



Wisconsin Academy of Ophthalmology v. State of Wisconsin Optometry Examining Board (Dane County, Wisc. Cir. Ct.)

Topics Covered: Scope of Practice

Outcome: Neutral

Issue

The issue in this case was whether optometrists should be permitted to perform laser eye surgery.

AMA Interest

The AMA believes that non-physician health care practitioners should provide health care that is appropriate to their education, training, and experience.

Case Summary

The Optometry Examining Board of the State of Wisconsin (Board), without notice or opportunity for public comment, ruled that Wisconsin optometrists could perform laser eye surgery. Immediately thereafter, some optometrists started to perform the procedure.

The Wisconsin Academy of Ophthalmology, the American Academy of Ophthalmology and the Wisconsin Medical Society sued the Board for declaratory and injunctive relief. In essence, the plaintiffs alleged that: use of lasers on the eye constitutes surgery; numerous delicate and difficult ophthalmologic surgeries are performed with use of a laser; there are contraindications and potential complications associated with laser procedures; and ophthalmologists receive extensive medical training while optometrists do not. Plaintiffs contended that the Board action was invalid because laser surgery exceeds the scope of permissible practice by optometrists, as defined by state statute. Plaintiffs further contended that the Board ignored statutory rule making procedures.

Shortly thereafter, the Board rescinded its ruling and announced its intent to promulgate future rules allowing laser surgery by optometrists. By amended complaint, with the Litigation Center now added as a plaintiff, the plaintiffs sought a judicial declaration that defendant's rescission of its earlier ruling still exceeded the Board's authority. The remaining relief requested was substantially similar to that of the initial complaint. The amended complaint also sued four individual optometrists, who allegedly were performing laser eye surgery.

The court denied a motion by the Wisconsin Attorney General to dismiss the Wisconsin Optometry Board from the case for lack of ripeness. The board then withdrew its notice of intent to promulgate a rule concerning laser surgery by optometrists.

The plaintiffs moved for summary judgment and the defendants subsequently cross-moved for summary judgment in their favor. The court denied the plaintiffs' motion, granted the defendants' motion, and dismissed the ophthalmologists' lawsuit. Although the court did not explain its reasoning, it may have felt that, in light of the decision by the Optometry Board to rescind its earlier ruling, which had originally prompted the case, the lawsuit had become moot.

Litigation Center Involvement

The Litigation Center joined the lawsuit as an additional plaintiff in the amended complaint.