

## Jurisprudence 2020 Outline Part 1 of 2

John W. McClane III OD

No relevant financial relationships exist with any commercial interests.

4/22/19 edit

A little history

Until 1981 there was no prohibition on OD's using drugs.

They were not mentioned in our law.

We practiced under a positive Attorney General's ruling.

Then the AG with a little help from FSO said we needed a law passed to use drugs

History lesson cont:

We passed a topical drug law in 1983, that Governor Graham vetoed after FSO donated \$25,000 to his campaign.

We passed a law again in 1986 that he signed. (for a \$25,000 campaign contribution from us)

We litigated the law until 1991 when we prevailed against ophthalmology's suit.

It only took from 1986 to 2013 to get a new Optometry Law.

We are finally able to move Florida Optometry into the 21st Century.

Florida Society of Ophthalmology signed off on all sections of our new law.

They cannot complain about optometric care of patients in Florida any more

Let's go section by section and look at the changes in the law in 2013

First Change: Deleted (topical)

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

Added (oral) & limits Surgery

(5) "Ocular pharmaceutical agent" that is administered topically or orally for the dx or tx of ocular conditions of the human eye and its appendages without the use of surgery. (Eliminated in new bill)

#### Defined Surgery

"Surgery" means a procedure using an instrument, including a laser, scalpel, or needle, in which human tissue is cut, burned, scraped or vaporized, by incision, injection, ultrasound, laser, infusion, cryotherapy, or radiation. Includes a procedure which requires the closure of human tissue by suture, clamp. (eliminated in new bill)

You had to take a course

& test

Before an optometrist may administer or prescribe oral ocular pharmaceutical agents, you must provide proof of successful completion of a course and exam, , on general and ocular pharmaceuticals and the side effects.

How many Optometrists in this Room have not taken the test?

GOOD for those of you that have already passed the test

For the rest of you....

How many Hours do you need?

The course consists of 20 contact hours, all of which may be web-based. ,

How do you sign up?

Go to <http://optometristonlinece.com>

Pay \$995.00

Take the course and test.

After passing the course and test you may use authorized oral drugs after notifying the Dept. of Health

How do you notify the DOH

Mail a copy of your completion certificate to DOH (return receipt requested)

Florida Department of Health                      Florida Board of Optometry                      Division of Medical  
Quality Assurance      4052 Bald Cypress Way Bin #C07      Tallahassee, Florida 32399-3257

Now you can begin!

Can you use the hours for your regular CE?

Successful completion of the exam may be used to satisfy 20 hours of CE only for the biennium in which the course and exam are taken.

What if you don't take the course?

If an optometrist does not complete a course and exam, the optometrist is only authorized to administer and prescribe topical ocular pharmaceutical agents.

Which pain meds can we use currently?

1. Tramadol hydrochloride.
2. Acetaminophen 300 mg with No. 3 codeine phosphate 30 mg. (Tylenol #3)

How Long can we use them?

Analgesics may not be administered or prescribed for more than 72 hours without consultation with a physician licensed under ch. 458 or 459 who is skilled in diseases of the eye:

Pain med limitations

A certified optometrist may not administer or prescribe:

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

Can't use for chronic pain

b) A controlled substance for the treatment of chronic nonmalignant.

What oral antibiotics can we use?

Antibiotics

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

What anti-virals can we use?

Three Antivirals

Acyclovir

Famcyclovir

Valcyclovir

What about oral anti-glaucoma?

2 Oral Anti-glaucoma drugs

Acetazolamide

Methazolamide

may not be administered or prescribed for more than 72 hours:

Xiidra

Added January 20th 2017

More Changes!

What is Chapter 548?

463.0135 Standards of practice.—

(10) A certified optometrist is authorized to perform an eye examination, required by chapter 548.

Chapter 548

PUGILISTIC EXHIBITIONS...

