

STATE OF NEW YORK

1193--B

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. PAULIN, COOK, CYMBROWITZ, ABINANTI, GUNTHER, WEPRIN, HEVESI, RYAN, TITUS, STIRPE, BUCHWALD, DiPIETRO, BRABENEC, BLAKE, FAHY, ORTIZ, COLTON, NORRIS, BARRETT, PHEFFER AMATO, DINOWITZ, LALOR, ZEBROWSKI, STECK, HUNTER, BRONSON, SOLAGES, PEOPLES-STOKES, DE LA ROSA, B. MILLER, RAIA, GARBARINO, MORINELLO, FITZPATRICK, DICKENS, MAGNARELLI, PICHARDO, SANTABARBARA, GIGLIO, D. ROSENTHAL, KIM, RODRIGUEZ, ABBATE, JONES, ARROYO, VANEL, McDONOUGH, AUBRY, L. ROSENTHAL, ENGLEBRIGHT, LAVINE, D'URSO, JAFFEE, JOYNER, SEAWRIGHT, M. L. MILLER, FERNANDEZ, FALL, BURKE, REILLY, REYES, SALKA, WALLACE, JACOBSON, JEAN-PIERRE, MOSLEY, MANKTELOW, TAYLOR, BENEDETTO, STERN, GRIFFIN, CRESPO, BUTTENSCHON, MALLIOTAKIS, EICHENSTEIN -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, CAHILL, CARROLL, CROUCH, CUSICK, DAVILA, EPSTEIN, FRIEND, GALEF, GOODELL, GOTTFRIED, HAWLEY, LENTOL, LIFTON, LUPARDO, PALMESANO, PERRY, QUART, RIVERA, SIMOTAS, STEC, TAGUE, THIELE, WALSH, WOERNER, WRIGHT -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the use of oral medications by optometrists

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (e) of subdivision 1 of section 7101-a of the
2 education law, as added by chapter 517 of the laws of 1995, is amended
3 to read as follows:

4 (e) [~~Phase one~~] Topical therapeutic pharmaceutical agents. [~~Phase one~~]
5 Topical therapeutic pharmaceutical agents shall mean those drugs which
6 shall be limited to topical application to the surface of the eye for
7 therapeutic purposes and shall be limited to:

8 (i) antibiotic/antimicrobials;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

LBD01275-08-9

- (ii) decongestants/anti-allergenic;
- (iii) non-steroidal anti-inflammatory agents;
- (iv) steroidal anti-inflammatory agents;
- (v) antiviral agents;
- (vi) hyperosmotic/hypertonic agents;
- (vii) cycloplegics;
- (viii) artificial tears and lubricants; and
- (ix) immunosuppressive agents.

§ 2. Paragraph (f) of subdivision 1 of section 7101-a of the education law, as added by chapter 517 of the laws of 1995, is amended to read as follows:

(f) [~~Phase two therapeutic~~] Therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension. [~~Phase two~~] Therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension shall mean those drugs which shall be limited to topical application to the surface of the eye and shall be limited to:

- (i) beta blockers;
- (ii) alpha agonists;
- (iii) direct acting cholinergic agents;
- (iv) prostaglandin analogs; and
- (v) carbonic anhydrase inhibitors.

§ 3. Subdivision 1 of section 7101-a of the education law is amended by adding a new paragraph (g) to read as follows:

(g) Oral therapeutic pharmaceutical agents. Oral therapeutic pharmaceutical agents shall mean those orally administered drugs used for therapeutic purposes solely for the treatment of diseases of the eye and adnexa and shall be limited to:

- (i) the following antibiotics:
 - (1) amoxicillin/clavulanate potassium;
 - (2) cephalexin;
 - (3) azithromycin;
 - (4) sulfamethoxazole/trimethoprim;
 - (5) doxycycline; and
 - (6) tetracycline;

(ii) the following antiglaucoma agents used for the management of acute increases in intraocular pressure; provided, however, an optometrist may use or prescribe a maximum of one twenty-four hour prescription and shall immediately refer the patient to a licensed physician specializing in diseases of the eye:

- (1) acetazolamide; and
- (2) methazolamide; and

(iii) the following antiviral agents used for herpes zoster ophthalmicus; provided an optometrist shall use or prescribe in maximum, one seven-day prescription; provided, however, if a patient is diagnosed with herpes zoster ophthalmicus and has not already been examined by a primary care physician or other appropriate physician for such viral condition, an optometrist shall refer the patient to a licensed primary care physician, licensed physician specializing in diseases of the eye, or other appropriate physician within three days of such diagnosis:

- (1) valacyclovir; and
- (2) acyclovir.

