

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 248

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

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.

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:

~~[(1)]~~ (a) the employment of any
subjective or objective means or methods, including ~~the~~
~~prescription or administration of topical ocular pharmaceutical~~

1 ~~agents, for the purpose of determining]~~ but not limited to the
2 use of lenses, prisms, autorefractors or other automated
3 testing devices, and includes the prescription or
4 administration of drugs for the purpose of diagnosing the
5 visual defects or abnormal conditions of the human eye and its
6 adnexa; and

7 [~~(2)~~] (b) the employing, adapting or
8 prescribing of preventive or corrective measures, including but
9 not limited to lenses, prisms, contact or corneal lenses or
10 other optical appliances, [~~and prescribing or administering~~
11 ~~topical ocular pharmaceutical agents and oral pharmaceutical~~
12 ~~agents as authorized in Section 61-2-10.2 NMSA 1978]~~ ocular
13 exercises, vision therapy, vision training and vision
14 rehabilitation services, and includes the prescription or
15 administration of all drugs rational for the correction, relief
16 or referral of visual defects or abnormal conditions of the
17 human eye and its adnexa; and

18 (2) [~~The "practice of optometry" shall not]~~
19 does not include the use of surgery or injections in the
20 treatment of eye diseases [~~provided persons who sell or~~
21 ~~dispense eyeglasses upon prescription and who do not prescribe~~
22 ~~ophthalmic lenses for the eyes shall not employ, adapt,~~
23 ~~dispense, modify, provide, sell, give or fit contact or corneal~~
24 ~~lenses; and provided further the testing, design, dispensing~~
25 ~~and monitoring of a contact lens fitting shall be performed at~~

1 ~~the optometrist's place of practice];~~

2 B. "ophthalmic lens" means a lens that has a
3 spherical, cylindrical or prismatic value [~~and that~~], is ground
4 pursuant to a prescription and is intended to be used as
5 eyeglasses [~~or spectacles~~];

6 C. "contact [~~or corneal~~] lens" means [~~any~~] a lens
7 to be worn on the anterior segment of the human eye [~~to be~~
8 ~~prescribed, dispensed, adapted, employed, modified, provided,~~
9 ~~sold and fitted by a licensed optometrist or physician~~];

10 D. "prescription" means a [~~formula~~] written order
11 by an optometrist or a physician for an individual patient for:

12 (1) ophthalmic lenses;

13 (2) contact lenses; or

14 (3) [~~for~~] a topical ocular pharmaceutical
15 agent or [~~for~~] an oral pharmaceutical agent [~~as authorized in~~
16 ~~Section 61-2-10.2 NMSA 1978 that comes under the provisions of~~]
17 that is regulated pursuant to the New Mexico Drug, Device and
18 Cosmetic Act [~~by a person duly licensed and containing the~~
19 ~~following essential elements:~~

20 (1) ~~an order given individually for the person~~
21 ~~for whom prescribed, either directly from the prescriber to the~~
22 ~~pharmacist or indirectly by means of a written order signed by~~
23 ~~the prescriber, and shall bear the name and address of the~~
24 ~~prescriber, his license classification, the name and address of~~
25 ~~the patient, the name and quantity of the drug prescribed,~~

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1 ~~directions for use and the date of issue; or~~

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

6 ~~(3) designation of pupillary distance; and~~

7 ~~(4) name of patient, date of prescription,~~
8 ~~expiration date and the name and office location of prescriber;~~
9 ~~provided, however, that:~~

10 ~~(5) those who sell and dispense eyeglasses~~
11 ~~upon the written prescription of a physician, surgeon or~~
12 ~~optometrist may determine the:~~

13 ~~(a) type, form, size and shape of~~
14 ~~ophthalmic lenses;~~

15 ~~(b) placement of optical centers for~~
16 ~~distance seeing and near work;~~

17 ~~(c) designation of type and placement of~~
18 ~~reading segments in multivision lenses;~~

19 ~~(d) type and quality of frame or~~
20 ~~mounting, type of bridge and distance between lenses type,~~
21 ~~length and angling of temples; and~~

