

November 19, 2015

Ben Kesner  
New Mexico Board of Pharmacy  
5500 San Antonio Drive NE, Suite C  
Albuquerque, NM 87109

RE: New Mexico Registration for LensDiscounters.com / OptiContacts.com / PostalContacts.com

Dear Mr. Kesner,

We are in receipt of your letter dated Nov 3rd, 2015 regarding the requirement to register in New Mexico. Please note that LensDiscounters.com, OptiContacts.com and PostalContacts.com are websites operated by LD Vision Group Inc, which is a Canadian federal corporation, with no domicile in the US, and no nexus in the state of New Mexico. Our directors and shareholders are all Canadian residents. Our address in Buffalo NY is merely a mail-forwarding address for customer returns, and a point of contact for our US customers. We do not lease, rent or own any property in the US, nor do we have any US based employees or operations.

Your statement that we ship contacts without proper validation is false. We comply with US federal legislation (Fairness to Contact Lens Consumers Act) when dispensing contacts from Canada to customers in the US, including to New Mexico. Section 4 (d) of the act specifically states:

VERIFICATION EVENTS.—A prescription is verified under this Act only if one of the following occurs

- (1) The prescriber confirms the prescription is accurate by direct communication with the seller.
- (2) The prescriber informs the seller that the prescription is inaccurate and provides the accurate prescription.
- (3) **The prescriber fails to communicate with the seller within 8 business hours**, or a similar time as defined by the Federal Trade Commission, after receiving from the seller the information described in subsection (c).

Furthermore, the FTC has determined that the Contact Lens Rule for verification takes precedence over state law, and as such NMSA 61-2-10.5 Section (N)(2)(3) and (4) are contrary to the Act.

We are firm in the belief that when a consumer within New Mexico purchases contact lenses on one of our websites, they are knowingly purchasing contact lenses 'out-of-state' and that the transaction wholly occurs outside New Mexico jurisdiction. As per our terms and conditions of sale, our transaction ends when we hand off the package to the carrier chosen by the customer, and the hand-off takes place outside of New Mexico. It is no different than if the customer was to drive across New Mexico state lines, physically purchase the lenses in Texas or Arizona, then drive back to New Mexico. That is in fact what they are doing when they purchase from us, purchasing out-of-state. We are not selling \*to\* New Mexico customers, New Mexico customers are purchasing \*from\* us. When the New Mexico Board is ready to enforce the registration requirement on out-of-state bricks-and-mortar retailers that have face-to-face transactions with New Mexico customers who choose to purchase out-of-state, we will reconsider registering with your board. But until then, we contend that the registration requirement for Contact Lens "Mail Order" Distributors is biased and unconstitutional.

However, notwithstanding the previous comments, and in light of the fact that we fully comply with all federal laws regarding verification and dispensing of contact lenses, we would be willing to consider registration if 1) The application form and registration requirement were amended to address New Mexico customers purchasing from **out-of-country foreign corporations**. 2) The New Mexico business permanent physical location requirement was to be removed. 3) NMSA 61-2-10.5 was to be amended to be in compliance with federal verification rules.

We look forward to working with you in the future once the issues above have been addressed.

Sincerely,



Arshil Abdulla  
LD Vision Group Inc.



New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION

Board of Pharmacy

5500 San Antonio Drive NE, Suite C • Albuquerque, New Mexico 87109
(505) 222-9830 • Fax (505) 222-9845 • (800) 565-9102
http://www.rld.state.nm.us/boards/pharmacy.aspx

Seller or Dispenser of Contact Lenses Application

FEE: \$400 Biennial (Please pay by check or money order made payable to: New Mexico Board of Pharmacy)
A Request for Inspection application and fee must be submitted with application for New Mexico location.

New Mexico business permanent physical location must be inspected prior to the Board consideration to issue license.

Name: \_\_\_\_\_
Mailing Address: \_\_\_\_\_
Permanent Street Address \*\*: \_\_\_\_\_
Contact Person Name & Title \_\_\_\_\_ Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

\*\*License will ONLY be issued to permanent physical address where lenses are to be received, stored, and sold.
Temporary location such as flea markets and fairs will NOT be licensed.

I, the undersigned, hereby apply for a registration to operate a business selling and/or dispensing contact lenses under the laws of the state of New Mexico and present the following statements in support of the privilege to be granted a registration and represent that if such registration is granted, such place will be conducted in full compliance with existing laws and rules and regulations, unless compliance would violate the laws and regulations of the resident state.

I hereby understand that the registration expires the last day of the registration month each 2-year registration cycle, that the registration is not transferable, and that a separate registration is required for each location delivering into New Mexico.

Please make sure that 1-9 are answered or attached to this application before submittal, if not application will be returned.

- 1. Enter current license/registration information; "pending" or not applicable "N/A"
Business and/or professional license (if applicable):
Name: \_\_\_\_\_ Address: \_\_\_\_\_
License/registration number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ Professional license number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_
2. Circle the letter beside appropriate classification: (If b, c, or d attach list on a separate piece of paper)
a) If an individual is owner, give name and address;
b) If a partnership is owner, give name and address of all partners, (attach list);
c) If a corporation or municipality, list name, address and title of all officers, (attach list);
d) If county, city, state or church is owner, give name, address and title of all officers, (attach list).
3. Attach copy of current resident state license, permit or registration to operate (if applicable).
4. Attach a copy of the most recent inspection conducted by a resident state regulatory or licensing authority (if applicable).
5. Attach a policy manual listing procedures for items listed in regulation 16.19.28.
POLICY MANUAL: A policy manual containing at a minimum the information listed below shall be submitted with the registration application. The initial manual must be approved by the board and any subsequent changes or modifications require prior approval of the board or its agent.
a) 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:
i. The patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;
ii. 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
iii. 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.
b) The prescription contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:
i. Lens manufacturer;
ii. Type of lens;
iii. Power of the lens;
iv. Base curve;
v. Lens size;
vi. Name of the patient;
vii. Date the prescription was given to the patient;
viii. Name and office location of the licensed optometrist who writes the replacement contact lens prescription; and expiration date of the replacement contact lens prescription.
c) A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of all prescription for 3 years.
d) Security requirements: restricting access, to all lenses and patient health records, to authorized personnel only.
e) Storage requirements: The registrant must have policies and procedures for maintaining the proper storage conditions for contact lenses. The lenses must be stored at the licensed location.

I [owner(s)/operator(s)] have not been arrested, investigated for, charged with, convicted of, sentenced, entered a plea of nolo contendere, or entered into any other legal agreements for any criminal offense in any state, territory or possession of the United States or by the federal government.\*

Signature \_\_\_\_\_
I [owner(s)/operator(s)] have not had any disciplinary actions, nor have any pending actions against us, or to my knowledge been investigated by any professional licensing authority.\*

Signature \_\_\_\_\_
\*\*If the above statements are not true, explain the circumstances, include a copy of the judgment(s), and attach to this application.
I (we) certify under penalty of perjury that the information given in this application is true and accurate to the best of my (our) knowledge.

Signature - Owner or Officer \_\_\_\_\_ Print Name of Officer or Owner \_\_\_\_\_ Date \_\_\_\_\_