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**HOUSE BILL 61**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Max Coll**

**AN ACT**

**RELATING TO OPTOMETRY; ALLOWING PATIENTS TO HAVE COPIES OF  
THEIR CONTACT OR CORNEAL LENS PRESCRIPTION.**

**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" means:**

**(1) the employment of any subjective or  
objective means or methods, including the prescription or  
administration of topical ocular pharmaceutical agents, for  
the purpose of determining the visual defects or abnormal  
conditions of the human eye and its adnexa; and**

**(2) the employing, adapting or prescribing of  
preventive or corrective measures, including lenses, prisms,**

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1 contact or corneal lenses or other optical appliances; and  
2 prescribing or administering topical ocular pharmaceutical  
3 agents and oral pharmaceutical agents as authorized in Section  
4 61-2-10.2 NMSA 1978 for the correction, relief or referral of  
5 visual defects or abnormal conditions of the human eye and its  
6 adnexa. The "practice of optometry" shall not include the use  
7 of surgery or injections in the treatment of eye diseases  
8 ~~[provided, persons who sell or dispense eyeglasses upon~~  
9 ~~prescription and who do not prescribe ophthalmic lenses for~~  
10 ~~the eyes shall not employ, adapt, dispense, modify, provide,~~  
11 ~~sell, give or fit contact or corneal lenses; and provided~~  
12 ~~further, the testing, design, dispensing and monitoring of a~~  
13 ~~contact lens fitting shall be performed at the optometrist's~~  
14 ~~place of practice];~~

15 B. "ophthalmic lens" means a lens that has a  
16 spherical, cylindrical or prismatic value and that is ground  
17 pursuant to a prescription and intended to be used as  
18 eyeglasses ~~[or spectacles];~~

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

23 D. "prescription" means a formula written for  
24 ophthalmic lenses or contact or corneal lenses, for a topical  
25 ocular pharmaceutical agent or for an oral pharmaceutical

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1 agent as authorized in Section 61-2-10.2 NMSA 1978 that comes  
2 under the provisions of the New Mexico Drug, Device and  
3 Cosmetic Act by a person duly licensed and containing the  
4 following essential elements:

5 (1) an order given individually for the  
6 person for whom prescribed, either directly from the  
7 prescriber to the pharmacist or indirectly by means of a  
8 written order signed by the prescriber, [~~and shall bear~~] that  
9 bears the name and address of the prescriber, his license  
10 classification, the name and address of the patient, the name  
11 and quantity of the drug prescribed, directions for use and  
12 the date of issue; or

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

17 (3) designation of pupillary distance; and

18 (4) name of patient, date of prescription,  
19 expiration date and the name and office location of  
20 prescriber; provided, however, that:

21 (5) those who sell and dispense eyeglasses  
22 upon the written prescription of a physician, surgeon or  
23 optometrist may determine the:

24 (a) type, form, size and shape of  
25 ophthalmic lenses;

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

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

5 (d) type and quality of frame or  
6 mounting, type of bridge and distance between lenses, type,  
7 length and angling of temples; and

8 (e) designation of pupillary distance;

9 E. "eyeglasses" means any exterior optical device  
10 using ophthalmic lenses for the correction or relief of  
11 disturbances in and anomalies of human vision and includes  
12 spectacles and other devices using ophthalmic lenses; and

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

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

16 "61-2-4. LICENSE REQUIRED. -- Unless licensed or exempted  
17 under the Optometry Act, no person shall:

18 A. practice optometry;

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

21 C. prescribe eyeglasses or give a prescription to  
22 a patient; or

23 D. duplicate or replace an ophthalmic lens [~~not~~  
24 ~~including~~] or contact [~~lenses~~] or corneal lens without a  
25 current prescription or without a written authorization from

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1 the patient if the prescription is not available. "

2 Section 3. Section 61-2-14 NMSA 1978 (being Laws 1973,  
3 Chapter 353, Section 12, as amended) is amended to read:

4 "61-2-14. OFFENSES. --

5 A. Each of the following acts committed by any  
6 person constitutes a fourth degree felony, punishable upon  
7 conviction as provided in the Criminal Code:

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

10 (2) using or attempting to use pharmaceutical  
11 agents without the certification issued by the board, unless  
12 [however] the administration of pharmaceutical agents is done  
13 under the direct supervision of a licensed optometrist  
14 certified to administer the pharmaceutical agents in  
15 accordance with the provisions of the Optometry Act;

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

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

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1 one's 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  
5 as provided in the Criminal Code:

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

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

13 (3) refusal, after a request, to provide a  
14 patient a copy of his ~~[spectacle]~~ ophthalmic lens or contact  
15 or corneal lens prescription ~~[not including a contact lens~~  
16 ~~prescription, providing]~~ if the prescription is not over one  
17 year old;

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

23 (5) except for licensed optometrists and as  
24 provided in Subsection A of Section 61-2-15 NMSA 1978, using  
25 any trial lenses, trial frames, graduated test cards or other

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1 appliances or instruments for the purpose of examining the  
2 eyes or rendering assistance to anyone who desires to have an  
3 examination of the eyes; provided, however, that it is not the  
4 intent of this paragraph to prevent any school nurse,  
5 schoolteacher or employee in public service from ascertaining  
6 the possible need of vision services [~~provided that such~~] if  
7 the person, clinic or program does not attempt to diagnose or  
8 prescribe ophthalmic lenses or contact or corneal lenses for  
9 the eyes or recommend any particular practitioner or system of  
10 practice;

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

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

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