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Introduced by M. of A. PAULIN, COOK, CYMBROWITZ, ABINANTI, GUNTHER, WEPRIN, HEVESI, STIRPE, DiPIETRO, BRABENEC, FAHY, COLTON, NORRIS, BARRETT, PHEFFER AMATO, DINOWITZ, LALOR, ZEBROWSKI, STECK, HUNTER, BRONSON, SOLAGES, PEOPLES-STOKES, DE LA ROSA, B. MILLER, MORINELLO, FITZPATRICK, DICKENS, MAGNARELLI, PICHARDO, SANTABARBARA, J. M. GIGLIO, D. ROSENTHAL, KIM, RODRIGUEZ, ABBATE, JONES, VANEL, McDONOUGH, AUBRY, L. ROSENTHAL, ENGLEBRIGHT, LAVINE, JOYNER, SEAWRIGHT, M. MILLER, FERNANDEZ, FALL, REILLY, REYES, SALKA, WALLACE, JACOBSON, JEAN-PIERRE, MANKTELOW, TAYLOR, BENEDETTO, STERN, GRIFFIN, BUTTENSCHON, EICHENSTEIN, LUPARDO, WOERNER -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, CAHILL, CARROLL, CUSICK, DAVILA, EPSTEIN, FRIEND, GALEF, GOODELL, GOTTFRIED, HAWLEY, PALMESANO, PERRY, QUART, J. RIVERA, TAGUE, THIELE, WALSH -- 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

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

Section 1. Paragraph (e) 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:

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

- (i) antibiotic/antimicrobials;
- (ii) decongestants/anti-allergenics;
- (iii) non-steroidal anti-inflammatory agents;
- (iv) steroidal anti-inflammatory agents;
- (v) antiviral agents;
- (vi) hyperosmotic/hypertonic agents;

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

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- (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) cephalixin;
- (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 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

1 and additionally shall either have taken and successfully passed the
2 treatment and management of ocular diseases portion of the National
3 Board of Examiners in Optometry test or have taken and successfully
4 passed an examination acceptable to the board.

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

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

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

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

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

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

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

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

47 (v) The requirement for the oral therapeutic pharmaceutical agent
48 certification course and examination shall not apply to those optome-
49 trists who graduated from an accredited college of optometry subsequent
50 to January first, two thousand twenty-two and have taken and successful-
51 ly passed the National Board of Examiners in Optometry examination or an
52 examination acceptable to the department.

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

55 5. Suspension of certification. The department shall suspend the
56 certification for the use and prescribing of [~~phase-one~~] topical thera-

1 peutic agents of any optometrist who fails to receive certification for
2 ~~[phase two]~~ therapeutic pharmaceutical agents for treatment of glaucoma
3 and ocular hypertension within three years of having been certified for
4 ~~[phase one]~~ topical therapeutic pharmaceutical agents.

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

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

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

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

45 (b) The department, in its discretion, may issue a conditional regis-
46 tration to an optometrist who fails to meet the continuing education
47 requirements established in paragraph (a) of this subdivision, but who
48 agrees to make up any deficiencies and complete any additional education
49 which the department may require. The fee for such a conditional regis-
50 tration shall be the same as, and in addition to, the fee for the trien-
51 nial registration. The duration of such conditional registration shall
52 be determined by the department, but shall not exceed one year. Any
53 optometrist who is notified of the denial of registration for failure to
54 submit evidence, satisfactory to the department, of required continuing
55 education and who practices without such registration may be subject to

1 disciplinary proceedings pursuant to section sixty-five hundred ten of
2 this title.

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

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

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

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

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

31 Notice to patient with the use or prescription of topical therapeutic
32 pharmaceutical agents and therapeutic pharmaceutical agents for treat-
33 ment of glaucoma and ocular hypertension.

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

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

40 10. Pharmaceutical agents. Optometrists who have been approved and
41 certified by the department shall be permitted to use the following
42 drugs:

43 (a) Diagnostic pharmaceuticals.

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

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

55 (c) Those optometrists having been certified for [~~phase-two~~] therapeu-
56 tic pharmaceutical agents for treatment of glaucoma and ocular hyperten-

1 sion shall be authorized to use and prescribe [~~phase—two~~] therapeutic
2 pharmaceutical agents for treatment of glaucoma and ocular hypertension
3 specified in paragraph (f) of subdivision one of this section, which are
4 FDA approved and commercially available.

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

12 (e) Those optometrists having been certified for topical therapeutic
13 pharmaceutical agents, therapeutic pharmaceutical agents for treatment
14 of glaucoma and ocular hypertension or oral therapeutic pharmaceutical
15 agents shall be authorized to use and recommend all nonprescription
16 medications, whether intended for topical or oral use, appropriate for
17 the treatment of the eye and adnexa.

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

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

30 § 13. This act shall take effect two years after it shall have become
31 a law; provided that section nine of this act shall take effect January
32 1, 2023. Effective immediately, the addition, amendment and/or repeal
33 of any rule or regulation necessary for the implementation of this act
34 on its effective date are authorized to be made and completed on or
35 before such effective date.