

AN ACT

RELATING TO OPTOMETRY; CHANGING DEFINITIONS; CHANGING CERTAIN
LICENSING AND FEE PROVISIONS; ESTABLISHING REQUIREMENTS FOR CONTACT
LENS PRESCRIPTIONS AND REPLACEMENT CONTACT LENS PRESCRIPTIONS;
PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE
OPTOMETRY ACT.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-2-2 NMSA 1978 (being Laws 1973, Chapter 353,

Section 2, as amended) is amended to read:

"61-2-2. DEFINITIONS.--As used in the Optometry Act:

A. "practice of optometry":

(1) means:

(a) the employment of any subjective or objective means or methods, including but not limited to the use of lenses, prisms, autorefractors or other automated testing devices, and includes the prescription or administration of drugs for the purpose of diagnosing the visual defects or abnormal conditions of the human eye and its adnexa; and

(b) the employing, adapting or prescribing of preventive or corrective measures, including but not limited to lenses, prisms, contact or corneal lenses or other optical appliances, ocular exercises, vision therapy, vision training and vision rehabilitation services, and includes the prescription or administration of all drugs rational for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa; and

(2) does not include the use of surgery or injections in the treatment of eye diseases;

B. "ophthalmic lens" means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses;

C. "contact lens" means a lens to be worn on the anterior segment of the human eye;

D. "prescription" means a written order by an optometrist or a physician for an individual patient for:

(1) ophthalmic lenses;

(2) contact lenses; or

(3) a topical ocular pharmaceutical agent or an oral pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act;

E. "eyeglasses" means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision; and

F. "board" means the board of optometry."

Section 2. Section 61-2-4 NMSA 1978 (being Laws 1973, Chapter 353, Section 3) is amended to read:

"61-2-4. LICENSE REQUIRED.--Unless licensed pursuant to the Optometry Act, or specifically exempted or excluded from the application of all or part of that act, a person shall not:

A. practice optometry;

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B. represent himself or offer his services as being able to practice optometry; or

C. duplicate or replace an ophthalmic lens."

Section 3. Section 61-2-11 NMSA 1978 (being Laws 1973, Chapter 353, Section 9, as amended) is amended to read:

"61-2-11. LICENSE FEES--LICENSURE UNDER PRIOR LAW.--

A. The board shall set fees for the following by rule:

(1) application fee in an amount not to exceed five hundred dollars (\$500);

(2) examination fee in an amount not to exceed five hundred dollars (\$500);

(3) licensure fee in an amount not to exceed four hundred dollars (\$400); and

(4) issuance fee for pharmaceutical certification in an amount not to exceed one hundred dollars (\$100).

B. A person licensed as an optometrist under any prior laws of this state, whose license is valid on April 3, 1973, shall be held to be licensed under the provisions of the Optometry Act and shall be entitled to the annual renewal of his license as provided in that act.

C. Prior to engaging in the active practice of optometry in this state, a licensee shall furnish the board evidence that he holds a registration number with the taxation and revenue department and has completed, as a condition of licensure by endorsement, the continuing education requirements as set by the rules of the board."

Section 4. Section 61-2-12 NMSA 1978 (being Laws 1973, Chapter 353,

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Section 10, as amended) is amended to read:

"61-2-12. LICENSE--DISPLAY--RENEWAL--RETIREMENT--RESUMPTION OF PRACTICE.--

A. A person to whom a license as an optometrist has been issued shall display the license in a conspicuous place in the licensee's principal office or place of business.

B. A license shall be renewed annually on or before July 1. The licensee shall pay to the secretary-treasurer of the board the required fees. The board shall promulgate rules establishing additional requirements and procedures for renewal of a license. It shall also promulgate rules establishing a fee schedule for renewal of a license, but a specific fee shall not exceed five hundred dollars (\$500).

C. Failure to renew a license pursuant to this section terminates the optometrist's authority to practice optometry, and the former licensee shall fulfill all current requirements for licensing and therapeutic drug certification if application for licensing or certification is made after termination.

D. An optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of his license, and the secretary-treasurer of the board shall acknowledge the receipt of the notice and record it. If within a period of five years from the year of retirement the optometrist desires to resume practice, he shall notify the board in writing, and, upon giving proof of completing refresher courses prescribed by rules of the board and the payment of required fees, his license shall be restored to him in full effect.

