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IN ASSEMBLY

March 16, 2017

Introduced by M. of A. PAULIN, COOK, CYMBROWITZ, ABINANTI, GUNTHER, WEPRIN, HEVESI, RYAN, TITUS, STIRPE, SKOUFIS, BUCHWALD, DiPIETRO, BRABENEC, BLAKE, FAHY, ORTIZ, COLTON, WALTER, NORRIS, McDONALD, BARRETT, PHEFFER AMATO, DINOWITZ, OAKS, LALOR, ZEBROWSKI, STECK, JENNE, HUNTER, BRONSON, SOLAGES, PEOPLES-STOKES, DE LA ROSA, B. MILLER, RAIA, GARBARINO, MORINELLO, FITZPATRICK, DICKENS, MAGNARELLI, PICHARDO, SANTABARBARA, GIGLIO, PELLEGRINO, D. ROSENTHAL, KIM, RODRIGUEZ, ABBATE, JONES -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, BUTLER, CAHILL, CROUCH, CUSICK, ERRIGO, FRIEND, GALEF, GOODELL, GOTTFRIED, HAWLEY, HIKIND, LENTOL, LUPARDO, MAGEE, PALMESANO, RIVERA, SKARTADOS, STEC, THIELE, WALSH, WOERNER, WRIGHT -- read once and referred to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, 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; 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-allergenics;

10 (iii) non-steroidal anti-inflammatory agents;

11 (iv) steroidal anti-inflammatory agents;

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

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- (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, including, where applicable, the generic equivalent of any of the listed drugs:

- (1) augmentin;
- (2) keflex;
- (3) azithromycin;
- (4) bactrim;
- (5) doxycycline; and
- (6) tetracycline;

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

- (1) clarinex;
- (2) xyzal; and
- (3) singulair;

(iii) the following antiglaucoma agents, including the generic equivalents of such 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) diamox; and
- (2) neptazane;

(iv) the following antiviral agents, including the generic equivalents of such agents, used for herpes zoster ophthalmicus; provided an optometrist shall use or prescribe in maximum, seven-day prescriptions; 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; and

(v) the following non-steroidal anti-inflammatory agents:
(1) cox-2 inhibitors;
(2) ibuprofen; and
(3) naproxen.

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

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

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

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

(c) Before using or prescribing oral therapeutic pharmaceutical agents, an optometrist must be certified to prescribe diagnostic pharmaceutical agents and topical therapeutic and therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension, have completed an oral therapeutic pharmaceutical agent certification course and have passed an examination within five years of the department's approval of the initial certification course or the initial examination, whichever is later.

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

(ii) Such course shall qualify towards meeting the continuing education per triennial registration requirement pursuant to subdivision seven of this section.

(iii) The examination shall test the knowledge of materials in the curriculum and reflect the provisions of paragraph (g) of subdivision one of this section, and shall be acceptable to the department. If an optometrist fails to pass the examination, such optometrist may retake the examination; provided, however, that if an optometrist fails to pass the examination after three attempts, such optometrist must again complete the certification course in order to retake the examination. An

1 optometrist shall be required to complete the certification course after
2 each subsequent failure to pass the examination three times. If an opto-
3 metrist requires more time to pass the examination and to become certi-
4 fied than the five-year period provided for in this paragraph, such
5 optometrist may be authorized to retake the examination and to become
6 certified beyond such period upon application by the optometrist and a
7 showing of good cause as may be acceptable to the commissioner.

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

10 (v) The requirement for the oral therapeutic pharmaceutical agent
11 certification course and examination shall not apply to those optome-
12 trists who graduated from an accredited college of optometry subsequent
13 to January first, two thousand seven and have taken and successfully
14 passed the National Board of Examiners in Optometry test or an examina-
15 tion acceptable to the department.

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

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

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

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

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

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

51 Notice to patient with the use or prescription of topical therapeutic
52 pharmaceutical agents and therapeutic pharmaceutical agents for treat-
53 ment of glaucoma and ocular hypertension.

54 (i) An optometrist prescribing topical steroids or antiviral medica-
55 tion shall inform each patient that in the event the condition does not

1 improve within five days, a physician of the patient's choice will be
2 notified.

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

5 10. Pharmaceutical agents. Optometrists who have been approved and
6 certified by the department shall be permitted to use the following
7 drugs:

8 (a) Diagnostic pharmaceuticals.

9 (b) Those optometrists having been certified for [~~phase one~~] topical
10 therapeutic pharmaceutical agents shall be authorized [~~(i) to use and~~
11 ~~recommend all nonprescription medications appropriate for ocular disease~~
12 ~~whether intended for topical or oral use; and (ii)]~~ to use and prescribe
13 all [~~phase one~~] topical therapeutic pharmaceutical agents specified in
14 paragraph (e) of subdivision one of this section, which are FDA approved
15 and commercially available for topical use.