22 ~~(e) designation of pupillary distance];~~

23 E. "eyeglasses" means [any] an exterior optical
24 device using ophthalmic lenses for the correction or relief of
25 disturbances in and anomalies of human vision [and includes

1 ~~spectacles and other devices using ophthalmic lenses~~; and

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

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

5 "61-2-4. LICENSE REQUIRED. -- Unless licensed ~~[or exempted~~
6 ~~under]~~ pursuant to the Optometry Act, ~~[no]~~ or specifically
7 exempted or excluded from the application of all or part of
8 that act, a person shall not:

9 A. practice optometry;

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

12 ~~[C. prescribe eyeglasses or give a prescription to~~
13 ~~a patient; or~~

14 ~~D.] C. duplicate or replace an ophthalmic lens [not~~
15 ~~including contact lenses without a current prescription or~~
16 ~~without a written authorization from the patient if the~~
17 ~~prescription is not available]. "~~

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

20 "61-2-11. LICENSE FEES-- LICENSURE UNDER PRIOR LAW. --

21 A. The board shall set fees for the following by
22 ~~[regulation]~~ rule:

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

25 (2) examination fee in an amount not to exceed

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1 five hundred dollars (\$500);

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

4 (4) issuance fee for pharmaceutical
5 certification in an amount not to exceed one hundred dollars
6 (\$100)

7 [~~(5) annual license renewal fee in an amount~~
8 ~~not to exceed three hundred dollars (\$300); and~~

9 ~~(6) late renewal penalty fee in an amount not~~
10 ~~to exceed one hundred dollars (\$100)].~~

11 B. [Any] A person licensed as an optometrist under
12 any prior laws of this state, whose license is valid on April
13 3, 1973, shall be held to be licensed under the provisions of
14 the Optometry Act and shall be entitled to the annual renewal
15 of his [~~present~~] license as provided in that act.

16 C. Prior to engaging in the active practice of
17 optometry in this state, [~~each~~] a licensee shall furnish the
18 board evidence that he holds a registration number with the
19 taxation and revenue department and has completed, as a
20 condition of licensure by endorsement, [~~such~~] the continuing
21 education requirements as set by the [~~regulations~~] rules of the
22 board. "

23 Section 4. Section 61-2-12 NMSA 1978 (being Laws 1973,
24 Chapter 353, Section 10, as amended) is amended to read:

25 "61-2-12. LICENSE-- DISPLAY-- RENEWAL-- RETIREMENT--

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1 RESUMPTION OF PRACTICE. --

2 A. ~~[Every]~~ A person to whom a ~~[certificate of]~~
 3 license as an optometrist has been issued shall display the
 4 ~~[certificate of]~~ license in a conspicuous place in ~~[his]~~ the
 5 licensee's principal office or place of business.

6 B. ~~[Each]~~ A license shall be renewed annually on or
 7 before July 1. ~~[by]~~ The licensee ~~[remitting]~~ shall pay to the
 8 secretary-treasurer of the board the ~~[proper fee and proofs of~~
 9 ~~registration with the revenue processing division of the~~
 10 ~~taxation and revenue department and of continued education as~~
 11 ~~required by regulation of the board.~~ Notice of renewal shall
 12 be sent to each licensee by the board before July 1 of each
 13 year. Failure to renew his license on or before September 1
 14 shall subject the licensee to a late charge as determined by
 15 regulation of the board not to exceed the limit set forth in
 16 the Optometry Act. Any license not renewed by October 1 of
 17 each year shall be automatically revoked. Upon receipt of the
 18 renewal certificate, each licensee shall attach a copy of the
 19 renewal certificate to his certificate of license.

