr. Lilly had high regard for Dr. Peters and thought he was working diligently for the profession. However, he wanted to be able to better respond to his colleagues as well as legislators when those questions arose.[14] There is no record that Dr. Peters responded to Dr. Lilly.

Settlement of 1975 Optometry Practice Act

The enactment of the 1975 Alabama Optometry Practice Act permitted, at least according to University Counsel, the use of drugs for diagnostic purposes. This matter was not settled at the state level until Sept. 30, 1982, when a favorable opinion was issued by Alabama Attorney General Charles Graddick. This matter was confirmed on Nov. 12, 1982, when the AG's office declined to overturn the ruling and stated it would stand as is. Suffice it to say, Dr. Peters most likely felt the change in the 1975 law placed the UAB School of Optometry's ability to teach its professional program students on a par, or perhaps even ahead of other optometry programs, as regarded the ability to use topical drugs for diagnostic purposes.

It was, however, the passage of optometry practice acts in other states permitting the use of drugs for therapeutic purposes that caused Dr. Peters great consternation. He felt compelled to write an editorial expressing his rationale for what he viewed as an unwarranted intrusion into the practice of ophthalmology and an inappropriate goal for optometry.[15] Furthermore, he was concerned that such an increase in scope of practice would require radical changes in the optometric curricula and reduction or elimination of the existing optometric heritage. He also strongly discouraged optometry faculty from testifying in other states on behalf of such legislative efforts.

Whether Dr. Peters sincerely believed in such opposition to the treatment of eye disease by optometrists, or he simply felt obliged to take such a stand based on his prior statements or discussions, is difficult to know. Certainly his views stirred strong emotions in many optometrists throughout the State of Alabama, the southeast, and to some extent, the nation.

Many optometrists, especially recent graduates, viewed the enactment of therapeutic legislation as being vital to the future of the profession. Undoubtedly, Dr. Peters had expressed his views to interested individuals during the subsequent years. What impact, if any, his opinion had regarding this matter on the Board of Directors of the ALOA is difficult to judge from this point in time. Regardless, during the 1980-81 year the ALOA Board of Directors, under the leadership of President Dr. Carl McInnish, approved the drafting of a new practice act to include the use of drugs for therapeutic use. The executive director of the ALOA by this time was Bill Cook and the Board of Directors hired Bobby Jack Russell to serve as lobbyist for this new effort.

FIRST ATTEMPT AT THERAPEUTIC LEGISLATION-1983

The Regular Session for the 1983 Alabama legislature began April 19, 1983, and ended on August 1, 1983. This session consisted of 30 calendar days.[16]

Senate

On April 21, 1983, the Second Day of the Regular Session, Sen. John Teague introduced Senate Bill S. 203. The intent of this bill was to further define the practice of optometry. This new bill was assigned to the Senate Committee on Health and Welfare. This Standing Committee reported a substitute for S. 203 on June 30, 1983, the 24th Day of the Session. This substitute as amended was then adopted, Yeas 16; Nays 3. On its third reading amended substitute S. 203 was read at length and lost, Yeas 10; Nays 17.[16]

House

There was no action in the House regarding this bill nor was a companion bill introduced.

Dr. Catherine Amos, who was the president of the ALOA from 1981-82, devoted many hours to lobbying for this bill. In the summer of 1983, it was becoming clear to the ALOA this issue was not about the merit of the legislation but the amount of political support and the number of votes.[17] Lobbyists were retained, and the ALOA spent significant resources, with very little to show for the effort.

LEGISLATIVE EFFORT OF 1988

The Regular Session for the 1988 Alabama Legislature began on Feb. 2, 1988, and ended on May 5, 1988. This session consisted of 30 calendar days.[18]

House

On Feb. 23, 1988, the 7th Day of the Regular Session, Rep. Burke introduced in the House Bill H. 630 to further define the practice of optometry. This bill was assigned to the Committee on State Administration. On March 30, 1988, the 18th Day of the Session, it was reported the Committee had acted on H. 630 (with substitute and amendment) and ordered it returned to the House with a favorable report, with substitute, and it was read a second time and placed on the calendar, but advanced no further.[18]

Senate

There was not any action in the Senate related to this bill or any companion bill introduced.[18] As a result, this concluded the legislative year for optometry.

