

# STATE OF NEW YORK

6751

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## IN ASSEMBLY

March 16, 2017

Introduced by M. of A. PAULIN, COOK, CYMBROWITZ, ABINANTI, GUNTHER, FARRELL, WEPRIN, HEVESI, RYAN, TITUS, STIRPE, SKOUFIS, BUCHWALD, DiPIETRO, BRABENEC, GRAF, BLAKE, FAHY, ORTIZ, COLTON, WALTER -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, CAHILL, CROUCH, FRIEND, GALEF, GODELL, GOTTFRIED, HIKIND, KEARNS, LUPARDO, MAGEE, PALMESANO, RIVERA, SKARTADOS, STEC, WOERNER -- read once and referred 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-allergens;
- 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 § 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:

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

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

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

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

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

17 (i) the following antibiotics, including, where applicable, the gener-  
18 ic equivalent of any of the listed drugs:

- 19 (1) augmentin;
- 20 (2) keflex;
- 21 (3) azithromycin;
- 22 (4) bactrim;
- 23 (5) doxycycline; and
- 24 (6) tetracycline;

25 (ii) the following decongestants/anti-allergenic/antihistamines,  
26 including the generic equivalents of the listed drugs:

- 27 (1) clarinex;
- 28 (2) xyzal; and
- 29 (3) singulair;

30 (iii) the following antiglaucoma agents, including the generic equiv-  
31 alents of such agents, used for the management of acute increases in  
32 intraocular pressure; provided, however, an optometrist may use or  
33 prescribe a maximum of one twenty-four hour prescription and shall imme-  
34 diately refer the patient to a licensed physician specializing in  
35 diseases of the eye:

- 36 (1) diamox; and
- 37 (2) neptazane;

38 (iv) the following antiviral agents for herpes zoster ophthalmicus;  
39 provided an optometrist shall use or prescribe in maximum, seven-day  
40 prescriptions; provided, however, if a patient is diagnosed with herpes  
41 zoster ophthalmicus and has not already been examined by a primary care  
42 physician or other appropriate physician for such viral condition, an  
43 optometrist shall refer the patient to a licensed primary care physi-  
44 cian, licensed physician specializing in diseases of the eye, or other  
45 appropriate physician within three days of such diagnosis:

- 46 (1) valacyclovir; and
- 47 (2) acyclovir; and

48 (v) the following non-steroidal anti-inflammatory agents:

- 49 (1) cox-2 inhibitors;
- 50 (2) ibuprofen; and
- 51 (3) naproxen.

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

55 [~~Phase one~~] Topical therapeutic pharmaceutical agents. (a) Before  
56 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 completion of the certifi-  
31 cation course. The curriculum shall be developed by academic faculty  
32 representatives approved by the department from a New York state accred-  
33 ited college of optometry, from a department of ophthalmology at a New  
34 York state accredited medical school upon the recommendation of a state-  
35 wide professional organization consisting of ophthalmologists, and from  
36 a department of pharmacology at a New York state accredited medical  
37 school.

38 (i) The curriculum 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 test the knowledge of materials in the  
47 curriculum and reflect the provisions of paragraph (g) of subdivision  
48 one of this section, and shall be acceptable to the board. If an opto-  
49 metrist fails to pass the examination, such optometrist may retake the  
50 examination following completion of the certification course, provided  
51 that if an optometrist requires more time to pass the examination than  
52 provided for in this paragraph, such optometrist may be authorized to  
53 retake the examination beyond the period provided for in this paragraph  
54 upon application by the optometrist and a determination of good cause  
55 shown by the commissioner.

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

3 (v) The requirement for the oral therapeutic pharmaceutical agent  
4 certification course and examination shall not apply to those optome-  
5 trists who graduated from an accredited college of optometry subsequent  
6 to January first, two thousand seven and have taken and successfully  
7 passed the National Board of Examiners in Optometry test or an examina-  
8 tion acceptable to the board.

