

CHAPTER 2013-26

Committee Substitute for Committee Substitute for House Bill No. 239

An act relating to the practice of optometry; amending s. 463.002, F.S.; revising and providing definitions; authorizing a certified optometrist to administer and prescribe ocular pharmaceutical agents; amending s. 463.005, F.S.; authorizing the Board of Optometry to adopt rules relating to the administration and prescription of ocular pharmaceutical agents; amending s. 463.0055, F.S.; requiring a certified optometrist to complete a board-approved course and examination on general and ocular pharmaceutical agents before administering or prescribing those agents; requiring the certified optometrist to provide proof to the department of successful completion of the course and examination; authorizing that successful completion of the course and examination be used to satisfy certain continuing education requirements; requiring the board to establish a formulary of topical ocular pharmaceutical agents that may be prescribed and administered by certified optometrists; deleting provisions with respect to a committee; establishing a statutory formulary of oral ocular pharmaceutical agents; prohibiting a certified optometrist from administering or prescribing certain controlled substances; amending s. 463.0057, F.S.; providing conditions under which the holder of an optometric faculty certificate may administer and prescribe oral ocular pharmaceutical agents; amending s. 463.006, F.S.; revising provisions relating to licensure and certification of optometrists, to conform; amending s. 463.0135, F.S.; authorizing a certified optometrist to perform certain eye examinations; requiring a transfer of care letter for the co-management of postoperative care; requiring patient consent; requiring the patient to be informed of the fees and provided an itemized statement of services; amending s. 463.014, F.S.; prohibiting a licensed practitioner of optometry from providing any drug for the purpose of treating a systemic disease; specifying procedures that a certified optometrist is authorized to perform; creating s. 463.0141, F.S.; requiring the reporting of adverse incidents in the practice of optometry to the department according to specified procedures; providing a definition; requiring the department to review the conduct of licensed practitioners with respect to adverse incidents, to which disciplinary action may apply; amending s. 483.035, F.S.; requiring a clinical laboratory operated by a licensed practitioner of optometry to be licensed under Optometry Practice Act; amending s. 483.041, F.S.; revising the definition of the term "licensed practitioner" to include certified optometrists; amending s. 483.181, F.S.; providing for an optometrist to accept a human specimen for examination, under certain conditions; amending s. 893.02, F.S.; redefining the term "practitioner" to include certified optometrists; amending s. 893.05, F.S.; prohibiting a certified optometrist from administering or prescribing certain controlled substances; amending s. 893.055, F.S.; revising the term "health care practitioner" to include certified optometrists for purposes of the prescription drug monitoring

program; amending ss. 463.009 and 641.31, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (3) and subsection (4) of section 463.002, Florida Statutes, are amended, subsection (5) is renumbered as subsection (7) and amended, present subsections (6) through (10) are renumbered as subsections (8) through (12), respectively, and new subsections (5) and (6) are added to that section, to read:

463.002 Definitions.—As used in this chapter, the term:

(3)

(b) A licensed practitioner who is not a certified optometrist shall be required to display at her or his place of practice a sign which states, “I am a Licensed Practitioner, not a Certified Optometrist, and I am not able to prescribe ~~topical~~ ocular pharmaceutical agents.”

(4) “Certified optometrist” means a licensed practitioner authorized by the board to administer and prescribe ~~topical~~ ocular pharmaceutical agents.

(5) “Ocular pharmaceutical agent” means a pharmaceutical agent that is administered topically or orally for the diagnosis or treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.

(6) “Surgery” means a procedure using an instrument, including a laser, scalpel, or needle, in which human tissue is cut, burned, scraped except as provided in s. 463.014(4), or vaporized, by incision, injection, ultrasound, laser, infusion, cryotherapy, or radiation. The term includes a procedure using an instrument which requires the closure of human tissue by suture, clamp, or other such device.

(7)(5) “Optometry” means the diagnosis of conditions of the human eye and its appendages; the employment of any objective or subjective means or methods, including the administration of ~~topical~~ ocular pharmaceutical agents, for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological, or anatomic anomalies of the human eyes and their appendages; and the prescribing and employment of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods, including ~~topical~~ ocular pharmaceutical agents, for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.

Section 2. Paragraph (g) of subsection (1) of section 463.005, Florida Statutes, is amended to read:

463.005 Authority of the board.—

(1) The Board of Optometry has authority to adopt rules pursuant to ss. 120.536 (1) and 120.54 to implement the provisions of this chapter conferring duties upon it. Such rules shall include, but not be limited to, rules relating to:

(g) Administration and prescription of ~~topical~~ ocular pharmaceutical agents.