20 C. ~~Each optometrist applying for the renewal of his~~
 21 ~~license shall furnish to the secretary-treasurer of the board~~
 22 ~~satisfactory evidence that he has attended, in the preceding~~
 23 ~~year, at least two days of the annual education program, to~~
 24 ~~include a minimum of six credit hours of continuing education~~
 25 ~~in ocular therapeutic pharmacological agents, as conducted by~~

1 ~~the New Mexico optometric association, or its equivalent as~~
2 ~~determined by the board. The secretary-treasurer shall send a~~
3 ~~written notice of the continuing education requirements at~~
4 ~~least thirty days prior to August 1 of each year to the last~~
5 ~~known address of the licensee. Failure of a licensee to meet~~
6 ~~annual postgraduate education requirements shall be grounds for~~
7 ~~the revocation of his license. Any license revoked because of~~
8 ~~the failure to meet the continuing education requirements shall~~
9 ~~be reinstated by the board upon the presentation of evidence of~~
10 ~~postgraduate study of a standard approved by the board and the~~
11 ~~payment of all fees due] required fees. The board shall~~
12 promulgate rules establishing additional requirements and
13 procedures for renewal of a license. It shall also promulgate
14 rules establishing a fee schedule for renewal of a license, but
15 a specific fee shall not exceed five hundred dollars (\$500).

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

22 D. [Any] An optometrist who intends to retire from
23 the practice of optometry shall notify the board in writing
24 before the expiration of his [renewal of licensure] license,
25 and the secretary-treasurer of the board shall acknowledge the

1 receipt of the notice and record it. If within a period of
 2 five years from the year of retirement the optometrist desires
 3 to resume practice, he shall ~~[so]~~ notify the board in writing,
 4 and, upon giving proof of completing refresher courses
 5 prescribed by ~~[regulation]~~ rules of the board and the payment
 6 of ~~[an amount equivalent to all lapsed renewal]~~ required fees,
 7 his ~~[certificate of]~~ license shall be restored to him in full
 8 effect. ~~[Any optometrist not currently licensed because of~~
 9 ~~failure to timely renew, because of retirement or for any other~~
 10 ~~reason, who practices optometry in this state shall be subject~~
 11 ~~to the penalties provided for violation of the Optometry Act.]~~

12 E. Before engaging in the practice of optometry,
 13 ~~[and after a license has been issued to him, each registered]~~ a
 14 licensed optometrist shall notify the secretary-treasurer of
 15 the board in writing of the address at which he intends to
 16 begin practice and subsequently of any changes in his business
 17 address or location. ~~[Any]~~ Notices the board is required to
 18 give a licensee shall legally have been given when delivered to
 19 the latest address furnished by the licensee to the board. "

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

22 "61-2-14. OFFENSES. --

23 A. ~~[Each of the following acts committed by any~~
 24 ~~person constitutes a fourth degree felony, punishable upon~~
 25 ~~conviction as provided in the Criminal Code]~~ A person who

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

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

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

15 (3) permitting ~~[any]~~ a person in one's employ,
16 supervision or control to practice optometry or use
17 pharmaceutical agents described in Paragraph (2) of this
18 subsection unless that person is licensed and certified in
19 accordance with the provisions of the Optometry Act or unless
20 the administration of pharmaceutical agents is done under the
21 direct supervision of a licensed optometrist certified to
22 administer the pharmaceutical agents in accordance with the
23 provisions of the Optometry Act. ~~[and~~

24 ~~(4) practicing optometry, including the use of~~
25 ~~pharmaceutical agents, during any period of time in which one's~~

1 ~~license has been revoked or suspended as provided by the~~
2 ~~Optometry Act.~~

3 ~~B. Each of the following acts committed by any~~
4 ~~person constitutes a misdemeanor, punishable upon conviction as~~
5 ~~provided in the Criminal Code]~~

6 B. A person who commits one of the following acts
7 is guilty of a misdemeanor and upon conviction shall be
8 sentenced pursuant to the provisions of Section 31-19-1 NMSA
9 1978:

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

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

17 (3) ~~[refusal]~~ refusing, after a request, to
18 provide a patient a copy of his ~~[spectacle]~~ eyeglasses
19 prescription, ~~[not including a contact lens prescription~~
20 ~~providing]~~ if the prescription is not over one year old;

