

7440

I N S E N A T E

May 2, 2016

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the use of oral medications by optometrists; and providing for the repeal of certain provisions upon expiration thereof

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;
- 9 (ii) decongestants/anti-allergenic;
- 10 (iii) non-steroidal anti-inflammatory agents;
- 11 (iv) steroidal anti-inflammatory agents;
- 12 (v) antiviral agents;
- 13 (vi) hyperosmotic/hypertonic agents;
- 14 (vii) cycloplegics;
- 15 (viii) artificial tears and lubricants; AND
- 16 (IX) IMMUNOSUPPRESSIVE AGENTS.

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

20 (f) [Phase two therapeutic] THERAPEUTIC pharmaceutical agents FOR
21 TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION. [Phase two] THERAPEUTIC
22 pharmaceutical agents FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION
23 shall mean those drugs which shall be limited to topical application to
24 the surface of the eye and shall be limited to:

- 25 (i) beta blockers;
- 26 (ii) alpha agonists;
- 27 (iii) direct acting cholinergic agents;

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

- 1 (IV) PROSTAGLANDIN ANALOGS; AND
2 (V) CARBONIC ANHYDRASE INHIBITORS.

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

5 (G) ORAL THERAPEUTIC PHARMACEUTICAL AGENTS. ORAL THERAPEUTIC PHARMA-
6 CEUTICAL AGENTS SHALL MEAN THOSE ORALLY ADMINISTERED DRUGS USED FOR
7 THERAPEUTIC PURPOSES SOLELY FOR THE TREATMENT OF DISEASES OF THE EYE AND
8 ADNEXA AND SHALL BE LIMITED TO:

9 (I) THE FOLLOWING ANTIBIOTICS:

- 10 (1) AUGMENTIN;
11 (2) KEFLEX;
12 (3) AZITHROMYCIN;
13 (4) BACTRIM;
14 (5) DOXYCYCLINE; AND
15 (6) TETRACYCLINE;

16 (II) THE FOLLOWING DECONGESTANTS/ANTI-ALLERGENIC/ANTI-HISTAMINES:

- 17 (1) CLARINEX;
18 (2) XYZAL; AND
19 (3) SINGULAIR;

20 (III) THE FOLLOWING ANTIGLAUCOMA AGENTS USED FOR THE MANAGEMENT OF
21 ACUTE INCREASES IN INTRAOCULAR PRESSURE; PROVIDED, HOWEVER, AN OPTOME-
22 TRIST MAY USE OR PRESCRIBE A MAXIMUM OF ONE TWENTY-FOUR HOUR
23 PRESCRIPTION AND SHALL IMMEDIATELY REFER THE PATIENT TO A LICENSED
24 PHYSICIAN SPECIALIZING IN DISEASES OF THE EYE:

- 25 (1) DIAMOX; AND
26 (2) NEPTAZANE;

27 (IV) THE FOLLOWING ANTIVIRAL AGENTS FOR HERPES ZOSTER OPHTHALMICUS;
28 PROVIDED AN OPTOMETRIST SHALL USE OR PRESCRIBE IN MAXIMUM, SEVEN-DAY
29 PRESCRIPTIONS; PROVIDED, HOWEVER, IF A PATIENT IS DIAGNOSED WITH HERPES
30 ZOSTER OPHTHALMICUS AND HAS NOT ALREADY BEEN EXAMINED BY A PRIMARY CARE
31 PHYSICIAN OR OTHER APPROPRIATE PHYSICIAN FOR SUCH VIRAL CONDITION, AN
32 OPTOMETRIST SHALL REFER THE PATIENT TO A LICENSED PRIMARY CARE PHYSI-
33 CIAN, LICENSED PHYSICIAN SPECIALIZING IN DISEASES OF THE EYE, OR OTHER
34 APPROPRIATE PHYSICIAN WITHIN THREE DAYS OF SUCH DIAGNOSIS:

- 35 (1) VALCYCLOVIR; AND
36 (2) ACYCLOVIR; AND

37 (V) THE FOLLOWING NON-STEROIDAL ANTI-INFLAMMATORY AGENTS:

- 38 (1) COX-2 INHIBITORS;
39 (2) IBUPROFEN; AND
40 (3) NAPROXEN.