E. Before engaging in the practice of optometry, a licensed optometrist shall notify the secretary-treasurer of the board in writing of the address at

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which he intends to begin practice and subsequently of any changes in his business address or location. Notices the board is required to give a licensee shall legally have been given when delivered to the latest address furnished by the licensee to the board."

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Section 5. Section 61-2-14 NMSA 1978 (being Laws 1973, Chapter 353, Section 12, as amended) is amended to read:

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"61-2-14. OFFENSES.--

A. A person who commits one of the following acts is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978:

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(1) practicing or attempting to practice optometry without a valid current license issued by the board;

(2) using or attempting to use a topical ocular pharmaceutical agent or an oral pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act; or

(3) permitting a person in one's employ, supervision or control to practice optometry or use pharmaceutical agents described in Paragraph (2) of this subsection unless that person is licensed and certified in accordance with the provisions of the Optometry Act or unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

B. A person who commits one of the following acts is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978:

(1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;

(2) selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;

(3) refusing, after a request, to provide a patient a copy of his eyeglasses prescription, if the prescription is not over one year old;

(4) duplicating or replacing an ophthalmic lens without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;

(5) except for licensed optometrists, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes, but it is not the intent of this paragraph to prevent any school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, if the person, clinic or program does not attempt to diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;

(6) advertising the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part thereof, but this paragraph does not preclude the use of a business name, trade name or trademark not relating to price or

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the use of the address, telephone number, office hours and designation of the provider, in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

(7) selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor."

Section 6. Section 61-2-15 NMSA 1978 (being Laws 1973, Chapter 353, Section 13) is amended to read:

"61-2-15. EXEMPTIONS.--

A. Except for the provisions of Section 61-2-16 NMSA 1978 and as provided in this subsection, the Optometry Act does not apply to a licensed physician or a person, clinic or program under his responsible supervision and control, provided that the person, clinic or program under the responsible supervision and control of the licensed physician shall not use either loose or fixed trial lenses for the sole purpose of determining the prescription for eyeglasses or contact lenses.

B. Except as provided in Sections 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, the Optometry Act does not apply to a person selling eyeglasses who does not represent himself as being qualified to detect or correct ocular anomalies and who does not traffic upon assumed skill in adapting ophthalmic lenses to the eyes."

Section 7. Section 61-2-16 NMSA 1978 (being Laws 1973, Chapter 353, Section 14, as amended) is amended to read:

"61-2-16. FREEDOM OF CHOICE.--

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A. In expending public money for any purpose involving the care of vision, any state board, commission or department created or existing by statute, including public schools or other state or municipal agencies or any of their employees, who, in the performance of their duties, are responsible for such expenditures shall not, directly or indirectly, refer the name or address of any particular ocular practitioner or system of practice to any person eligible for a vision examination or the correction of any visual or muscular anomaly, except in emergency situations.

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B. Every policy of insurance or medical or health service contract providing for payment or reimbursement for any eye care service shall be construed to include payment or reimbursement for professional services rendered by a licensed optometrist, and no insurance policy or medical or health service contract shall discriminate between ocular practitioners rendering similar services."

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Section 8. A new section of the Optometry Act is enacted to read:

"PRESCRIPTION FOR TOPICAL OCULAR PHARMACEUTICAL AGENT, ORAL PHARMACEUTICAL AGENT OR OPHTHALMIC LENSES--REQUIRED ELEMENTS-- AUTHORITY OF A PERSON WHO SELLS AND DISPENSES EYEGLASSES.--

A. A prescription written for a topical ocular pharmaceutical agent or for an oral pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to a pharmacist or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the agent prescribed and directions for its use and the date of issue.

B. A prescription written for ophthalmic lenses shall include:

(1) the dioptric power of spheres, cylinders and prisms, the axes of cylinders, the position of the prism base and, if so desired by the prescriber, the light transmission properties and lens curve values;

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(2) the designation of pupillary distance; and

(3) the name of the patient, the date of the prescription, the expiration date of the prescription and the name and address of the prescriber.

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C. A person who sells and dispenses eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine:

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(1) the type, form, size and shape of ophthalmic lenses;

(2) the placement of optical centers for distance-seeing and near-work;

(3) the designation of type and placement of reading segments in multivision lenses;

(4) the type and quality of frame or mounting, the type of bridge and the distance between lenses and the type, length and angling of temples; and

(5) the designation of pupillary distance."