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

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

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

33 (e) Those optometrists having been certified for topical therapeutic
34 pharmaceutical agents, therapeutic pharmaceutical agents for treatment
35 of glaucoma and ocular hypertension or oral therapeutic pharmaceutical
36 agents shall be authorized to use and recommend all nonprescription
37 medications, whether intended for topical or oral use, appropriate for
38 the treatment of the eye and adnexa.

39 § 12. 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 two hundred fifty dollars.

51 § 13. Oral therapeutic pharmaceutical agent implementation review. 1.
52 For purposes of this section, the term "commissioner" shall mean the
53 commissioner of the state education department; and the term "depart-
54 ment" shall mean the state education department.

55 2. Each optometrist certified to use oral therapeutic pharmaceutical
56 agents pursuant to paragraph (c) of subdivision four of section 7101-a

1 of the education law shall provide the department with information, on a
2 form prescribed by the commissioner, related to the prescription or use
3 of oral therapeutic pharmaceutical agents provided for in section 7101-a
4 of the education law. Such information shall include the optometrist's
5 license number and the national provider identifier as established by
6 the centers for medicare and medicaid services, whether no oral
7 prescriptions have been issued and in the event that oral prescriptions
8 have been issued, then the following information shall be required: the
9 prescribed or used oral therapeutic pharmaceutical agent, the dosage of
10 such agent, the date of the prescription, the diagnosis of the patient
11 for which the agent was prescribed or used, and whether a referral was
12 made in accordance with paragraph (g) of subdivision one of section
13 7101-a of the education law. Such information shall not include any
14 patient identifying information and must otherwise be in compliance with
15 all state and federal requirements related to protected health informa-
16 tion. Each form shall be submitted by mail or electronic means to the
17 department on a quarterly basis. If a database of all oral therapeutic
18 pharmaceutical agents prescribed or used by optometrists is, or becomes,
19 available to the committee provided for in this act, then optometrists
20 shall be advised by the commissioner that quarterly reporting forms will
21 no longer be required. The requirements of this section shall remain in
22 effect for five years following approval by the department of the
23 initial oral therapeutic pharmaceutical agent certification course and
24 examination pursuant to paragraph (c) of subdivision four of section
25 7101-a of the education law, after which time these requirements shall
26 expire and no longer have effect.

27 3. The commissioner shall appoint a committee to advise and assist the
28 commissioner in evaluating compliance with the provisions of section
29 7101-a of the education law and to identify any necessary enhancements
30 to the curriculum provided for in such section and other educational
31 materials and to assist in ensuring patient safety. The committee shall
32 consist of one pharmacist, one optometrist upon the recommendation of a
33 statewide professional organization consisting of optometrists, one
34 ophthalmologist upon the recommendation of a statewide professional
35 organization consisting of ophthalmologists, and one expert in the field
36 of public health who shall be designated as chair by the commissioner in
37 consultation with the commissioner of the department of health and who
38 shall be neither an ophthalmologist nor an optometrist.

39 4. The commissioner shall submit each form received pursuant to this
40 section to the committee, except as otherwise provided in this subdivi-
41 sion. The committee shall review the forms and shall randomly cross-
42 check such submissions with a publicly available or other database
43 containing electronic prescriber information. Should a database of all
44 oral therapeutic pharmaceutical agents prescribed or used by optome-
45 trists pursuant to section 7101-a of the education law become available,
46 and the commissioner determines and advises optometrists that quarterly
47 reports are no longer necessary, then the committee shall review the
48 database and ascertain the prescribing information for all optometrists
49 consistent with section 7101-a of the education law. The committee
50 shall advise the commissioner as to compliance with the provisions of
51 section 7101-a of the education law for the purpose of evaluating
52 compliance with the provisions of section 7101-a of the education law
53 including the applicable referrals and dosing limitations and to identi-
54 fy any necessary enhancements to the curriculum provided for in para-
55 graph (c) of subdivision 4 of section 7101-a of the education law and
56 other educational materials and to assist in ensuring patient safety.

1 Upon finding evidence of non-compliance by any optometrist, the commit-
2 tee shall refer such information to the commissioner and to the office
3 of professions within the department for investigation and, if applica-
4 ble, disciplinary action. Nothing in this subdivision is intended to
5 modify or otherwise limit the department's authority or discretion to
6 review, investigate and refer matters related to the professional
7 conduct of a licensed provider.

8 § 14. This act shall take effect eighteen months after it shall have
9 become a law; provided that:

10 (a) section thirteen of this act shall expire and be deemed repealed
11 five years following the approval by the department of education of the
12 initial certification course or the initial examination, whichever is
13 later, pursuant to paragraph (c) of subdivision 4 of section 7101-a of
14 the education law as added by section six of this act;

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

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