§ 7101-a. Certification to use therapeutic drugs. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) Clinical training. Clinical training shall mean the diagnosis, treatment and management of patients with ocular disease and shall be comparable to that acquired by a current graduate of the State University College of Optometry.

(b) Consultation. Consultation shall mean a confirmation of the diagnosis, a plan of co-management of the patient, and a periodic review of the patient's progress.

(c) Education review committee. Education review committee shall mean the committee established pursuant to subdivision nine of this section.

(d) Diagnostic pharmaceuticals. Diagnostic pharmaceuticals shall mean those drugs which shall be limited to topical applications to the surface of the eye for the purpose of diagnostic examination of the eye and shall be limited to:

(i) Anesthetic agents;

(ii) Mydriatics;

(iii) Cycloplegics;

(iv) Miotics;

(v) Disclosing agents and other substances used in conjunction with these drugs as part of a diagnostic procedure.

(e) Topical therapeutic pharmaceutical agents. 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;

(vii) cycloplegics;

(viii) artificial tears and lubricants; and

(ix) immunosuppressive agents.

(e-1) Nasal sprays as topical therapeutic pharmaceutical agents. Topical therapeutic pharmaceutical agents shall also include those drugs

listed in subparagraph (iii) of paragraph (f) of this subdivision that are administered through a nasal spray for the treatment of dry eye disease.

(f) Therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension. 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.

(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) cephalexin;

(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.

2. Standard of care. An optometrist authorized to use pharmaceutical agents for use in the diagnosis, treatment or prevention of ocular disease shall be held to the same standard of care in diagnosis, use of such agents, and treatment as that degree of skill and proficiency commonly exercised by a physician in the same community.

3. Certificate. The commissioner shall issue appropriate certificates to use therapeutic pharmaceutical agents in accordance with the provisions of this section to those optometrists who have satisfactorily completed a curriculum in general and ocular pharmacology at a college of optometry with didactic and supervised clinical programs approved by the department are eligible to apply for the certificate issued pursuant to this section.

4. Topical therapeutic pharmaceutical agents. (a) Before using or prescribing 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.

(b) Before using or prescribing therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension, an optometrist must be certified for diagnostic and 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.

(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 provided, however, an optometrist who has commenced the oral therapeutic pharmaceutical agent certification course within the five year time period but has not yet passed an examination shall be allowed to take such examination and become certified after the five year time period provided for in this paragraph has ended.

(i) The curriculum for the oral therapeutic pharmaceutical agent certification 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 assess the knowledge of materials in the curriculum and reflect the oral therapeutic pharmaceutical agents described in paragraph (g) of subdivision one of this section, and shall be acceptable to the department.

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

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

(d) The clinical training required by this section may have been

acquired prior to the enactment of this section not inconsistent with paragraphs (a) and (b) of this subdivision. Approval of the pre-acquired clinical training shall be in accordance with subdivision nine-a of this section.

(e) The provisions of paragraphs (a) and (b) of this subdivision shall not apply to (i) graduates of an appropriate program approved by the department who have successfully passed the examination on the use of diagnostic and therapeutic drugs and who graduated subsequent to January first, nineteen hundred ninety-three; or (ii) optometrists who have been certified for at least five years to use phase one and phase two drugs in another jurisdiction, have demonstrated such use in independently managed patients, and have been licensed in accordance with section seventy-one hundred four of this chapter. Provided, however, no optometrist exempt under this paragraph shall be permitted to use phase one therapeutic pharmaceutical agents or phase two therapeutic pharmaceutical agents prior to the general authorization provided to optometrists licensed in this state.

5. Suspension of certification. The department shall suspend the certification for the use and prescribing of topical therapeutic agents of any optometrist who fails to receive certification for therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension within three years of having been certified for topical therapeutic pharmaceutical agents.

6. Consultation with use of certain topical therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension. (a) After the initial diagnosis of glaucoma or ocular hypertension and before initiating treatment of any patient, an optometrist shall engage in a written consultation with a licensed physician specializing in diseases of the eye.