Section 3. Section 463.0055, Florida Statutes, is amended to read:

463.0055 Administration and prescription of ~~topical~~ ocular pharmaceutical agents; ~~committee~~.—

(1)(a) Certified optometrists may administer and prescribe ~~topical~~ ocular pharmaceutical agents as provided in this section for the diagnosis and treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques. However, a licensed practitioner who is not certified may use topically applied anesthetics solely for the purpose of glaucoma examinations, but is otherwise prohibited from administering or prescribing ~~topical~~ ocular pharmaceutical agents.

(b) Before a certified optometrist may administer or prescribe oral ocular pharmaceutical agents, the certified optometrist must provide proof to the department of successful completion of a course and subsequent examination, approved by the board, on general and ocular pharmaceutical agents and the side effects of those agents. The course shall consist of 20 contact hours, all of which may be web-based. The first course and examination shall be presented by October 1, 2013, and shall be administered at least annually thereafter. The course and examination shall be developed and offered jointly by a statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician’s Recognition Award (AMA PRA) Category 1 credit and a statewide professional association of licensed practitioners which provides board-approved continuing education on an annual basis. The board shall review and approve the content of the initial course and examination if the board determines that the course and examination adequately and reliably satisfy the criteria set forth in this section. The board shall thereafter annually review and approve the course and examination if the board determines that the content continues to adequately and reliably satisfy the criteria set forth in this section. Successful completion of the board-approved course and examination may be used by a certified optometrist to satisfy 20 hours of the continuing education requirements in s. 463.007(3), only for the biennial period in which the board-approved course and examination are taken. If a certified optometrist does not complete a board-approved course and examination under this section, the certified optometrist is only authorized to administer and prescribe topical ocular pharmaceutical agents.

(2)(a) The board shall establish a formulary of topical ocular pharmaceutical agents that may be prescribed and administered by a certified

~~optometrist. There is hereby created a committee composed of two optometrists licensed pursuant to this chapter, appointed by the Board of Optometry, two board-certified ophthalmologists licensed pursuant to chapter 458 or chapter 459, appointed by the Board of Medicine, and one additional person with a doctorate degree in pharmacology who is not licensed pursuant to chapter 458, chapter 459, or this chapter, appointed by the State Surgeon General. The committee shall review requests for additions to, deletions from, or modifications of a formulary of topical ocular pharmaceutical agents for administration and prescription by certified optometrists and shall provide to the board advisory opinions and recommendations on such requests. The formulary shall consist of those topical ocular pharmaceutical agents that are appropriate to treat or diagnose ocular diseases and disorders and that which the certified optometrist is qualified to use in the practice of optometry. The board shall establish, add to, delete from, or modify the topical formulary by rule. Notwithstanding any provision of chapter 120 to the contrary, the topical formulary rule becomes ~~shall become~~ effective 60 days from the date it is filed with the Secretary of State.~~

(b) The formulary may be added to, deleted from, or modified according to the procedure described in paragraph (a). Any person who requests an addition, deletion, or modification of an authorized topical ocular pharmaceutical agent shall have the burden of proof to show cause why such addition, deletion, or modification should be made.

(c) The State Surgeon General shall have standing to challenge any rule or proposed rule of the board pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the State Surgeon General, may declare all or part of a rule or proposed rule invalid if it:

1. Does not protect the public from any significant and discernible harm or damages;
2. Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or
3. Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(d) Upon adoption of the formulary required by this section, and upon each addition, deletion, or modification to the formulary, the board shall mail a copy of the amended formulary to each certified optometrist and to each pharmacy licensed by the state.

(3) In addition to the formulary of topical ocular pharmaceutical agents established by rule of the board, there is created a statutory formulary of oral ocular pharmaceutical agents, which includes the following agents:

(a) The following analgesics or their generic or therapeutic equivalents, which may not be administered or prescribed for more than 72 hours without consultation with a physician licensed under chapter 458 or chapter 459 who is skilled in diseases of the eye:

1. Tramadol hydrochloride.
2. Acetaminophen 300 mg with No. 3 codeine phosphate 30 mg.

(b) The following antibiotics or their generic or therapeutic equivalents:

1. Amoxicillin with or without clavulanic acid.
2. Azithromycin.
3. Erythromycin.
4. Dicloxacillin.
5. Doxycycline/Tetracycline.
6. Keflex.
7. Minocycline.