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

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

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

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

24 7. Continuing education. Each optometrist certified to use [~~phase one~~  
25 ~~or phase two~~] topical therapeutic pharmaceutical agents and therapeutic  
26 pharmaceutical agents for treatment of glaucoma and ocular hypertension,  
27 shall complete a minimum of thirty-six hours of continuing education in  
28 the area of ocular disease and pharmacology per triennial registration  
29 period. [~~The education shall be in the area of ocular disease and phar-~~  
30 ~~maceology and may include both didactic and clinical components.~~] Each  
31 optometrist certified to use oral therapeutic pharmaceutical agents  
32 shall, in addition to the minimum thirty-six hours of continuing educa-  
33 tion provided for in this subdivision, complete an additional minimum of  
34 thirty-nine hours of continuing education related to systemic disease  
35 and therapeutic treatment per triennial registration period. Such educa-  
36 tional programs may include both didactic and clinical components and  
37 shall be approved in advance by the department and evidence of the  
38 completion of this requirement shall be submitted with each application  
39 for license renewal as required by section sixty-five hundred two of  
40 this chapter.

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

44 Notice to patient with the use or prescription of topical therapeutic  
45 pharmaceutical agents and therapeutic pharmaceutical agents for treat-  
46 ment of glaucoma and ocular hypertension.

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

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

53 10. Pharmaceutical agents. Optometrists who have been approved and  
54 certified by the department shall be permitted to use the following  
55 drugs:

56 (a) Diagnostic pharmaceuticals.

1 (b) Those optometrists having been certified for [~~phase one~~] topical  
2 therapeutic pharmaceutical agents shall be authorized [~~(i) to use and~~  
3 ~~recommend all nonprescription medications appropriate for ocular disease~~  
4 ~~whether intended for topical or oral use, and (ii)] to use and prescribe~~  
5 all [~~phase one~~] topical therapeutic pharmaceutical agents specified in  
6 paragraph (e) of subdivision one of this section, which are FDA approved  
7 and commercially available for topical use.

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

12 (c) Those optometrists having been certified for [~~phase two~~] therapeu-  
13 tic pharmaceutical agents for treatment of glaucoma and ocular hyperten-  
14 sion shall be authorized to use and prescribe [~~phase two~~] therapeutic  
15 pharmaceutical agents for treatment of glaucoma and ocular hypertension  
16 specified in paragraph (f) of subdivision one of this section, which are  
17 FDA approved and commercially available.

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

25 (e) Those optometrists having been certified for topical therapeutic  
26 pharmaceutical agents, therapeutic pharmaceutical agents for treatment  
27 of glaucoma and ocular hypertension or oral therapeutic pharmaceutical  
28 agents shall be authorized to use and recommend all nonprescription  
29 medications, whether intended for topical or oral use, appropriate for  
30 the treatment of the eye and adnexa.

31 § 12. Section 7101-a of the education law is amended by adding a new  
32 subdivision 13 to read as follows:

33 13. Oral therapeutic pharmaceutical agent implementation review. (a)  
34 Each optometrist certified to use oral therapeutic pharmaceutical agents  
35 pursuant to paragraph (c) of subdivision four of this section shall  
36 provide the department with information, on a form prescribed by the  
37 commissioner, related to the prescription or use of oral therapeutic  
38 pharmaceutical agents provided for in this section. Such information  
39 shall include the optometrist's license number and the national provider  
40 identifier as established by the centers for medicare and medicaid  
41 services, whether no oral prescriptions have been issued and in the  
42 event that oral prescriptions have been issued, then the following  
43 information shall be required: the prescribed or used oral therapeutic  
44 pharmaceutical agent, the dosage of such agent, the date of the  
45 prescription, the diagnosis of the patient for which the agent was  
46 prescribed or used, and whether a referral was made in accordance with  
47 paragraph (g) of subdivision one of this section. Such information  
48 shall not include any patient identifying information and must otherwise  
49 be in compliance with all state and federal requirements related to  
50 protected health information. Each form shall be submitted by mail or  
51 electronic means to the department on a quarterly basis. If a database  
52 of all oral therapeutic pharmaceutical agents prescribed or used by  
53 optometrists is, or becomes, available to the committee provided for in  
54 this subdivision, then optometrists will be advised by the commissioner  
55 that quarterly reporting forms will no longer be required. The require-  
56 ments of this paragraph shall remain in effect for five years following



1 approval by the department of the initial oral therapeutic pharmaceu-  
2 tical agent certification course and examination pursuant to paragraph  
3 (c) of subdivision four of this section, after which time these require-  
4 ments shall expire and no longer have effect.