FORTUNATE TURN OF EVENTS

In November 1994, Fob James was elected governor and Don Siegelman was elected lieutenant governor. This series of events would eventually prove fortuitous for the ALOA. During the Hunt and Folsom administrations optometry had been unable to advance politically. Part of this failure to advance fell on the shoulders of the ALOA because it was not organized in a manner that would result in political success. There had been an over reliance on lobbyists rather than an understanding that it was about relationships with and the votes of the legislators. In this matter the optometrists possessed a clear advantage because of their broad geographic distribution within the state. If the ALOA were to become organized by developing a plan its chances for success would be much improved.

THE ALOA GETS ORGANIZED

There were many optometrists who were involved in the 1990s effort to pass legislation that authorized the use of drugs for therapeutic purposes in Alabama. In fact, as many as 200 or more optometrists became involved to some degree or in some manner in this effort. This involvement ranged from becoming intimately involved with a specific candidate's race, hosting fundraising events at their homes, placing signs in their yard and those of their neighbors and friends' yards, distributing campaign literature and materials, making phone calls on behalf of the candidate and, of course, making personal donations to local, district and state campaigns. As well there was a significant effort to increase the funds in the Alabama Optometry Political Action Committee (ALOPAC). This high level of participation was in no small way a response to the frustration optometrists in Alabama felt at being unsuccessful, for well over a decade, in the passage of therapeutic legislation.

Dr. Jim McClendon (Image courtesy Alabama Optometric Association).

A Plan is Needed

Of the many optometrists involved in the successful effort that occurred in 1995, there are several optometrists who deserve specific recognition for their conception and development of an ingenious legislative plan. The three primary individuals who led the effort were Drs. Jim McClendon, Tommy Crooks and Sarah Gordon. Other optometrists who were very active or had specific roles were Drs. Charles Brown, Rose Betz, Doug Clark, Norman Johnson and Barry McNamara. Of course, there were dozens of others who were very active on the local, district or state level. Of special note is the personal relationship Dr. Brown had developed several years earlier with Lt. Gov. Don Siegelman. By coincidence, Don Siegelman and Charles Brown were fraternity brothers at the University of Alabama. Although Lt. Gov. Siegelman had already graduated by the time Dr. Brown was active in the fraternity, they had nonetheless been in the same fraternity. By this time Siegelman was attending the Georgetown School of Law.[19]

Several years later, Dr. Brown had become involved, through his former roommate Bill Cassels, as a volunteer in the campaign when Don Siegelman was running for secretary of state. When Dr. Brown read in the newspaper that Siegelman was running for lieutenant governor, he wrote a note to Mr. Siegelman recalling Brown's earlier activities and again offered his assistance for the upcoming campaign. Within a few days, Don Siegelman dropped by Dr. Brown's office unannounced.[19]

As will be explained later, the support of so many optometrists was important to the overall success of the plan and ultimately the legislation. However, the relationship that developed between Dr. Brown and the future lieutenant governor proved to be critical. According to Dr. Brown, as a result of his travels and grassroots network throughout the state, Mr. Siegelman clearly understood the role optometrists could play in providing primary eye care to the citizens of Alabama.[19] Like Gov. George Wallace before him, Lt. Gov. Siegelman possessed a keen sense of the services optometry could provide to the citizens of the state of Alabama.

ALOA Sends a Delegation to the AOA State Legislative Action Committee

The genesis of the ALOA effort primarily emerged from the lack of legislative success during the 1980s. Dr. McClendon has related that his signal epiphany occurred after attending the 1991 fall meeting of the ALOA.[20] He heard a lecture by Dr. Lou Catania and thought to himself there was a great deal he, and probably most optometrists, needed to learn regarding clinical pharmacology and its proper use in the treatment of eye disease. On the way out of the lecture he mentioned to Dr. Barry McNamara that something needed to be done by the ALOA to address the therapeutic issue.