(b) A consultation shall be required for a period of three years or until the optometrist has examined and diagnosed seventy-five patients having glaucoma or ocular hypertension which examinations require a written consultation in accordance with paragraph (a) of this subdivision, whichever occurs later.

(c) The consultation provisions shall not apply to a graduate of an

appropriate program approved by the department who successfully passed an examination in the use of diagnostic and therapeutic pharmaceutical agents approved by the department and graduated such school subsequent to January first, nineteen hundred ninety-nine and who has had at least seventy-five documented examinations and diagnosis of patients with glaucoma or ocular hypertension which examinations were part of their training and were under physician supervision.

7. Continuing education. (a) Each optometrist certified to use topical therapeutic pharmaceutical agents and therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension, shall complete a minimum of thirty-six hours of continuing education in the area of ocular disease and pharmacology per triennial registration period. Each optometrist certified to use oral therapeutic pharmaceutical agents shall, in addition to the minimum thirty-six hours of continuing education provided for in this subdivision, complete an additional minimum of eighteen hours of continuing education related to systemic disease and therapeutic treatment per triennial registration period. Such educational programs may include both didactic and clinical components and shall be approved in advance by the department. Beginning on January first, two thousand twenty-three, all sponsors of continuing education courses seeking advanced approval from the department shall file an application and pay a fee determined by the department in accordance with the regulations of the commissioner. An optometrist subject to the provisions of this subdivision whose first registration date following the effective date of this section occurs less than three years from such effective date, but on or after January first, two thousand twenty-three, shall complete continuing education hours on a prorated basis at the rate of one hour per month for the period beginning January first, two thousand twenty-three up to the first registration date thereafter. An optometrist who has not satisfied the mandatory continuing education requirement pursuant to this subdivision shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration is issued as provided for in paragraph (b) of this subdivision. Continuing education hours taken during one triennium may not be transferred to the subsequent triennium.

(b) The department, in its discretion, may issue a conditional registration to an optometrist who fails to meet the continuing education requirements established in paragraph (a) of this subdivision, but who agrees to make up any deficiencies and complete any additional education which the department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the department, but shall not exceed one year. Any optometrist who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of required continuing education and who practices without such registration may be subject to disciplinary proceedings pursuant to section sixty-five hundred ten of this title.

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

(d) An optometrist not engaged in practice, as determined by the department, shall be exempt from the mandatory continuing education requirement upon the filing of a statement with the department declaring such status. Any licensee who returns to the practice of optometry during the triennial registration period shall notify the department prior to reentering the profession and shall meet such continuing education requirements as shall be prescribed by regulations of the commissioner.

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

(f) The mandatory continuing education fee shall be determined by the department. Such fee shall be payable on or before the first day of each triennial registration period, and shall be paid in addition to the triennial registration fee required by subdivision eight of section

seventy-one hundred four of this article.

8. Notice to patient with the use or prescription of topical therapeutic pharmaceutical agents and therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension. (a) (i) An optometrist prescribing topical steroids or antiviral medication shall inform each patient that in the event the condition does not improve within five days, a physician of the patient's choice will be notified.

(ii) An optometrist engaged in a written consultation with an ophthalmologist shall inform a patient diagnosed with glaucoma that the optometrist will have the diagnosis confirmed and co-managed with an ophthalmologist of the patient's choice, or one selected by the optometrist.

(b) In addition, each optometrist certified to prescribe and use therapeutic drugs shall have posted conspicuously in the office reception area the following notice:

"Dr. (Name), O.D. is certified by New York State to use drugs to diagnose and treat diseases of the eye. In the event your condition requires the use of steroids or antiviral medication and your condition does not improve within five days, a physician of your choice will be notified.

In the event you are diagnosed with glaucoma, the optometrist will have your diagnosis confirmed and treatment co-managed with an ophthalmologist (MD) of your choice, or if you wish, one selected by Dr. (Name)."

The second paragraph of such notice shall only be required to be included during the period when the optometrist is engaged in a written consultation pursuant to subdivision six of this section.