(c) The following antivirals or their generic or therapeutic equivalents:

1. Acyclovir.
2. Famciclovir.
3. Valacyclovir.

(d) The following oral anti-glaucoma agents or their generic or therapeutic equivalents, which may not be administered or prescribed for more than 72 hours:

1. Acetazolamide.
2. Methazolamide.

Any oral ocular pharmaceutical agent that is listed in the statutory formulary set forth in this subsection and that is subsequently determined by the United States Food and Drug Administration to be unsafe for administration or prescription shall be considered to have been deleted from the formulary of oral ocular pharmaceutical agents. The oral ocular pharmaceutical agents on the statutory formulary set forth in this subsection may not otherwise be deleted by the board, the department, or the State Surgeon General.

~~(4)(3)~~ A certified optometrist shall be issued a prescriber number by the board. Any prescription written by a certified optometrist for an a-topical ocular pharmaceutical agent pursuant to this section shall have the prescriber number printed thereon. A certified optometrist may not administer or prescribe:

(a) A controlled substance listed in Schedule III, Schedule IV, or Schedule V of s. 893.03, except for an oral analgesic placed on the formulary pursuant to this section for the relief of pain due to ocular conditions of the eye and its appendages.

(b) A controlled substance for the treatment of chronic nonmalignant pain as defined in s. 456.44(1)(e).

Section 4. Subsection (3) of section 463.0057, Florida Statutes, is amended to read:

463.0057 Optometric faculty certificate.—

(3) The holder of a faculty certificate may engage in the practice of optometry as permitted by this section; but may not administer or prescribe topical ocular pharmaceutical agents unless the certificateholder has satisfied the requirements of s. 463.006(1)(b)4. and 5. If a certificateholder wishes to administer or prescribe oral ocular pharmaceutical agents, the certificateholder must also satisfy the requirements of s. 463.0055(1)(b).

Section 5. Subsections (2) and (3) of section 463.006, Florida Statutes, are amended to read:

463.006 Licensure and certification by examination.—

(2) The examination shall consist of the appropriate subjects, including applicable state laws and rules and general and ocular pharmacology with emphasis on the use topical application and side effects of ocular pharmaceutical agents. The board may by rule substitute a national examination as part or all of the examination and may by rule offer a practical examination in addition to the written examination.

(3) Each applicant who successfully passes the examination and otherwise meets the requirements of this chapter is entitled to be licensed as a practitioner and to be certified to administer and prescribe ~~topical~~ ocular pharmaceutical agents in the diagnosis and treatment of ocular conditions.

Section 6. Subsections (10) and (11) are added to section 463.0135, Florida Statutes, to read:

463.0135 Standards of practice.—

(10) A certified optometrist is authorized to perform any eye examination, including a dilated examination, required or authorized by chapter 548 or by rules adopted to implement that chapter.

(11) Co-management of postoperative care shall be conducted pursuant to the requirements of this section and a patient-specific transfer of care letter that governs the relationship between the physician who performed the surgery and the licensed practitioner. The patient must be fully informed of, and consent in writing to, the co-management relationship for his or her care. The transfer of care letter shall confirm that it is not medically necessary for the physician who performed the surgery to provide such postoperative care to the patient and that it is clinically appropriate for the licensed practitioner to provide such postoperative care. Before co-management of postoperative care commences, the patient shall be informed in writing that he or she has the right to be seen during the entire postoperative period by the physician who performed the surgery. In addition, the patient must be informed of the fees, if any, to be charged by the licensed practitioner and the physician performing the surgery, and must be provided with an accurate and comprehensive itemized statement of the specific postoperative care services that the physician performing the surgery and the licensed practitioner render, along with the charge for each service.

Section 7. Subsections (3) and (4) of section 463.014, Florida Statutes, are amended to read:

463.014 Certain acts prohibited.—

(3) Prescribing, ordering, dispensing, administering, supplying, selling, or giving any drug for the purpose of treating a systemic disease systemic drugs by a licensed practitioner is prohibited. However, a certified optometrist is permitted to use commonly accepted means or methods to immediately address incidents of anaphylaxis.

(4) Surgery of any kind, including the use of lasers, is expressly prohibited. Certified optometrists may remove superficial foreign bodies. For the purposes of this subsection, the term “superficial foreign bodies” means any foreign matter that is embedded in the conjunctiva or cornea but that which has not penetrated the globe. Notwithstanding the definition of surgery as provided in s. 463.002(6), a certified optometrist is not prohibited from providing any optometric care within the practice of optometry as defined in s. 463.002(7), such as removing an eyelash by epilation, probing an uninflamed tear duct in a patient 18 years of age or older, blocking the puncta by plug, or superficial scraping for the purpose of removing damaged epithelial tissue or superficial foreign bodies or taking a culture of the surface of the cornea or conjunctiva.

Section 8. Section 463.0141, Florida Statutes, is created to read:

463.0141 Reports of adverse incidents in the practice of optometry.—

(1) Effective January 1, 2014, an adverse incident occurring in the practice of optometry must be reported to the department in accordance with this section.