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

44 [Phase one] TOPICAL therapeutic pharmaceutical agents. (a) Before
45 using or prescribing [phase one] TOPICAL therapeutic pharmaceutical
46 agents, each optometrist shall have completed at least three hundred
47 hours of clinical training in the diagnosis, treatment and management of
48 patients with ocular disease other than glaucoma and ocular hyperten-
49 sion, not fewer than twenty-five hours of such training shall have been
50 completed subsequent to June thirtieth, nineteen hundred ninety-three
51 and additionally shall either have taken and successfully passed the
52 treatment and management of ocular diseases portion of the National
53 Board of Examiners in Optometry test or have taken and successfully
54 passed an examination acceptable to the board.

1 S 5. Paragraph (b) of subdivision 4 of section 7101-a of the education
2 law, as added by chapter 517 of the laws of 1995, is amended to read as
3 follows:

4 (b) Before using or prescribing [phase two] therapeutic pharmaceutical
5 agents FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION, an optometrist
6 must be certified for diagnostic and [phase one] TOPICAL therapeutic
7 agents and have completed an additional one hundred hours of clinical
8 training in the diagnosis, treatment and management of patients with
9 glaucoma and ocular hypertension, not fewer than twenty-five hours of
10 such training shall have been completed subsequent to July first, nine-
11 teen hundred ninety-four, and shall have taken and successfully passed
12 an oral or written examination acceptable by the board.

13 S 6. Paragraphs (c) and (d) of subdivision 4 of section 7101-a of the
14 education law are relettered paragraphs (d) and (e) and a new paragraph
15 (c) is added to read as follows:

16 (C) BEFORE USING OR PRESCRIBING ORAL THERAPEUTIC PHARMACEUTICAL
17 AGENTS, AN OPTOMETRIST MUST BE CERTIFIED TO PRESCRIBE DIAGNOSTIC PHARMA-
18 CEUTICAL AGENTS AND TOPICAL THERAPEUTIC AND THERAPEUTIC PHARMACEUTICAL
19 AGENTS FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION, HAVE COMPLETED
20 AN ORAL THERAPEUTIC PHARMACEUTICAL AGENT CERTIFICATION COURSE AND HAVE
21 PASSED AN EXAMINATION, WITH A CURRICULUM AND EXAMINATION DEVELOPED BY
22 ACADEMIC FACULTY REPRESENTATIVES FROM A NEW YORK STATE ACCREDITED
23 COLLEGE OF OPTOMETRY, FROM A DEPARTMENT OF OPHTHALMOLOGY AT A NEW YORK
24 STATE ACCREDITED MEDICAL SCHOOL UPON THE RECOMMENDATION OF A STATEWIDE
25 PROFESSIONAL ORGANIZATION CONSISTING OF OPHTHALMOLOGISTS, AND FROM A
26 DEPARTMENT OF PHARMACOLOGY AT A NEW YORK STATE ACCREDITED MEDICAL
27 SCHOOL.

28 (I) THE CURRICULUM SHALL INCLUDE, BUT NOT BE LIMITED TO, INSTRUCTION
29 IN PHARMACOLOGY AND DRUG INTERACTION IN TREATING OCULAR DISEASE AND BE
30 TAUGHT THROUGH CLINICAL CASE SCENARIOS AND EMPHASIZE CLINICAL DECISION
31 MAKING AND SHALL BE NO LESS THAN FORTY HOURS, OF WHICH NO LESS THAN
32 TWENTY-FOUR HOURS SHALL BE LIVE INSTRUCTION.

33 (II) SUCH COURSE SHALL QUALIFY TOWARDS MEETING THE SEVENTY-FIVE HOURS
34 OF CONTINUING EDUCATION PER TRIENNIAL REGISTRATION PERIOD REQUIRED BY
35 SUBDIVISION SEVEN OF THIS SECTION.

36 (III) THE EXAMINATION SHALL TEST THE KNOWLEDGE OF MATERIALS IN THE
37 CURRICULUM.

38 (IV) IF AN OPTOMETRIST FAILS TO PASS THE EXAMINATION, SUCH OPTOMETRIST
39 MAY RETAKE THE EXAMINATION FOLLOWING COMPLETION OF THE CERTIFICATION
40 COURSE, AND MAY RETAKE THE EXAMINATION A MAXIMUM OF TWO ADDITIONAL
41 TIMES.

