

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 61

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

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,

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~~] that is
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

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;

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; and

14 G. "seller" means a person who sells contact or
15 corneal lens pursuant to a prescription after final fitting by
16 an optometrist or physician."

17 Section 2. A new section of the Optometry Act is enacted
18 to read:

19 "[~~NEW MATERIAL~~] CONTACT OR CORNEAL LENS-- ADDITIONAL
20 PRESCRIPTION REQUIREMENTS-- NOTICE TO PATIENTS-- WRITTEN
21 VALIDATION OF AGENCY BY SELLER. --

22 A. A prescription for a contact or corneal lens
23 shall be determined after a comprehensive eye examination,
24 diagnostic lens fitting and after the contact or corneal lens
25 has been adequately adapted and the patient has been released

1 from the initial follow-up care by the prescribing optometrist
2 or physician. Prescriptions shall be issued only for a lens
3 the optometrist or physician has assessed clinically. A
4 prescription shall include the following information required
5 to ensure that the patient receives the designated contact or
6 corneal lens:

7 (1) for a rigid contact or corneal lens:

8 (a) patient's name;

9 (b) the date the contact lens
10 prescription is issued;

11 (c) base curve;

12 (d) power;

13 (e) overall diameter;

14 (f) optic zone diameter;

15 (g) center thickness;

16 (h) lens manufacturer and lens
17 material;

18 (i) a specific expiration date not less
19 than twelve months, unless a shorter period is warranted by
20 the patient's ocular health or by potential harm to the
21 patient's ocular health;

22 (j) signature of the optometrist or
23 physician; and

24 (k) any special design features that
25 may be applicable; and

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underscored material = new
[bracketed material] = delete

1 (2) for a hydrophilic contact or corneal
2 lens:

3 (a) patient's name;

4 (b) the date the contact lens
5 prescription is issued;

6 (c) base curve;

7 (d) power;

8 (e) overall diameter;

9 (f) lens manufacturer and lens
10 material;

11 (g) a specific expiration date not less
12 than twelve months, unless a shorter period is warranted by
13 the patient's ocular health or by potential harm to the
14 patient's ocular health;

15 (h) signature of the optometrist or
16 physician; and

17 (i) any special design features that
18 may be applicable.

19 B. After final fitting, and absent any medical
20 reason to the contrary, the contact or corneal lens
21 prescription shall be given to the patient at his request.

22 C. Optometrists and physicians shall display in a
23 prominent location in their offices a sign to inform their
24 patients that they have the right to request a copy of their
25 prescription.

1 D. An optometrist or physician shall verify the
2 validity and content of a contact or corneal lens prescription
3 by written means to a seller who represents that the patient
4 has authorized the seller to act as his agent. "

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

7 "61-2-4. LICENSE REQUIRED. -- Unless licensed or exempted
8 under the Optometry Act, no person shall:

9 A. practice optometry;

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

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

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

18 Section 4. Section 61-2-14 NMSA 1978 (being Laws 1973,
19 Chapter 353, Section 12, as amended) is amended to read:

20 "61-2-14. OFFENSES. --

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

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

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1 (2) using or attempting to use pharmaceutical
2 agents without the certification issued by the board, unless
3 [however] the administration of pharmaceutical agents is done
4 under the direct supervision of a licensed optometrist
5 certified to administer the pharmaceutical agents in
6 accordance with the provisions of the Optometry Act;

7 (3) permitting any person in one's employ,
8 supervision or control to practice optometry or use
9 pharmaceutical agents unless that person is licensed and
10 certified in accordance with the provisions of the Optometry
11 Act or unless the administration of pharmaceutical agents is
12 done under the direct supervision of a licensed optometrist
13 certified to administer the pharmaceutical agents in
14 accordance with the provisions of the Optometry Act; and

15 (4) practicing optometry, including the use
16 of pharmaceutical agents, during any period of time in which
17 one's license has been revoked or suspended as provided by the
18 Optometry Act.

19 B. Each of the following acts committed by any
20 person constitutes a misdemeanor, punishable upon conviction
21 as provided in the Criminal Code:

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

25 (2) selling or using any designation, diploma

1 or certificate tending to imply that one is a practitioner of
 2 optometry, unless one holds a license as provided by the
 3 Optometry Act;

4 (3) refusal, after a request, to provide a
 5 patient a copy of his ~~[spectacle]~~ prescription ~~[not including~~
 6 ~~a contact lens prescription, providing]~~ if the prescription is
 7 not over one year old;

8 (4) duplicating or replacing an ophthalmic
 9 lens ~~[not including]~~ or contact ~~[lenses]~~ or corneal lens
 10 without a current prescription not more than ~~[two years]~~ one
 11 year old ~~[or without a written authorization from the patient~~
 12 ~~if the prescription is not available];~~

13 (5) except for licensed optometrists and as
 14 provided in Subsection A of Section 61-2-15 NMSA 1978, using
 15 any trial lenses, trial frames, graduated test cards or other
 16 appliances or instruments for the purpose of examining the
 17 eyes or rendering assistance to anyone who desires to have an
 18 examination of the eyes; provided, however, that it is not the
 19 intent of this paragraph to prevent any school nurse,
 20 schoolteacher or employee in public service from ascertaining
 21 the possible need of vision services ~~[provided that such]~~ if
 22 the person, clinic or program does not attempt to diagnose or
 23 prescribe ophthalmic lenses or contact or corneal lenses for
 24 the eyes or recommend any particular practitioner or system of
 25 practice;

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1 (6) advertising by any means the fabricating,
2 adapting, employing, providing, sale or duplication of
3 eyeglasses or any part thereof. This paragraph does not
4 preclude the use of a business name, trade name or trademark
5 not relating to price or the use of the address, telephone
6 number, office hours and designation of the provider in or at
7 retail outlets, on business cards, eyeglass cleaners and cases
8 or in news media or in public directories, mailings and
9 announcements of location openings or the use of the words
10 "doctors' prescriptions for eyeglasses filled" or "eyeglass
11 repairs, replacements and adjustments"; or

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

16 Section 5. Section 61-2-15 NMSA 1978 (being Laws 1973,
17 Chapter 353, Section 13) is amended to read:

18 "61-2-15. EXEMPTIONS. - -

19 A. Nothing in the Optometry Act, except as
20 provided in Section [~~67-1-14 NMSA 1953~~] 61-2-16 NMSA 1978,
21 shall be construed to apply to licensed physicians or surgeons
22 or persons, clinics or programs under their responsible
23 supervision and control. Persons, clinics and programs under
24 the responsible supervision and control of a licensed
25 physician or surgeon shall not use either loose or fixed trial

1 lenses for the sole purpose of determining the prescription
2 for eyeglasses or contact or corneal lenses. [~~The fitting of~~
3 ~~a contact lens to a patient shall be done at the~~
4 ~~practitioner's place of practice.~~]

5 B. Nothing in the Optometry Act, except as
6 provided in Sections [~~67-1-2, 67-1-12, 67-1-14 and 67-1-15~~
7 ~~NMSA 1953~~] 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978,
8 shall be construed to apply to persons selling eyeglasses who
9 do not represent themselves as being qualified to detect or
10 correct ocular anomalies and who do not traffic upon assumed
11 skill in adapting [~~ophthalmic~~] ophthalmic lenses to the eyes. "

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