During the organizational session in preparation for the ALOA's 1991-92 year, Dr. McClendon learned he had been appointed to the Legal/Legislative Committee (later the Government Relations Committee) of the ALOA.[20] This appointment helped set into motion the ALOA sending a small contingent of its members to the AOA's State Legislative Action Committee (SLAC) meeting. This meeting was entitled "Statutory Definition Exchange" and was held in New Orleans, Louisiana, Nov. 19-22, 1992.

The program served as an informational exchange for states endeavoring to pass therapeutic drug legislation. It also served as an opportunity for the AOA to provide assistance to those states who had not been successful in passing such legislation. In many instances, the AOA SLAC members would discuss strategy with those states requesting assistance. Those members attending the meeting on behalf of the ALOA were Drs. Betz, Crooks, Johnson, McClendon and Ms. Virginia Campbell, executive director of the organization. After listening to the plans and successes of other states the group was left feeling even more frustrated than before the meeting. On a personal note, as a result of being chair of the AOA's Clinical Care Center, I had been asked to speak at this meeting and well remember the Alabama attendees gathered together discussing strategy. This was the beginning of the ALOA's effort to pass legislation that allowed for the use of drugs for therapeutic purposes.

THE DEVELOPMENT OF A LEGISLATIVE PLAN

It was during an informal meeting of the group in the Hotel Le Meridian's bar, after the first meeting day, that Dr. Crooks and colleagues began to develop a long-term plan for passing legislation for therapeutic drug use in Alabama.[20,21] The model they chose to follow was one described by Dr. Larry Moore, a representative from the Texas Optometric Association. As one of the speakers for this meeting, Dr. Moore had described the Texas model during the AOA SLAC-sponsored general session. Dr. Moore was also one of the discussion leaders of the breakout session the Alabama delegation attended during the meeting. It was the result of this meeting that the ALOA began to develop the seeds of a plan.

A Plan is Developed

The plan that evolved as a result of the AOA/SLAC meeting had several features to ensure success. First, it would, like a three-legged stool, have three central components. These tripartite components were: 1) a strong grassroots organizational concept, 2) a connection to the governor and 3) a level of ALOPAC

contributions that would cover state-wide races, key committee chairs and Senate and House races. Another part of the plan was that the Legal/Legislative chair would remain unchanged from at least 1992 through 1995. The final portion involved the candidate races.[20,21]

Members were warned against becoming too emotionally attached to a candidate. The basic premise was the "dead dog theory" that most learned from their mother or father growing-up. The best solution to a dog dying is to get another dog. In other words, if your candidate did not win his or her race, then transfer your efforts and support to a candidate still in the race. This plan was to be implemented over four years with information and education of the membership occurring mostly over the first one to two years. This was followed by fundraising, drafting of legislation and finally distribution of personal and PAC funds as the election year unfolded.[20,21]

Drs. Crooks and McClendon approached Dr. Sarah "Sally" Gordon during the fall meeting of the ALAO in 1992 to be the chair of the Elections Committee.[20] Dr. Gordon accepted the challenge and set about dividing the state into districts that paralleled the number of legislative districts and local societies.[22] Each district had a zone coordinator whose primary responsibility was to make sure that each candidate in that district had an assigned optometrist.

Dr. Gordon assembled a notebook that contained political, professional and pertinent family or personal information related to each candidate.[22] This notebook also contained the name of the optometrist who was assigned to the candidate. She worked tirelessly on this legislation for several years. Virginia Campbell was very helpful in assisting Dr. Gordon by providing relevant information about each candidate.[22] While fundraising was ongoing, especially related to the ALOPAC, the legislation was not drafted until after the election cycle and was refined until the time the Regular Session began in March, 1995.