42 (V) THE INITIAL CURRICULUM AND EXAMINATION SHALL BE APPROVED BY THE
43 DEPARTMENT NO LATER THAN ONE HUNDRED EIGHTY DAYS FROM THE EFFECTIVE DATE
44 OF THIS PARAGRAPH AND SUBSEQUENT CURRICULUM AND EXAMINATIONS SHALL BE
45 APPROVED BY THE DEPARTMENT PERIODICALLY THEREAFTER.

46 (VI) THE REQUIREMENT FOR THE ORAL THERAPEUTIC PHARMACEUTICAL AGENT
47 CERTIFICATION COURSE AND EXAMINATION SHALL NOT APPLY TO THOSE OPTOME-
48 TRISTS WHO GRADUATED FROM AN ACCREDITED COLLEGE OF OPTOMETRY SUBSEQUENT
49 TO JANUARY FIRST, TWO THOUSAND SIX AND HAVE TAKEN AND SUCCESSFULLY
50 PASSED THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY TEST OR AN EXAMINA-
51 TION ACCEPTABLE TO THE BOARD.

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

54 5. Suspension of certification. The department shall suspend the
55 certification for the use and prescribing of [phase one] TOPICAL thera-
56 peutic agents of any optometrist who fails to receive certification for

1 [phase two] therapeutic pharmaceutical agents FOR TREATMENT OF GLAUCOMA
2 AND OCULAR HYPERTENSION within three years of having been certified for
3 [phase one] TOPICAL therapeutic pharmaceutical agents.

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

7 Consultation WITH USE OF CERTAIN TOPICAL THERAPEUTIC PHARMACEUTICAL
8 AGENTS FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION.

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

11 7. Continuing education. Each optometrist certified to use [phase one
12 or phase two] TOPICAL THERAPEUTIC PHARMACEUTICAL AGENTS, therapeutic
13 pharmaceutical agents FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION,
14 OR ORAL THERAPEUTIC PHARMACEUTICAL AGENTS shall complete a minimum of
15 [thirty-six] SEVENTY-FIVE hours of continuing education per triennial
16 registration period. The education shall be in the area of ocular
17 disease and pharmacology, AT LEAST THIRTY-NINE HOURS OF WHICH SHALL
18 RELATE TO SYSTEMIC DISEASE AND THERAPEUTIC TREATMENT, and may include
19 both didactic and clinical components. Such educational programs shall
20 be approved in advance by the department and evidence of the completion
21 of this requirement shall be submitted with each application for license
22 renewal as required by section sixty-five hundred two of this chapter.

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

26 Notice to patient WITH THE USE OR PRESCRIPTION OF TOPICAL THERAPEUTIC
27 PHARMACEUTICAL AGENTS AND THERAPEUTIC PHARMACEUTICAL AGENTS FOR TREAT-
28 MENT OF GLAUCOMA AND OCULAR HYPERTENSION.

29 (i) An optometrist prescribing TOPICAL steroids or antiviral medica-
30 tion shall inform each patient that in the event the condition does not
31 improve within five days, a physician of the patient's choice will be
32 notified.

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

35 10. Pharmaceutical agents. Optometrists who have been approved and
36 certified by the department shall be permitted to use the following
37 drugs:

38 (a) Diagnostic pharmaceuticals.

39 (b) Those optometrists having been certified for [phase one] TOPICAL
40 therapeutic pharmaceutical agents shall be authorized [(i) to use and
41 recommend all nonprescription medications appropriate for ocular disease
42 whether intended for topical or oral use; and (ii)] to use and prescribe
43 all [phase one] TOPICAL therapeutic pharmaceutical agents SPECIFIED IN
44 PARAGRAPH (E) OF SUBDIVISION ONE OF THIS SECTION, which are FDA approved
45 and commercially available FOR TOPICAL USE.

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

50 (c) Those optometrists having been certified for [phase two] therapeu-
51 tic pharmaceutical agents FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTEN-
52 SION shall be authorized to use and prescribe [phase two] therapeutic
53 pharmaceutical agents FOR TREATMENT OF GLAUCOMA AND OCULAR HYPERTENSION
54 SPECIFIED IN PARAGRAPH (F) OF SUBDIVISION ONE OF THIS SECTION, which are
55 FDA approved and commercially available.

