

# STATE OF NEW YORK

1921

2021-2022 Regular Sessions

## IN ASSEMBLY

January 13, 2021

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:

- 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;

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

LBD02016-01-1

- 1 (vii) cycloplegics;  
2 (viii) artificial tears and lubricants; and  
3 (ix) immunosuppressive agents.

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

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

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

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

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

23 (i) the following antibiotics:

- 24 (1) amoxicillin/clavulanate potassium;  
25 (2) cephalexin;  
26 (3) azithromycin;  
27 (4) sulfamethoxazole/trimethoprim;  
28 (5) doxycycline; and  
29 (6) tetracycline;

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

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

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

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

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

50 [~~Phase one~~] Topical therapeutic pharmaceutical agents. (a) Before  
51 using or prescribing [~~phase one~~] topical therapeutic pharmaceutical  
52 agents, each optometrist shall have completed at least three hundred  
53 hours of clinical training in the diagnosis, treatment and management of  
54 patients with ocular disease other than glaucoma and ocular hyperten-  
55 sion, not fewer than twenty-five hours of such training shall have been  
56 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 ennial 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 tion 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.