§ 4. The subdivision heading and paragraph (a) of subdivision 4 of section 7101-a of the education law, as added by chapter 517 of the laws of 1995, are amended to read as follows:

~~[Phase one]~~ Topical therapeutic pharmaceutical agents. (a) Before using or prescribing [~~phase one~~] topical therapeutic pharmaceutical

1 agents, each optometrist shall have completed at least three hundred
2 hours of clinical training in the diagnosis, treatment and management of
3 patients with ocular disease other than glaucoma and ocular hyperten-
4 sion, not fewer than twenty-five hours of such training shall have been
5 completed subsequent to June thirtieth, nineteen hundred ninety-three
6 and additionally shall either have taken and successfully passed the
7 treatment and management of ocular diseases portion of the National
8 Board of Examiners in Optometry test or have taken and successfully
9 passed an examination acceptable to the board.

10 § 5. Paragraph (b) of subdivision 4 of section 7101-a of the education
11 law, as added by chapter 517 of the laws of 1995, is amended to read as
12 follows:

13 (b) Before using or prescribing [~~phase two~~] therapeutic pharmaceutical
14 agents for treatment of glaucoma and ocular hypertension, an optometrist
15 must be certified for diagnostic and [~~phase one~~] topical therapeutic
16 agents and have completed an additional one hundred hours of clinical
17 training in the diagnosis, treatment and management of patients with
18 glaucoma and ocular hypertension, not fewer than twenty-five hours of
19 such training shall have been completed subsequent to July first, nine-
20 teen hundred ninety-four, and shall have taken and successfully passed
21 an oral or written examination acceptable by the board.

22 § 6. Paragraphs (c) and (d) of subdivision 4 of section 7101-a of the
23 education law are relettered paragraphs (d) and (e) and a new paragraph
24 (c) is added to read as follows:

25 (c) Before using or prescribing oral therapeutic pharmaceutical
26 agents, an optometrist must be certified to prescribe diagnostic pharma-
27 ceutical agents and topical therapeutic and therapeutic pharmaceutical
28 agents for treatment of glaucoma and ocular hypertension, have completed
29 an oral therapeutic pharmaceutical agent certification course and have
30 passed an examination within five years of the department's approval of
31 the initial certification course or the initial examination, whichever
32 is later provided, however, an optometrist who has commenced the oral
33 therapeutic pharmaceutical agent certification course within the five
34 year time period but has not yet passed an examination shall be allowed
35 to take such examination and become certified after the five year time
36 period provided for in this paragraph has ended.

37 (i) The curriculum for the oral therapeutic pharmaceutical agent
38 certification course shall include, but not be limited to, instruction
39 in pharmacology and drug interaction in treating ocular disease and be
40 taught through clinical case scenarios and emphasize clinical decision
41 making and shall be no less than forty hours, of which no less than
42 twenty-four hours shall be live instruction.

43 (ii) Such course shall qualify towards meeting the continuing educa-
44 tion per triennial registration requirement pursuant to subdivision
45 seven of this section.

46 (iii) The examination shall assess the knowledge of materials in the
47 curriculum and reflect the oral therapeutic pharmaceutical agents
48 described in paragraph (g) of subdivision one of this section, and shall
49 be acceptable to the department.

50 (iv) The initial, and any subsequent, curriculum and examination shall
51 be subject to review and approval by the department.

52 (v) The requirement for the oral therapeutic pharmaceutical agent
53 certification course and examination shall not apply to those optome-
54 trists who graduated from an accredited college of optometry subsequent
55 to January first, two thousand seven and have taken and successfully

1 passed the National Board of Examiners in Optometry examination or an
2 examination acceptable to the department.

3 § 7. Subdivision 5 of section 7101-a of the education law, as added by
4 chapter 517 of the laws of 1995, is amended to read as follows:

5 5. Suspension of certification. The department shall suspend the
6 certification for the use and prescribing of ~~[phase one]~~ topical thera-
7 peutic agents of any optometrist who fails to receive certification for
8 ~~[phase two]~~ therapeutic pharmaceutical agents for treatment of glaucoma
9 and ocular hypertension within three years of having been certified for
10 ~~[phase one]~~ topical therapeutic pharmaceutical agents.