Certified optometrists are now authorized by statute to perform dilated eye exams for boxing exhibitions and MMA fights necessary for licensure. Previously, this authority had been limited by Florida law to ophthalmologists.

New Co-Management Rules

Formal Co-management rules

Co-management of postoperative care shall require a patient-specific transfer of care letter that governs the relationship between the physician who performed the surgery and the licensed practitioner.

Co-Management rules cont:

The patient must be fully informed of, and consent in writing to, the co-management relationship for his or her care.

#### Transfer of care Letter

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.

#### Co-Management cont:

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.

#### Fee information:

the patient must be informed of the fees, to be charged, and must be provided with an accurate and comprehensive itemized statement of the specific postoperative care services rendered, along with the charge for each service.

FSO can not complain about Co-management any more.

Florida Optometrists' ability to provide co-management of post-operative care is, for the first time, codified in the Florida Statutes under identical documentation requirements and rules established previously under Federal CMS/ Medicare.

#### Are certain Acts prohibited?

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.

#### Are there exceptions?

However, a certified optometrist is permitted to use commonly accepted means or methods to immediately address incidents of anaphylaxis.

You can use an epi-pen

Since Surgery is prohibited, what can we do?

Certified optometrists may remove superficial foreign bodies. 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.

not prohibited from:

removing an eyelash by epilation,

not prohibited from:

probing an uninflamed tear duct in a patient 18 years of age or older,

not prohibited from:

blocking the puncta by plug,

not prohibited from:

superficial scraping for the purpose of removing damaged epithelial tissue or superficial foreign bodies

not prohibited from:

taking a culture of the surface of the cornea or conjunctiva

Do you have to report Adverse incidents?

Effective January 1, 2014, an adverse incident occurring must be reported to the department

How do report?

The required notification must be in writing and submitted by certified mail.

notification must be postmarked within 15 days after the adverse incident if the adverse incident occurs when the patient is at the office

What about an adverse incident that is not at the office?

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, the occurrence

What constitutes an Adverse incident?

term “adverse incident,” 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

Adverse incidents:

a) Any condition that requires the transfer of a patient to a hospital

Adverse incidents:

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

Adverse incident reporting cont:

c) Permanent physical injury to the patient.

Bad:

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

More Bad:

e) Death of the patient.

Then what?

The department shall review each incident and determine whether it potentially involved conduct by the licensed practitioner who may be subject to disciplinary action.

Disciplinary action, if any, shall be taken by the board.

Why do we have to report adverse incidents?

This was a compromise added to match current physician adverse incident language.

Are we added to other Chapters of Florida law?

Yes we are!

483

893

641

What are these?

We are added to Clinical lab testing statutes!

483.035 Clinical laboratories operated by practitioners

(1) A clinical laboratory operated by one or more practitioners licensed under ch 458, 459, chapter 463

Lab testing

You can have your own lab

Must follow lab testing rules and standards

483.181 Clinical labs

A clinical laboratory licensed under this part must accept a human specimen submitted for examination by a practitioner licensed under ch 458, 459, chapter, chapter 463

We are now included in the Controlled substance section

893.05 Controlled substances

A certified optometrist licensed may not administer or prescribe a controlled substance listed in Schedule I or Schedule II .

Why is this important?

Since optometrists are now mentioned in the controlled substance chapter

You will now be able to get a DEA # in Florida

How do you get a DEA #?

If you have successfully completed the oral drug course and test, then you go to the DEA website and apply for your #.

[www.deadiversion.usdoj.gov](http://www.deadiversion.usdoj.gov)

Note: you are a mid-level practitioner.

Optometry is added to 641.31 Health maintenance contracts

health maintenance policies or contracts which provide coverage, benefits, or services as described in s. 463, shall offer to the subscriber the services of an optometrist

Questions about the law?

What's next?

The Board of Optometry writes rules explaining the law.



Who are these people?