1 (D) THOSE OPTOMETRISTS HAVING BEEN CERTIFIED FOR ORAL THERAPEUTIC
2 PHARMACEUTICAL AGENTS SHALL BE AUTHORIZED TO USE AND PRESCRIBE ORAL
3 THERAPEUTIC PHARMACEUTICAL AGENTS SPECIFIED IN PARAGRAPH (G) OF SUBDIVI-
4 SION ONE OF THIS SECTION, WHICH ARE FDA APPROVED AND COMMERCIALY AVAIL-
5 ABLE AND SHALL COMPLY WITH ALL SAFETY INFORMATION AND SIDE-EFFECT AND
6 WARNING ADVISORIES CONTAINED IN THE MOST CURRENT PHYSICIANS' DESK REFER-
7 ENCE.

8 (E) THOSE OPTOMETRISTS HAVING BEEN CERTIFIED FOR TOPICAL THERAPEUTIC
9 PHARMACEUTICAL AGENTS, THERAPEUTIC PHARMACEUTICAL AGENTS FOR TREATMENT
10 OF GLAUCOMA AND OCULAR HYPERTENSION OR ORAL THERAPEUTIC PHARMACEUTICAL
11 AGENTS SHALL BE AUTHORIZED TO USE AND RECOMMEND ALL NONPRESCRIPTION
12 MEDICATIONS, WHETHER INTENDED FOR TOPICAL OR ORAL USE, APPROPRIATE FOR
13 THE TREATMENT OF THE EYE AND ADNEXA.

14 S 12. Section 7101-a of the education law is amended by adding a new
15 subdivision 13 to read as follows:

16 13. ORAL THERAPEUTIC PHARMACEUTICAL AGENT IMPLEMENTATION REVIEW. (A)
17 EACH OPTOMETRIST CERTIFIED TO USE ORAL THERAPEUTIC PHARMACEUTICAL AGENTS
18 PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS SECTION SHALL
19 PROVIDE THE DEPARTMENT WITH INFORMATION, ON A FORM PRESCRIBED BY THE
20 COMMISSIONER, RELATED TO THE PRESCRIPTION OR USE OF ORAL THERAPEUTIC
21 PHARMACEUTICAL AGENTS PROVIDED FOR IN THIS SECTION. SUCH INFORMATION
22 SHALL INCLUDE THE OPTOMETRIST'S NAME, LICENSE NUMBER, WHETHER NO ORAL
23 PRESCRIPTIONS HAVE BEEN ISSUED AND IN THE EVENT THAT ORAL PRESCRIPTIONS
24 HAVE BEEN ISSUED, THEN THE FOLLOWING INFORMATION SHALL BE REQUIRED: THE
25 PRESCRIBED OR USED ORAL THERAPEUTIC PHARMACEUTICAL AGENT, THE DOSAGE OF
26 SUCH AGENT, THE DATE OF THE PRESCRIPTION, THE DIAGNOSIS OF THE PATIENT
27 FOR WHICH THE AGENT WAS PRESCRIBED OR USED, AND WHETHER A REFERRAL WAS
28 MADE IN ACCORDANCE WITH PARAGRAPH (G) OF SUBDIVISION ONE OF THIS
29 SECTION. SUCH INFORMATION SHALL NOT INCLUDE ANY PATIENT IDENTIFYING
30 INFORMATION AND MUST OTHERWISE BE IN COMPLIANCE WITH ALL STATE AND
31 FEDERAL REQUIREMENTS RELATED TO PROTECTED HEALTH INFORMATION. EACH FORM
32 SHALL BE SUBMITTED BY MAIL OR ELECTRONIC MEANS TO THE DEPARTMENT ON A
33 QUARTERLY BASIS. IF A DATABASE OF ALL ORAL THERAPEUTIC PHARMACEUTICAL
34 AGENTS PRESCRIBED OR USED BY OPTOMETRISTS IS, OR BECOMES, AVAILABLE TO
35 THE COMMITTEE PROVIDED FOR IN THIS SUBDIVISION, THEN OPTOMETRISTS WILL
36 BE ADVISED BY THE COMMISSIONER THAT QUARTERLY REPORTING FORMS WILL NO
37 LONGER BE REQUIRED. THE REQUIREMENTS OF THIS PARAGRAPH SHALL REMAIN IN
38 EFFECT FOR FIVE YEARS FOLLOWING APPROVAL BY THE DEPARTMENT OF THE
39 INITIAL ORAL THERAPEUTIC PHARMACEUTICAL AGENT CERTIFICATION COURSE AND
40 EXAMINATION PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS
41 SECTION, AFTER WHICH TIME THESE REQUIREMENTS SHALL EXPIRE AND NO LONGER
42 HAVE EFFECT.

