

By Senator Bennett

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1 A bill to be entitled
2 An act relating to the health care; amending s.
3 463.002, F.S.; conforming provisions to changes made
4 by the act; amending s. 463.005, F.S.; authorizing the
5 Board of Optometry to adopt rules for the
6 administration and prescription of ocular
7 pharmaceutical agents rather than topical ocular
8 pharmaceutical agents; amending s. 463.0055, F.S.;
9 authorizing certified optometrists to administer and
10 prescribe ocular pharmaceutical agents under certain
11 circumstances; revising qualifications of certain
12 members of the formulary committee; amending ss.
13 463.0057 and 463.006, F.S.; conforming provisions to
14 changes made by the act; amending s. 483.035, F.S.,
15 relating to licensure and regulation of clinical
16 laboratories operated by practitioners for exclusive
17 use; providing applicability to clinical laboratories
18 operated by practitioners licensed to practice
19 optometry; amending s. 483.041, F.S.; revising the
20 definition of the term "licensed practitioner" to
21 include a practitioner licensed under ch. 463, F.S.;
22 amending s. 483.181, F.S.; requiring clinical
23 laboratories to accept human specimens submitted by
24 practitioners licensed to practice under ch. 463,
25 F.S.; amending s. 766.102, F.S.; revising the burden
26 of proof that a claimant must demonstrate in order to
27 prove medical negligence by a health care provider or
28 an emergency health care provider; amending s. 893.02,
29 F.S.; revising the definition of the term

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30 "practitioner" to include certified optometrists for
31 purposes of the Florida Comprehensive Drug Abuse
32 Prevention and Control Act; amending s. 893.05, F.S.;
33 prohibiting certified optometrists from administering
34 and prescribing certain controlled substances;
35 providing effective dates.

36
37 Be It Enacted by the Legislature of the State of Florida:

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39 Section 1. Subsections (3), (4), and (5) of section
40 463.002, Florida Statutes, are amended to read:

41 463.002 Definitions.—As used in this chapter, the term:

42 (3) (a) "Licensed practitioner" means a person who is a
43 primary health care provider licensed to engage in the practice
44 of optometry under the authority of this chapter.

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

50 (c) All practitioners initially licensed after July 1,
51 1993, must be certified optometrists.

52 (4) "Certified optometrist" means a licensed practitioner
53 authorized by the board to administer and prescribe ~~topical~~
54 ocular pharmaceutical agents.

55 (5) "Optometry" means the diagnosis of conditions of the
56 human eye and its appendages; the employment of any objective or
57 subjective means or methods, including the administration of
58 ~~topical ocular~~ pharmaceutical agents, for the purpose of

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59 determining the refractive powers of the human eyes, or any
60 visual, muscular, neurological, or anatomic anomalies of the
61 human eyes and their appendages; and the prescribing and
62 employment of lenses, prisms, frames, mountings, contact lenses,
63 orthoptic exercises, light frequencies, and any other means or
64 methods, including ~~topical-ocular~~ pharmaceutical agents, for the
65 correction, remedy, or relief of any insufficiencies or abnormal
66 conditions of the human eyes and their appendages.

67 Section 2. Paragraph (g) of subsection (1) of section
68 463.005, Florida Statutes, is amended to read:

69 463.005 Authority of the board.—

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

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

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

78 463.0055 Administration and prescription of ~~topical~~ ocular
79 pharmaceutical agents; committee.—

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

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88 agents.

89 (2) (a) There is ~~hereby~~ created a committee composed of two
90 certified optometrists licensed pursuant to this chapter,
91 appointed by the Board of Optometry, two board-certified
92 ophthalmologists licensed pursuant to chapter 458 or chapter
93 459, appointed by the Board of Medicine, and one additional
94 person with a doctorate degree in pharmacology who is not
95 licensed pursuant to chapter 458, chapter 459, or this chapter,
96 appointed by the State Surgeon General. The committee shall
97 review requests for additions to, deletions from, or
98 modifications of a formulary of ~~topical~~ ocular pharmaceutical
99 agents for administration and prescription by certified
100 optometrists and shall provide to the board advisory opinions
101 and recommendations on such requests. The formulary shall
102 consist of those ~~topical-ocular~~ pharmaceutical agents which the
103 certified optometrist is qualified to use in the practice of
104 optometry. The board shall establish, add to, delete from, or
105 modify the formulary by rule. Notwithstanding any provision of
106 chapter 120 to the contrary, the formulary rule shall become
107 effective 60 days following ~~from~~ the date it is filed with the
108 Secretary of State.

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

115 (c) The State Surgeon General shall have standing to
116 challenge any rule or proposed rule of the board pursuant to s.

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117 120.56. In addition to challenges for any invalid exercise of
118 delegated legislative authority, the administrative law judge,
119 upon such a challenge by the State Surgeon General, may declare
120 all or part of a rule or proposed rule invalid if it:

121 1. Does not protect the public from any significant and
122 discernible harm or damages;

123 2. Unreasonably restricts competition or the availability
124 of professional services in the state or in a significant part
125 of the state; or

126 3. Unnecessarily increases the cost of professional
127 services without a corresponding or equivalent public benefit.

128
129 However, there shall not be created a presumption of the
130 existence of any of the conditions cited in this subsection if
131 ~~in the event that~~ the rule or proposed rule is challenged.

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

137 (3) A certified optometrist shall be issued a prescriber
138 number by the board. Any prescription written by a certified
139 optometrist for a ~~topical-ocular~~ pharmaceutical agent pursuant
140 to this section shall have the prescriber number printed
141 thereon.

