

## CHAPTER 249

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**PROFESSIONS AND OCCUPATIONS**

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**SENATE BILL 09-251**

BY SENATOR(S) Romer, Boyd, Brophy;  
also REPRESENTATIVE(S) Riesberg, Acree, Fischer, Frangas, Gerou, Kefalas, Kerr J., Labuda, Liston, Massey, Merrifield,  
Nikkel, Summers, Swalm, Todd, Vaad.

**AN ACT**

**CONCERNING THE AUTHORITY OF A LICENSED HEALTH CARE PROVIDER TO CHARGE A FEE FOR CERTAIN OPHTHALMIC DEVICES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 12-22-121 (6), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**12-22-121. Compounding - dispensing - sale of drugs and devices.** (6) (c) NOTHING IN THIS SECTION SHALL PROHIBIT AN OPTOMETRIST LICENSED PURSUANT TO ARTICLE 40 OF THIS TITLE OR A PHYSICIAN LICENSED PURSUANT TO ARTICLE 36 OF THIS TITLE FROM CHARGING A FEE FOR PRESCRIBING, ADJUSTING, FITTING, ADAPTING, OR DISPENSING OPHTHALMIC DEVICES, SUCH AS CONTACT LENSES, THAT ARE CLASSIFIED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION AS A DRUG, AS LONG AS THE ACTIVITY IS WITHIN THE SCOPE OF PRACTICE OF THE OPTOMETRIST PURSUANT TO ARTICLE 40 OF THIS TITLE OR THE SCOPE OF PRACTICE OF THE PHYSICIAN PURSUANT TO ARTICLE 36 OF THIS TITLE.

**SECTION 2.** 12-40-102 (5), Colorado Revised Statutes, is amended to read:

**12-40-102. Practice of optometry defined.** (5) (a) The classes of pharmaceutical agents and the procedures approved for optometric use for treatment of the anterior segment of the eye or its appendages, including prescription, by certified therapeutic optometrists for treatment purposes under this section are as follows: Topical and oral antimicrobials (except oral antifungal agents), topical and oral antihistamines, topical antiinflammatory agents, topical and oral nonscheduled analgesics, and any controlled substance for ocular pain and inflammation except those specified in schedules I and II as provided in part 2 of article 18 of title 18,

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

C.R.S., and the removal of superficial foreign bodies from the human eye or its appendages.

(b) NOTHING IN THIS SECTION SHALL PROHIBIT AN OPTOMETRIST FROM CHARGING A FEE FOR PRESCRIBING, ADJUSTING, FITTING, ADAPTING, OR DISPENSING OPHTHALMIC DEVICES, SUCH AS CONTACT LENSES, THAT ARE CLASSIFIED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION AS A DRUG, AS LONG AS THE DRUG DELIVERED BY THE OPHTHALMIC DEVICE IS ONE OF THE PHARMACEUTICAL AGENTS IDENTIFIED IN SUBSECTION (4) OR (6) OF THIS SECTION OR THIS SUBSECTION (5) OR THE DRUG IS NOT A PRESCRIPTION DRUG.

**SECTION 3.** 12-40-118 (1)(cc), Colorado Revised Statutes, is amended to read:

**12-40-118. Unprofessional conduct defined.** (1) The term "unprofessional conduct", as used in this article, means:

(cc) Dispensing for a fee any prescription drug, as defined in section 12-22-102, ~~(30)~~; or any controlled substance, as defined in section 12-22-303, ~~(7)~~ EXCEPT AS PERMITTED IN SECTIONS 12-22-121 (6) (c) AND 12-40-102 (5) (b);

**SECTION 4. Effective date.** This act shall take effect July 1, 2009.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 14, 2009