(2) The required notification must be in writing and submitted to the department by certified mail. The required notification must be postmarked within 15 days after the adverse incident if the adverse incident occurs when the patient is at the office of the licensed practitioner. If the adverse incident occurs when the patient is not at the office of the licensed practitioner, the required notification must be postmarked within 15 days after the licensed practitioner discovers, or reasonably should have discovered, the occurrence of the adverse incident.

(3) For purposes of notification to the department, the term “adverse incident,” as used in this section, means any of the following events when it is reasonable to believe that the event is attributable to the prescription of an oral ocular pharmaceutical agent by the licensed practitioner:

(a) Any condition that requires the transfer of a patient to a hospital licensed under chapter 395.

(b) Any condition that requires the patient to obtain care from a physician licensed under chapter 458 or chapter 459, other than a referral or a consultation required under this chapter.

(c) Permanent physical injury to the patient.

(d) Partial or complete permanent loss of sight by the patient.

(e) Death of the patient.

(4) The department shall review each incident and determine whether it potentially involved conduct by the licensed practitioner who may be subject to disciplinary action, in which event s. 456.073 applies. Disciplinary action, if any, shall be taken by the board.

Section 9. Subsection (1) of section 483.035, Florida Statutes, is amended to read:

483.035 Clinical laboratories operated by practitioners for exclusive use; licensure and regulation.—

(1) A clinical laboratory operated by one or more practitioners licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, or chapter 466, exclusively in connection with the diagnosis and treatment of their own patients, must be licensed under this part and must comply with the provisions of this part, except that the agency shall adopt rules for staffing, for personnel, including education and training of personnel, for proficiency testing, and for construction standards relating to the licensure and operation of the laboratory based upon and not exceeding the same standards contained in the federal Clinical Laboratory Improvement Amendments of 1988 and the federal regulations adopted thereunder.

Section 10. Subsection (7) of section 483.041, Florida Statutes, is amended to read:

483.041 Definitions.—As used in this part, the term:

(7) “Licensed practitioner” means a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461; a certified optometrist licensed under chapter 463; a dentist licensed under chapter 466; a person licensed under chapter 462; or an advanced registered nurse practitioner licensed under part I of chapter 464; or a duly licensed practitioner from another state licensed under similar statutes who orders examinations on materials or specimens for nonresidents of the State of Florida, but who reside in the same state as the requesting licensed practitioner.

Section 11. Subsection (5) of section 483.181, Florida Statutes, is amended to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(5) A clinical laboratory licensed under this part must accept a human specimen submitted for examination by a practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, s. 464.012, or chapter 466, if the specimen and test are the type performed by the clinical laboratory. A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by the practitioner. A clinical laboratory shall not charge different prices for tests based upon the chapter under which a practitioner submitting a specimen for testing is licensed.

Section 12. Subsection (21) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(21) “Practitioner” means a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed pursuant to chapter 463, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number.

Section 13. Subsection (1) of section 893.05, Florida Statutes, is amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be

administered by a licensed nurse or an intern practitioner under his or her direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's direction and supervision only. A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.

Section 14. Paragraph (d) of subsection (1) of section 893.055, Florida Statutes, is amended to read:

893.055 Prescription drug monitoring program.—

(1) As used in this section, the term:

(d) "Health care practitioner" or "practitioner" means any practitioner who is subject to licensure or regulation by the department under chapter 458, chapter 459, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466.

Section 15. Section 463.009, Florida Statutes, is amended to read:

463.009 Supportive personnel.—No person other than a licensed practitioner may engage in the practice of optometry as defined in s. ~~463.002(7)~~ 463.002(5). Except as provided in this section, under no circumstances shall nonlicensed supportive personnel be delegated diagnosis or treatment duties; however, such personnel may perform data gathering, preliminary testing, prescribed visual therapy, and related duties under the direct supervision of the licensed practitioner. Nonlicensed personnel, who need not be employees of the licensed practitioner, may perform ministerial duties, tasks, and functions assigned to them by and performed under the general supervision of a licensed practitioner, including obtaining information from consumers for the purpose of making appointments for the licensed practitioner. The licensed practitioner shall be responsible for all delegated acts performed by persons under her or his direct and general supervision.

Section 16. Subsection (19) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(19) Notwithstanding any other provision of law, health maintenance policies or contracts which provide coverage, benefits, or services as described in s. ~~463.002(7)~~ 463.002(5), shall offer to the subscriber the services of an optometrist licensed pursuant to chapter 463.

Section 17. This act shall take effect July 1, 2013.

Approved by the Governor April 19, 2013.

Filed in Office Secretary of State April 19, 2013.