Board Members

Stuart Kaplan OD      Chair

David Rouse OD

Stephen Kepley OD

Christopher King OD

Katie Spear OD

John Griffin- consumer member

vacant - consumer member

Can the board write any rule they want?

NO!

All rules must have a basis in law.

Rules may only explain or clarify the statutes they are based on.

All new rules are reviewed by the AG,s office and if they are found to expand or contravene current law they are invalidated.

Let's talk about other sections of Florida law we are mentioned in!

Real Estate Tax Exemption

196.101 Exemption for totally and permanently disabled persons.—

196.012(11)

Any real estate used and owned as a homestead by a totally and permanently disabled person, who must use a wheelchair for mobility or who is legally blind, is exempt from taxation.

What does this mean?

You can help homesteaded blind people obtain a real estate tax exemption on their property.

Many people, especially Optometrist's aren't aware of this law.

You can sign this form:

OPTOMETRIST'S CERTIFICATION OF  
TOTAL AND PERMANENT DISABILITY

I, (name) , an optometrist licensed pursuant to ch 463, , hereby certify that (name of disabled person) , ss # , is totally and permanently disabled as of Jan. 1, (year) , due to legal blindness.

It is my professional belief that the above-named condition renders (name of disabled person) totally and permanently disabled and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.

Signature

Address (print)

Date

Fl. Bd. of Optometry license #

Issued on

Permanent Impairment Benefits

440.15 Workers Compensation Law

Once an injured employee has reached maximum medical improvement, impairment benefits become due and payable to the employee.

Disability determination

Under Subsection 440.15(3) Optometrist's may make a determination that an employee suffers some permanent impairment after reaching maximum medical improvement.

The standard is the AMA Snellen chart for eye injuries.

Disabled Parking Permits

An individual who is certified as being legally blind is eligible to receive a disabled parking permit from the Fl. Dept. of Hwy. Safety and Motor Vehicles.

Blind Drivers cont:

Subsection 320.0848(b) authorizes Fl. Optometrist's to certify to the Dept. that an individual is legally blind for purposes of obtaining a disabled parking permit.

Driver's License

To obtain a driver's license in Florida an individual must pass an eyesight test.

322.12(3)Class E

That test may be administered by a Fl. Optometrist.

Truck Drivers:322.12(4) Commercial driver's license

That test may be administered by a Fl. Optometrist.

Convenience Renewal

An individual who is at least 80 years of age and who seeks to renew his driver's license by using a convenience renewal, must submit to a vision test as a condition of renewal.

Convenience Renewal cont:

322.18(5)(a)2, provides that vision test may be administered by a Florida Optometrist.

Old drivers:

The results of the test must be submitted on a form obtained from the Dept of Hwy. and Motor Vehicles and must be signed by the Optometrist.

2016, we passed another New Law

SB 340 prohibits an insurer, or an (HMO) from requiring a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another insurer's, or HMO's vision network, respectively.

More

The bill provides that this provision does not restrict an insurer, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or labs

More New Law

The bill also prohibits these plans from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical labs.

And Finally More

The bill requires insurers, and HMOs to update their online vision care network directory monthly

Volunteer and get CE

Statute 381.00593 Public School Volunteer Health Program: practitioners who participate in the program and provide services, without compensation, in a public school for at least 80 hours a year for each school year during the biennium shall be eligible for waiver of the biennial license renewal fee and fulfillment of a max of 25% of the CE hours required for renewal.

Volunteer at a School, The Florida Board of Optometry will be posting this type of CE for you. Please mail your documentation to: FLORIDA BOARD OF OPTOMETRY 4052 BALD CYPRESS WAY BIN C-07  
TALLAHASSEE, FL 32399-3257

What are the Primary laws that govern Florida Optometry?

Chapter 456 – Health Professions and Occupations: General Provisions

Chapter 463 – Optometry Practice Act

Chapter 465.0276 – Dispensing Practitioner

Chapter 456: Why is it important?