21 (4) duplicating or replacing an ophthalmic
22 lens ~~[not including contact lenses]~~ without a current
23 prescription not more than two years old or without a written
24 authorization from the patient if the prescription is not
25 available;

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1 (5) except for licensed optometrists, [~~and as~~
2 ~~provided in Subsection A of Section 61-2-15 NMSA 1978~~] using
3 any trial lenses, trial frames, graduated test cards or other
4 appliances or instruments for the purpose of examining the eyes
5 or rendering assistance to anyone who desires to have an
6 examination of the eyes [~~provided, however, that~~], but it is
7 not the intent of this paragraph to prevent any school nurse,
8 schoolteacher or employee in public service from ascertaining
9 the possible need of vision services, [~~provided that such~~] if
10 the person, clinic or program does not attempt to diagnose or
11 prescribe ophthalmic lenses for the eyes or recommend any
12 particular practitioner or system of practice;

13 (6) advertising [~~by any means~~] the
14 fabricating, adapting, employing, providing, sale or
15 duplication of eyeglasses or any part thereof, but this
16 paragraph does not preclude the use of a business name, trade
17 name or trademark not relating to price or the use of the
18 address, telephone number, office hours and designation of the
19 provider, in or at retail outlets, on business cards, eyeglass
20 cleaners and cases or in news media or in public directories,
21 mailings and announcements of location openings or the use of
22 the words "doctors' prescriptions for eyeglasses filled" or
23 "eyeglass repairs, replacements and adjustments"; or

24 (7) selling of prescription eyeglasses or
25 contact lenses, frames or mountings for lenses in an

1 establishment in which the majority of its income is not
2 derived from being engaged in that endeavor."

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

5 "61-2-15. EXEMPTIONS. --

6 A. [~~Nothing in the~~] Except for the provisions of
7 Section 61-2-16 NMSA 1978 and as provided in this subsection,
8 the Optometry Act [except as provided in Section 67-1-14 NMSA
9 1953 shall be construed to] does not apply to a licensed
10 [~~physicians, or surgeons or persons, clinics or programs under~~
11 ~~their~~] physician or a person, clinic or program under his
12 responsible supervision and control, [persons, clinics and
13 programs] provided that the person, clinic or program under the
14 responsible supervision and control of [a] the licensed
15 physician [or surgeon] shall not use either loose or fixed
16 trial lenses for the sole purpose of determining the
17 prescription for eyeglasses or contact lenses. [The fitting of
18 a contact lens to a patient shall be done at the practitioner's
19 place of practice.]

20 B. [~~Nothing in the Optometry Act~~] Except as
21 provided in Sections [~~67-1-2, 67-1-12, 67-1-14 and 67-1-15 NMSA~~
22 ~~1953 shall be construed to]~~ 61-2-2, 61-2-14, 61-2-16 and
23 61-2-17 NMSA 1978, the Optometry Act does not apply to
24 [~~persons~~] a person selling eyeglasses who [~~do~~] does not
25 represent [~~themselves~~] himself as being qualified to detect or

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1 correct ocular anomalies and who [~~do~~] does not traffic upon
2 assumed skill in adapting [~~optalmie~~] ophthalmic lenses to the
3 eyes. "

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

6 "61-2-16. FREEDOM OF CHOICE. --

7 A. In expending public money for any purpose
8 involving the care of vision, any state board, commission or
9 department created or existing by statute, including public
10 schools or other state or municipal agencies or any of their
11 employees, who, in the performance of their duties, are
12 responsible for such expenditures shall not, directly or
13 indirectly, refer the name or address of any particular ocular
14 practitioner or system of practice to any person eligible for a
15 vision examination or the correction of any visual or muscular
16 anomaly, except in emergency situations. [~~For the purpose of~~
17 ~~this subsection, "ocular practitioner" includes all validly~~
18 ~~licensed optometrists, physicians and surgeons.]~~

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

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

3 "[NEW MATERIAL] PRESCRIPTION FOR TOPICAL OCULAR
4 PHARMACEUTICAL AGENT, ORAL PHARMACEUTICAL AGENT OR OPHTHALMIC
5 LENSES--REQUIRED ELEMENTS--AUTHORITY OF A PERSON WHO SELLS AND
6 DISPENSES EYEGLASSES.--