43 (B) THE COMMISSIONER SHALL APPOINT A COMMITTEE TO ADVISE AND ASSIST
44 THE COMMISSIONER IN EVALUATING COMPLIANCE WITH THE PROVISIONS OF THIS
45 SECTION. THE COMMITTEE SHALL CONSIST OF THE SECRETARY OF THE BOARD OF
46 PHARMACY, ONE OPTOMETRIST UPON THE RECOMMENDATION OF A STATEWIDE PROFES-
47 SIONAL ORGANIZATION CONSISTING OF OPTOMETRISTS, ONE OPHTHALMOLOGIST UPON
48 THE RECOMMENDATION OF A STATEWIDE PROFESSIONAL ORGANIZATION CONSISTING
49 OF OPHTHALMOLOGISTS, AND ONE EXPERT IN THE FIELD OF PUBLIC HEALTH WHO
50 SHALL BE DESIGNATED AS CHAIR BY THE COMMISSIONER IN CONSULTATION WITH
51 THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WHO SHALL BE NEITHER AN
52 OPHTHALMOLOGIST NOR AN OPTOMETRIST.

53 (C) THE COMMISSIONER SHALL SUBMIT EACH FORM RECEIVED PURSUANT TO THIS
54 SUBDIVISION TO THE COMMITTEE. THE COMMITTEE SHALL REVIEW THE FORMS AND
55 SHALL RANDOMLY CROSS-CHECK SUCH SUBMISSIONS WITH A PUBLICLY AVAILABLE OR
56 OTHER DATABASE CONTAINING ELECTRONIC PRESCRIBER INFORMATION. SHOULD A

1 DATABASE OF ALL ORAL THERAPEUTIC PHARMACEUTICAL AGENTS PRESCRIBED OR
2 USED BY OPTOMETRISTS BECOME AVAILABLE PURSUANT TO THIS SECTION, AND THE
3 COMMISSIONER DETERMINES AND ADVISES OPTOMETRISTS THAT QUARTERLY REPORTS
4 ARE NO LONGER NECESSARY, THEN THE COMMITTEE SHALL REVIEW THE DATABASE
5 AND ASCERTAIN THE PRESCRIBING INFORMATION FOR ALL OPTOMETRISTS CONSIST-
6 ENT WITH THIS SECTION. THE COMMITTEE SHALL ADVISE THE COMMISSIONER AS
7 TO COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND UPON FINDING
8 EVIDENCE OF NON-COMPLIANCE BY ANY OPTOMETRIST, THE COMMITTEE SHALL REFER
9 SUCH INFORMATION TO THE COMMISSIONER AND TO THE OFFICE OF PROFESSIONS
10 FOR INVESTIGATION AND, IF APPLICABLE, DISCIPLINARY ACTION.

11 S 13. This act shall take effect on the one hundred twentieth day
12 after it shall have become a law; provided that:

13 (a) subdivision 13 of section 7101-a of the education law added by
14 section twelve of this act shall expire and be deemed repealed five
15 years following the approval by the department of education of the
16 certification course and examination pursuant to paragraph (c) of subdi-
17 vision 4 of section 7101-a of the education law as added by section six
18 of this act;

19 (b) the commissioner of education shall notify the legislative bill
20 drafting commission upon approval of the certification course and exam-
21 ination required in section six of this act in order that the commission
22 may maintain an accurate and timely effective data base of the official
23 text of the laws of the state of New York in furtherance of effectuating
24 the provisions of section 44 of the legislative law and section 70-b of
25 the public officers law; and

26 (c) any rule or regulation necessary for the timely implementation of
27 this act on its effective date shall be promulgated on or before such
28 effective date.