11 § 8. The subdivision heading of subdivision 6 of section 7101-a of the
12 education law, as added by chapter 517 of the laws of 1995, is amended
13 to read as follows:

14 Consultation with use of certain topical therapeutic pharmaceutical
15 agents for treatment of glaucoma and ocular hypertension.

16 § 9. Subdivision 7 of section 7101-a of the education law, as added by
17 chapter 517 of the laws of 1995, is amended to read as follows:

18 7. Continuing education. (a) Each optometrist certified to use ~~[phase~~
19 ~~one or phase two]~~ topical therapeutic pharmaceutical agents and thera-
20 peutic pharmaceutical agents for treatment of glaucoma and ocular hyper-
21 tension, shall complete a minimum of thirty-six hours of continuing
22 education in the area of ocular disease and pharmacology per triennial
23 registration period. ~~[The education shall be in the area of ocular~~
24 ~~disease and pharmacology and may include both didactic and clinical~~
25 ~~components.]~~ Each optometrist certified to use oral therapeutic pharma-
26 ceutical agents shall, in addition to the minimum thirty-six hours of
27 continuing education provided for in this subdivision, complete an addi-
28 tional minimum of eighteen hours of continuing education related to
29 systemic disease and therapeutic treatment per triennial registration
30 period. Such educational programs may include both didactic and clinical
31 components and shall be approved in advance by the department ~~[and~~
32 ~~evidence of the completion of this requirement shall be submitted with~~
33 ~~each application for license renewal as required by section sixty-five~~
34 ~~hundred two of this chapter]~~. Beginning on January first, two thousand
35 twenty-two, all sponsors of continuing education courses seeking
36 advanced approval from the department shall file an application and pay
37 a fee determined by the department in accordance with the regulations of
38 the commissioner. An optometrist subject to the provisions of this
39 subdivision whose first registration date following the effective date
40 of this section occurs less than three years from such effective date,
41 but on or after January first, two thousand twenty-two, shall complete
42 continuing education hours on a prorated basis at the rate of one hour
43 per month for the period beginning January first, two thousand twenty-
44 two up to the first registration date thereafter. An optometrist who has
45 not satisfied the mandatory continuing education requirement pursuant to
46 this subdivision shall not be issued a triennial registration certif-
47 icate by the department and shall not practice unless and until a condi-
48 tional registration is issued as provided for in paragraph (b) of this
49 subdivision. Continuing education hours taken during one triennium may
50 not be transferred to the subsequent triennium.

51 (b) The department, in its discretion, may issue a conditional regis-
52 tration to an optometrist who fails to meet the continuing education
53 requirements established in paragraph (a) of this subdivision, but who
54 agrees to make up any deficiencies and complete any additional education
55 which the department may require. The fee for such a conditional regis-
56 tration shall be the same as, and in addition to, the fee for the trien-

1 nial registration. The duration of such conditional registration shall
2 be determined by the department, but shall not exceed one year. Any
3 optometrist who is notified of the denial of registration for failure to
4 submit evidence, satisfactory to the department, of required continuing
5 education and who practices without such registration may be subject to
6 disciplinary proceedings pursuant to section sixty-five hundred ten of
7 this title.

8 (c) In accordance with the intent of this section, adjustment to the
9 mandatory continuing education requirement may be granted by the depart-
10 ment for reasons of health that are certified by an appropriate health
11 care professional, for extended active duty with the armed forces of the
12 United States, or for other good cause acceptable to the department
13 which may prevent compliance.

14 (d) An optometrist not engaged in practice, as determined by the
15 department, shall be exempt from the mandatory continuing education
16 requirement upon the filing of a statement with the department declaring
17 such status. Any licensee who returns to the practice of optometry
18 during the triennial registration period shall notify the department
19 prior to reentering the profession and shall meet such continuing educa-
20 tion requirements as shall be prescribed by regulations of the commis-
21 sioner.

22 (e) Optometrists subject to the provisions of this subdivision shall
23 maintain adequate documentation of completion of acceptable continuing
24 education credits and shall provide such documentation at the request of
25 the department. Failure to provide such documentation upon the request
26 of the department shall be an act of misconduct subject to disciplinary
27 proceedings pursuant to section sixty-five hundred ten of this title.