As for candidate support, many optometrists were directly involved in candidate races, they gave individual donations to candidates in their districts and other candidates outside of their districts as requested by colleagues or Drs. McClendon or Gordon. Each member of the ALOA was assessed $100 per month for each year of the plan with the funds being specifically allocated for the ALOPAC and this legislation. Aside from the ALOPAC and Therapeutics Course, each optometrist was asked to donate $150 to the governor's campaign, $250 to the lieutenant governor's campaign, $150 to a Senate campaign and $100 to a House campaign. One of the critical aspects of the plan was the ALOA would not move forward with the legislation until the appropriate funds were in place.[20,21]

Dr. Arol Augsburger (Image courtesy University of Alabama at Birmingham School of Optometry).

On Jan. 1, 1994, Dr. Arol Augsburger became the third dean of the UAB School of Optometry. Dr. Augsburger was a strong supporter of therapeutic legislation and made many efforts to support the activities of the ALOA. Dr. Augsburger was very active in several national optometric organizations and understood the importance of the success of this legislative initiative.

Dr. McClendon developed a spreadsheet that could track every donation to a 1994 race in the state.[20] Likewise, Dr. Gordon developed a similar spreadsheet related to elections.[22] In all likelihood there was overlap and redundancy, but in this manner all of the district and statewide races could be monitored and supported as the situation required. This action also allowed the ALOA to track financial or gift-in-kind support to the incumbent or candidate and orchestrate additional support as necessary. The three major statewide races were covered by ALOPAC funds, as were the chairs of the key Rules and Health Committees in each chamber and each incumbent representative or senator. There was an 86% chance that the incumbents would be reelected. In addition, each new candidate who appeared to have a reasonable chance of election was covered by individual donations from local or state optometrists who wish to support a particular candidate. In some situations, Dr. McClendon would request assistance from others to supplement the amount given by the local optometrists. The broad base of support and cooperation by the membership was a key element to the success of this plan.[20]

IMPLEMENTATION OF THE PLAN

Ultimately the ALOPAC gave funds to those candidates who the polls indicated would win or were reasonably certain of winning. Gov. James received $50,000, Lt. Gov. Siegelman received by a conservative estimate $250,000 ($100,000 about 10 days before the election), and Attorney General Jeff Sessions approximately $10,000. The original target goal of ALOPAC was to raise $650,000. This amount was based on the amount Milton McGregor had spent to pass legislation that allowed dog racing in Alabama. Dr. McClendon had read this amount in the *Birmingham News* and

thought it would be a reasonable barometer or starting amount for this legislation. In the final analysis the amount raised, including the ALOPAC and individual donations, was approximately $750,000. If one were to count gift-in-kind contributions and receptions for candidates, then it was well over this amount and likely closer to $1 million. This number was determined to be the amount required to appropriately cover all reasonable candidates, the amount contributed to statewide races, the amount contributed to incumbents and new candidates and, of course, to address the inflation that occurred during this four-year period.[20-22] There were also several large receptions held during this period funded by the ALOA.

Distributions to Viable Candidates

Every viable candidate for the House and Senate received donations regardless of whether they were an incumbent or running as a candidate in the primary or general election. Incumbents received $1,500 from ALOPAC, while other candidates received varying amounts depending on the size of the district and the number of optometrists in that district. One of the important aspects of the plan was that the optometrists were instructed to personally deliver donations to all candidates deemed to have a reasonable chance of winning the race. The general rule followed was that funds were not distributed to candidates unless poll data found they were either predicted to win or had a reasonable chance of winning. It was even better if they could have several checks from other optometrists, even if they lived outside of the district. The face-to-face or one-on-one contact was considered essential for reasons related to accountability once a vote was called. Drs. McClendon and Gordon tracked each of these races as they progressed.[20,22]

For the Senate, with its 35 seats, the same process was followed except incumbents received $3,000. Because there were fewer Senators this chamber was perhaps somewhat easier, if only because of its smaller size. However, many optometrists had excellent relations with members of both chambers. The Senate Pro Tem for this session was Sen. Michael Figures from Mobile. Sen. Figures was supportive of the legislative efforts of optometry and very helpful with the passage of this legislation. He had been recommended to the ALOA by soon-to-be Lt. Gov. Don Siegelman. Lt. Gov. Siegelman played a critical role in making sure this legislation came up for a vote at the appropriate time. As lieutenant governor, he had the authority to control the outcome of legislation.[19] As an ironic footnote to history, Lt. Gov. Siegelman may have had the most power to affect legislation of any lieutenant governor before or since.

