DEPARTMENT OF JUSTICE
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OFFICIAL
MAR 25 1987
DEPT. OF JUSTICE

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: March 20, 1987

SUBJECT: Remedial Effect of Proposed Amendments to Optometry Law.

REQUESTED BY: Senator Patricia S. Morehead

WRITTEN BY: Robert M. Spire, Attorney General
Marilyn B. Hutchinson, Assistant Attorney General

You have asked whether LB116 with amendment AMO 424 will remedy any constitutional problems of Laws 1986, LB131 which we addressed in Attorney General Opinion #86061. There were two problems. We have concluded that one has been corrected and then re-created by this proposed legislation; the other has been corrected, both as discussed below.

1. Treating current licensees differently than new licensees.

There was no "grandfathering" in the prior bill, but current licensees could continue to practice without certification if they didn't use pharmaceuticals for diagnosis or therapeutic purposes; new licensees had to be certified to use pharmaceuticals both for diagnostic and for theraputic purposes before they could be licensed.

The proposed amendments at page 2, line 25 to page 3, line 6 of LB116 would delete the source of that problem. However, the insertion proposed after the date on page 3, line 11 creates a similar problem. It would close the class of persons who may be certified to use topical ocular pharmaceuticals for diagnostic purposes to those "previously" certified to do so by the Department. If the intent is to "grandfather" those already certified to use such pharmaceuticals for diagnostic purposes, then "and" should be changed to "except" and an alternative should be added for those certified previously in another state under comparable standards. It should also be clarified whether "previously" refers to before July 17, 1986, or before the effective date of this bill.

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2. Delegating to the Department of Health without sufficient guidelines the task of specifying the educational requirements for certification.

This problem is resolved by the proposed legislation. However, there are some inconsistencies which may complicate the enforcement process. The courses and examinations for both types of certification must be approved by the Department. However, the standards for doing so are stated in terms of approval by the Board. To be consistent with the overall scheme of enforcement, i.e., by the Department on the recommendation of the Board, "Board of Examiners in Optometry" should be changed to "Department" at page 4, line 14 of LB116 and at page 1, line 16 and page 2, line 12 of AMO 424. The text starting on page 2, lines 21-23 of AMO 424 starting with "or" should be deleted.

Sincerely,

ROBERT M. SPIRE
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MBH:cdw

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:

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