Section 9. A new section of the Optometry Act is enacted to read:

"CONTACT LENS PRESCRIPTION--REQUIRED ELEMENTS--RESTRICTIONS.--

A. A contact lens prescription shall:

(1) explicitly state that it is for contact lenses;

(2) specify the lens type;

(3) include all specifications for the ordering and fabrication of the lenses;

(4) include the date of issue, the name and address of the patient and the name and address of the prescriber; and

(5) indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interests of the patient.

B. A contact lens shall be fitted to a patient at the prescriber's place of practice.

C. A prescriber may extend a patient's prescription without completing another eye examination of the patient.

D. A prescriber shall not write a contact lens prescription until he has determined all the requirements of a satisfactory fit.

E. A contact lens prescription may include a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented patient records.

F. The words "OK for contact or corneal lenses", "fit with contact or corneal lenses", "contact or corneal lenses may be worn" or similar wording do not constitute a contact lens prescription.

G. If, in the professional opinion of the prescriber, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the prescriber may terminate his care of that patient. The prescriber shall notify the patient in writing that the prescriber is terminating care and shall state his reasons for doing so."

Section 10. A new section of the Optometry Act is enacted to read:

"REPLACEMENT CONTACT LENS PRESCRIPTIONS.--

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A. As used in this section:

(1) "immediate follow-up care" is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient; and

(2) "replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

B. A licensed optometrist shall ensure that each replacement contact lens prescription that the licensed optometrist prescribes for contact lenses:

(1) contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

- (a) lens manufacturer;
- (b) type of lens;
- (c) power of the lens;
- (d) base curve;
- (e) lens size;
- (f) name of the patient;
- (g) date the prescription was given to the patient;
- (h) name and office location of the licensed optometrist

who writes the replacement contact lens prescription; and

(i) expiration date of the replacement contact lens prescription; and

(2) is reduced to writing and placed in the patient's permanent

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file.

C. After a licensed optometrist releases the patient from immediate follow-up care, the patient may request a replacement contact lens prescription from the licensed optometrist. The request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five years. If, after examination, the patient's prescription has not changed since the last examination and there are no ocular concerns, a licensed optometrist shall, upon request of the patient, provide the patient's replacement contact lens prescription to the patient without cost to the patient and without requiring the patient to purchase contact lenses.

D. In responding to a patient's request pursuant to Subsection C of this section, a licensed optometrist shall transmit the replacement contact lens prescription by mail, telephone, facsimile, e-mail or any other means of communication that will, under normal circumstances, result in the patient receiving the information within a reasonable time.

E. The replacement contact lens prescription that a licensed optometrist provides a patient:

(1) shall contain the information necessary for the proper duplication of the current prescription of the patient;

(2) shall contain, subject to the provisions of Subsection F of this section, an expiration date for the replacement contact lens prescription of not more than twenty-four months from the time the patient was first examined; and

(3) may contain wearing guidelines or specific instructions for use of the contact lenses by the patient, or both.

F. The licensed optometrist shall enter into the

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patient's medical record the valid clinical reasons for a shorter expiration date and shall provide the patient with a written and oral explanation of the clinical reasons for a shorter expiration date.

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G. When a patient's prescription is dispensed by a person other than a licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser.

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H. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

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I. A licensed optometrist who fills or provides a contact lens prescription shall maintain a record of that prescription in accordance with rules promulgated by the board.

J. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five years.

K. The board may impose a civil fine of no more than one thousand dollars (\$1,000) on a licensed optometrist who fails to provide a replacement contact lens prescription, knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription or who otherwise fails to comply with the provisions of this section.

L. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless the person

has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription in accordance with Subsection M of this section.

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M. A contact lens may not be sold, dispensed or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

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(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

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(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

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(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

N. A verification shall not be provided pursuant to Paragraph (3) of Subsection M of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days of receipt;

(3) if not received between 9:00 a.m. and 5:00 p.m. on a

working day, the prescribing licensed optometrist shall provide verification to the seller within three working days after 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescriber shall promptly contact the patient to determine if a designation is in effect. Under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any prescription; and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday but does not include a holiday.

O. A person who knowingly violates the provisions of Subsection L of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

P. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement. The board of pharmacy shall maintain a current list of all registered sellers and dispensers of contact lenses. A person who is not registered pursuant to this subsection and knowingly sells or dispenses a contact lens to a resident of this state is guilty of a

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misdemeanor and shall be sentenced pursuant to
Section 31-19B-240 MSA 1978."

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