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

16 B. A prescription written for ophthalmic lenses
17 shall include:

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

22 (2) the designation of pupillary distance; and

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

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

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

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

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

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

13 (5) the designation of pupillary distance. "

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

16 "[NEW MATERIAL] CONTACT LENS PRESCRIPTION--REQUIRED
17 ELEMENTS--RESTRICTIONS.--

18 A. A contact lens prescription shall:

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

21 (2) specify the lens type;

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

24 (4) include the date of issue, the name and
25 address of the patient and the name and address of the

1 prescriber; and

2 (5) indicate a specific date of expiration,
3 not to exceed twelve months.

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

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

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

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

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

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

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

3 "[NEW MATERIAL] REPLACEMENT CONTACT LENS PRESCRIPTIONS. --

4 A. As used in this section:

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

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

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

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

- 20 (a) lens manufacturer;
- 21 (b) type of lens;
- 22 (c) power of the lens;
- 23 (d) base curve;
- 24 (e) lens size;
- 25 (f) name of the patient;

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1 (g) date the prescription was given to
 2 the patient;

3 (h) name and office location of the
 4 licensed optometrist who writes the replacement contact lens
 5 prescription; and

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

8 (2) is reduced to writing and placed in the
 9 patient's permanent file.

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

22 D. In responding to a patient's request pursuant to
 23 Subsection C of this section, a licensed optometrist shall
 24 transmit the replacement contact lens prescription by mail,
 25 telephone, facsimile, e-mail or any other means of

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 [bracketed material] = delete

1 communication that will, under normal circumstances, result in
2 the patient receiving the information within a reasonable time.

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

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

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

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

15 F. The licensed optometrist shall enter into the
16 patient's medical record the valid clinical reasons for a
17 shorter expiration date and shall provide the patient with a
18 written and oral explanation of the clinical reasons for a
19 shorter expiration date.

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

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

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

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

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

20 L. A person who is not a licensed optometrist or a
21 licensed physician shall not sell or dispense a contact lens to
22 a resident of this state unless the person has at the time of
23 sale or dispensing a copy of a valid, unexpired prescription or
24 has obtained verification of a valid, unexpired prescription in
25 accordance with Subsection M of this section.

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

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

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

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

15 N. A verification shall not be provided pursuant to
16 Paragraph (3) of Subsection M of this section unless the
17 patient has designated the contact lens seller to act on the
18 patient's behalf. Verification by the prescribing licensed
19 optometrist shall take place within a reasonable time after
20 receipt of the request for verification by the seller. In any
21 case where the existence of a valid designation by the patient
22 of a seller to act on the patient's behalf is in question, the
23 prescriber shall promptly contact the patient to determine if a
24 designation is in effect. Under no circumstances shall a non-
25 response to a verification request be deemed to authorize,

1 validate or confirm any prescription.

2 0. A person who violates the provisions of
3 Subsection L of this section is guilty of a fourth degree
4 felony and shall be sentenced pursuant to Section 31-18-15 NMSA
5 1978.

6 P. A person who is not a licensed optometrist or a
7 licensed physician shall not sell or dispense a contact lens to
8 a resident of this state unless he is registered with the board
9 as a seller or dispenser of contact lenses; provided that
10 pharmacies, clinics and hospitals licensed by the board of
11 pharmacy shall be exempt from this requirement. The board
12 shall promulgate rules to establish the application procedures
13 for obtaining registration and may include a requirement for
14 payment of a fee by the applicant, but the amount of the fee
15 shall not exceed the costs of implementing the registration
16 requirement. The board shall maintain a current list of all
17 registered sellers and dispensers of contact lenses. A person
18 who is not registered pursuant to this subsection and sells or
19 dispenses a contact lens to a resident of this state is guilty
20 of a misdemeanor and shall be sentenced pursuant to Section
21 31-19-1 NMSA 1978. "