THE POLITICAL PROCESS

Hiring Excellent Lobbyists

One of the important aspects of the strategy to pass this legislation was to hire a highly regarded lobbying firm. Fine and Geddie had been approached by the ALOA in the mid- to late-1980s to assist with therapeutic drug legislation. It was their opinion, after considering the issue, that the ALOA was not ready for such an initiative. They told the leadership the ALOA was not in a position to pass such controversial legislation, knowing there was very likely to be strong medical opposition. As it turned out, of course, Fine and Geddie were correct in their assessment as difficult as it was to hear. By the time this plan was launched in 1991, Fine and Geddie were still regarded as the best lobbying firm in Montgomery, Alabama. However, after listening to the plan that had been developed by the ALOA, Fine and Geddie then realized the ALOA was organized and its understanding of the political realities of passing such legislation had significantly changed. A contract was signed in which the ALOA agreed to pay Fine and Geddie $100,000 per year from 1991 through 1995. It should also be noted that a bonus of this relationship was the close friendship that existed between soon-to-be Gov. James and Bob Geddie.[20-22]

Drafting the Legislation

The draft legislation was written by Drs. McClendon, Crooks and Gordon using language taken from the best aspects of therapeutic laws passed in other states. The language of this legislation was developed during the latter part of 1994 and into 1995 up to the point when the Regular Session began. It was placed in the proper legislative format by the Legislative Reference Service (LRS) now called the Legislative Service Agency (LSA).[20-22]

PASSAGE OF SENATE BILL 307 - 1995

The Regular Session of the Legislature of the State of Alabama, 1995, began April 18, 1995, and ended on July 31, 1995. This session consisted of 30 days.[23]

On June 13, 1995, the 16th Day of the Regular Session, the House took up the bill S. 307, as amended, was read a third time at length and passed, Yeas 100; Nays 3. On motion of Representative Knight, the bill, H. 550, as amended, was indefinitely postponed.

Senate bill S. 307 was approved by Gov. James on June 20, 1995, and was effective immediately on his signing at 12:15 p.m.

Compared to other legislative efforts by the ALOA, this one proved to be widely supported by the membership and relatively straightforward in its passage. The development of such a comprehensive plan was critical to its success. It also provided a process that could be utilized in successive years, if necessary.

The chronology of the actions related to this legislation by chamber during the 1995 Regular Session is provided in Appendix I. It was amazing what a well-developed and supported plan could accomplish.

THE ALOA PASSES THERAPEUTIC LEGISLATION

There was not much rancor or even discussion related to this legislation compared to what was expected. The reasons for this are several. First, Dickie Whitaker, the executive director of MASA, knew of the efforts of the ALOA and could count the votes of the sponsors and co-sponsors as well as anyone in Montgomery. The plan was so comprehensive and thorough it left almost no district race or critical statewide candidate at risk of not supporting this legislation. Second, the lobbying firm of Fine and Geddie was now solidly behind this legislation and their support proved to be of great significance. Fine and Geddie were certainly regarded as one of the best, if not the best, such lobbying firms in Alabama. The fact that most optometrists had already taken the required course further demonstrated the optometrist's determination to assume

therapeutic responsibility. Third, the then Executive Director of the Alabama Academy of Ophthalmology, Evans Whaley, had his attention focused on personal issues and problems and was either unaware of the situation or too distracted to attend to this matter. This lack of response by ophthalmology was unusual because they normally kept close surveillance of optometric legislation.