5 (b) The commissioner shall appoint a committee to advise and assist  
6 the commissioner in evaluating compliance with the provisions of this  
7 section and to identify any necessary enhancements to the curriculum  
8 provided for in this section and other educational materials and to  
9 assist in ensuring patient safety. The committee shall consist of one  
10 pharmacist, one optometrist upon the recommendation of a statewide  
11 professional organization consisting of optometrists, one ophthalmolo-  
12 gist upon the recommendation of a statewide professional organization  
13 consisting of ophthalmologists, and one expert in the field of public  
14 health who shall be designated as chair by the commissioner in consulta-  
15 tion with the commissioner of the department of health and who shall be  
16 neither an ophthalmologist nor an optometrist.

17 (c) The commissioner shall submit each form received pursuant to this  
18 subdivision to the committee, except as otherwise provided in this para-  
19 graph. The committee shall review the forms and shall randomly cross-  
20 check such submissions with a publicly available or other database  
21 containing electronic prescriber information. Should a database of all  
22 oral therapeutic pharmaceutical agents prescribed or used by optome-  
23 trists become available pursuant to this section, and the commissioner  
24 determines and advises optometrists that quarterly reports are no longer  
25 necessary, then the committee shall review the database and ascertain  
26 the prescribing information for all optometrists consistent with this  
27 section. The committee shall advise the commissioner as to compliance  
28 with the provisions of this section for the purpose of evaluating  
29 compliance with the provisions of this section including the applicable  
30 referrals and dosing limitations and to identify any necessary enhance-  
31 ments to the curriculum provided for in this section and other educa-  
32 tional materials and to assist in ensuring patient safety. Upon finding  
33 evidence of non-compliance by any optometrist, the committee shall refer  
34 such information to the commissioner and to the office of professions  
35 for investigation and, if applicable, disciplinary action. Nothing in  
36 this paragraph is intended to modify or otherwise limit the department's  
37 authority to review, investigate and refer matters related to the  
38 professional conduct of a licensed provider.

39 § 13. Subdivision 8 of section 7104 of the education law, as amended  
40 by chapter 517 of the laws of 1995, is amended to read as follows:

41 (8) Fees: pay a fee of two hundred twenty dollars to the department  
42 for admission to a department conducted examination and for an initial  
43 license, a fee of one hundred fifteen dollars for each reexamination, a  
44 fee of one hundred thirty-five dollars for an initial license for  
45 persons not requiring admission to a department conducted examination,  
46 [~~and~~] a fee of two hundred ten dollars for each triennial registration  
47 period, [~~and~~] for additional authorization for the purpose of utilizing  
48 diagnostic pharmaceutical agents, a fee of sixty dollars, and for  
49 certification to use or prescribe oral therapeutic pharmaceutical  
50 agents, a fee of one hundred dollars.

51 § 14. This act shall take effect one year after it shall have become a  
52 law; provided that:

53 (a) subdivision 13 of section 7101-a of the education law as added by  
54 section twelve of this act shall expire and be deemed repealed five  
55 years following the approval by the department of education of the  
56 initial certification course and examination pursuant to paragraph (c)

1 of subdivision 4 of section 7101-a of the education law as added by  
2 section six of this act;  
3 (b) the commissioner of education shall notify the legislative bill  
4 drafting commission upon approval of the initial certification course  
5 and examination required in section six of this act in order that the  
6 commission may maintain an accurate and timely effective data base of  
7 the official text of the laws of the state of New York in furtherance of  
8 effectuating the provisions of section 44 of the legislative law and  
9 section 70-b of the public officers law; and  
10 (c) any rule or regulation necessary for the timely implementation of  
11 this act on its effective date shall be promulgated on or before such  
12 effective date.