

Court voids rule letting optometrists do eyelid surgery



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The West Virginia Board of Optometry went beyond its rulemaking authority when it sought to expand optometrists' scope of practice to include some eyelid surgeries, according to a circuit court ruling in the Mountaineer State.

Out of concern for patient safety, the West Virginia State Medical Association and the West Virginia Academy of Eye Physicians & Surgeons Inc. sued the state optometry board in Kanawha County Circuit Court. The lawsuit asked the court to preliminarily enjoin optometrists from performing these surgeries and to ultimately find that Rule 14-14-1 is void. The optometry board promulgated the rule in 2023, and it was approved by the state legislature in 2024. As a result of the court's ruling, the board issued a formal statement Nov. 20, 2025, declaring that the rule is no longer in effect.

Physicians and their patients recognize that expanding scope of practice to nonphysicians who don't have the proper training can be dangerous for patients. The AMA agrees with the West Virginia State Medical Association and the West Virginia Academy of Eye Physicians and Surgeons that optometrists do not have the proper level of education and clinical training required to safely perform surgery—including the surgeries that would have been authorized under Rule 14-14-1 in West Virginia.

More than 90% of patients surveyed have said that a physician's years of education and training are vital to patient care, especially if a complication or medical emergency arises.

And when it comes to optometrists and ophthalmologists, the training differences are stark. Optometrists complete a pre-professional undergraduate education and four years of professional education at a college of optometry to receive their doctor of optometry (OD) degree.

Some complete an optional residency in a specific practice area, but there is no mandatory postgraduate training. Ophthalmologists, by contrast, are physicians (medical doctors or doctors of osteopathic medicine), who after receiving an undergraduate degree go on to four years of medical school and four years of residency training. About 40% of ophthalmology residents go on to an additional one- or two-year fellowship in a subspecialty.

And while optometrists spend about one year in clinical rotations, ophthalmologists get more than 12,000–16,000 hours during training. And optometrists' education and training is focused almost entirely on examining the eye for vision prescription, dispensing corrective lenses and performing some eye screening. They are not properly trained to perform surgery either with a laser or scalpel. Meanwhile, as physicians, ophthalmologists are trained to perform surgery, to anticipate and address unexpected medical events or complications during and following surgery and to effectively manage a patient's medical care.

The Litigation Center of the American Medical Association and State Medical Societies financially supported the legal effort in West Virginia. The AMA is fighting scope creep, defending the practice of medicine against scope of practice expansions that threaten patient safety.

How did optometry board exceed authority?

The lawsuit, *West Virginia State Medical Association and West Virginia Academy of Eye Physicians & Surgeons Inc. v. West Virginia Board of Optometry*, said that the board exceeded its rulemaking authority because it did not, as West Virginia law requires:

- Submit an application to the legislature's Joint Standing Committee on Government Organization, which subsequently must refer the application to the independent West Virginia Legislative Auditor's Office for thorough analysis and evaluation.
- Provide the Joint Standing Committee on Government Organization with a statement that 10 West Virginia residents who are members of the optometry profession supported a legislative rule that would expand the scope of practice.
- Establish or confirm whether eyelid procedures and surgeries are taught at 50% of all accredited optometry schools, as West Virginia law requires.

Because the state optometry board failed to follow these so-called Sunrise Procedures and submit that initial completed application to the Joint Standing Committee on Government Organization, the state's Performance Evaluation and Research Division of the Office of Legislative Auditor was never able to conduct an analysis and evaluation and provide a report and recommendation to the Joint Standing Committee on Government Organization on whether the scope should be expanded.

In turn, that prevented:

- The research division's report and recommendation from becoming publicly available.
- The Joint Standing Committee on Government Organization from holding public hearings.
- The West Virginia legislature from having the report and recommendations as it voted on whether to expand the scope of practice.

Issuing a summary judgment, West Virginia Circuit Court Judge Stephanie Abraham wrote that the optometry board violated the Sunrise Procedures when promulgating its rule expanding optometrists' scope of practice.

The ruling makes clear the limitations that the optometry board faces in unilaterally enacting certain changes on scope of practice and that it is, broadly speaking, a matter the legislature must decide.

California in 2022 passed a bill that would have allowed optometrists to perform advanced eye procedures—including laser eye surgery and scalpel eyelid surgery—after completing a 32-hour weekend training, but Gov. Gavin Newsom vetoed the bill saying he was “not convinced that the education and training required is sufficient to prepare optometrists to perform the surgical procedures.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center's case-selection criteria.