This chapter regulates all Health Care Practitioners

Who is required to take medical errors and HIV courses?

456.013 Medical Errors

The boards, shall require the completion of a 2-hour course relating to prevention of medical errors...

456.033 Requirement for instruction for certain licensees on HIV and AIDS

The following requirements apply to each person licensed under ch 457; 458; 459; 460; 461; chapter 463; 464; 465; 466; 468; or 486:

456.033 HIV continued:

Each person shall be required ... to complete no later than upon first renewal a continuing educational course, approved by the board,...

456.035 Address of record.--

1) Each licensee is solely responsible for notifying in writing the licensee's current mailing address and place of practice, .. A licensee's failure to notify of a change of address constitutes a violation ,

Address

Electronic notification shall be allowed ; however, it shall be the responsibility of the licensee to ensure that the electronic notification was received

Are optometrist's defined as physicians?

456.056 Treatment of Medicare beneficiaries; refusal, emergencies, consulting physicians.--

"Physician" means a physician licensed under ch 458, an osteopathic physician under ch 459, a chiropractic physician under ch 460, a podiatric physician under ch 461, or an optometrist licensed under chapter 463.

Who owns patient records?

456.057 Ownership and control of patient records...

the term "records owner" means any health care practitioner who generates a medical record after making a physical or mental exam of, or treating or dispensing drugs to, any person;

any practitioner to whom records are transferred by a previous records owner;

Record owner!

any practitioner's employer, including, but not limited to, group practices and staff-model HMO,

provided the employment contract or agreement between the employer and the practitioner designates the employer as the records owner.

456.057 records cont.

the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons;

furthermore, the following persons are not authorized to own medical records, but are authorized to maintain those documents required by the chapter under which they are licensed:

456.057 NOT record owners

(a) Certified nursing assistants

(b) Pharmacists and pharmacies .

(c) Dental hygienists .

(d) Nursing home administrators .

(e) Respiratory therapists.

(f) Athletic trainers .

(h) Clinical laboratory personnel .

(j) Opticians and optical establishments licensed or permitted under part I of chapter 484.

If a patient demands their original records do you have to give them to the patient?

456.057 records release

Any health care practitioner who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records ..., including X rays and insurance information.

Can you charge a fee for providing records to a patient?

Records release cont.

The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

Records release:

records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient the patient's legal representative

or other health care providers involved in the care or treatment of the patient,

except upon written authorization of the patient

Exceptions

When compulsory physical exam is made, copies of the medical records shall be furnished to both the defendant and the plaintiff.

In any civil or criminal action, upon the issuance of a subpoena

For statistical and scientific research, provided the information protects the identity of the patient the probable cause panel requests.

If you perform a procedure where the patient is harmed should you tell the patient?  
(or what should you do when you screw up?)

456.0575 Duty to notify patients.

Every licensed health care practitioner shall inform each patient, in person about adverse incidents that result in serious harm to the patient.

Notification of outcomes of care that result in harm to the patient shall not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence

What needs to be included in every advertisement for free or discounted services?

456.062 Advertisement by a health care practitioner of free or discounted services; required statement

In any advertisement for a free, discounted fee, or reduced fee, exam, or Tx by a health care practitioner licensed under ch 458, 459, 463, 484, , the following statement shall appear in capital letters clearly distinguishable from the rest of the text:

THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.

Can a new graduate practice under another doctors license while they are waiting for their board results?

456.065 Unlicensed practice of a health care profession

It is a felony of the third degree, to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession.

Note: new graduates!

What is your responsibility when writing a prescription?

456.42 Written prescriptions for medicinal drugs.

A written prescription for a medicinal drug must be legibly printed or typed so as to be capable of being understood by the pharmacist...; must contain the name of the practitioner, the name and strength of

the drug , the quantity... , and the directions for use... ; must be dated; and must be signed ... on the day when issued.

[Go to Part 2...](#)