9. Education review committee. An education review committee is hereby created to advise and assist the commissioner in evaluating pre-acquired clinical training. The members of the committee shall be appointed by the commissioner in consultation with the chancellor of the state university of New York. The committee shall consist of five members, two of whom shall be optometrists on the faculty of the SUNY college of

optometry, two of whom shall be ophthalmologists who, in addition to being members of the faculty of any approved medical school in this state and not also faculty members of SUNY college of optometry, have surgical privileges at a New York state hospital. The fifth member who shall be designated as chair shall be an expert in the field of public health and shall be neither an ophthalmologist nor an optometrist.

The commissioner shall submit each application to the committee for its review and recommendation. In making such recommendation, the committee shall advise as to the number of hours of pre-acquired clinical training, if any, to be approved, based upon the information submitted with the application. In evaluating such training, the committee shall be authorized to require the submission of such reasonable documentation needed to facilitate the committee's review of the adequacy and relevance of such training.

9-a. Pre-acquired clinical training. (a) Each optometrist requesting approval of pre-acquired clinical training shall submit a written application to the department. The commissioner, in consultation with the education review committee may provide credit for the following:

(i) clinical training acquired at an institution accredited by a regional or professional accreditation organization which is recognized or approved by the United States Department of Education, the department and the Board of Regents of the University of the state of New York;

(ii) clinical training acquired at a facility licensed by the state of New York in accordance with article twenty-eight of the public health law or at a comparable facility located in another state or country provided the licensing requirements or accreditation requirements of such institution are comparable to those of New York state;

(iii) hospital affiliations, including rounds and patient management for applicants having staff privileges at such facility;

(iv) consultation and co-management with ophthalmologists of patients with ocular disease and post-surgery recovery;

(v) postdoctoral accredited residency or fellowship programs;

(vi) experience at an accredited educational institution as a faculty instructor in clinical practice, ocular disease management and pharmacology;

(vii) experience in other states in which the applicant has been certified to use therapeutic pharmaceutical agents.

(b) Any optometrist disagreeing with the recommendation of the education review committee shall have a right to appeal in writing to the commissioner. The decision of the commissioner shall be final and binding on all parties.

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

(a) Diagnostic pharmaceuticals.

(b) Those optometrists having been certified for topical therapeutic pharmaceutical agents shall be authorized to use and prescribe all topical therapeutic pharmaceutical agents specified in paragraph (e) of subdivision one of this section, which are FDA approved and commercially available for topical use.

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

(c) Those optometrists having been certified for therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension shall be authorized to use and prescribe therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension specified in paragraph (f) of subdivision one of this section, which are FDA approved and commercially available.

(d) Those optometrists having been certified for oral therapeutic pharmaceutical agents shall be authorized to use and prescribe oral therapeutic pharmaceutical agents specified in paragraph (g) of subdivision one of this section, which are FDA approved and commercially available and shall comply with all safety information and side-effect and warning advisories contained in the most current physicians' desk reference.

(e) Those optometrists having been certified for topical therapeutic pharmaceutical agents, therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension or oral therapeutic pharmaceutical

agents shall be authorized to use and recommend all nonprescription medications, whether intended for topical or oral use, appropriate for the treatment of the eye and adnexa.

11. Responsibilities of the commissioner. The commissioner shall adopt regulations (a) providing for the certification of graduates of an appropriate program approved by the department who have successfully passed the examination on the use of diagnostic and therapeutic pharmaceutical agents and who have graduated subsequent to January first, nineteen hundred ninety-three; and (b) providing for the certification of optometrists who have graduated from other accredited colleges of optometry or who are licensed to practice in other jurisdictions, have demonstrated such use in independently managed patients and are seeking licensure and certification in New York.

12. Responsibilities of the commissioner of health. The commissioner of health may recommend to the commissioner additions or deletions to the department's regulations relating to optometric use of drugs except that such recommendations shall be limited only to additions which have been determined to be equivalent to those drugs already authorized or deletions based upon a finding that the drugs are no longer appropriate for their current use or for other similar reasons.