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

144 463.0057 Optometric faculty certificate.—

145 (3) The holder of a faculty certificate may engage in the

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146 practice of optometry as permitted by this section, but may not
147 administer or prescribe ~~topical~~ ocular pharmaceutical agents
148 unless the certificateholder has satisfied the requirements of
149 s. 463.006(1)(b)4. and 5.

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

152 463.006 Licensure and certification by examination.—

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

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

165 Section 6. Subsection (1) of section 483.035, Florida
166 Statutes, is amended to read:

167 483.035 Clinical laboratories operated by practitioners for
168 exclusive use; licensure and regulation.—

169 (1) A clinical laboratory operated by one or more
170 practitioners licensed under chapter 458, chapter 459, chapter
171 460, chapter 461, chapter 462, chapter 463, or chapter 466,
172 exclusively in connection with the diagnosis and treatment of
173 their own patients, must be licensed under this part and must
174 comply with the provisions of this part, except that the agency

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175 shall adopt rules for staffing, for personnel, including
176 education and training of personnel, for proficiency testing,
177 and for construction standards relating to the licensure and
178 operation of the laboratory based upon and not exceeding the
179 same standards contained in the federal Clinical Laboratory
180 Improvement Amendments of 1988 and the federal regulations
181 adopted thereunder.

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

184 483.041 Definitions.—As used in this part, the term:

185 (7) "Licensed practitioner" means a physician licensed
186 under chapter 458, chapter 459, chapter 460, ~~or~~ chapter 461, or
187 chapter 463; a dentist licensed under chapter 466; a person
188 licensed under chapter 462; or an advanced registered nurse
189 practitioner licensed under part I of chapter 464; or a duly
190 licensed practitioner from another state licensed under similar
191 statutes who orders examinations on materials or specimens for
192 nonresidents of the State of Florida, but who reside in the same
193 state as the requesting licensed practitioner.

194 Section 8. Subsection (5) of section 483.181, Florida
195 Statutes, is amended to read:

196 483.181 Acceptance, collection, identification, and
197 examination of specimens.—

198 (5) A clinical laboratory licensed under this part must
199 accept a human specimen submitted for examination by a
200 practitioner licensed under chapter 458, chapter 459, chapter
201 460, chapter 461, chapter 462, chapter 463, s. 464.012, or
202 chapter 466, if the specimen and test are the type performed by
203 the clinical laboratory. A clinical laboratory may only refuse a

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204 specimen based upon a history of nonpayment for services by the
205 practitioner. A clinical laboratory shall not charge different
206 prices for tests based upon the chapter under which a
207 practitioner submitting a specimen for testing is licensed.

208 Section 9. Effective October 1, 2012, for causes of action
209 accruing on or after that date, subsection (1) of section
210 766.102, Florida Statutes, is amended to read:

211 766.102 Medical negligence; standards of recovery; expert
212 witness.—

213 (1) In any action for recovery of damages based on the
214 death or personal injury of any person in which it is alleged
215 that such death or injury resulted from the negligence of the
216 following persons:

217 (a) A health care provider as defined in s. 766.202(4); or

218 (b) An emergency health care provider, which includes a
219 person or an entity that provides services according to
220 obligations imposed by s. 395.1041 or s. 401.45, but does not
221 include a person or entity that is otherwise covered under this
222 section,

223
224 the claimant has ~~shall have~~ the burden of proving by clear and
225 convincing ~~the greater weight of~~ evidence that the alleged
226 actions of the health care provider or emergency health care
227 provider represented a breach of the prevailing professional
228 standard of care for that health care provider or emergency
229 health care provider. The prevailing professional standard of
230 care for a given health care provider or emergency health care
231 provider is the ~~shall be that~~ level of care, skill, and
232 treatment which, in light of all relevant surrounding

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233 circumstances, is recognized as acceptable and appropriate by
234 reasonably prudent similar health care providers or emergency
235 health care providers.

236 Section 10. Subsection (21) of section 893.02, Florida
237 Statutes, is amended to read:

238 893.02 Definitions.—The following words and phrases as used
239 in this chapter shall have the following meanings, unless the
240 context otherwise requires:

241 (21) "Practitioner" means a physician licensed pursuant to
242 chapter 458, a dentist licensed pursuant to chapter 466, a
243 veterinarian licensed pursuant to chapter 474, an osteopathic
244 physician licensed pursuant to chapter 459, a naturopath
245 licensed pursuant to chapter 462, a certified optometrist
246 licensed pursuant to chapter 463 to administer and prescribe
247 ocular pharmaceutical agents, or a podiatric physician licensed
248 pursuant to chapter 461, provided such practitioner holds a
249 valid federal controlled substance registry number.

250 Section 11. Subsection (1) of section 893.05, Florida
251 Statutes, is amended to read:

252 893.05 Practitioners and persons administering controlled
253 substances in their absence.—

254 (1) A practitioner, in good faith and in the course of his
255 or her professional practice only, may prescribe, administer,
256 dispense, mix, or otherwise prepare a controlled substance, or
257 the practitioner may cause the same to be administered by a
258 licensed nurse or an intern practitioner under his or her
259 direction and supervision only, except that an optometrist
260 certified pursuant to chapter 463 to administer and prescribe
261 ocular pharmaceutical agents may not administer or prescribe any

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262 controlled substance listed on Schedule I or Schedule II of s.
263 893.03. A veterinarian may so prescribe, administer, dispense,
264 mix, or prepare a controlled substance for use on animals only,
265 and may cause it to be administered by an assistant or orderly
266 under the veterinarian's direction and supervision only.

267 Section 12. Except as otherwise expressly provided in this
268 act, this act shall take effect July 1, 2012.