28 (f) The mandatory continuing education fee shall be determined by the
29 department. Such fee shall be payable on or before the first day of
30 each triennial registration period, and shall be paid in addition to the
31 triennial registration fee required by subdivision eight of section
32 seventy-one hundred four of this article.

33 § 10. The subdivision heading and subparagraph (i) of paragraph (a) of
34 subdivision 8 of section 7101-a of the education law, as added by chap-
35 ter 517 of the laws of 1995, are amended to read as follows:

36 Notice to patient with the use or prescription of topical therapeutic
37 pharmaceutical agents and therapeutic pharmaceutical agents for treat-
38 ment of glaucoma and ocular hypertension.

39 (i) An optometrist prescribing topical steroids or antiviral medica-
40 tion shall inform each patient that in the event the condition does not
41 improve within five days, a physician of the patient's choice will be
42 notified.

43 § 11. Subdivision 10 of section 7101-a of the education law, as added
44 by chapter 517 of the laws of 1995, is amended to read as follows:

45 10. Pharmaceutical agents. Optometrists who have been approved and
46 certified by the department shall be permitted to use the following
47 drugs:

48 (a) Diagnostic pharmaceuticals.

49 (b) Those optometrists having been certified for [~~phase one~~] topical
50 therapeutic pharmaceutical agents shall be authorized [~~(i) to use and~~
51 ~~recommend all nonprescription medications appropriate for ocular disease~~
52 ~~whether intended for topical or oral use; and (ii)] to use and prescribe~~
53 all [~~phase one~~] topical therapeutic pharmaceutical agents specified in
54 paragraph (e) of subdivision one of this section, which are FDA approved
55 and commercially available for topical use.

1 In the event an optometrist treats a patient with topical antiviral or
2 steroidal drugs and the patient's condition either fails to improve or
3 worsens within five days, the optometrist shall notify a physician
4 designated by the patient or, if none, by the treating optometrist.

5 (c) Those optometrists having been certified for [~~phase-two~~] therapeutic
6 pharmaceutical agents for treatment of glaucoma and ocular hyperten-
7 sion shall be authorized to use and prescribe [~~phase-two~~] therapeutic
8 pharmaceutical agents for treatment of glaucoma and ocular hypertension
9 specified in paragraph (f) of subdivision one of this section, which are
10 FDA approved and commercially available.

11 (d) Those optometrists having been certified for oral therapeutic
12 pharmaceutical agents shall be authorized to use and prescribe oral
13 therapeutic pharmaceutical agents specified in paragraph (g) of subdivi-
14 sion one of this section, which are FDA approved and commercially avail-
15 able and shall comply with all safety information and side-effect and
16 warning advisories contained in the most current physicians' desk refer-
17 ence.

18 (e) Those optometrists having been certified for topical therapeutic
19 pharmaceutical agents, therapeutic pharmaceutical agents for treatment
20 of glaucoma and ocular hypertension or oral therapeutic pharmaceutical
21 agents shall be authorized to use and recommend all nonprescription
22 medications, whether intended for topical or oral use, appropriate for
23 the treatment of the eye and adnexa.

24 § 12. Subdivision 8 of section 7104 of the education law, as amended
25 by chapter 517 of the laws of 1995, is amended to read as follows:

26 (8) Fees: pay a fee of two hundred twenty dollars to the department
27 for admission to a department conducted examination and for an initial
28 license, a fee of one hundred fifteen dollars for each reexamination, a
29 fee of one hundred thirty-five dollars for an initial license for
30 persons not requiring admission to a department conducted examination,
31 [~~and~~] a fee of two hundred ten dollars for each triennial registration
32 period, [~~and~~] for additional authorization for the purpose of utilizing
33 diagnostic pharmaceutical agents, a fee of sixty dollars, and for
34 certification to use or prescribe oral therapeutic pharmaceutical
35 agents, a fee of two hundred fifty dollars.

36 § 13. This act shall take effect two years after it shall have become
37 a law; provided that section nine of this act shall take effect January
38 1, 2022. Effective immediately, the addition, amendment and/or repeal
39 of any rule or regulation necessary for the implementation of this act
40 on its effective date are authorized and directed to be made and
41 completed on or before such effective date.