The Speaker of the House was Rep. Jimmy Clark from Eufaula, Alabama. While not extraordinarily helpful, ultimately, he did support the bill when the vote was called. However, the Senate Pro Tem, Sen. Michael Figures, was very supportive and made his office available for some discussions that occurred during the last days before the final vote.[20]

Meeting with Ophthalmology

Dr. McClendon had, as a courtesy, met earlier in the spring of the year with Dr. Elmar Lawaczeck. Dr. Lawaczeck, a Birmingham private practice ophthalmologist was representing the Alabama Academy of Ophthalmology, for purposes of discussing the legislation. Dr. McClendon remembered two comments from this meeting. First, Lawaczeck stated, "if this was Germany this legislation would not be happening" (there is no American model of optometry in Germany) and secondly, he tried to convince Dr. McClendon optometry did not need steroids to treat eye disease. Basically Dr. Lawaczeck's attitude was very Old World and it was obvious he did not fully grasp the efforts the ALOA had made.[20]

Decision to Drop Hydrocodone

Another matter of some importance, and perhaps confusion, was the decision to drop the Schedule III narcotic dihydrocodenione (Hydrocodone) from the legislation. During the Regular Session, Dr. McClendon was approached by Rep. Billy Beasley from Clayton, Alabama. Rep. Beasley was a pharmacist and relayed to Dr. McClendon the pharmacy profession's experiences with Hydrocodone. It was not only becoming an issue of safety for pharmacies but also a personal problem for some pharmacists. His suggestion to Dr. McClendon was that, while he supported the ALOA's legislation, optometry would perhaps be best served if it dropped Hydrocodone from the legislation. Dr. McClendon felt that Hydrocodone could be dropped from the language of the legislation.[20]

Dr. McClendon knew that politically this gesture was not a necessity, but he was concerned that having such prescriptive authority for this drug might cause addicted patients to pressure optometrists to prescribe it. He also knew its absence would, furthermore, reduce the risk of abuse by optometrists. While Hydrocodone is a very effective medication for the management of pain, there are several other medications available as well for this purpose. Given the current crisis of epidemic opioid abuse in Alabama and the United States, his view was very insightful.

SUMMARY

After 20 years of determined effort by the members of the ALOA a very comprehensive law was enacted that significantly expanded the scope of practice of the optometry profession in Alabama. The impact of this law has been of great importance. Not only did it allow optometrists to deliver eye care they had, for decades been uniquely educated to provide, but it removed barriers such as access to care for patients. in many areas of the state of Alabama, whether urban or rural, transportation is a significant issue. Even in urban areas some individuals are reluctant to leave their immediate neighborhood. For long distances the patient will frequently elect to forego care because of the direct or indirect expenses associated with travel. Optometrists are located in all but three counties of the state. This distribution of optometrists has provided access that has resulted in not only excellent clinical care but also significant savings to patients in the form of cost-efficient eye care and less travel.

Beyond the importance of the passage of this law was the importance of the organization that was developed to pass this legislation. This same organization can be implemented again, for any reason, should this ever become necessary. Assuming, of course, there is broad-based support for the cause among the ALOA membership. Certainly a special word of acknowledgement is due to Drs. McClendon, Crooks and Gordon for their tireless efforts. However, there were perhaps as many as 10 more optometrists who were very active in this effort. There was also broad-based support from the members of the ALOA.

Since the enactment of the first law authorizing the use of drugs for diagnostic purposes in Rhode Island, approximately 225 or more laws have been enacted in the United States expanding the scope of optometric practice. No doubt this number will continue to increase as the states continue to expand their scope of practice. To date, no scope of optometry practice law has been rescinded.

As a result of this experience, Dr. Jim McClendon decided to run for public office in 2001. He was sworn into office as a duly elected member of the State of Alabama, House of Representative for District 50 in January 2002. He continues to serve the state of Alabama with great distinction as a member of the Alabama Senate. He was instrumental in assisting the ALOA secure passage of an updated Loan and Scholarship Program for Optometry and Vision Science Students in 2009, 2012, 2016, 2017, 2018 and 2019.

Dr. McClendon served as chair of the Ethics Committee during the Special Session called for December 2010. The Alabama Legislature passed seven ethics bills during this session, and Dr. McClendon served as the House sponsor for one of those ethics bills. In February 2011, Dr. McClendon was appointed chair of the House Health Committee and a member of the Statewide Health Coordinating Council. He was also chair of the House Reapportionment Committee, which is part of a Joint House – Senate Reapportionment Committee. Rep. McClendon was also appointed in June 2011 by Gov. Bentley as co-chair for the Alabama Health Insurance Exchange Study Commission.[20]

In June 2014 he was elected as the Republican Senator for a newly created Senate District 11. He was subsequently appointed as chair of the Senate Health Committee a position he holds currently. Dr. McClendon was reelected to the Senate in 2018.

One final note should be mentioned. The history of attempts to pass legislation regarding the use of drugs for diagnostic and therapeutic purposes was obviously not unique to the ALOA. Every state optometric association has a history related to this type of legislation. It is hoped that perhaps this history of the ALOA's legislative efforts will encourage other states to document their legislative experiences in this regard as well. It would be a great

loss to the profession if the collective history of each state's effort to increase scope of practice were to be lost.

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APPENDIX I

CHRONOLOGY OF ACTIONS RELATED TO PASSAGE OF THE ALOA SPONSORED LEGISLATION REGARDING THE 1995 OPTOMETRY PRACTICE ACT

REGULAR SESSION OF THE LEGISLATURE OF THE STATE OF ALABAMA, 1995

HOUSE OF REPRESENTATIVES, STATE OF ALABAMA

Tuesday, May 16, 1995, the seventh Day of the Regular Session, Bill, H. 550 was introduced by Representative Al Knight and 65 co-sponsors and assigned to the House Committee on Commerce, Transportation and Utilities

Tuesday, May 16, 1995, the seventh Day of the Regular Session, Representative Knight also introduced Bill, H. 551, which was assigned to the House Committee on Health

Thursday, May 25, 1995, the 11th Day of the Regular Session, Representative Knight, Chairperson of the Standing Committee on

Commerce, Transportation and Utilities reported to the House that in Session this Committee had acted on H. 550 (with substitute) and ordered the same returned to the House with a favorable report, with substitute, and it was read a second time and placed on the House calendar

Tuesday, June 13, 1995, the 16th Day of the Regular Session, the Senate Bill S. 307, as amended, was read a third time at length and passed, yeas 100, nays 3

Tuesday, June 13, 1995, the 16th Day of the Regular Session, Representative Knight moved that the Bill, H. 550, as amended, was indefinitely postponed

Act No. 95-218 was approved and signed by Governor Fob James on Tuesday, June 20, 1995 at 12:15 P. M. and became effective immediately on his signature.

SENATE, STATE OF ALABAMA

Wednesday, May 3, 1995, the third Day of the Regular Session, Senate Bill, S. 307 was introduced by Senator Jack Biddle and 17 co-sponsors and assigned to the Senate Committee on Health and Human Resources

Thursday, May 18, 1995, the ninth Day of the Regular Session, proceeded to consideration of the Unfinished Business for that day, which was the Bill S. 307. The question was on the Biddle amendment which said amendment is set out in the Journal of the Senate for the eighth Legislative Day

Thursday, May 18, 1995, the ninth Day of the Senate, on motion of Senator Figures, said amendment was laid on the table (referring to the Biddle amendment)

Thursday, May 18, 1995, the ninth Day of the Regular Session, Senator Figures then offered the following substitute for the Bill SB. 307, Adopted, yeas 34, nays 0 (this legislative excepted the use of steroids)

Thursday, May 18, 1995, ninth Day of the Regular Session, Senator Figures offered an amendment to the Bill, SB. 307, as amended by the substitute, Adopted, yeas 23, nays 11 (included the use of steroids)

Thursday, May 18, 1995, the ninth Day of the Regular Session, the said Bill, S. 307, as amended, was read a third time at length and passed, yeas 34, nays 1. The Bill, SB. 307 was ordered sent forthwith to the House upon engrossment

Thursday, May 18, 1995, the ninth Day of the Regular Session, Senator Biddle moved that the Senate reconsider the vote by which the Bill, SB. 307, as amended, was passed and further moved that the motion to reconsider be laid on the table. The motion to table prevailed

Act No. 95-218 was approved and signed by Governor Fob James on Tuesday, June 20, 1995 at 12:15 P. M. and became effective immediately on his signature.